
(2012) 04 CAL CK 0110
In the Calcutta High Court
Case No : C.R.R. No. 1471 of 2011

Manish Kumar Bhattacharyya and Others	APPELLANT
Vs	
Smt. Sanhita Bhattacharyya and Another	RESPONDENT

Date of Decision : 03-04-2012

Acts Referred:

Constitution of India, 1950 — Article 227
Penal Code, 1860 (IPC) — Section 323, 341, 498A, 506
Protection of Women From Domestic Violence Act, 2005 — Section 12, 23, 29

Citation : (2012) 3 CHN 231

Hon'ble Judges : Prasenjit Mandal, J

Bench : Single Bench

Advocate : Ayonava Bhattacharya, for the Appellant; Barun Kr. Das, for the Respondent

Final Decision : Dismissed

Judgement

Prasenjit Mandal, J.—This criminal revision is directed against the order dated March 14, 2011 passed by the learned Judicial Magistrate, 5th Court, Serampore in C.R. No. 673 of 2010 thereby granting an interim order of right of residence of the petitioner/opposite party therein in the dwelling house situated at 95/A Patuapara Lane under P.S. Serampore, Dist. Hooghly u/s 23 of the Protection of Women from Domestic Violence Act. The complainant/opposite party herein instituted a proceeding u/s 12 of the Protection of Women from Domestic Violence Act, 2005 before the learned Judicial Magistrate, 5th Court, Serampore claiming relief of right of residence along with her husband and child at her matrimonial home, that is, at 95/A Patuapara Lane under P.S. Serampore, Dist. Hooghly. She moved an application u/s 23 of the said 2005 Act for interim relief and that prayer was granted by the impugned order. Being aggrieved, the opposite parties/petitioners herein have filed this application for quashing the said proceeding as well as setting aside the order u/s 23 of the 2005 Act.

2. Now, the question is whether the impugned order should be sustained.

3. Upon hearing the learned Counsel for the parties and on going through the materials-on-record, I find that there is no dispute as to the relationship between the parties as mentioned in the petition. The said complaint case was filed by the wife against her father-in-law, mother-in-law and elder brother-in-law (Bhasur) contending, inter alia, that she, her husband and the child were ousted from the said dwelling house.

4. Upon perusal of the materials, it appears that there are cases and counter-causes between the parties. The wife/complainant/opposite party herein instituted a case u/s 498A of the IPC against her in-laws and the petitioners herein lodged a criminal case u/s 323/341/506 of the IPC against the complainant/opposite party herein. The complainant/petitioner/opposite party herein and her husband are on Court bail in connection with that case. Both the cases are pending. So, such facts clearly indicate that the wife, complainant has been residing at the domestic home referred to above along with her husband and the child. The report submitted by the Concerned Officer after enquiry reveals that the complainant was subjected to torture by the respondents (i.e. petitioners herein). Under the above circumstances, I find that the complainant has shown prima facie case to have an order of right of residence in the dwelling house.

5. Mr. Ayonava Bhattacharya appearing for the petitioners has submitted that the complaint lodged by the wife is not maintainable and the provision of the said Act of 2005 will not be applicable against the petitioners herein. In support of his contention, he has referred to the decision of S.R. Batra & anr. v. Smt. Taruna Batra reported in AIR 2007 SC 1118 and thus, he submits that the right of the wife is available against her husband and not against father-in-law or other relatives, mother-in-law and others. This decision may be referred at the time of trial of the suit and not at this initial stage as in the present case.

6. He has also referred to the decision of Umesh Sharma v. State reported in AIR 2010 (NOC) 515 (Del.) and thus, he submits that the wife cannot claim right to live in house owned by father-in-law against his consent. This matter relates to a restrained order against the father-in-law when the wife is residing in the flat owned by the father-in-law.

7. Mr. Barun Kumar Das, appearing on behalf of the opposite party has contended that the impugned order has been passed u/s 23 of the 2005 Act and this is purely interim in nature. The Act itself does not provide for revision before this Hon'ble Court, but Section 29 of the said 2005 Act lays down a provision for appeal against orders passed under the provisions of the said Act. For convenience, the said Section 29 is quoted below:-

29. Appeal.-There shall lie an appeal to the Court of Session within thirty days from the date on which the order made by the Magistrate is served on the aggrieved person or the respondent, as the case may be, whichever is later.

8. Therefore, from the provisions of Section 29 of the said Act, it is clear that an

appeal lies against an order passed u/s 23 of the said Act. When an alternative efficacious remedy is available under the Act, the parties are to resort that recourse to ventilate their grievance accordingly.

9. Mr. Ayonavba Bhattacharya, appearing for the petitioners submits that in exercise of jurisdiction under Article 227 of the Constitution, this Court is competent to take up when the Lower Court has failed to exercise his jurisdiction properly. In this regard, since an alternative efficacious remedy is available to the petitioner and there is no provision for preferring a revision at all, I am of the view that the alternative efficacious remedy which is available to the petitioner should be resorted to by the petitioners for seeking redressal of their grievance.

10. In this respect, I have also considered the decision referred to by Mr. Barun Kr. Das appearing for the opposite party in the case of Md. Sabir Hussain v. State of West Bengal reported in 2012 (1) AICLR 431. Therefore, the present application for quashing the proceeding is not maintainable at all. The complainant is at liberty to take steps u/s 23 of the 2005 Act, if the situation demands. So, the contention of the petitioners herein that the proceeding u/s 23 of the said Act should be quashed, cannot be accepted.

11. In that view of the matter, I am of the opinion that there is no scope of interference with the impugned order. The application is not maintainable. The application is, therefore, dismissed.

12. Considering the circumstances, there will be no order as to costs. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocate for the parties on their usual undertaking.