

21.9.2022
S.D.
10.

C.R.R. 3033 of 2022

Smt. Jhuma Mondal
Vs.
Sri Somnath Mondal & Anr

Mr. Debasish Ghosh
Mr. Subhajit Roy
Mr. Satyaki Banerjee

...For the Petitioner.

It is submitted on behalf of the petitioner while assailing an order dated 3.8.2022 passed by the learned Judicial Magistrate, 3rd Court at Alipore in a proceeding under Section 12 read with Section 23 and other cognate provision of Protection of Women from Domestic Violence Act that though in the application filed under Section 12 read with Section 23 of the said Act, the petitioner prayed for interim monetary relief and right to residence, the learned Magistrate failed to consider such relief and refused to grant such relief on the ground that there is no “urgency in granting ad interim relief in favour of the aggrieved person at this stage, without giving the respondents a reasonable opportunity of being heard”.

It is further submitted on behalf of the petitioner that the learned Magistrate fixed 26.9.2022 for service return and appearance of the opposite party.

It is contended by the learned advocate for the aggrieved person/petitioner that when the application under Section 12 of the Protection of Women from Domestic Violence Act contained interim prayer, it was the duty of the learned Judicial Magistrate to grant such relief. This Court strongly differs from the submissions made by the learned advocate for the petitioner when this Court finds that the learned Judicial Magistrate in the order impugned clearly recorded;

“At this stage, the petitioner has not prayed for any protection order”.

Needless to say that it is the duty of the learned counsel for the aggrieved person to pray for interim relief. That prayer was not made so far as the impugned order dated 3.8.2022 is concerned.

Therefore, I am not in a position to concur with the submissions made by the learned advocate for the petitioner.

At the same time, this Court is not unmindful to note that an aggrieved person, like the petitioner, is a destitute lady being a victim of domestic violence in the instant case. It is asserted from the submissions made by the learned advocate for the petitioner that the aggrieved person/petitioner does not have any accommodation of her own and she has been staying at the mercy of his brother. It is also learnt that she has no independent income.

Therefore, she is entitled to get immediate relief.

Considered such circumstances, the instant revision is disposed of directing the learned Magistrate to take up the application for interim

relief under the Protection of Women from Domestic Violence Act filed by the petitioner for hearing even if the opposite party does not appear. The learned Magistrate is directed to pass order on interim relief prayed by the petitioner even *ex parte* without being influenced any way by the instant order.

The petitioner is directed to file affidavit of assets in compliance of the guideline made by the Hon'ble Supreme Court in **Rajneesh vs. Sneha** before the learned Magistrate on 26.9.2022. The learned Magistrate shall consider interim monetary relief on the basis of such affidavit of assets that has been directed to be filed by the petitioner before the Trial Court on 26.9.2022.

The petitioner is at liberty to act on a server copy of this order duly downloaded from the official website of this Court.

(Bibek Chaudhuri, J.)