

Misc Ex case no. 50/2023
Reg No.-185/2023
CNR No. WBBB06-001357-2023

Order no.10/ Dated:- 07.06.24

Today is fixed for order.

Both parties files hazira.

Heard the submission of both the parties on the earlier occasion.

The record is taken for passing order.

It appears that by filing the instant petition the OP has challenged the merit of the schedule of the petition u/s 125(3) of the Cr.P.C on the ground that it is vague indistinct and out of the principle of law. In the petition u/s 125(3) of the Cr.P.C. the petitioner has prayed for execution of the order of inter maintenance allowance granted in her favour for the period commencing from 01.04.2018 till 01.04.2023. The execution case has been filed on 15.05.2023. According to proviso u/s 125(3) of the Cr.P.C no warrant shall be issued for the recovery of any amount due under this section unless application be made to the court to levy such amount within a period of 1 year from the date on which it becomes due. In the case of ***Shantha @ Usha Devi and Another Vs B.G. Shivnanjappa*** reported in (2005) 4 SCC 468 it has been observed by the Supreme Court that liability to pay maintenance u/s 125 of the Cr.P.C is a continuing liability on interpretation of the provision of section 125(3) of the Cr.P.C proviso it is found that there is no bar on making an application for recovery of amount of maintenance that has accrued as a liability upon the OP if the application is made within a period of 1 year from the date on which it becomes due. In this case the last date up till which the maintenance allowance has not been paid is found to be 01.04.2023 and the instant application has been filed well within the period of 1 year in conformity with the statutory mandate. Therefore this court finds no defect in the schedule of the petition and therefore the instant petition filed by the OP has no merit in the view of this court.

H e n c e, it is ,

ORDERED

That the instant petition is rejected on contest.

Fix 05.07.2024 for payment id W/A.

Dictated & corrected by me

J.M 2nd Court
Rampurhat, Birbhum
(JO code-WB01447)

Judicial Magistrate, 2nd Court
Rampurhat, Birbhum
(JO code-WB01447)