

6Misc. Case No 300 of 2022 (392/22)
Smt. Sangita Jana vs. Shri Avik Jana and Another

Order dated.11.6.24

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 the parties files hazira.

Already heard both sides.

Perused the DIR and applications of the aggrieved party and written objections of the respondents, affidavit of assets and liabilities and documents submitted.

The case record is taken up for passing the order.

It is the case of the aggrieved party /petitioner that she is the legally married wife of the respondent no.1 and their marriage was solemnized on 10.3.10 under Special Marriage Act and the ceremony was held on 23.1.11 as per the Hindu rites and customs. The respondent no.2 is the mother in law of the aggrieved party. After marriage the aggrieved party went to her matrimonial house at Bally, Howrah and her marriage was dully consummated. Out of the said wedlock one male child namely Ahan Jana was born on 3.10.16. After the birth of her child the aggrieved party and respondent no.1 started residing at Belghoria in 2014 and they again shifted to their present address at Agarpara where they resided till 3.6.19. The present resident is a residential flat which is a joint property of the respondents. The respondent no.1 started to inflict torture upon the aggrieved party and threatened her to leave the flat. On 3.6.19, the aggrieved party was driven out of the residence in Agarpara and she was compelled to live at her brother's rented house at Sovabazar, Kolkata. Again on 2.12.19 the aggrieved party returned to her flat at Agarpara but the respondent no.1 started to reside with his mother at Belghoria. The son of the aggrieved party is in her custody and due to shortage of money he stopped going to school. Since marriage the aggrieved party has faced mental and physical torture and no monetary help was provided by the respondent. The respondents run a business of tours and travels which is in the name of respondent no.2. On 2.2.22 the aggrieved party threw away all the clothes, as a result of which the aggrieved party had to spent her night in front of the door of the flat. Ultimately on 3.6.19 the aggrieved party was driven out of the flat in Agarpara. The respondent no.1 runs a business under the name and style Priya Travels / Global Diaries Pvt. Ltd. and he earns Rs.8000/- per month from his business. The respondent no.1 had filed one divorce case against the aggrieved party but the said case was dismissed for default on 25.11.19. The aggrieved party wants to reside with the respondents because she has no permanent shelter of her own and she is residing at a rented house. The aggrieved party has meager income of her own from commission of hotel booking and railway tickets wherefrom she earns Rs.3500/- per month. The petitioner has thus prayed for appropriate order u/s.17/18/19/20/21/22 of the P.W.D.V Act.

The respondents have filed their written objection wherein they have admitted the marriage of the respondent no.1 with the aggrieved party and the paternity of the minor child. The aggrieved party and respondent no.1 were working in a company namely Neptune Holidays Pvt. Ltd when they met each other. After few months of marriage aggrieved party was demanded to live separately from the grandmother of the respondent no.1 in their house at Bally, Howrah. When respondent no.1 refused, aggrieved party shifted at the house of her brother in the month of June, 2011. After staying separated for more than one month, respondent no.1 was constrained to agree with the decision of petitioner and he started staying at Belghoria flat with respondent.2 where the mother of the petitioner used to intervene and stay for several days which deteriorated their marital life. In the month of November, 2014 respondent no.1 lost his job. In the year 2015, petitioner conceived for the first time but she miscarried the same due to her health issue and abortion took place at Zenith Hospital and all the cost of the treatment was borne by the respondent no.1. Thereafter at the time of delivery of the child, respondent no.1 also borne all the expenses. Aggrieved party used to abuse the respondent no.1 with filthy languages. After few days aggrieved party started to pressurize the respondent to transfer his whole ancestral property in the name of petitioner but when the respondent refused, the aggrieved party started to inflict physical torture upon the respondents and destroyed household articles. On 5.4.19 respondent no.1 left his mother's house due to mental and physical torture by the aggrieved party and started staying in paying guest. On 3.6.19 aggrieved party left Belghoria flat and started staying with her brother. Thereafter respondent no.1 filed divorce suit being MAT suit no.514/19 before District Judge at Howrah. On 1.9.19 petitioner forcibly broke locks of the flat at Agarpara and took possession of the flat without permission of the respondents. It is also submitted that due to Covid 19 the travel business of the respondent no.1 is affected and he became jobless in between 2020-22. On 9.8.21 the aggrieved party took back all her as well as her son's jewelries. The respondent no.1 never disturbed the peaceful possession of the aggrieved party and her son at the ancestral house of the respondent no.1. Further the

respondent no.1 is paying the electric bill of the said flat. He is also making a voluntary payment of maintenance of Rs.5000/- or more every month to the aggrieved party and her son in her account in the Bank of Boroda. The respondent no.1 has also kept a fixed deposit of Rs.80,000/- in the name of their son Ahan Jana. The aggrieved party and respondent no.1 both have the same business as agent of tour and travels and they both used to get income on commission basis. The respondent no.1 has an income of Rs.27,616/- per month as per the latest IT return. He also has responsibility towards his aged and ailing mother. The aggrieved party also earns Rs.25,000/- per month. Thus, they prayed for the rejection of the interim petition.

Heard and Considered.

Upon perusal of the report from the protection officer it appears that the petitioner was subjected to mental and physical torture by the respondents and last date of physical violence as on 03.06.2019.

Marriage of the parties and the paternity of the male child is admitted. The petitioner has filed one copy of her marriage certificate and the copy of the order dt.25.11.19 and the petition of Mat suit 514/19. OP on the other hand has filed several medical documents in the name of aggrieved party including the discharge certificate after the birth of his child. He has also filed copy of the LIC in the name of his son Avik Jana, his bank statement and copy of his IT return for assessment year 204-25.

On perusal of the aggrieved party filed supplementary affidavit of assets and liabilities on 19.4.24 from which it appears that the petitioner has been residing separately from the respondent no.1 since 3.6.19 and she is residing at her flat jointly owned by the respondent. It is also mentioned in her affidavit of assets and liabilities that she earns Rs.2,000/- per month as commission from hotel and railway ticket booking. On the other hand, respondent no.1 filed his affidavit of assets and liabilities where in he stated that he earns Rs.27,616/- per month as freelancer.

It is pertinent to mention here that the respondent no.1 has been making payment to the aggrieved party which is found on perusal of the bank statement of respondent no.1. Further it is also to be mentioned here that from the DIR report dt.26.5.23 it is found that the respondent no.1 paid Rs.5000/- per month to the aggrieved party and her minor son. At present, the aggrieved party is residing at a flat owned by the respondent.

Heard and 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.

With regard to the protection order **u/s.18** the court is of the opinion that the same should be granted at this stage as the petitioner has prima facie satisfied the court regarding domestic violence upon her.

With regard to residential order **u/s.19** the same is rejected at this stage as it is found that the aggrieved party is residing at a flat owned by the respondents.

With regard to monthly allowance order **u/s.21** the same is rejected at this stage as it is found that the respondent no.1 has been making payment to the aggrieved party and her minor child which has not been disclosed by the aggrieved party and she herself is earning.

Hence, it is,

ORDERED

(a) 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 Kalighat and Belghoria 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, Kalighat and Belghoria P.S for information and necessary action.

To **27.11.24** for evidence.

Typed & Printed by me,

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

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