

M Ex 244/2019 (Regn. no. 244/2019)

Order dt. 08-02-2024.

Both sides file respective hazira. Today is fixed for hearing petition filed by O.P. The petition dated 06-12-2023 filed by O.P. is taken up for hearing.

By the petition dated 06-12-2023, filed along with an accounts of payment till date, the O.P. has prayed for disposal of the instant execution case on full satisfaction on the ground that till now Rs. 56000/- in total has been realized from him against the claim of arrear of maintenance to the tune of Rs. 18000/- made by the petitioner in this case.

On 28-06-2023 the petitioner has filed an application for further realization of arrear of maintenance due for the period from 15-12-2019 to 14-07-2023 to the tune of Rs. 126000/- in total subsequent to her earlier claim of arrear to the tune of Rs. 18000/- due for the period from 14-06-2019 to 14-12-2019.

Ld. Lawyer for the O.P. submits that the further claim of realization by the petitioner vide application dated 28-06-2023 is barred by limitation as per provisions u/s. 125 (3) of Cr.P.C. as the original application for realization had been filed on 09-12-2019. On this score ld. Lawyer for the O.P. refers to decisions as reported in (2007) 2 C.Cr.LR. (Cal) 116 and (2009) 2 C.Cr.LR. (SC) 800.

On the other hand, ld. Lawyer for the petitioner refers to decision as reported in (2014) 1 SCC (Crl.) 361 while submitting that the claim of realization of arrear due for the period from 15-12-2029 to 14-07-2019 by application dated 28-06-2023 is not barred by limitation as per provisions u/s. 125 (3) of Cr.P.C. as the application dated 09-12-2019 for realization of arrear for the period from 14-06-2019 to 14-12-2019 has been pending on that date.

Heard both sides. Perused the materials on record and the decisions of the Hon'ble Courts as cited before me. Considered.

Hon'ble High Court at Calcutta in its decision as reported in (2007) 2 C.Cr.LR. (Cal) 116 has been pleased to hold that under the first proviso to subsection 3 of section 125 no warrant shall be issued for recovery of such amount due in this section unless an application be made before the Court to levy such amount within a period of one year from the date on which it becomes due. The fact of that case is that an order of interim maintenance was passed on 31-01-2004 and the order was made effective from the date of application i.e. 02-09-2002. The application for execution was filed on 14-12-2005 for recovery of the arrears. It was held by the ld. Magistrate concerned that the amount due for the period from 02-09-2002 to 31-01-2004 and also the amount due for the period from 15-12-2004 to 14-12-2005 were recoverable. Hon'ble Supreme Court in its decision as reported in (2009) 2 C.Cr.LR. (SC) 800 has been pleased to hold that the question of recovery of any amount from the petitioners towards the maintenance granted to the children after they had attained majority does not arise. In that case the question before the Hon'ble Supreme Court had been that whether the maintenance already paid to the children liable to be recovered on the ground that they have attained the majority. Hon'ble Supreme Court in its decision as reported in (2014) 1 SCC (Crl.) 361 has been pleased to hold that the first proviso to section 125 (3) 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. In case of default in payment of maintenance, claimant cannot seek detention of defaulter in custody if application therefor is not moved within one year from date. It has further been held by the Hon'ble Court that the remedy to approach the Court by means of successive applications under Section 125 (3) of Cr.P.C. highlighting the subsequent defaults in payment of maintenance was acknowledged by this Court in the case of *Shahada Khatoon vs. Amjad Ali* as reported in (1999) 5 SCC 672. On that score the Hon'ble Supreme Court has been pleased to hold that the application filed on 05-02-2002 filed by the appellants under section 125 (3) was in continuation of the earlier application and for subsequent periods of default on the part of the respondent. The

M Ex 244/2019 (Regn. no. 244/2019)

contd.

Order dt. 08-02-2024.

first proviso to Section 125 (3), therefore did not extinguish or limit the entitlement of the appellants to the maintenance.

In view of the decision of the Hon'ble Supreme Court as reported in (2014) 1 SCC (Cri.) 361, in this case the subsequent application dated 28-06-2023 for realization of arrear due for the period from 15-12-2019 to 14-07-2019, which is in continuation of the earlier application dated 09-12-2019 for realization of arrear for the period from 14-06-2019 to 14-12-2019, is not barred by the limitation prescribed u/s. 125 (3) of Cr.P.C. as the earlier application dated 09-12-2019 has been pending on the date of filing the subsequent application. The facts of the cases in the decisions as referred by the ld. Lawyer for the O.P. are different from the fact of the instant case and as such those decisions are not applicable in the facts and circumstances of the instant case.

Under such circumstances, the prayer for disposal of the instant execution case is liable to be rejected. The O.P. is liable to pay the arrear of interim maintenance due for the subsequent period from 15-12-2019 to 14-07-2029 to the petitioner. It appears from the materials on record that a total amount of Rs. 56000/- has already been realized against the claim of the petitioner in the instant execution case. The petitions filed by both sides are disposed of accordingly.

Hence, the O.P. is liable to pay the rest amount of arrear of interim maintenance against claim of Rs. 144000/- (Rs. 18000/- for the period from 14-06-2019 to 14-12-2019 + Rs. 126000/- for the period from 15-12-2019 to 14-07-2023). Thus, a sum of Rs. 88000/- is still due from the O.P. to the petitioner as arrear of interim maintenance.

To 15-03-2024 for further payment.

Typed and printed by me.

Sd/-

A C J M

Kakdwip, South 24-Parganas.

Sd/-

A C J M

Kakdwip, South 24-Parganas.