

MISC CASE No. 171 of 2017

Order Dated - 15.03.2019

Today is fixed for passing order in respect of an application under section 23 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter to be referred as 'D V Act').`

The record is taken up for passing order.

The instant application under consideration has been made by the petitioner/complainant since the petitioner/complainant has been allegedly subjected to domestic violence by the respondents (husband and in-laws).

In her petition, the petitioner/complainant has contended that she is the legally wedded wife of respondent, Bijon Saha (hereinafter called the respondent no. 1). That her marriage with the respondent no. 1 was solemnized on 20.01.2016 in tune with Hindu rites and customs. Subsequent to her marriage, the petitioner/complainant went to her matrimonial home along with all her stridhan articles and started leading her conjugal life with the opposite party. The petitioner/complainant and the respondent no.1 adapted one daughter named Adrija Das on 12.07.2016. Unfortunately her matrimonial life was not a happy one. Soon after marriage, the respondent no.1. on instigation of the other respondents started subjecting the petitioner/complainant to diverse forms of mental and physical tortures in furtherance of his demand for more dowry. However with a hope that everything would be set at right with time, she tolerated all the tortures meted upon her and continued her conjugal life but tortures upon her intensified day after day. Ultimately on 26.06.2017 the petitioner/complainant was forced out of her matrimonial home along with her daughter as a result of which she was compelled to take shelter at her paternal home.

The petitioner/complainant claims the opposite party has neglected and refused to maintain her and her daughter despite having sufficient means. She further claims that she has no source of income whereas on the other hand the respondent no.1 is a businessman who conducts business on export and wholesale of water treatment components. As such, the petitioner/complainant has claimed for reliefs u/s 18/19/20/22/23 of the Act. The petitioner/complainant has filed an affidavit in support of her petition.

The respondents filing written objection have reacted sharply at the allegations heaped upon them by the complainant/petitioner and has rebuffed the case of the complainant/petitioner as a bundle of lies, save and except that the petitioner/complainant is the legally married wife of respondent no.1. The respondents have tried to impress that the allegations

labelled by the petitioner are false and fabricated. They have forwarded that the petitioner/complainant is a divorcee and the respondent no.1 was pressurized and threatened in order to sign in the paper for adoption. He has also contended that the petitioner/complainant is an ill tempered and an arrogant lady and it was the petitioner/complainant who always threatened the respondent no. 1 with dire consequences. The respondents have highlighted that the petitioner/complainant had left her matrimonial home voluntarily without any cause and moreover the petitioner/complainant was never neglected or tortured the petitioner. They have also denied the income of respondent no.1 as claimed by the petitioner/complainant and have furthered that the petitioner/complainant is an educated lady and earns Rs. 10,000 to 12,000/- p.m. by imparting private tuition. To sum up, they have thus emphasized on rejection of the prayer of the petition.

I have gone through the petition, DIR, written objection, documents filed and the materials on record. I have also heard and considered the rival contentions of the Ld Counsels for the both sides at length. At this juncture, be it mentioned herein that the instant case being at its initial stage, I refrain myself into the merit of the case.

Needless to say that section 23 of the Domestic Violence Act, 2005 authorizes this court to pass any interim order in the present proceedings. At this embryonic stage of this case it appears that the dispute raised and controverted by the parties cannot be decided without the evidence, as it involves complicated factual questions. However, for passing such order this court needs to be prima facie satisfied as to the contention and claim of the petitioner/complainant.

The definition of domestic violence as jotted in the 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/complainant before this court or not. Further, the plain reading of section 23 of Act goes to show 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/complainant 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. At this stage the DIR supports the case of the petitioner/complainant so far as the definition domestic violence is concerned. As already observed above, 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. Now, coming back to the case in hand, the facts narrated in the application and supported by the affidavit and the DIR, prima facie, show that the applicant was subjected to physical abuse, verbal and emotional abuse and economic violence at the hands of the respondents. 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/complainant has alleged that the respondents tortured at her matrimonial home and she has also 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.

Now at this stage, it is pertinent to note that interim order to the tune of Rs. 7000/- p.m. and Rs. 5,000/- p.m. has been passed in favour of the petitioner/complainant and her daughter respectively in connection with M Case no. 656 of 2017 u/s 125 CrPc. As such, considering such interim order and under the facts and the circumstances of this case this Court is not inclined to pass any monetary relief to the petitioner/complainant or her daughter at this stage.

The Ld Advocate for the respondents, at the time of hearing contended that all the allegations labeled by the petitioner/complainant are false and fabricated and moreover it was the petitioner/complainant who had tortured and threatened the respondents. He also contended that respondent no.1 is not the biological father of the daughter of the petitioner/complainant. He further contended that the petitioner/complainant had voluntarily left her matrimonial home and that apart it was the petitioner/complainant who was not willing to continue her conjugal life. He hence, prayed for rejection of the petition under consideration.

I have considered the submission of the Ld Advocate for the respondents. Now so far as the paternity of the minor daughter of the petitioner/complainant is concerned, admittedly the respondent husband and the petitioner/complainant have adapted the daughter of the petitioner/complainant. Though, the Ld Advocate for the respondents tried to impress that the respondent husband was pressurized and forced to sign on the adaption papers however nothing has been brought on the part of the respondents to suggest that the respondent husband or the respondents has/had taken any steps before the appropriate authority challenging the said adaption. As such, at this stage, such stance of respondents is devoid of any merit.

So far as the points raised by the Ld Advocate for the respondents is concerned the same cannot be decided at this stage without recording evidence and the same are matter of trial and evidence. It has no bearing on the interim application of the petitioner/complainant. As such at this stage, I find no merit in the contention of the Ld Advocate for the respondents.

Thus, at this stage, having regard to the entire facts and the circumstance of this case and in absence of any cogent documents on the part of the petitioner/complainant and also considering the contention of both the sides and the materials on record, this Court is of the view that, pending the disposal of this case the petitioner/ complainant is required to be given protection order u/s 18, which in the opinion of this Court would sub-serve the purpose of justice.

As regards the residence order sought by the petitioner/complainant, in absence of any convincing material to suggest dire need of an alternate accommodation, I am not inclined to pass any residence order in favour of the petitioner/complainant at this stage. So far as other reliefs, this Court after giving an anxious thought over the materials on record and considering the submissions of the Ld Advocates, deems fit and proper to consider the same at the time of passing final order in this case after going though the evidence of both the parties.

Hence, it is

Ordered

that, the prayer of the complainant/petitioner person is allowed but on part. The respondents are directed not to disturb the complainant/petitioner in any manner or to cause any sort of domestic violence towards the complainant/petitioner or her relatives.

Let the copy of this order be sent to the I/C, Baranagar and Kalighat P.S and also to the Protection Officer, North 24 Parganas for necessary information and for according all necessary helps to the complainant/petitioner so as to get the order implemented. The petition for interim relief under section 23 of the D V Act is thus disposed of. Let a copy of this order be given to the parties free of cost.

Fix 08-08-2019 for evidence.