

Complaint Case No. 643/24

Ad interim matter under Section 23(2) of PWDV Act

Order Dated: 30/04/2024

Today is fixed for report of the District Protection Officer and SR.

The report is received today. Perused the report. Let it be kept with the record for future reference.

No SR has been received as yet.

The Ld. Advocate for the complainant/aggrieved person files one application praying for ad interim residential relief for the complainant namely, Sucheta Chndra, u/s 23(2) of the Protection of Women from Domestic Violence Act of 2005.

The petitioner by filing this interim maintenance petition has claimed maintenance for herself being her husband. The case of the complainant in brief is that the complainant/aggrieved person is a legally married wife of Manideep Chandra. The marriage between complainant/ aggrieved person and the OP took place on 18/07/2001 according to Hindu Rites. At the time of marriage the parents of the complainant gave valuable articles as per the demand of her husband and his family members. After their marriage the complainant and the her husband started living their conjugal life at Tata Eden Court, Tower C, Flat No.17A, New Town, Action Area-II, Kol-56 and out of the wedlock one son was born 25/05/2003. The complainant further contended that a few days after her marriage she had been subjected to physical and mental torture by the OP on various pretexts. It was further alleged that the OP used to neglect the aggrieved person of her general amenities and also had grown an illicit relationship with another woman. The complainant/ aggrieved person stated that since after death of her father, she was compelled to stay separate from her husband without any maintenance from him. The aggrieved party submitted that the OP is a lecturer in a college with an income of about.2,50,000/- per month. As she has been ousted from the OP's house and now under financial stringency at her father's house at DA-174, Sector-I, Salt Lake, Kol-64 along with her son, she has prayed for financial maintenance for herself and her son, educational expenses of her son along with protection order and residential order. In support of her contentions, the aggrieved party has submitted some documents along with affidavit of assets and liabilities.

The report of the District Protection Officer corroborates the complainant's allegation of Domestic Violence against the respondents.

On the very inception of delving into the matter I would like to point out that in series of decisions the Hon'ble Court has decided that s. 23 of the PWDV Act enables the Court to pass ex parte order on the basis of affidavit filed by the aggrieved party.

In another case (**Shambhu Prasad Singh vs. Manjari**) reported on 7th May, 2012 in Indian Kanoon and in **Manoj Anand vs State of UP 2012(77) ACC(All)**, **Smt. Suresh vs. Jaibir 2009(78) AIC (P & H)** , the Hon'ble Courts have held that a conjoint reading of ss. 20(1/d), 23(1) and 23 (1) & 23(2) of the PWDV Act will make it abundantly clear that the Court is not only empowered to grant monetary relief while finally disposing of an application u/s 12 (1) of the same Act, but also empowered to grant maintenance to the aggrieved person as an interim measure during pendency of the application by way of passing an interim order.

The same ratio has been observed by the Hon'ble Apex Court in Criminal Appeal no. 2009/2013 in **Indar Sarma vs. VKV Sarma**.

On perusing the materials on record, it reveals that the aggrieved party has a right to residence which is a higher right and the said right , as per the legislation , extends only to the joint properties in which the spouse has share. As per s. 17 of the same Act :

1) Notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household , whether or not she has any right, title or beneficial interest in the same.

2) the aggrieved party shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law.

In the instant case, the aggrieved party has a right in Tata Eden Court, Tower C, Flat No.17A, New Town, Action Area-II, Kol-56. Under the exigency situation and upon hearing the Ld Counsel for the aggrieved party and considering the materials on record, I think the instant prayer of the aggrieved party is to be allowed.

Hence, it is

ORDERED

That the respondents are hereby restrained from dispossessing the aggrieved person from the premises at Tata Eden Court, Tower C, Flat No.17A, New Town, Action Area-II, Kol-56. The I/C of Bidhannagar (North) PS is hereby directed to make arrangements in respect of having her lawful re-entry in the shared household where she used to reside along with her husband.

However at this I am not inclined to pass any order in respect monetary relief without hearing the other side.

The Bidhannagar (North) PS is directed to comply with the above order within 24 hours , else, proceedings u/s 29 of the Police Act shall be drawn upon against him.

The Bidhannagar (North) PS is also directed to secure the aggrieved party's right in that shared household by applying his ultimate effort.

Fixing 16.07.2024 for SR and AD, compliance report of the Bidhannagar (North) PS and report of the protection officer.

The aggrieved party is hereby directed to file requisite.

Let copy of this order be forwarded to the Bidhannagar (North) PS, the District Protection Officer and the Commissioner of Police, Bidhannagar Police Commissionerate for compliance thereof.

Let copy of this order be supplied to the aggrieved person, namely Sucheta Chandra free of cost at once.

Let the documents submitted today be kept with the record.

ACJM/Bidhannagar/24 Parganas(N).