

Court No. - 16

Case :- MATTERS UNDER ARTICLE 227 No. - 3556 of 2024

Petitioner :- Neeraj Maurya And Another

Respondent :- State Of U.P. Thru. Prin. Secy. Home Lko And 2 Others

Counsel for Petitioner :- Shafaq Fatima

Counsel for Respondent :- G.A.

Hon'ble Shamim Ahmed,J.

1. Heard Ms. Shafaq Fatima alongwith Mr. Arshad Siddiqui, learned Counsel for the petitioners, Mr. Veer Bhan Singh, learned A.G.A-I for the State-respondent and perused the material placed on record.

2. The present petition has been filed on behalf of the petitioners seeking direction to the opposite party No.2 to permit the petitioners for filing fresh application under Section 25(2) of Domestic Violence Act, 2005 in Compliant No.7335/2021 under Section 12 of Domestic Violence Act, 2005, Police Station-Ashiyana, District-Lucknow (Shweta Maurya vs. Neeraj Maurya and others), which is pending before the opposite party No.2.

3. Learned Counsel for the petitioners submit that an ex-parte order dated 10.10.2022 was passed by learned Additional Chief Judicial Magistrate, Court No.29 in Case No.7335/2021 under Section 12 of Protection of Women from Domestic Violence Act, 2005, wherein the petitioners were directed to pay Rs.2,500/- i.e. an amount of Rs.5000/- per month to the opposite party No.3 and her minor son as interim maintenance. Thereafter, the petitioner being aggrieved by the order dated 10.10.2022 preferred an appeal bearing Criminal Appeal No.18661 of 2023 before the District and Session Judge, Lucknow and also filed an application on 08.05.2023 before the trial court with a prayer to stay further proceedings of the interim order dated 10.10.2022 till the disposal of the appeal so filed by the petitioners. They further submit that the aforesaid appeal filed by the petitioners was dismissed vide order dated 15.02.2024 by learned Additional Session Judge, Court Room No.1/Special Judge, but the trial court did not decide the application dated 08.05.2023 moved by the petitioners.

4. Learned Counsel for the petitioners further submit that after the dismissal of appeal filed by the petitioners in the trial court,

the petitioners filed a criminal revision bearing Criminal Revision No.294 of 2024 before the Coordinate Bench of this Court and the Coordinate Bench of this Court vide order dated 22.03.2024 dismissed the revision of the petitioners. The order dated 22.03.2024 passed by the Coordinate Bench of this Court is reproduced hereunder:-

"1. Heard Sri Arshad Siddiqui, the learned counsel appearing for the revisionists and Sri Abhishek Kumar Singh, the learned Additional Government Advocate and perused the record.

2. By means of the instant revision filed under Section 397/401 Cr.P.C., the revisionists have challenged the validity of the order dated 15.02.2024 passed by the learned Additional District & Sessions Judge, Court No.3, Lucknow in Appeal No.18661 of 2023 whereby the order dated 10.10.2022 passed by the Additional Chief Judicial Magistrate, Court No.29, Lucknow in Complaint Case No.7335 of 2021 under Section 23 of Protection of Women from Domestic Violence Act awarding the revisionist to pay Rs.2,000/- per month as maintenance to opposite party No.2 and to pay Rs.500/- per month to her minor son, was affirmed.

3. The revisionist's have not challenged the validity of the order dated 10.10.2022 passed by the Additional Chief Judicial Magistrate and it was provided in this order that the opposite party No.2 will not cause any delay in disposal of the case and in case any other material comes to light, the Court may modify/amend or vacate the order. The matter was ordered to be put up on 12.11.2022.

4. The learned counsel for the revisionists has submitted that the interim order dated 10.10.2022 is bad in law in compliance of the provisions of Rule 7 of the Protection of Women from Domestic Violence Rules, 2006.

5.The revisionists have not challenged the validity of the order dated 10.10.2022 before this Court, therefore, it is not open to the learned counsel for the revisionist to raise this ground.

6.Even on merits, Rule 7 of the Protection of Women from Domestic Violence Rules, 2006 provides that every affidavit for obtaining ex-parte order under sub-section (2) of section 23 shall be filed in Form-III. Opposite party No.2 has filed her affidavit in support of the prayer for grant of ex parte maintenance, although the same is not on the prescribed Form-III. However, this affidavit is on the format laid down by the Hon'ble Supreme Court in the case of Rajnesh vs Neha : (2021) 2 SCC 32, therefore, it cannot be said that the opposite party No.2 has committed any illegality in filing the affidavit on the format laid down by the Hon'ble Supreme Court in the aforesaid case.

7.As the impugned order is interlocutory in nature and it is recorded therein that the order may be varied or amended or set aside in case some new material is placed before the Court, it is open to the revisionist to file a suitable application raising all their pleas before

the Magistrate concerned.

8.The learned counsel for the revisionists informs that such an application has already been filed by the revisionists, therefore, this Court finds no reason to interfere with the impugned order. The revision is dismissed.

9. However, it is observed that the Additional Chief Judicial Magistrate, Court No.29, Lucknow will pass suitable orders on the application filed by the revisionists in accordance with law after giving an opportunity of hearing to all the parties concerned."

5. Thereafter, the petitioners preferred the present petition before this Court praying for aforesaid reliefs in spite of complying with the order dated 22.03.2024. The reliefs sought by the petitioners cannot be granted by this Court. If the petitioners are aggrieved by the impugned order passed by the trial court, they may file their objections and contest the aforesaid case, in accordance with law, thus, the present petition lacks merit and substance and is liable to be dismissed.

6. With the above observations, the present petition is hereby ***dismissed.***

7. No order as to cost(s).

Order Date :- 1.8.2024

Piyush/-