

May 12, 2022
Sl. No. 19
Court No.1
PA - RB

MAT 49 of 2022
with
CAN 1 of 2022

Smt. Sumita Paine and Anr.
vs.
The State of West Bengal and Others

Mr. Biswarup Paine,
Ms. Sumita paine,
... appellants-in-person

Mr. Asim Kumar Ganguly,
Mr. Ramchandra Guchhait, Advocates
... for the State

The appellant, being dissatisfied with the order of the learned Single Judge dated 4th January, 2022 whereby WPA 13749 of 2021 has been disposed of with certain observation, has filed this appeal.

The appellant had filed the writ petition with the plea that the appellant no. 1, after separation from her husband, along with her son, appellant no. 2, is residing in her father's house. Respondent no. 4 is the elder brother of the appellant no. 1 and in course of time, the appellant's father had died and the appellant as also respondent no. 4 and his mother are residing in the house. Relations between the parties are strained and appellant no. 1 had filed a domestic violence case in which the learned Judicial Magistrate, 5th Court, Serampore, Hooghly had passed the final order on 1st April, 2016 giving protection to the appellant no. 1. The appellants had raised the plea that inspite of the order by

the learned Judicial Magistrate, she was being harassed and the order was not complied with, therefore, in the writ petition, compliance of the order dated 1st April, 2016 was sought.

Learned Single Judge has taken note of the nature of dispute between the parties and reached to the conclusion that the dispute can be solved in a partition suit where the property can be divided in terms of the respective shares, if any, as may be determined by the competent Court. Learned Single judge has also requested the State Legal Services Authority to render appropriate assistance to both the parties and in order to ensure peace, he has directed Officer-in-Charge of Rishra Police Station to forthwith intervene and take into custody any person found to be disturbing peace in the residence.

The appellant no. 2, present in-person, has submitted that the order of the learned Judicial Magistrate dated 1st April, 2016 has been violated and pending this appeal, the appellant no. 1 has been forcibly dispossessed, therefore, action needs to be taken against the respondent. The appeal and the submission have been opposed by the respondents.

Having heard the learned Counsel for the parties and on perusal of the record, it is noticed that if the protection order passed under the provisions of the Act is breached, then the remedy lies under Section 31 of the

Protection of Women from Domestic Violence Act, 2005. In the present case, very fact of violation of the order dated 1st April, 2016 is in dispute and the appellant is required to establish its breach by way of appropriate evidence before the competent Court/forum. Learned Single Judge, having regard to the strained relations and dispute between the parties, had already issued appropriate directions to ensure peace between the parties. Hence, the order passed by the learned Single Judge does not suffer from any error and no case for interference is made out.

The appeal is accordingly, dismissed.

[Prakash Shrivastava, C.J.]

[Krishna Rao, J.]