

19.05.2026
SL. 36
Court No. 5
Suvayan

**In the High Court at Calcutta
Circuit Bench at Jalpaiguri
Criminal Revisional Jurisdiction
C.R.R. 142 of 2026**

In Re: - An application under Article 227 of the Constitution of India, 1950.

And

In the matter of: **Sri Nabin Ghosh & Anr.**

....petitioners.

Mr. Ajay Singhal
Mrs. Heena Yasmin Shaikh

...for the petitioners.

Mr. Kshitendranath Bhowmik
Mr. Ujjal Kundu
Ms. Shreya Agarwal
Mr. Mayank Roy

...for the opposite party no. 1.

Mr. Nilay Chakraborty, Ld. APP-in-Charge

...for the State.

1. The petitioners have filed the present revisional application challenging the judgment and order passed by the learned Additional Sessions Judge, Fast Track Court, Siliguri in Criminal Appeal no. 2 of 2021 dated February 11, 2026 wherein learned Additional Sessions Judge, Fast Track Court, Siliguri set aside the order passed by the learned Judicial Magistrate, 4th Court, Siliguri, Darjeeling in Misc. Case no. 121 of 2015 under the provisions of the Protection of Women from Domestic Violence Act, 2005 and confirmed the order passed by the learned Additional Sessions Judge, Fast Track Court, Siliguri dated February 21, 2022.
2. By the order dated February 21, 2022 the learned Sessions Judge has passed the following order:

“Considering the urgency of the application as well as

considering the matter in dispute which is under adjudication, the O.C. Matigara P.S. is hereby directed to restrain the respondents for demolishing the structure of 'BASUSHREE', Satyen Bose Road, Shivmandir, P.O. – Kadamtal, P.S. – Matigara, District – Darjeeling and submit the compliance report within seven days from the date of this order.”

3. Initially the opposite party no. 1 had filed an application under Sections 12, 18, 19 and 22 of the Protection of Women from Domestic Violence Act, 2005 against the opposite party nos. 2 to 5. Admittedly in the said application the petitioners herein viz. Nabin Ghosh and Smt. Shreosi Ghosh were not the party to said application. It is also admitted that the Nabin Ghosh and Smt. Shreosi Ghosh who are the petitioners in the present application are not in domestic relation with the opposite party no. 1. The application filed by the opposite party no. 1 before the learned Magistrate was taken up for hearing and initially the learned Magistrate has passed an interim order on September 4, 2015 permitting the opposite party no. 1 to reside in her matrimonial house viz. 'BASUSHREE' at Satyen Bose Road, Shivmandir, P.O. – Kadamtal, P.S. – Matigara, District – Darjeeling until further order. The learned Magistrate has also restrained the opposite party no. 2 or any other opposite parties from dispossessing or disturbing the possession of the opposite party no. 1 in any manner with regard to her right to reside in her matrimonial house.
4. The learned Magistrate has further passed an order

restraining from alienating or disposing or altering the nature and character of the matrimonial home of the opposite party no. 1 until further order.

5. After the order dated September 4, 2015 the opposite party nos. 2 to 5 have entered appearance before the learned Magistrate and filed an application for modification of the order dated September 4, 2015.
6. By an order dated January 7, 2016 the learned Magistrate has revived the order dated September 4, 2015 and October 8, 2015 by allowing the opposite party no. 1 to reside in her matrimonial house viz. 'Basushree' and the opposite party no. 2 or any other opposite parties are restrained from dispossessing or disturbing the possession of the opposite party no. 1 in any manner with regard to her right to reside in her matrimonial house. The learned Magistrate has further restrained the opposite parties for alienating or disposing or altering the nature and character of the matrimonial home of the opposite party no. 1 until further order.
7. On March 4, 2020 by an Order No. 23 the learned Magistrate has disposed of the application filed by the opposite party no. 1 by passing the following order:

"The petition u/s 12 P.W.D.V. Act, 2005 is allowed ex parte against the respondents in part without any order of cost.

I. All the respondents are prohibited from doing any type of assault or abuse against the petitioner or making any demand of dowry as well as causing any type of bodily harm upon the petitioner for such demand.

