

23-11-2021
ct no. 13
Sl.5
sp

WPA 4534 of 2020
Manu Sarkar & Anr.
The
State of West Bengal & Ors.
(Through Video Conference)

Mr. Shibaji Kumar Das
....for the petitioners

Ms. Joyee Maiti
...for the State

Mr. Manoj Kumar Roy
...for the respondent nos. 5 and 6

Heard learned counsel for the private respondent nos. 5 and 6, being daughter-in-law and her father.

The Inspector-in-Charge, Barasat Women Police Station has submitted a report that has been read out by the counsel for the State. A copy of the report is taken on record.

It appears that in respect of the complaint lodged by the private respondent daughter-in-law against the petitioners, charge sheet has been filed, inter alia, under Section 498A/406/307/34 of the Indian Penal Code, 1860. The respondent has also taken out proceedings under the D.V. Act, 2005, inter alia,

against the petitioners and the same is pending. Other complaints have also been lodged alleging that the child of the 5th respondent has been kidnapped by the petitioners and the same is under investigation.

Learned counsel for the daughter-in-law would argue that in view of the pendency of the proceedings under the D.V. Act, 2005, the petitioners ought to avail the forum provided under the D.V. Act for seeking remedies. It is also argued that allowing the prayer (b) to the writ petition, would dilute the proceedings instituted by the petitioners under the D.V. Act. Provision of the D.V. Act has also been placed by the counsel for the respondent.

This Court is of the view that merely because proceedings under the D. V. Act and IPC are pending, the same cannot deny or deprive the petitioners' right to reside on their own property.

The daughter-in-law, respondent no.5, shall not be ousted from the said residence and her right to continue thereat, shall abide by the pending proceedings of the D.V. Act. Indeed, the provision of the D.V. Act, can also be availed by the petitioners.

This Court is therefore of the view that since the right of residence of the petitioners is involved and the petitioners claimed to have been thrown out from the residence by the daughter-in-law and her father, interference under Article 226 of the Constitution of India is called for.

This Court also notes the submission of the counsel for the daughter-in-law that the petitioners have left the residence on their own. These are matters that are left for adjudication in the proceeding under the D.V. Act. Since the daughter-in-law has through counsel said that she has not obstructed or objected to the petitioners residing in the said premises, the Officer-in-Charge, Barasat Women Police Station shall depute a constable to accompany the petitioners into their house. It shall briefly be overseen by the Barasat Police Station that the petitioners and the respondents live separately in the same residence and are not needed to come into contact with one and other.

It is made clear that this Court has not adjudicated or decided any right, title and interest either of the private respondents to reside in the said premises. The same shall be

decided either in pending proceedings that any other proceedings of the parties that may take out against each other. The said fora shall decide the matter in accordance with law uninfluenced by any observations made herein.

With the aforesaid observations, the writ petition is disposed of.

There shall be no order as to costs.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)