

MISNS No. 5/2024
Reg No. MISNS – 4/2024
CNR- WBCS02-032563-2024
Present. Smt. Yozna Lama,
J.O. Code No. WB01349

Order Dated: 15.10.2025

Today is fixed for passing of the order upon the petition as filed by the Respondents with respect to the maintainability of the application as filed under Sec 12 Of the PWDV Act by the aggrieved person.

Ld. Advocate for both the parties are present before the Court.

Now the record is taken up for passing of the Order upon the aforesaid mentioned petition.

The respondents in their maintainability petition have contended that the suit property is an undivided ancestral property and a partition suit is pending which has been filed by the husband of the petitioner against respondent No 1 and the said fact has nowhere been mentioned in her application. They contended that the main dispute is with respect to the said undivided property and the petitioner has filed the application under the PWDV act only to harass the respondents. They have asserted and contended that the petitioner has no locus standi to file the application under Sec 12 of the PWDV Act as the petitioner has no right, title, interest in the property for it is her husband and respondent No.1 who are the co sharers of the said property. They have claimed that on 4.6.2022, the petitioner and her husband had forcefully entered in the 2nd floor of the premises which was under the possession of the respondents and started creating disturbances in the peaceful possession of the respondents for which the respondents had lodged police complaints. They have claimed that the petitioner and her husband voluntarily vacated the 2nd floor on 9.7.2022 and have lived there only for about one month and since then have been living in the ground floor of the premises having all the necessary facilities. They have contended that incidents of domestic violence as alleged by the petitioner never took place and that the dispute is purely a civil one and the petitioner has filed an application under the PWDV Act in the guise of domestic violence case. Therefore, they have prayed for dismissal of the application being non maintainable.

In addition to what has been mentioned above, the Ld. Advocate for the respondents submitted before the Court that there has been no domestic relationship between the respondents and the petitioner whatsoever and the allegation of domestic violence is absolutely false. The main contention between the parties is the partition of the suit premises and the present case has been filed only with an ulterior motive to enter in the 2nd floor of the premises which is in possession of the respondents. Hence, he prayed for dismissal of the application as filed by the petitioner.

On the contrary, the petitioner filed a written objection against the petition as filed by the respondents wherein she has admitted that the premises is an undivided property. The Ld. Advocate for the petitioner asserted that the petitioner does have the locus standi to file the application under the PWDV Act because the petitioner is the aggrieved person as defined in Sec 2 (a) of the said act and was in a domestic relationship with the respondents at one point of time in a shared household i.e. the second floor of the premises, before she and her husband were forcibly ousted from the 2nd floor of the undivided premises. He submitted that as per Sec 2 (s) of the PWDV Act, the definition of the word 'shared household' has been made amply clear that right, title, interest on the part of the aggrieved person is not required with respect to the shared household in order to invoke the provisions of the said Act. In support of the same, he has relied upon the decision of the Hon'ble Supreme Court in the case of Satish Chandra Ahuja Vs Sneha Ahuja (2021) 1 SCC 414 and Prabha Tyagi Vs Kamlesh Devi, 2002 5 SCR 970. Therefore, he submitted that the petitioner has every right to file the application under the PWDV Act. Further, he asserts that the Domestic Incident Report has very clearly established that the petitioner has been subjected to domestic violence Therefore, he prays for rejection of the maintainability petition as filed by the respondents.

Now on hearing the submissions on behalf of both the parties, on perusing the petitions of both the parties and the documents submitted, at the out set, it is to be mentioned that that both the parties have admitted the premises to be an undivided property comprising of the 2nd floor, ground floor and the open terrace(without going into the specifications). The petitioner is claiming that being an undivided property and she being the wife of the husband of respondent No.1 has a right to enjoy and enter the second floor of the building as she and her husband were forcibly ousted from the second floor and constrained to reside in the ground floor of the said building which is not at all habitable. Whereas on the contrary the respondents are claiming that the petitioner and her husband stayed in the second floor for mere period of only one month and no kind of domestic relationship was there between the petitioner and the respondents and no domestic violence was inflicted upon the petitioner by the respondents.

Taking the above facts into consideration and the submissions made by both the parties, firstly, the question comes up as to whether the petitioner can file an application under the PWDV Act when a partition suit is pending between her husband and the respondent with respect to the premises under issue? In order to determine the said question, it becomes important to mention that partition suit and domestic violence cases are independent legal proceedings and can run parallelly to each other and accordingly the right of the petitioner to file an application under PWDV Act is not curtailed even if a Partition suit is pending.

Now it is an admitted fact that the premises is an undivided property wherein the husband of the petitioner and the respondent No.1 are the co sharers. It is also an admitted fact that the petitioner resided in the second floor of the said premises for one month before she started residing with her husband in the ground floor of the said premises. Taking the said admitted facts into account, going through the definition of shared household, domestic relationship,

aggrieved person, as defined in Sec 2(s), Sec 2 (f) and 2 (a) of the Act respectively and the decision of the Hon'ble Apex Court in the case of Satish Chandra Ahuja Vs Sneha Ahuja (2021) 1 SCC 414, it is at this stage amply clear that in order to file a case under PWDV Act, it not necessary for the aggrieved person to have any right , title or interest in the property and in the present case, the petitioner being the wife of one of the co sharers and having resided with the respondents at one point of time before filing of the present application does have the locus standi to file the present application under PWDV Act. At this stage, the question raised by the respondents that the petitioner by camouflaging the partition dispute has filed the application under PWDV Act in the guise of a domestic violence case cannot be accepted by this Court. Further, It is also to be mentioned here that though the Domestic Incident report cannot be considered as a conclusive proof of domestic violence but at this initial stage, the Court cannot disregard the same either.

Therefore, considering the discussions made above, the application filed by the respondents is fit to be rejected.

Accordingly, the maintainability petition as filed by the respondents is hereby rejected.

Fix **24.11.2025** for hearing.

Dictated and Corrected by me

Judicial Magistrate, 4th Court
Calcutta

Judicial Magistrate, 4th Court
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