

Latif Vs. Arktari

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Court : Allahabad

Decided On : Feb-14-1995

Reported in : I(1995)DMC644

Judge : N.B. Asthana, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 125

Appeal No. : Cr. Revision No. 238 of 1995

Appellant : Latif

Respondent : Arktari

Disposition : Revision dismissed

Judgement :

N.B. Asthana, J.

1. Heard learned Counsel for the revisionist. Opposite party who is admittedly wife of the revisionist filed an application under Section 125 Cr. P.C. in 1979. This application was allowed ex-parte on 23.6 1979. The order for maintenance was put into execution a number of times and it is argued that every time the revisionist filed objection stating that he was of unsound mind and that the ex-parte order passed against him be set aside. The execution application was dismissed for one reason or the other but not on merits. It is further argued that thereafter the

revisionist did not press his application for setting aside the ex-parte maintenance order. The opposite party again filed application for execution of the maintenance order and in execution thereof the revisionist was sought to be arrested and sent to civil prison. He thereafter again filed an application for setting aside the ex-parte order of maintenance through his next friend and guardian alleging that he was confined in mental hospital and for that reason could not apply earlier for setting aside the ex-parte order. This application was contested by the opposite party.

2. The learned Family Court Judge before whom the matter was pending came to the conclusion that no discharge certificate from the mental hospital has been filed nor the date of discharge of the applicant from the mental hospital has been given nor the delay in moving the application has been explained and therefore he came to the conclusion that the application is barred by time. The result was that the application for setting aside the ex-parte order was rejected. Aggrieved by it the husband has come to this Court.

3. I have heard the learned Counsel for the revisionist and have perused the record. No plausible explanation is forthcoming as to why the applications for setting aside the ex-parte order moved earlier were not proceeded with. It was argued on behalf of the revisionist that the execution application was dismissed and therefore application for setting aside the ex-parte order was not perused under the advice given to the revisionist. I am not satisfied with this argument. The fact remains that the earlier application for setting aside the ex-parte order was got dismissed and therefore successive applications for setting aside that order were not maintainable. On this very legal ground the subsequent application for setting aside the ex-parte order was not maintainable. It was however contended that the Trial Judge himself directed the revisionist to move application for setting aside ex parte order but I do not think that this would change the legal position that successive applications for setting aside the ex-parte order are not maintainable. Undisputedly the revisionist was discharged from the mental hospital on 24.3.1983. The last application for setting aside the ex-parte order was filed in the year 1991 which was registered as Criminal Misc. Case No. 424 of 1991. Trial Judge has also stated in the order in question that no valid reason has been assigned for not moving such application from 24.3.1982 till the year 1991, In the

facts and circumstances it cannot be said that the order of the Trial Judge suffers from any infirmity so as to call for the interference in the revision. The revision is dismissed at the admission stage.

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