

Misc. Case No. 83/2022

New No.60/22

ORDER DATED : 30.07.2026

Today is fixed for interim hearing.

Both parties are present by filing their respective hajiras.

Respondents had filed WO. Let the same be kept with the record.

Ld. Advocate on behalf of the petitioner had submitted certain copies of documents by the way of firisti. Let the same be kept with the record.

Heard both sides in full.

Perused the materials available in the record.

Considered.

Record is taken up for passing order after hearing of the petition under section 23 of the Protection of Women from Domestic Violence Act, 2005.

The fact of the case of the Aggrieved person in brief is that the Aggrieved person is the married wife of late Laltu Roy and respondents are her sister in laws and relatives of her sister in laws. Since the marriage, i.e 1987 the petitioner is residing at her matrimonial house along with the respondents. The son in law of the petitioner became ill and then the petitioner went there to take care of them on 20.06.2019 and when on 27.06.2019 the petitioner came back to her matrimonial house, then he came to know that her husband had died on 23.06.2019 and since then the respondents tried to threaten her to vacate her room at her matrimonial house and then on 26.02.2022 the petitioner has been forcefully ousted from her matrimonial house and she had lodged GDE.

Therefore, the aggrieved person prays for protection order, Residence order so that the AP can reside at the share household of her matrimonial home and compensation order as interim relief.

Respondents have filed a written objection and denied all allegations against them made by the Aggrieved person but the fact of marriage has been admitted by the respondents and they stated that the petitioner left her matrimonial house voluntarily and does not have any relation with her husband and after that her husband remarried again and the whereabouts of the petitioner is not known to the respondents.

Therefore, Ld. Advocate for the Respondent submits for rejection of the application praying for Interim relief u/s 23 of P.W.D.V. Act.

Perused the D.I.R. kept in the record. From D.I.R., it appears that protection officer has done hearing with the AP and from the perusal of the petition as well as the DIR it appears before the Court that at present the petitioner resides at her son in law's house.

Now, during hearing, it has been submitted that the house in question is owned by the grand mother of the deceased husband of the petitioner. Previously Hon'ble Apex Court in **S.R.Batra -Vs- Taruna Batra (2007)3 SCC 169,** has held that a household in which the Aggrieved person's husband has neither any ownership nor any interest of any kind, can not be construed as a shared household within the meaning of clause (s) of section 2 of PWDV Act.

Overruling its own decision in S.R. Batra (Supra) the Apex Court in ***Satish Chander Ahuja v Sneha Ahuja (AIRONLINE 2020 SC 784)*** reinterpreted the term 'shared household' under Section 2(s) of the DV Act. Siding with the respondent, the Court held that:

- "The definition of the term 'shared household' is exhaustive and not enumerative.
- For a property to be considered as a 'shared household', it has to be proved that it is either owned/co-owned or rented by a 'respondent' in a complaint under the DV Act and that the aggrieved person has resided in the said house at any stage of her domestic relationship.
- The aggrieved person is not required to own or rent the premises, either by themselves or jointly with the family.

- A ‘shared household’ is also one that may also belong to a joint family of which the aggrieved person is a member irrespective of whether they have any right, title or interest in the shared household”

AP has prayed for interim relief u/s 18/19 of PWDV Act. The AP had not adduced any document wherefrom prima facie it can be ascertained that the case scheduled property is the matrimonial house of the AP allegedly owned by the Respondents and neither the AP had adduced any material prima facie to prove that the respondents as well as her deceased husband had any legal right in respect of the said property. Moreover, the AP had not made it clear before the Court that whether the said property is a self acquired property or an ancestral property of the respondents or not. Moreover, the AP had failed to satisfy this Court that she is in need of the residence order on urgent basis without giving the respondents an opportunity of being heard.

Similarly, in the case of **Lokesh Kiran Kumar Shah v. Shradha Lokesh Shah and another (criminal appeal no. 517 of 2012)**, **The Hon’ble Bombay High Court** held that *House owned by husband’s father being his self acquired property is not shared household.*

Thus, without determining the status of the Aggrieved Party in the alleged shared household particularly in the given facts and circumstances of the case wherein it is explicitly admitted by the Aggrieved party that the shared household in the question was owned by the grandmother of her deceased husband, therefore, without having any proof of the actual ownership of the alleged shared household, if any residence order is being passed the same may cause hardship to other interested parties . Now, the petitioner had not disclosed anything about the income of the respondents and therefore without giving an opportunity of being heard, no compensation order can be passed against the respondents. There is allegation and counter allegation by and against both side in this case and if at this stage without adducing any evidence any residence order is being passed, then the same will arise multiplicity of proceedings and increase number of litigation pending between the parties to this case.

Considering all, this court is of the view that consideration of evidence which will be adduced by both parties to this case is necessary before passing any appropriate order in this case relating to the interim residence order.

Hence, prayer for Interim relief is rejected at this stage.

Fix 23.09.2026 for evidence by the AP.

Typed and printed by me:

Judicial Magistrate 2nd Court,
Barrackpore, North 24 Parganas

Judicial Magistrate 2nd Court,
Barrackpore, North 24 Parganas

JO Code- WB01493