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ITEM NO.34

COURT NO.10

SECTION XVI

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C).....of 2016

(CC No.17125/2016)

(Arising out of impugned final judgment and order dated 28/09/2015

in CO No. 2764/2015 passed by the High Court of Calcutta)

SOMNATH DAS

Petitioner(s)

VERSUS

RITUPARNA DAS

Respondent(s)

(With appln. (s) for c/delay in filing SLP and c/delay in refiling SLP)

Date : 19/09/2016 This petition was called on for hearing today.

CORAM : HON&#39;BLE MR. JUSTICE KURIAN JOSEPH

HON&#39;BLE MR. JUSTICE ROHINTON FALI NARIMAN

For Petitioner(s) Mr. R. K. Sing, Adv.

Mr. A. Mangalasserry, Adv.

Mr. Virag Gupta, Adv.

Mr. Praveen Swarup, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following

O R D E R

Delay condoned.

The petitioner is aggrieved by two orders to pay maintenance, one, as per the proceedings under Section 125 of Code of Criminal Procedure, 1973 and another, under Section 24 of the Hindu Marriage Act, 1955.

Section 125 Cr.P.C. proceedings were initiated earlier and learned Magistrate had directed payment and maintenance of Rs.3000/- for the wife and Rs.2000/- for the child.

Thereafter, in the proceedings under Section 24 of the Hindu Marriage Act, the same amount was awarded with the rider that the amount awarded by the Magistrate under Section 125 Cr.P.C. proceedings would be deducted. That was challenged by the respondent in the High Court. The High Court has vacated that rider and resultantly, the petitioner has to pay maintenance to his wife

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and child in two proceedings, one, under Section 125 Cr.P.C. and other under Section 24 of the Hindu Marriage Act.

Under Section 127(2) of the Cr.P.C., in case, it appears to the Magistrate that in consequence of any decision of the Civil Court, any order made under Section 125 Cr.P.C. should be cancelled or varied, he has to cancel or vary the order as the situation warrants.

Under Section 127(4) Cr.P.C., at the time of making a decree for the recovery of any maintenance by any person to whom monthly allowance has been ordered to be paid under Section 125, the Civil Court should take into account that sum which has been paid or recovered, and that was what precisely done by the Civil Court while granting maintenance under Section 24. Unfortunately, this crucial aspect has missed the notice of the High Court.

In view of the above circumstances, we feel that the High court needs to consider the matter afresh. We permit the petitioner to file a review in the lines we have indicated above, within a period of 30 days from today before the High Court and we request the High Court to dispose of the review on merits three months thereafter. Until the review is disposed, of subject to the petitioner filing the review within one month from today, impugned order passed by the High Court shall stand deferred.

In view of the above, the Special Leave Petition is disposed of.

(Rashmi Dhyani)

(Renu Diwan )

SR. P.A. ASSISTANT REGISTRAR