

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 2181 of 2019

Smt. Bina Das

Vs

Suman Das @ Suman Sekhar Das

For the Petitioners : Mr. Suman De.

For the Opposite Party : None.

Heard on : 24.11.2022

Judgment on : 12.12.2022

Shampa Dutt (Paul), J.:

The present revision is against an order dated 05.10.2018 passed by the learned Additional District Judge, 3rd F.T.C., Alipore in Criminal Appeal No. 157 of 2018 setting aside the order dated 18.11.2017 passed by the learned Judicial Magistrate, 7th Court, Alipore in C. 4909/2013 wherein the respondent no. 1 Suman Das was directed to pay a sum of Rs. 4,000/- per month for the petitioner towards interim monetary relief under Section 20 of the Protection of Women from Domestic Violence Act, 2005 (**herein after referred to as the Act of 2005**) and to pay a sum of Rs. 4000/- per month for alternate accommodation under Section 19 of the Act of 2005 from the date of the order.

The petitioner's case before the Trial Court is that at the age of 19 years on 27.05.1975, she was married to Nemai Das (uncle of the opposite party) who expired on 10.06.1998 in the shared household and has one daughter and one son. After her marriage she stayed in her matrimonial home at the address of the opposite party who is her husband's nephew (therefore also her nephew). The daughter is married and lives in her matrimonial home. The son's where about is not known. After the death of her husband in the year 1998 the petitioner was harassed and was asked to leave the shared household as her husband had been 'disinherited' by his father.

The present revisional application arises from a complaint case being C-4909/13 filed by the petitioner under the Act of 2005. The said case was disposed of by the learned Judicial Magistrate, 7th Court, Alipore on 18.11.2017 directing the opposite party to pay the amount as stated above. The order was challenged by the opposite party before the Sessions Court, which vide its judgment dated 05.10.2018 has set aside the order of the Magistrate dated 18.11.2017. Hence the present revision.

Mr. Suman Dey learned Counsel for the petitioner has submitted that the judgment and order dated 05.10.2018 suffers from serious infirmities and the order dated 18.11.2017, being set aside on the basis of the same issue which has been raised by the opposite party while challenging the maintainability application, therefore the principle of res judicata will apply.

It is further submitted that the petitioner is a helpless widow having no income on her own and she had been residing in the shared household with her husband and as such is entitled to the monetary relief.

It is submitted that the Act of 2005 is a separate and independent proceeding which is not dependant on the result of any other proceeding. The learned Appellate Court failed to appreciate that the Act is a beneficial legislation and also failed to consider the

wider scope and ambit of the Act. The impugned order thus being bad in law, is liable to be set aside.

Considered the materials on record including the judgment of the learned Magistrate and the judgment of the Sessions Court from which the present revision has been preferred and the materials on record. Heard the counsel for the petitioner at length.

The opposite party inspite of service has chosen not to contest.

From the final order of the learned Magistrate it has come before this Court that the learned Magistrate has only noted the case of the parties, the arguments of both sides and the materials on record but there is no independent findings by the learned Magistrate other than as follows:-

“In view of the above facts and circumstances this Court finds that it is reasonable for the interest of justice to allow this petition in part and allow the prayer in part in the manner stated in the prayer portion of the petition.”

The learned Magistrate by allowing the application granted monetary relief to the petitioner herein.

The Court of Sessions set aside the Magistrate's order on hearing the appeal by came to the findings as follows:-

“It appears that the learned Court below did consider the judgment and decree passed in T.S. No. 177 of 2006 evicting the aggrieved person and his son from the case property being premises no. 76 Pratapaditya Road, P.S.

Tollygunj, Kolkata-26 but failed to consider the essence of the said judgment being passed holding relationship between the aggrieved person and the appellant beyond the purview of P.W.D.V. Act. It has been simple logical inference that had there been relationship between the aggrieved person and Nimai Das, claimed to be husband of the aggrieved person accepted as legal by the learned Civil Court, there would have been no decree in favour of the appellant and others and such decision by a competent court of law would definitely stand in the way prima facie to decide against the domestic relationship between aggrieved person and the appellant.

In that view of the matter, this court of appeal is of the opinion that unless the aggrieved person be able to prove the domestic relationship by producing cogent documentary evidence on trial, the appellant should not be burdened in the form of punishment for obtaining the eviction decree and the court set aside the said order of the learned Magistrate.”

