

Form J(1)

**IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

CRR 2920 of 2022

**Neha Gupta
Vs.
Jayant Shekar**

**For the petitioner : Md. Sabir Ahmed, Adv.,
Mr. Hillol Saha Poddar, Adv.**

Judgement on : 28.09.2022.

Bibek Chaudhuri, J.

The petitioner/aggrieved person has challenged judgment and order dated 4th July, 2022 passed by the Learned Additional Sessions Judge, Fast Track, 1st Court at Howrah in Criminal Appeal No. 12/2021 dismissing the said appeal filed by the aggrieved persons and affirming the order passed by the Learned Judicial Magistrate in Misc. Execution Case No. 255/2019.

For proper appreciation of the dispute between the parties, it is necessary to record the following facts:-

The petitioner/aggrieved person filed an application under Section 12 read with other cognate provision of the Protection of Women from Domestic Violence Act against her husband/opposite party praying for monetary relief and residential relief. The said application was registered as Misc. Case No. 630/2018. In the said

proceeding upon an application for interim relief, the Learned Magistrate passed an order dated 22nd October, 2019 directing the opposite party to pay a sum of Rs. 6,000/- per month as interim monetary relief. The opposite party was also directed to provide one room with separate privy in the shared household situated at 169, G.T. Road (South), Howrah.

The opposite party preferred an appeal assailing the order dated 22nd October, 2019 passed by the Learned Magistrate before the Learned Sessions Judge which was registered as Criminal Appeal No. 111/2019. The Learned Sessions Judge, Howrah passed an order dated 19th November, 2019 rejecting the appellant's prayer for stay of operation of the order dated 22nd October, 2019. The said order dated 19th November, 2019 passed by the Learned Sessions Judge, Howrah was assailed in criminal revision before this Court which was registered as CRR 3855/2019. The said criminal revision filed by the husband of the petitioner, the opposite party herein was disposed of by a Coordinate Bench vide order dated 19th March, 2021 with the following direction:-

"I have perused the order passed by the Learned Magistrate as well as the interim order passed by the Learned Sessions Court. It has been submitted that next date for criminal appeal is fixed on 23rd March, 2021. On that date the Learned Court in seisin of the said appeal would decide that in case the petitioner is unable to provide one room with separate privy at the shared household situated at 169, G. T. Road (South), Howrah, the petitioner would pay the tariff for availing accommodation equivalent to the said household/rented accommodation which may be availed of by the opposite party no. 1."

On the strength of the aforesaid order passed by this Court the petitioner filed an execution application in the Trial Court which was registered as Misc. Execution Case No. 255/2019. In the said proceeding the Learned Magistrate passed an order following the provision of Section 31 of the PWDV Act holding, *inter alia*, that a breach of protection order or interim protection order by the respondent would be an offence under the Act being punishable with imprisonment or with fine or with both and the aggrieved person is liable to file a separate complaint for such violation. With the above order the Learned Magistrate expressed his inability to execute the interim order of right of residence passed in favour of the petitioner/aggrieved person. The petitioner challenged the said order dated 24th February, 2021 passed by the Learned Judicial Magistrate, 5th Court at Howrah in Misc. Execution Case No. 255/2019 by filing a Criminal Appeal No. 12/2021. The said appeal was dismissed on contest vide judgement dated 4th July, 2022 passed by the Learned Additional Sessions Judge, Fast Track, 1st Court at Howrah.

Surprisingly enough, the petitioner did not take any step in Criminal Appeal No. 111/2019 praying for passing necessary order in terms of the direction passed by this Court in CRR 3855/2019.

Efficacious relief of the petitioner lies in pursuing Criminal Appeal No. 111/2019 praying before the Court of appeal to pass necessary order in terms of the direction passed by this Court in CRR 3855/2019.

Therefore, the instant revision is disposed of directing the petitioner to file an application for compliance of the order passed in CRR No. 3855/2019 by this Court and if such application is filed, the

Learned Sessions Judge shall dispose of the same within one month from the date of filing of the application positively.

It is made clear that this Court has never entered into the merit of the claim of the respective parties. The Learned Appellate Court would be at liberty to decide the same in accordance with law.

With the above observation, the instant revision is **disposed of.**

The petitioner is at liberty to act on the server copy of this order.

(Bibek Chaudhuri, J.)

Srimanta, A.R.(Ct.)
Item No. 21.