

Neutral Citation No. - 2024:AHC-LKO:69557

Court No. - 12

Case :- MATTERS UNDER ARTICLE 227 No. - 1872 of 2024

Petitioner :- Anno Khan

Respondent :- State Of U.P. Thru. Prin. Secy. Home Deptt. Lko. And 4 Others

Counsel for Petitioner :- Dinesh Kumar Shukla

Counsel for Respondent :- G.A.,Amar Singh,Jai Vardhan Srivastava

Hon'ble Saurabh Lavania,J.

1. Heard learned counsel for the petitioner, learned A.G.A. for the State and perused the material available on record.
2. By means of the instant petition under Article 227 of the Constitution of India, the petitioner – Anno Khan has sought the following main relief (s) :-

“I. To set-aside the impugned order dated 29.02.2024 passed by court of Additional Session Judge room No.04/Special Judge (E.C. Act) Gonda in Criminal Appeal No.49/2023 (Pravej Alam and others Vs. Anno Khan and another) in the interest of justice.

II. To stay the impugned order dated 29.02.2024 passed by court of Additional Session Judge room No.04/Special Judge (E.C. Act) Gonda in Criminal Appeal No.49/2023 (Pravej Alam and others Vs. Anno Khan and another) in the interest of justice.”

3. Brief facts of the case are to the effect that marriage between the petitioner and opposite party no.2/Parvej Alam was solemnized on 18.01.2016 as per Muslim rites and rituals. Thereafter on account of some dispute the petitioner left her matrimonial home and started living separately.
4. The petitioner on 28.08.2019 instituted a case under Section 12 of Domestic Violence Act, 2005 (in short ‘Act 2005’) and the same was registered as Case No.794 of 2019 (Anno Khan Vs. Pravej and others). The aforesaid Case No.794 of 2019 filed

under Section 12 of Act 2005 was decided vide order dated 04.04.2022 by Civil Judge (Junior Division), FTC IInd, Gonda. The operative portion of the order dated 04.04.2022 reads as under.

"वादिनी अधिवक्ता द्वारा दाखिल लिखित बहस का परिशीलन किया गया। पत्रावली पर संलग्न डी०आई०आर० रिपोर्ट से भी विपक्षीगण द्वारा प्रार्थिनी के विरुद्ध घरेलू हिंसा कारित किया जाने का पृष्ठांकन पाया जाता है। धारा 3 घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम 2005 में घरेलू हिंसा को परिभाषित किया गया है, जिसमें शारीरिक हिंसा, लैंगिक हिंसा, मौखिक एवं भावनात्मक हिंसा, आर्थिक हिंसा को शामिल किया गया है, जिसमें दहेज मांग के संबंध में हानि पहुंचाना प्रताड़ित करना शामिल है। घरेलू हिंसा में महिलाओं का संरक्षण नियम 2006 के प्रारूप-4 के प्रस्तर 3 में मौखिक और भावनात्मक हिंसा से दहेज इत्यादि ना लाने पर अपमान करना शामिल है एवं प्रस्तर 4 आर्थिक हिंसा में घर के किसी भाग में जाने या उपभोग करने से रोकना शामिल है। वादिनी द्वारा दिए गए बयान एवं उपरोक्त परिचर्चा के आधार पर यह साबित होता है कि वादिनी धारा-2 के अंतर्गत पीड़ित व्यक्ति कि श्रेणी में आती है। उसके द्वारा विपक्षी के साथ सांझी गृहस्थी में डोमेस्टिक वायलेंस एक्ट के अंतर्गत जीवन व्यतीत किया गया एवं प्रार्थिनी पर घरेलू हिंसा कारित की गई।

उपरोक्त परिचर्चा के अनुसार-प्रार्थना पत्र स्वीकार किए जाने का आधार पर्याप्त है।

आदेश

वादिनी का प्रार्थना पत्र अंतर्गत धारा-12 घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम, 2005 स्वीकार किया जाता है।

