

Misc. Case No 89 of 2021
Smt. Papiya Dey vs. Shri Debasish Dey and 3 Others

Order dated.21.11.23

Today is fixed for order in respect of the interim application filed by the aggrieved person u/s. 23 of the Protection of Woman from Domestic Violence Act, 2005 (in short P.W.D.V Act).

Both parties file hazira.

Already heard on both sides.

Perused the DIR and applications of the aggrieved party and written objections of the respondent, affidavit of assets and liabilities of both sides and documents submitted on behalf of the parties. Considered.

It is the case of the aggrieved party /petitioner that she is the legally married wife of the respondent no.1/OP no.1 and her marriage was solemnized on 23.01.2009 with the respondent no.1 at the parental house of the petitioner and the same was registered under Special Marriage Act, 1954. After marriage petitioner went to her matrimonial house with all her stridhan articles to lead a conjugal life at the house of respondent no.1 at 8/10, Rishi Arabinda Park, P.O Birati, P.S Nimta, Kolkata-700049, District- North 24 Parganas. Thereafter the petitioner went to Visakhapatnam, Andhra Pradesh with the respondent no.1 as the respondent was working as a electronic engineer in the private company and he was posted at Visakhapatnam. Out of the said wedlock a female child was born on 21.10.2010 and the said child is under the care and custody of the petitioner. At her matrimonial house of the petitioner, the in-laws of the petitioner also resided together. Since after marriage the respondents subjected the petitioner to domestic violence for demand of dowry. As per their demand the parents of the petitioner handed over the money demanded to the respondents. It is alleged that the respondent no.1 in connivance with the other respondents treated the petitioner as a maidservant and mercilessly beat the petitioner in a drunken state. The respondent no.1 also abused the petitioner with filthy languages and tried to drive her out of her matrimonial house. The respondents further threatened the petitioner with dire consequences if she did not leave the matrimonial house. The respondent no.1 deserted the petitioner and since the said desertion the petitioner has become helpless as she has no source of income and she is passing her days in hardship. The petitioner returned from Visakhapatnam with her minor daughter on 03.01.2021 and started residing at her matrimonial home. Since the year 2021 the respondent subjected the petitioner to torture and forced her to leave the matrimonial house along with her daughter on 5.4.21. The petitioner finding on other alternative went to Nimta PS to lodge a complaint but the police officer refused to lodged the FIR. The petitioner then filed a written complaint before the Nimta PS as per the advise of the police officer and PS case being no.321/21 dt.05.04.21 u/s.498A/323 IPC was started against the respondents. The respondent no.1 is an able bodied person but he has willfully neglected and refused to maintain the petitioner and her daughter. The respondent no.1 is a electronic engineer in a private company and he earns a salary of Rs.1,20,000/- per month and apart from it he has some immovable property. The petitioner has thus prayed for appropriate order u/s.17/18/19A/20/21/22 of the P.W.D.V Act.

On the other hand, Respondent entered his appearance and filed a composite written objection with show-cause against the application of the petitioner wherein respondent denied all the allegations leveled against him regarding torture. However the respondent admitted the marriage tie in between the parties and the paternity of the child. Respondent submitted that the petitioner used to reside at a different flat where the respondent no.1 did not reside. The respondent no.1 does not reside within the jurisdiction of Nimta PS but he resides under Airport PS. The petitioner lodged a false case under Nimta PS. The petitioner has wrongly mentioned the address of her matrimonial house. The petitioner used to demand huge amount of money from the respondent. The petitioner tortured the respondent mentally. The petitioner used to come to her matrimonial house at Arabinda Park under Airport jurisdiction once in a blue moon. The respondent no.1 lastly earned Rs.30,000/-. The petitioner has filed one M case being no.348/21 wherein she was awarded Rs.10,000/- per month and said amount was subsequently modified to Rs.5000/- per month. The respondent no.1 has several other expenses towards emi, rent and loan. Thus, he prayed for rejection of the prayer for maintenance.

Considered.

Upon perusal of the report from the protection officer it appears that the petitioner was subjected to mental and physical torture by the respondent and last date of physical violence as on 05.04.2021. Petitioner lodged GDE and FIR at Nimta P.S and Visakhapatnam P.S u/s. 498A/323 IPC against the respondents.

Marriage of the parties and the paternity of the female child is admitted. The petitioner has filed one copy of the marriage certificate along with the copy of her identity cards. OP on the other hand, has filed one copy of the petition filed by the respondent no.1 along with the written objection filed by the

petitioner u/s.13 (1) (a) of Hindu Marriage Act, 1955. Copy of the flight tickets to show that the respondent no.1 went to Chennai from Visakhapatnam for his work purpose.

Ld. Advocate for the respondent no.1 has relied in the decision of the Hon'ble Supreme Court in the case of ***Kamlesh Devi Vs. Jaypal and others.***

Ld. Advocate for the petitioner has relied upon the decision of the Hon'ble Supreme Court in the case of ***Shyamal Devda and others Vs. Parimala.***

On perusal of the affidavit of assets and liabilities of the petitioner, it appears that the petitioner has been residing separately from the respondent no.1 since 05.04.21. The minor daughter of the petitioner namely Debapriya Dey aged about 11 years is in custody of the petitioner. It is also mentioned in the said affidavit and as well as the petition that the petitioner has been residing in her sister's house after separation. On the other hand, on perusal of affidavit of assets and liabilities of the respondent no.1 it is found that the respondent no.1 lastly had an income of Rs.50,000/- as engineer. But in his column for name of the employer he has stated as 'not applicable at present'. It is also found that respondent no.1 has been paying Rs.10,000/- per month to the petitioner as per the order of the court in M case no.348/21. He has also paying Rs.12,000/- per month to his father as per the order of the court in M case 398/21.

The petitioner did not mentioning anything about the amount of maintenance awarded to her either in her petition nor in her affidavit of assets and liabilities. Even at the time of hearing no such submission made by the Ld. Advocate for the petitioner. However, the Ld. Advocate for the petitioner did not deny the fact that the petitioner is receiving any amount of maintenance.

Considered.

I make it clear that Interim relief is to be considered in a stage where there is extreme urgency. Thus upon perusal of the record I am of the opinion that the petitioner is entitled to the following reliefs.

Residence Orders: Such aspect is considered and allowed as the petitioner is staying at her sister's house and she does not have her own place.

Protection Orders: Such aspect is considered and allowed to the effect that the respondents are restrained from committing any act of domestic violence upon the petitioner.

Monetary reliefs: Such aspect is considered and rejected at this stage so far as the petitioner is concerned as it appear that the petitioner is receiving Rs.5000/- as maintenance in M Case no.348/21 though the petitioner did not disclose anything about it. As such I do not find any urgency to pass any interim maintenance order in favour of the aggrieved person.

Hence, it is,

ORDERED

(a) that the Respondent no.1 is directed to provide a suitable accommodation to the petitioner and her child in his share-household.

(b) that the Respondent no.1 is restrained from dispossessing the petitioner from the share household.

(c) that the Respondents are restrained from committing any act of domestic violence upon the petitioner.

All other prayer are not discussed and are rejected at this stage. Those prayer are to be considered on conclusion of the trial.

The Officer-in-charge of Airport P.S is directed to give protection to the petitioner for the implementation of this orders.

Let a copy of this order sheet be given free of cost to the petitioner.

Let a copy of this order be sent to the O/C, Airport P.S for information and necessary action.

To 22.04.2024 for evidence.

Typed & Printed by me,

(Pratigya Pradhan)
J.M, 3rd Court, Barrackpore

(Pratigya Pradhan)
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