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Misc. Case- 367 of 2022

Order dated: 03.04.2025

Record is fixed today for passing order.

Both the parties filed their respective haziras.

Heard the Ld. Advocate for the respondents.

DIR has been received by this Court.

Now, the record is taken up for passing order in respect of petition under section 23 of the Protection of Women from Domestic Violence Act, 2005.

The petitioner's case in brief is that the petitioner got married with the Opposite party no. 1 namely Biswajit Roy on 19.01.2016 as per Special Marriage Act 1954. At the time of marriage, the family members of the petitioner gave cash of Rs. 1,00,000/- gold ornaments, household articles and wearing apparels. After marriage of the petitioner, the petitioner went to her matrimonial home to lead the happy conjugal life with her husband and wife. After the marriage, the respondent no. 1 and in-laws took all the gold ornaments and other valuable articles from the petitioner in the name of safe custody and she handed over all the ornaments to the opposite parties. After few months of her marriage, the respondent no. 1 left his job and started time pass at home. Thereafter, all the respondents started torture and cruelty upon her both physically and mentally for demand of more dowries. The opposite parties started further mental and physical torture upon the petitioner, even they did not provide proper food to the petitioner as her father did not fulfill the demand of the opposite party. The opposite parties also regularly started physical assault, abusing, threatening, insulting, harassing and humiliating her. After few days, the petitioner gave birth to a male child namely Swoyongprovo Roy on 04.11.2016 and the opposite party no. 1 took credit loan of Rs. 50,000/- from the father of the petitioner to start a new business and assured him to return back the said amount. After lapse of stipulated time, the opposite party no. 1 did not return the said loan amount to the father of the petitioner. On 21.05.2021, the opposite parties tried to outrage her modesty of the petitioner and they driven her out in a single apparel and they took the minor son of the petitioner. The opposite party no. 1 is an employee in a private company and land broker and he earns Rs. 40,000/- per month, while the petitioner has no source of income of herself.

The petitioner has prayed for monetary relief of Rs. 15,000/- per month for herself and also prayed for monetary relief for rent of Rs. 8,000/- per month and Rs. 5,00,000/- as compensation in favour of the petitioner.

The petitioner has filed her Affidavit of Assets and Liabilities which is also perused by this court wherein the petitioner has stated that she has no source of income of her own.

The opposite parties have filed written objection and also filed his Affidavit of assets and liabilities. By filling the written objection the opposite parties have rebuffed the whole case of the aggrieved person as a pack of lies. Opposite party no. 1 admitted the fact of

marriage and the child but denied all the allegations of the petitioner. The Opposite party no.1 stated that the son namely Swoyongprovo Roy is within the custody of the opposite party. On 12.12.2019, the petitioner on her own will, left the house of the respondent along with her all gold ornaments. The opposite party further stated that he is an employee in a private company and earns not more than Rs. 10,000/-, while the petitioner is working lady and she earns Rs. 10,200/- by working at Uebel IF Park Ankarhati, Uebel Techo and also doing a online business from where she earns more than Rs. 20,000/- per month.

The definition of domestic violence as jotted down in Section 3 of the said Act is very wide in its scope. It takes within its fold different acts including physical abuse, sexual abuse, verbal and emotional abuse and economic abuse. Now, the question that crops up is whether the allegations as outlined in the petition make out a case as presented by the petitioner before this court or not. What would be the standard of proof at this stage of interim hearing regarding the allegations stated in the application?

Section 23 of the Act provides that the magistrate has to satisfy himself as regards the existence of a prima-facie case in the factual set-up projected by the petitioner/applicant on the basis of an affidavit. In its literal sense, 'prima facie' means on the face of it. The expression 'prima facie' is often used in common parlance to mean 'on first blush' or 'on first impression', without deriving a conclusive meaning. Therefore, if the allegations depicted in the application make out a case that falls among any of the category mentioned above, the court would then have to pass an order keeping in mind the object for which the Act was enacted. The tangled factual questions that have surfaced in the instant case from the pleadings of the contending parties would be dealt with according to the evidence led by the parties during trial. But, the legislative mandate as reflected under section 23 should be Honoured by the court so far as the interim relief is concerned. The facts narrated in the application supported by the affidavit and the DIR *prima facie* show that the applicant was subjected to physical abuse, verbal and emotional abuse and economic abuse at the hands of the respondent.