धारा 18 व 19 घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम, 2005 के अंतर्गत विपक्षीगण को आदेशित किया जाता है कि वादिनी जिस मकान में विवाह उपरांत रह रही थी उसमें रहने के लिए प्रतिबद्ध है, उसमें से उसे निकालने का प्रयास ना करें तथा वादिनी को सांझी गृहस्थी ग्रा०-रोचीपुरा लेन नं०-01 निरंजनपुर माजरा, थाना निरंजनपुर जिला देहरादून, उत्तराखण्ड के जिस हिस्से में निवास करना चाहती है, उसमें बाधा ना उत्पन्न करें।

धारा 20 व 22 घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम, 2005 के तहत विपक्षीगणों के आय के स्रोत के किसी भी दस्तावेजी साक्ष्य के पत्रावली पर ना उपलब्ध होने के कारण परंतु पीड़िता के हालात देखते हुए, विपक्षी सं०-01 परवेज आलम को आदेशित किया जाता है कि वह वादिनी को मुठ 2,000/- रुपए (दो हजार रुपये) मासिक गुजर बसर हेतु हर महीने कि 10 तारीख तक अदा करना सुनिश्चित करें। उक्त धनराशि माह अप्रैल 2022 की 10 तारीख (माह अप्रैल 2022 को शामिल करते हुए) देय होगी। उक्त धनराशि वादिनी श्रीमती अन्नोखान व विपक्षी सं०-01 परवेज आलम के विवाह के संबंध के वैध रहने तक देय होगी।

विपक्षीगण को वादिनी श्रीमती अन्नोखान पर किसी भी प्रकार का घरेलू हिंसा का कृत्य से निषेधित किया जाता है। उक्त घरेलू हिंसा का कृत्य करने से निषेधित

किया जाता है। उक्त घरेलू हिंसा के कृत्य इस आदेश उपरांत किये जाने पर विपक्षीय धारा 31 घरेलू हिंसा से महिलाओं के संरक्षण अधिनियम 2005 के अंतर्गत उत्तरदाई होंगे।

उक्त आदेश की प्रतिलिपि संबंधित थाने को अनुपालन हेतु प्रेषित की जाए। संबंधित थाने के एस०एच०ओ० को निर्देशित किया जाता है कि वे पीड़िता के साझे निवास में रहने हेतु उचित सहायता प्रदान करें।"

5. Being aggrieved by the order dated 04.04.2022, referred above, a Criminal Appeal No.49 of 2023 (Parvej Alam & others Vs. Anno Khan & another) was filed before the Session Judge, Gonda.
6. Vide order dated 29.02.2024, under challenge in the instant petition, the Criminal Appeal No.49 of 2023 has been finally decided by Additional Sessions Judge, Court No.4, Special Judge (E.C. Act), Gonda. The operative portion of the aforesaid order reads as under.

"अपीलार्थी द्वारा योजित प्रस्तुत दायित्व अपील संख्या 49/2023, परवेज आलम आदि बनाम श्रीमती अन्नो खान आदि मु० 10,000/- (दस हजार रुपये) हर्जे पर स्वीकार किया जाता है। न्यायालय सिविल जज (जू०डि०) / एफ०टी०सी० द्वितीय, गोण्डा द्वारा वाद संख्या 1049/2019, अन्नो खान बनाम परवेज आलम आदि, अन्तर्गत धारा 12 घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम 2005 में पारित आदेश दिनांकित 04.04.2022 अपास्त किया जाता है। उभयपक्ष को आदेशित किया जाता है कि सुनवाई हेतु विचारण न्यायालय के समक्ष दिनांक 11.03.2024 को उपस्थित हों। इस निर्णय की प्रति के साथ विचारण न्यायालय की तलब शुदा पत्रावली विद्वान विचारण न्यायालय को प्रतिप्रेषित की जाये।"

7. From the record it appears that the appeal was filed by the private opposite party on the main ground to the effect that the order dated 04.04.2022, passed by Civil Judge (Junior Division), FTC IInd, Gonda is an ex-parte order and no notice of the case was served.
8. The Session's Court after considering the paper book of Case No.794 of 2019, decided on 04.04.2022, found that the notice was actually not served upon the private opposite parties and,

therefore, allowed the appeal vide order dated 29.02.2024, under challenge, which is apparent from para 11 of the said judgment/order under challenge, which reads as under.

