

CRR No. 4115 of 2024

In the matter of : Rabindranath Naskar. petitioner.

Mr. Debabrata Ray
Mr. Sudip Srkar
Mr. Partha Sarathi Mishra
Mr. B. Sarkar ...for the petitioner.

Mr. Mrinal Kanti Mukherjee
Mr. Dipanjan Biswas ...for the opposite party.

Supplementary affidavit filed by the petitioner is taken on record.

Heard learned counsels for the parties.

The petitioner who is the husband of the private opposite party has assailed the ex parte judgment and order passed by the learned Judicial Magistrate, Bongaon, North 24 Parganas on 19th October, 2022 in M Case No.295 of 2021 directing the petitioner to pay Rs.10,000/- per month to the opposite party from the date of filing of the case.

Learned counsel for the petitioner submits that the petitioner and his wife met with an accident on 16th February, 2012 in which his wife Swapna Naskar expired on the spot and he subsequently married the private opposite party. The petitioner suffered physically as well as mentally due to the accident and was therefore unable

to contest the application under Section 125 of the Code of Criminal Procedure before the learned trial Court. The petitioner seeks to appear before the learned trial Court and contest the said application.

It appears that the order impugned was passed ex parte since the petitioner failed to appear before the learned trial Court on the relevant date.

As the petitioner seeks to contest the application under Section 125 of the Code of Criminal Procedure, it shall only be just and proper to send the matter back to the learned trial Court for a fresh consideration of the application upon granting reasonable opportunity of hearing to both the parties and considering the documents filed by the parties before the learned Court.

Accordingly, the revisional application being CRR 4115 of 2024 is allowed.

The order impugned dated 19th October, 2022 passed by the learned Judicial Magistrate, Bongaon, North 24 Parganas in M Case No.295 of 2021 be set aside/quashed. Consequently the Misc. execution cases nos.134 of 2022 and 80 of 2024 be set aside/quashed.

The matter be remanded to the learned trial Court for fresh consideration of the application under Section 125 of the Code upon granting reasonable opportunity of hearing to both the parties and considering the documents filed/to be filed by the parties in the proceeding.

The learned trial Court shall dispose of the application as expeditiously as possible, preferably within six months from the date of communication of this order without granting any unnecessary adjournment to either of the parties, in accordance with law.

Pending disposal of the said application, the petitioner shall continue to pay Rs.5,000/- per month to the opposite party. The amount for each month shall be paid within the 7th day of each succeeding month.

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

(Suvra Ghosh, J.)