

MEX- 104/22

Order dated: 07.06.2024

Today the record is fixed for payment..

Both the parties are present by filing hazira.

Ld. Advocate on behalf of the petitioner had filed one further claim for the period from October 2022 to February 2024, that is for 17 months amounting to Rs.76,500/- on 30.03.2024.

Ld. Advocate on behalf of the OP has filed one written objection against the said petition for further claim stating that the claim for the period from October 2022 to February 2024, that is for 17 months amounting to Rs.76,500/- is beyond the law as the petitioner cannot claim for recovery of allowance maintenance for more than one year as such the petition dated 30.03.2024 is liable to be rejected.

Ld. Advocate for the OP has relied in the decision of the Hon'ble High Court, Andhra Pradesh in Jangam Srinivasa Rao vs Jangam Rajeswari and Another dated 31.03.1989.

Heard and considered.

In this context, I would like to refer a judgment reported in (2013) 10 SCC, 618 wherein the Apex Court held that the the first proviso to section 125(3) CrPC does not create any bar nor fetter on claiming arrear of maintenance. The Hon'ble Supreme Court also made distinction between mode of enforcement of payment of maintenance and entitlement to payment of maintenance. The first proviso to section 125(2) of CrPC does not extinguish or limit entitlement to arrear of maintenance. This proviso lays down procedure for recovery of maintenance by construing maintenance to be a levy of fine and in case of default, claimant cannot seek detention of defaulter in custody if application therefore is not moved within one year from due date.

In all the judgments the Hon'ble High Court and the Apex Court have taken same view that as per proviso of sec.125(3) CrPC 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 one year from the date on which it becomes due. As per observation of the Apex Court in (2013) 10 SCC, 618, the petitioner can claim maintenance beyond the period of one year but no warrant shall be issued for the recovery of any amount due as per first proviso of sec.125(3) of CrPC unless the application to levy such amount within a period of one year from the date on which it becomes due.

In view of the above decisions of the Hon'ble Court I do not find any merit in the objection of the OP.

OP is directed to pay Rs.9000/- on the next date.

To 06.07.2024 for payment

Typed and printed by me,

J.M, 3rd Court, Barrackpore.

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