"11. प्रश्नगत आदेश व सम्बन्धित पत्रावली के अवलोकन से यह विदित है कि प्रत्यर्थिनी / परिवादिनी द्वारा विद्वान विचारण न्यायालय के समक्ष धारा 12 घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम के अन्तर्गत प्रार्थना पत्र वाद संख्या-1049/2019 अपीलार्थीगण के विरुद्ध योजित किया गया था जिसमें विपक्षीगण को नोटिस जारी की गयी तथा जिला प्रोबेशन अधिकारी/संरक्षण अधिकारी से आख्या तलब की गयी। जिला प्रोबेशन अधिकारी, गोण्डा की आख्या दिनांकित 25.06.2021 पत्रावली पर दाखिल है जिसके अनुसार प्रत्यर्थीगण पर नोटिस तामील कराये जाने हेतु नोटिस जिला प्रोबेशन अधिकारी/संरक्षण अधिकारी, आगरा को प्रेषित किये गये तथा घरेलू घटना रिपोर्ट तैयार करके दाखिल की गयी। विपक्षीगण पर तामीलशुदा नोटिस पत्रावली पर दाखिल नहीं है न ही जिला प्रोबेशन अधिकारी / संरक्षण अधिकारी, आगरा की कोई आख्या दाखिल है। न्यायालय से जारी नोटिस जरिये रजिस्टर प्रेषित किये गये जो अदम तामिल पत्रावली पर दाखिल है। पत्रावली पर आदेश पत्र पर दिनांक 27.10.2021 को विपक्षीगण पर नोटिस तामिला प्राप्त है का अंकन है तथा वाद की कार्यवाही विपक्षीगण के विरुद्ध एकपक्षीय रूप से अग्रसारित की गयी। पत्रावली पर विपक्षीगण पर तामिला के संबंध में अन्य कोई विवरण नहीं है कि किस प्रकार विपक्षीगण पर तामिला पर्याप्त माना गया। यह उल्लेखनीय है कि विपक्षी सं० 01 का पता (जिला देहरादून उत्तराखण्ड अंकित है परंतु तामील के लिए कोई नोटिस देहरादून जिला प्रोबेशन अधिकारी को प्रेषित नहीं किया गया है। दिनांक 27.10.2021 को विपक्षीगण के विरुद्ध वाद की कार्यवाही एकपक्षीय रूप से अग्रसारित कर दी गयी और वादिनी के द्वारा प्रस्तुत साक्ष्य के आधार पर आक्षेपित निर्णय दिनांकित 04.04.2022 पारित किया गया। उक्त कार्यवाही से यह स्पष्ट है कि पत्रावली पर ऐसा कोई साक्ष्य नहीं है जिससे यह प्रकट हो कि अपीलार्थीगण/विपक्षीगण को वाद की कोई जानकारी रही और पर्याप्त अवसर देने के बाद भी उनके द्वारा वाद की कार्यवाही में कोई सहयोग नहीं किया गया।"

9. To rebut the aforesaid finding, no material has been placed on record.
10. From the findings aforesaid it is apparent that the order dated 04.04.2022 was passed in violation of principles of natural justice.
11. Natural justice is an important concept in administrative law. In the words of Megarry J it is "justice that is simple and elementary, as distinct from justice that is complex, sophisticated and technical". The principles of natural justice or

fundamental rules of procedure for administrative action are neither fixed nor prescribed in any code. They are better known than described and easier proclaimed than defined.