II. *The respondents are restrained from causing any disturbance in peaceful leaving of petitioner in her present separate stay other than her matrimonial home. The O.P. No. 1, Biplab Basu is directed to pay Rs. 4,000/- per month to the petitioner as expenses for her alternative accommodation from the date of this order.*

III. *The O.P. No. 1, Biplab Basu is further directed to pay Rs. 4,000/- per month as monetary relief in form of monthly maintenance to the petitioner, Sarbari Basu (Ghosh) from the date of this order.*

The O.P. No. 1 is directed to make payment at the aforesaid rate to the petitioner every month within the 10th day of the succeeding month in which it falls due; failing which the petitioner will be at liberty to put this order into execution.

The interim order thus modified from this date of final order.

However, the amount of monthly monetary relief is subject to adjustment with any other sum payable by the respondent no. 1 to the petitioner towards her monthly maintenance by virtue of any other litigation.

All other prayers are rejected.”

8. Being aggrieved and dissatisfied with the order dated March 4, 2020, the opposite party no. 1 has preferred an appeal before the learned Additional Sessions Judge, Fast Track Court, Siliguri being Criminal Appeal no. 2 of 2021. In the appeal, the opposite party no. 1 has filed an application on the ground that matrimonial house as mentioned in the application as well as the impugned judgment of the learned Magistrate is being demolished by the respondents with the

aid of their men and agents without notice of the opposite party no. 1 which also includes two rooms in occupation and possession of the opposite party no. 1 in such matrimonial home and if such illegal act be continued, the opposite party no. 1 will be suffer irreparable loss and injury.

9. The learned Judge has taken up the said application for hearing on April 21, 2022 and passed an order restraining the opposite party nos. 2 to 5 from demolishing the structure and directed the Officer-in-Charge, Matigara P.S. to restrain the opposite parties for demolishing and to submit report.
10. By an Order no. 19 dated 22.11.2023, the opposite party no. 1 has filed an application for incorporating the name of the petitioners herein who are the purchasers/promoters of the property-in-question and accordingly, the learned Additional Sessions Judge has added the petitioners herein as respondent nos. 6 and 7 in the appeal and issued summons to the petitioners and subsequently by an order dated February 11, 2026 the impugned order is passed.
11. Learned counsel for the petitioners submits that the petitioners are not in domestic relation with the opposite party no. 1. The opposite party no. 1 has not made these petitioners as party in the original complaint filed before the learned Magistrate. Only on the application of the opposite party no. 1 the Appellate Court has added these petitioners as respondent nos. 6 and 7. He submits that the respondent nos. 6 and 7 have purchased the property from the opposite party nos. 2 to 5 by way of registered deed on

April 8, 2022. He further submits that on that day there was no order of injunction restraining the opposite party nos. 2 to 5 from alienating the property or transferring the property. The petitioners being the purchasers have found that the opposite party nos. 2 to 5 are ready and willing to sell the property and accordingly, the petitioners herein have purchased the property by way of registered conveyance deed. He submits that the learned Sessions Judge without considering that the petitioners were not the original respondents in the original complaint filed before the learned Magistrate and the petitioners are no way connected with the allegation of domestic violence of the opposite party no. 1 has passed the impugned order. Though the petitioners have purchased the property by way of registered deed.

12. Learned counsel for the petitioners draws attention of this Court to the complaint filed before the Magistrate in paragraph 6 she has stated that on June 9, 2006 at 11 p.m. at the night the opposite party no. 1 with the help of other opposite parties throughout from her matrimonial home after beating her mercilessly though they kept all the stridhan properties belonging the petitioners in their custody. By referring the said paragraph, learned counsel for the petitioners submits that it is the admitted case of the opposite party no. 1, the opposite party no. 1 is not residing in the matrimonial home and as such the learned Sessions Judge has passed the impugned order without considering the averment made by the petitioners in paragraph no. 6 of

the original complaint.