Thus, keeping in view the benevolent nature of the Act, the provisions under the act should be interpreted broadly. In **Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation, (1985) II LLJ 539** the Hon'ble Supreme Court observed:-

"The principles of statutory construction are well-settled. Words occurring in statutes of liberal import, such as social welfare legislations, and 'human rights' legislations, are not to be put in procrustean beds or shrunk to Lilliputian dimensions. In construing these legislations, the imposture of literal construction must be avoided and the prodigality of its misapplication must be recognized and reduced. Judges ought to be more concerned with the 'colour', 'content' and 'context' of such statutes".

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Unless the contrary is shown by the respondent, the provision made in favour of the women will be interpreted in their favour. Since the burden upon the victim of domestic violence is to show by way of an affidavit that she was subjected to domestic violence, the court would pass the order at the interim stage which appears to be justified and necessary. In the instant case, the petitioner has alleged that she was tortured by the respondent and she has filed an affidavit to that effect. She has thus met the terms of the requirement of law as contemplated under section 23 of the Act. That apart the contention of petitioner finds support by the domestic incident report submitted by the protection officer. The photocopies of the documents filed by parties cannot be relied on by this Court at this stage as they are required to be proved by relevant evidence.

In this case, the aggrieved person is the wife of the respondent and they lived their conjugal life in a shared household. It means that there is a domestic relationship between them.

It appears that both sides have filed their affidavit of assets and liabilities and the aggrieved person has stated in her petition as well as affidavit of assets and liabilities that she has no source of income of her own and that The opposite party no. 1 is an employee in a private company and land broker and he earns Rs. 40,000/- per month and the petitioner in her affidavit of assets and liabilities prayed for monetary relief of Rs. 15,000/- per month for herself and also prayed for monetary relief for rent of Rs. 4,000/- per month. Whereas from the affidavit of assets and liabilities submitted by the opposite party no.1 it appears that he is an employee and earns about Rs. 10,000/- per month and the petitioner is working lady and she earns Rs. 10,200/- by working at Uebel IF Park Ankarhati, Uebel Techo and also doing a online where she earns more than Rs. 20,000/- per month.

There is nothing to show herein that the aggrieved person has any income of her own to maintain herself, which disentitles her from claiming interim maintenance for herself during the pendency of the proceeding. No documents have been put forth before this Court by the respondent no.1/husband showing the income of the aggrieved person and so the facts remain as to who will look after the interests of the petitioner at this threshold stage of litigation. Therefore, this Court is of the opinion that respondent no.1/husband is required to look after the interests of the petitioner till the discord involved in this case is decided.

From the above mentioned points it is clear that the petitioner is thus entitled to get an interim monetary relief from the respondent no.1. So, considering the above stated facts and circumstances as well as the hike in the market price, I am inclined to allow the prayer for interim monetary relief. Therefore, the petitioner is entitled to get a monthly monetary relief of Rs. 2,500/-(Rupees two thousand five hundred only) per month for herself. This court is also inclined to hold that this amount is sufficient for her maintenance as per her status, situation and social condition and it will also not prejudice to the opposite party no.1 at this stage.

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It appears that the petitioner has prayed for protection order against the respondents restraining them from committing any act of domestic violence in future. On perusal of the record it prima facie appears that she was subjected to domestic violence by the respondents at her matrimonial home. In this circumstances the Court is of the opinion that to protect the petitioner from any act of domestic violence in future, interim protection order is required to be passed in favour of the aggrieved.

Hence it is,

ORDERED

that the instant interim petition is **allowed** on contest in part without any order as to costs.

The petitioner does get an order U/S 23 towards monthly monetary relief of Rs. 2,500/- (Rupees two thousand five hundred only) per month for herself from the date of filing of this case i.e. 15.06.2022 and until further order and such interim relief to be paid by opposite party no.1 within every 10th day of every succeeding English calendar month, failing which the petitioner would be at liberty to execute the order so passed.

The respondents are restrained from committing any act of domestic violence upon the petitioner. The other reliefs as prayed for by the petitioner which are not discussed above are rejected at this stage and will be considered after going through the evidence of this case.

The Inspectors-in-charge of Domjur P.S District Howrah are hereby directed to provide all necessary legal assistance to the petitioner so that the order passed herein be implemented by the respondent.

Let the copy of this order be handed over to the petitioner free of cost.

Let a copy of this order be also sent to the protection officer and IC of Domjur PS, Howrah for information and compliance.

Fix **08.07.2025** for evidence of 1st party.
D/C by me.

Sarmistha Bose, (JO Code WB01187)

J.M. 3rd Court, Howrah

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