

C. Execution 06 of 2018

Order dated: 28.09.2018

Aggrieved person is present by filing her hazira. As stipulated by the previous order today is fixed for S/R and appearance. No service return has been received as yet. At this stage the Aggrieved person has filed a petition stating the fact that distress warrant upon the O.P is required to be issued as he is intentionally evading service.

Ld. Advocate for the Aggrieved person submits that D/W is required to be issued upon the O.P. to protect the object of the legislation and to prevent vagrancy and destitution of the neglected wife. It was also argued that the notice has been issued to the O.P and section 27 of the General Clauses Act must in applied and good service has to be presumed.

Heard ld lawyer for the Aggrieved person. Perused the petition that has been filed today. It appears that show cause notice was issued upon the opposite party and postal receipts to that effect has filed by the Aggrieved person. Till date no service return has been received in this case. But the Aggrieved person through her petition has reinserted the fact that the opposite party still reside in that address which is given in the show cause notice. As mentioned above there is no report as regards show cause notice, though that was sent through registered post. Thus all the process designed to serve a notice has been exhausted. I find no rational reason to disbelief the version of the Aggrieved person. Moreover there is no circumstances to disprove and or doubt her version and assume that the address is not correct. Hence a pragmatic approach would suggest that the version of the Aggrieved person can be relied upon and embarking on such a statement necessary order can be passed. I must also not be oblivious of the fact that this is an application under Rule 6 of the DV Act read with section 125 sub-section (3) of the Cr.P.C, which emanates from the order passed by this court and is designed to prevent vagrancy and destitution of wife, minor child who are unable to maintain themselves. The enactment being a beneficial legislation, every interpretation should be given to protect the interest of the Aggrieved person.

At this stage the paramount consideration of this court is to secure the ensure realization of the legitimate due of the Aggrieved person and see that the order of this court is placed at the desired podium. When indeed the Aggrieved person herself has ratified the fact that the opposite party resides in the address manifested in the show cause notice in that event this court must not remain inactive rather gusto efforts should be made for the benefit of the Aggrieved person so that the relief may be percolated to her. Section 27 of the General Clauses Act militates in favour of the Aggrieved person and service may be presumed in this case.

On the basis of the above delineation and to provide relief to the Aggrieved person as provided in the Act, this court thinks that this is a fit case to issue Distress warrant against the opposite party to ensure payment of arrears maintenance.

Hence issue D/W against the respondent A copy of this order be sent along with the D/W. The I.C concern is directed to make sincere efforts to execute the D/W of this court because delay on their part would tantamount to deprivation of a rightful claim.

Fix **01-11-2018** for ER of D/W. Requisite at once.

Typed by me;

A.C.J.M.

Additional Chief Judicial Magistrate

Bidhannagar