

Misc Execution Case No. 169/2019
CNR No. WBBD16-003719-2019

Dated 26.09.2023

Today is fixed for order in respect of petition dated 01.03.2023 filed by the O.P. Both parties have filed hazira. O.P makes a payment of Rs. 10,000/- towards the arrear maintenance of petitioner. Let the money receipt be kept with record.

Now the record is taken up for passing order in respect of petition dated 01.03.2023 filed by the O.P.

By filing this instant application, Ld. Advocate for the O.P submits that the petitioner arrived a settlement agreement with the respondent in respect of certain terms and condition which was enumerated in para 6 of the application for mutual divorce being Mat Suit No. 265 of 2021. In the said application for Mutual Divorce, the petitioner agreed that the instant Misc Execution Case will be treated as withdrawn/Compromise. The said application mutual divorce was solemnly affirmed and verified by both the parties. Hence, Ld. Advocate for the O.P submits that the petitioner is barred to proceed with this case as per her own affidavit sworn in Mat Suit No. 265 of 2021. Hence he prays for rejection of this case on the ground of constructive res-judicata and estoppel.

Ld. Advocate for the petitioner raised strong application and submits that the O.P has filed a petition on the same ground identical to the instant petition which was rejected by this court vide order dated 26.09.22. he also submits that the Mat Suit No. 265 of 2021 has been disposed of as the parties have failed to agree to dissolve their marriage on mutual consent. He prays for rejection of this instant petition of O.P.

I have already heard both side. Perused.

The so-called settlement agreement between the parties has no effect in this instant execution case. Moreover the settlement of marital disputes between the parties by a decree of divorce on mutual consent have failed. Doctrine of res-judicata and estoppel have no role in this instant case. Considered.

The instant petition dated 01.03.2023 is rejected on contest without cost.

On further perusal it appears that till date the petitioner has not complied the direction dated 19.02.2022. The petitioner is strongly directed to comply the order dated 19.02.2022 by the next date without fail i.d N/O.

To.....16/ 11/ 23..... for payment by O.P and compliance of order dated 19.02.2022 by the petitioner i.d N/O.

Typed and corrected by myself

J.M, 3rd Court, Asansol
J.O Code: WB1159