Admittedly the petitioner was married in the year 1975. Her husband expired in the year 1998. It is the case of the petitioner that she was tortured mentally and physically after the death of her husband. A suit was filed against the petitioner and her son for eviction and recovery of possession and Title Suit 177 of 2006 was decreed in favour of the opposite party in this case and others. The said decree of eviction has not been challenged. The application under Section 12 of the Protection of Women from Domestic

Violence Act, 2005 was filed in the year 2013. It is the case of the petitioner that she was evicted from the shared household on 20.03.2013 through an execution case.

The Sessions Court considered the judgment of the learned Magistrate and held that:-

“..... Had there been relationship between the aggrieved person and Nemai Das claimed to be husband of the aggrieved person accepted as legal by the learned Civil Court there would have been no decree in favour of the appellant and others.”

The Court held that the eviction suit prima facie decided against the domestic relationship between aggrieved person and appellant and as the domestic relationship could not be proved, the appellant cannot be burdened for obtaining the eviction decree and set aside the said order of the Magistrate under appeal.

Section 2 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the Act of 2005) defines:-

- (a) **“aggrieved person”** means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent;
- (b)
- (c)
- (d)

(e)

(f) **“Domestic relationship”** means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage or through a relationship in the nature of marriage, adoption or are family members living together as a joint family;”

The learned Session Judge came to the conclusion that as the Civil Court decided in favour of the opposite parties herein it can be presumed that the petitioner herein could not prove her right, title and interest through her husband in the said property and as such the Civil Court being satisfied had decreed the eviction suit and also recovery of possession. The said decree has not been challenged.

The learned Magistrate while passing the order allowing the prayer under Section 12 of the said Act did not come to any specific findings relating to the domestic relationship between the parties and if any relationship was at all proved as to whether the petitioner could be considered an aggrieved person. There is absolutely no findings given by the learned Magistrate.

The Supreme Court in **Satish Chander Ahuja vs. Sneha Ahuja (Civil Appeal no. 2483 of 2020) on 15th October 2020** arrived at the following conclusions:-

“157. From the above discussions, we arrive at following conclusions:-

(i) The pendency of proceedings under Act, 2005 or any order interim or final passed under D.V. Act under Section 19 regarding right of residence is not an embargo for initiating or continuing any civil proceedings, which relate to the subject matter of order interim or final passed in proceedings under D.V. Act, 2005.

(ii) The judgment or order of criminal court granting an interim or final relief under Section 19 of D.V. Act, 2005 are relevant within the meaning of Section 43 of the Evidence Act and can be referred to and looked into by the civil court.

(iii) A civil court is to determine the issues in civil proceedings on the basis of evidence, which has been led by the parties before the civil court.

(iv) In the facts of the present case, suit filed in civil court for mandatory and permanent injunction was fully maintainable and the issues raised by the appellant as well as by the defendant claiming a right under Section 19 were to be addressed and decided on the basis of evidence, which is led by the parties in the suit.”

It is clear from the said judgment that irrespective of the ownership of the suit premises where the aggrieved person resided, she would still retain the right to reside therein as long as she was able to prove that she had endured domestic

violence while being in a domestic relationship with the owner of such premises.

The learned Sessions Judge came to the conclusion that there was no existence of a domestic relationship between the petitioner and her husband and thereby with the opposite party. The petitioner could not prove before the domestic relationship Trial Court. As a result, the definition of “aggrieved person” also could not be applied to the petitioner in this case.

The next question in the present case is whether the application under the said Act was filed within time. Admittedly the petitioner got married in the year 1975 and her husband expired in the year 1998. The suit for eviction was initiated in the year 2006 by the opposite party and others. All these are matters of record. It is the case of the petitioner that she was evicted from the premises in the year 2013 and the present case was also initiated in the year 2013. Accordingly the application in the present case prima facie appears to be within the period of limitation.

It is seen that the petitioner and the opposite party who it is stated is allegedly the Nephew of the petitioner’s husband, share the **same surname “Das”**. The fact that the petitioner lived in the suit premises till she was evicted allegedly in the year 2013 is proved by the fact that admittedly the opposite party and others

had to initiate a suit for eviction for evicting the petitioner. This prima facie proves that she lived in the said shared household till 2013.