12. Natural justice is another name for common-sense justice. Rules of natural justice are not codified cannone. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a common-sense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form.
13. The expressions "natural justice" and "Legal justice" do not present a watertight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law. As Lord Buckmaster said, no form or procedure should ever be permitted to exclude the presentation of a litigant's defense.
14. The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. There principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should apprise the party

determinatively of the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the "Magna Carta". the classic exposition of Sir Edward Coke of natural justice requires to "vocate, interrogate and adjudicate". In the celebrated case of *Cooper v. Wandsworth Board of Works* the principles was thus stated:

"Even God himself did not pass sentence upon Adam before he was called upon to make his defense. 'Adam'(says God), 'where art thou? hast thou not eaten of the tree whereof, I commanded thee that thou shouldest not eat.'"

15. Since then the principle has been chiselled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond.
16. It is not possible to define precisely and scientifically the expression "natural justice". Though highly attractive and potential, it is a vague and ambiguous concept and, having been criticised as "sadly lacking in precision, has been consigned more than once to the lumber-room. It is a confused and unwarranted concept and encroaches on the field of ethics. Though eminent judges have at times used the phrase "the principles of natural justice", even now the concept differs widely in countries usually described as civilised.

17. It is true that the concept of natural justice is not very clear and therefore, it is not possible to define it; yet the principles of natural justice are accepted and enforced. In reply to the aforesaid criticism against natural justice, Lord Reid in the historical decision of ***Ridge V. Baldwin (1963) 2 All ER 66 (HL)*** observed:

"In Modern times opinions have sometimes been expressed to the effect that natural justice is so vague as to be practically meaningless. But I would regard these as tainted by the perennial fallacy that because something cannot be cut and dried or nicely weighed or measured therefore it does not exist...."

18. Further, Natural justice is a branch of public law. It is a formidable weapon which can be wielded to secure justice to citizens. Rules of natural justice are "basic values" which a man has cherished throughout the ages. They are embedded in our constitutional framework and their pristine glory and primacy cannot be allowed to be submerged by exigencies of particular situations or cases. Principles of natural justice control all actions of public authorities by applying rules relating to reasonableness, good faith and justice, equity and good conscience. Natural justice is a part of law which relates to administration of justice. Rules of natural justice are indeed great assurances of justice and fairness.
19. The golden rule which stands firmly established is that the doctrine of natural justice is not only to secure justice but to prevent miscarriage of justice. Its essence is good conscience in a given situation; nothing more-but nothing less.
20. As Lord Denning in the case of **Kandaa v. Govt. of Malaya, 1962 AC 322** observed that *"if the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused person to know the case which is made against him. He must know what evidence has been given and what*

statements have been made affecting him; and then he must be given a fair opportunity to correct or contradict them."

21. Hon'ble the Apex Court in the case of ***Bishambhar Nath Kohli v. State of U.P., AIR 1955 SC 65*** held that *"in revision proceedings, the Custodian General accepted new evidence produced by one party, but no opportunity was given to the other side to meet with the same. The Supreme Court held that the principles of natural justice were violated."*

22. The Supreme Court in the case of ***Ramji Dass and others v. Mohan Singh, 1978 ARC 496*** has held that as far as possible, Courts' discretion should be exercised in favour of hearing and not to shut out hearing. In that case the appeal was filed against an ex parte decree after eight years and the District Court as well as the High Court had rejected the matter on the ground of delay. However, setting aside the order of the High Court, Hon'ble Justice V.R. Krishna Iyer observed as under:

"... we are inclined to the view that, as far as possible, Courts' discretion should be exercised in favour of hearing and not to shut out hearing. Therefore, we think that the order of the High Court should not have been passed in the interest of Justice which always informs the power under S. 115 C.P.C. ..."

23. Having considered the aforesaid including the specific findings in regard to service of notice upon the private opposite party in the impugned order dated 29.02.2024, which have not been refuted by placing appropriate evidence available on the record of the case in issue i.e. Case No.794 of 2019, this Court does not find any illegality or irregularity in the order dated 29.02.2024. The petition is, accordingly, **dismissed**.

Order Date :- 15.10.2024

Anand/-