

9.4.2026

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CRR 325 of 2026

Soumen Sen & Anr.

Vs.

The State of West Bengal

Mr. Kallol Basu

Mr. Atreya Chakraborty

...for the petitioners

It is submitted on behalf of the petitioners that the petitioners herein are married couple and due to the health reasons of the petitioner no. 2, it has become difficult for her to bear a child and for which they opted for the path of surrogacy in order to fulfill their yearning for parenthood.

Previously, the present petitioners approached before this High Court by way of filing an application under Article 226 of the Constitution of India being WPA 24838 of 2024 and the said writ petition was disposed of by an order dated 20th February, 2025 by which this court inter alia pleased to permit the present petitioners to avail the path of surrogacy. In the said conspectus of facts, the applicants filed an application seeking issuance of a parentage order as mandated under Section 4(iii)(a)(II) of the Surrogacy (Regulation) Act, 2021 so as to fulfill all requisite formalities of surrogacy under the said Act.

However, the court below by the impugned order dated 26.11.2025, was pleased to reject the application and instructed the petitioners to approach before the Executive Magistrate on the ground that the term "Magistrate" as referred in Section 4(iii)(a)(II)

of the said Act indicates that the legislature intended to give such power to the Executive Magistrate and not to the Judicial Magistrate. In this context, he referred Section 3(1) and 3(2) of the BNSS read with Section 4(iii)(a)(II) of the Surrogacy (Regulation) Act, 2021.

Learned counsel for the petitioners submits that this High Court by a notification issued by the Learned Registrar (Judicial Service), High Court, Appellate Side, Calcutta being no. 85-R(JS) dated 6th January, 2026 has empowered the court of Chief Judicial Magistrate in each district headquarter and the court of Additional Chief Judicial Magistrate, 1st Court, in each sub-division across the State of West Bengal, to deal with the application under Section 4(iii)(a)(II) of the said Act.

In such view of the matter, the instant application being CRR 325 of 2026 is hereby disposed of with a direction upon the court below to reconsider the petitioners' prayer in the light of the notification issued by the Learned Registrar (Judicial Service), High Court, Appellate Side, Calcutta being no. 85-R(JS) dated 6th January, 2026 within a period of ten days from the receipt of this order.

Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

All parties shall act on the basis of the server copy of this order, duly downloaded from the official website of this Hon'ble Court.

(Dr. Ajoy Kumar Mukherjee, J.)