In this case/revision, the opposite party has refused to accept the service as the envelope has been returned with the endorsement “unclaimed”. It appears that the opposite party has decided not to come before this Court on receiving an order in his favour from the Sessions Court.

From the materials before this Court, **it prima facie appears that there was a ‘domestic relationship’ between the petitioner and the opposite party, as admittedly the petitioner resided in the same premises (shared household) with that of the opposite party.** The petitioner thus lived with the opposite party and his family in the shared household as they were related through marriage. As to why the suit for eviction was granted is not before this Court nor are the statements of the petitioner before this Court in the present application denied by the opposite party, due to his non-appearance but the eviction suit clearly proves that the petitioner lived in the shared household allegedly till the year 2013 when she was evicted and on being evicted the definition “aggrieved person” becomes applicable to the petitioner.

Domestic violence has been defined under **Section 3** of the Act of 2005. Which also includes “economic abuse” :-

“Section 3 explanation I:-

.....

(iv) “Economic abuse” includes-

(c) *Prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.....”*

Thus by being evicted from the shared household/property the petitioner has suffered “economic abuse” as defined under Section 3 (iv) (c).

Expression “**at any stage as lived**” refers to the living of an aggrieved person in a household, at the time of filing of application under Section 12 or passing of order under Section 19 or her living in recent past prior to her exclusion from possession on or her remaining temporarily absent.

The definition of ‘share household’ has been given under Section 2(s) of the Act of 2005.

“Section 2.....

(s) “**shared household**” means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or

tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household;.....”

Section 17 of the said Act of 2005 lays down:-

“17. Right to reside in a shared household.-

(1) Notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same.

(2) The aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law.”

Section 17(2) lays down that an aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent **save in accordance with the procedure established, by law.**

In ***Rajnesh vs. Neha, (Criminal Appeal No. 730 of 2020)***

the Supreme Court on 4, November, 2020 observed:-

*“.....Sections 17 and 19 grant an entitlement in favour of an aggrieved woman to the right of residence in a “shared household”, **irrespective of her having any legal interest in the same or not.** From the definition of “aggrieved person” and “respondent”, it was clear that :*

(i) it is not the requirement of law that the aggrieved person may either own the premises jointly or singly, or by tenancing it jointly or singly;

(ii) the household may belong to a joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title, or interest in the shared household;

(iii) the shared household may either be owned, or tenanted by the respondent singly or jointly.”

In the present case admittedly there is a decree for eviction against the petitioner and her son from the suit property and also recovery of possession which has also been executed by way of initiating execution proceedings. The said eviction led to the filing to the present case.

As such though this Court finds that the petitioner admittedly resided in the suit property, she was evicted by due process of law and in accordance with the procedure established by law (decree of Civil Court).

As such the right of the petitioner to reside in the said shared household has been extinguished by the Civil Court's decree of eviction and recovery of possession effected by an execution case. The petitioner's right is thus not in existence as on date in view of the provision of **Section 17(2) of the Act of 2005**.

The petitioner being an "aggrieved person" in a domestic relationship living in a shared household allegedly till 2013 has been evicted and removed from the "shared household" by due process of law. The said decree of eviction and recovery of possession has not been challenged and as such the petitioner's claim to live in the 'shared household' as on date does not exit being extinguished by the process of law.

But as this Court finds that prima facie there was a "domestic relationship" between the parties by way of marriage sharing the same 'surname' and living in the same house, the petitioner is entitled to get monetary relief as granted by the learned Magistrate vide his order dated 18.11.2017 and the

learned Magistrate also rightly passed the residence order under Section 19 of the Act of 2005.

Section 20 of the Act of 2005 provides for monetary reliefs to the aggrieved woman.

“.....

Section 20(2) *The monetary relief granted under this Section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.”*

Thus the judgment and order of the learned Additional District and Sessions Judge, 3rd Court, Alipore, in criminal appeal 157 of 2018 being not in accordance with law is hereby set aside. The judgment and order of the learned Judicial Magistrate, 7th Court, Alipore dated 18.11.2017 in C-4909 of 2013 is affirmed.

Criminal revision being **CRR 2181 of 2019 is accordingly allowed.**

Let a copy of the judgment be sent to the Court of learned Additional District Judge, 3rd, Fast Track Court, Alipore and learned Judicial Magistrate, 7th Court, Alipore, along with the lower court records (if any).

No order as to costs.

Urgent Photostat Certified copy of this Judgment, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)