

Cr. Appeal 03 of 2025

Order no. 15 dated 08.01.2026

Today the matter is fixed for hearing of stay petition and awaiting TCR.

Both the parties are present by filing hazira.

The respondent has filed written objection to the stay application.

It reveals that TCR has not yet been received by this Court.

As per present proposition of law when both the parties are present before this Court the matter should be heard on merit for disposal of the main controversy between the parties without indulging the parties to keep the matter pending for hearing of interim petition. In the present case both the parties are present before this Court and the appeal is ready for hearing but due to want of TCR the criminal appeal cannot be taken up for final hearing.

As the appellant has preferred this appeal being aggrieved by the impugned order of the Id. Trial Court, if the stay petition is kept pending till receiving the TCR, the appellant will be prejudiced. As hearing stay application TCR is not required, stay petition is taken up for hearing.

Heard the Ld. Advocate for the parties.

Perused the materials on record.

Considered the same.

It reveals from hearing that when the wife /respondent filed the Misc Case no. 95 of 2023, she was residing with appellant/husband and the summons issued by the respondent/wife in connection with said Misc Case in the name of her husband was received by herself and got an ex-parte order in her favour. The Ld. Trial Court after considering the submission of the petitioner passed the order which is required to be stayed, otherwise the appellant will suffer from irreparable loss and injury.

The Ld. Advocate for the respondent by denying the submission of the appellant had submitted that the appellant inflicted physical and mental torture upon the wife /respondent for which a criminal case is also pending and having capacity to pay maintenance has not been paying any maintenance to his wife. The order of maintenance was passed on 05.03.2024 and since then he has not paid any amount towards maintenance of his wife. The dispute regarding the staying of the wife /respondent at the house of appellant / husband at the time of filing Misc Case no. 95 of 2023 cannot be decided without hearing of appeal with original Trial Court record but admittedly now the wife /respondent is residing separately and the husband /appellant has not submitted any prima facie document in support of payment of any maintenance to his wife though he is legally and morally bound to pay the same.

If the prayer of staying impugned order of the appellant is not allowed, the appellant will suffer from irreparable loss and injury and at the same time it is also possible for the appellant to keep the appeal pending after getting an order of stay by depriving his wife without paying her any maintenance which is supported by his conduct that still he has not paid any amount to his wife. On the above discussion, this Court is inclined to allow the prayer of the appellant for a limited period.

Contd.....

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Order no. 15 dated 08.01.2026 Contd....

Hence,

it is

ordered,

that the stay application filed by the appellant/ husband dated 27.01.2025 is allowed on contest subjected to payment of Rs.25,000/-.

The appellant / husband is directed to pay a sum of Rs.25,000/- to the respondent /wife by 31.01.2026.

The cost of Rs.25,000/- is subject to adjustment from the arrear maintenance to the extent of Rs.5000/- in each month after starting payment of maintenance by the appellant/ husband to the wife/respondent.

The operation of impugned order will be stayed till next date subjected to payment of cost of Rs.25,000/- to the respondent /wife by 31.01.2026. .

Call for TCR urgent basis.

Office Clerk to comply at once.

A copy of this order be sent to the Ld. Trial Court for taking necessary action towards staying of impugned order and to transmit the original case record on urgent basis.

Fix 03.02.2026 for filing money receipt of payment of cost and hearing of appeal.

D/C by me

Additional Sessions Judge
2nd Court, Hooghly

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