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24-09-2024
Ct. No.34
b.das

CRR No. 3205 of 2024

In the matter of : Somnath Das & Ors. petitioners.

Mr. Krishan Ray
Mr. Sekhar Mukherje
Mr. Anindya Chowdhury
Mr. Subhajit Mukherjee ...for the petitioners.

Mr. Surajit Basu
Ms. Jasika Alam
Mr. Pritam Chakraborty ...for the opposite party.

By consent of the parties the revisional application
is taken up for consideration.

Heard learned counsels for the parties.

The petitioner is aggrieved by the order passed by
the learned Judicial Magistrate, 4th Court, Howrah on 5th
July, 2023 in Misc. Case No.602 of 2021 directing him to
pay Rs.5,000/- per month to the opposite party and
Rs.3,000/- per month to her minor son as interim
monetary relief from the date of filing of the case.

Learned counsel for the petitioner submits that the
petitioner was not able to take steps before the learned
Trial Court on the relevant date for which an ex parte
order was passed. The petitioner seeks liberty to contest
the application before the learned Trial Court.

Per contra, learned counsel for the opposite party submits that the petitioner chose not to appear before the learned Trial Court to contest the application despite being given sufficient opportunity.

It appears from the order impugned that no step was taken by the petitioner on the relevant date and no written objection or affidavit of assets and liabilities was also filed. The Court proceeded to hear the application for interim maintenance ex parte.

It also appears that several opportunities were granted to the petitioner to file written objection and affidavit of assets and liabilities which were not availed of by the petitioner.

However, since the petitioner intends to contest the application before the learned Trial Court, he should be granted such opportunity in the interest of justice.

In view of the above, the order impugned dated 5th July, 2023 passed by the learned Judicial Magistrate, 4th Court, Howrah on 5th July, 2023 in Misc. Case No.602 of 2021 is set aside/quashed. The matter be remanded back to the learned Trial Court for fresh consideration upon granting an opportunity of hearing to both the parties, in accordance with law.

The petitioner is at liberty to submit written objection to the petition for interim maintenance as well as his affidavit of assets and liabilities before the learned Trial

Court on the next date of hearing fixed before the learned Trial Court. The learned Trial Court shall dispose of the application for interim maintenance within two months from the next date of hearing fixed before him.

The execution case being Misc. Execution Case No.11 of 2024 is also set aside/quashed.

Pending disposal of the application for interim maintenance, the petitioner shall continue to pay a consolidated sum of Rs.6,000/- per month to the opposite party and her minor son commencing from September, 2024. The maintenance for each month shall be paid within the 10th day of each succeeding month.

In the event the petitioner fails to pay such amount for any month, the learned Trial Court shall be at liberty to take necessary steps in accordance with law without further reference to this Court.

The revisional application being CRR 3205 of 2024 is disposed of.

All parties shall act on the server copy of this order duly uploaded from the official website of this Court.

Urgent certified website copy of the order, if applied for, be given to the parties on compliance of requisite formalities.

(Suvra Ghosh, J.)