13. Per contra, learned advocate appearing for the opposite party no. 1 submits that in terms of the interim order passed by the learned Magistrate initially on 04.09.2015, the opposite party no. 1 has started residing in the matrimonial house. Subsequently, the opposite party nos. 2 to 5 have entered appearance and filed an application for modification and accordingly learned Magistrate has modified the said order but the possession of the opposite party no. 1 was not disturbed. He further submits that in the final order dated 04.03.2020 the learned Magistrate also categorically ordered by restraining the respondents for causing any disturbance in peaceful living of the petitioners in her present separate stay other than her matrimonial home. He submits that the opposite party no. 1 is residing in the said house and the opposite party nos. 2 to 5 had the knowledge of the order but by suppressing the said order have transferred the said property in the name of the petitioners herein and the petitioners have started demolishing the property in which the opposite party no. 1 is residing.
14. Learned counsel for the opposite party no. 1 further submits that the opposite party nos. 2 to 5 have not appeared before the learned Magistrate or before the Appellate Court but on the other hand they have registered the deed with respect of the house wherein the opposite party no. 1 is residing in favour of the petitioners herein to frustrate the claim of the opposite party no. 1.

15. Heard the learned counsel for the respective parties perused the materials on record and the orders passed by the learned Magistrate and the Appellate Court.
16. This Court finds that the learned Magistrate has passed an order against the opposite party nos. 2 to 5 restraining from doing any act of assault or abused against the opposite party no. 1 or making any demand of dowry or causing any type of bodily harm. The opposite party nos. 2 to 5 were also restrained from causing any disturbance in the peaceful living of the opposite party no. 1 in the present separate stay other than her matrimonial home. The opposite party no. 2 was also directed to pay Rs. 4,000/- to the petitioners as expenses and shall alternative accommodation from the date of the order. The opposite party no. 1 further directed to pay Rs. 4,000/- per month as monetary relief. The petitioners have not satisfied with the said order and filed an appeal. In the appeal the circumstances was changed and the opposite party no. 1 came to know that the house has been sold by the opposite party nos. 2 to 5 in favour of the petitioners herein and accordingly on the prayer of the petitioners the learned Sessions Judge has passed an order restraining for demolishing the property by an order dated April 21, 2022.
17. The learned Appellate Court has also added these petitioners as party to the appeal. The learned Sessions Judge has set aside the order of the Magistrate and passed an order by confirming his order dated April 21, 2022. In the order dated April 21, 2022 that the learned Sessions Judge has

restrained the respondents from demolishing the structure of 'Basushree' and directed the Officer-in-Charge, Matigara P.S. to file report.

18. This Court failed to appreciate why the learned Sessions Judge has set aside the order of the learned Magistrate and has confirmed his order dated April 21, 2022 though the said order is not conclusive one. This Court also failed to appreciate that once the Sessions Judge has allowed the application of the opposite party no. 1 to add the petitioners as respondent nos. 6 and 7, the learned Sessions Judge ought to have remanded the matter back to the learned Magistrate for fresh consideration but instead of doing so by setting aside the order of the learned Magistrate, has confirmed the order dated April 21, 2022 which is not a conclusive one.
19. Learned Sessions Judge has not considered the order passed by the learned Magistrate dated 04.03.2020 wherein after the evidence of the opposite party no. 1 held that the opposite party no. 1 has not mentioned the address of her house where she resided with the opposite party no. 2 as husband and wife. In paragraph no. 6 of complaint it is the admitted case of the opposite party no. 1 that she has been driven out of the matrimonial house.
20. Learned Magistrate by an order dated 04.03.2020 has restrained the respondents i.e. opposite party nos. 2 to 5 from causing any disturbance in peaceful leaving of opposite party no. 1 in her separate stay other than her matrimonial

home and opposite party no. 2 was also directed to pay Rs. 4,000/- per month to the opposite party no. 1 as expenses for alternative accommodation thus it is clear from the said order that the opposite party no. 1 was not in occupation of the house of the opposite party nos. 2 to 5.

21. In view of the above, the impugned order passed by the learned Sessions Judge dated February 11, 2026 in Criminal Appeal No. 2 of 2021 is set aside and quashed.
22. This order will not preclude the opposite party no. 1 for taking appropriate steps before the appropriate forum with regard to the sale deed executed by the opposite party nos. 2 to 5 in favour of the petitioners herein before the appropriate court of law in accordance with law.
23. CRR 142 of 2026 is disposed of.

(Krishna Rao, J.)