

ORISSA HIGH COURT : C U T T A C K

CMP NO.445 OF 2021

In the matter of a Petition under Article 227 of the Constitution of India.

A F R

Malaya Kumar Das

: *Petitioner*

-Versus-

Mrs.Swatishree Das

: *Opp.Party*

For Petitioner

: M/s.P.K.Lenka, P.Lenka
& D.P.Pattnaik

For Opp.Party

: M/s.D.P.Dhal, Sr.Adv.,
S.Mohapatra, R.Mohanty,
M.K.Agarwal, A.Pradhan,
B.S.Dasparida & S.S.Lenka.

**CORAM :
JUSTICE BISWANATH RATH**

Date of hearing & Judgment :: 12.01.2022

1. This Civil Misc. Petition filed by the Father-in-law involves a challenge to the order dated 6.8.2021 passed by the 2nd Additional District Judge, Bhubaneswar in Civil Revision No.01/01 of 2021 under Annexure-13 reversing the order of the Senior Civil Judge, Bhubaneswar passed in I.A. No.2/2021 under the provision of Section 151 of C.P.C. read with Sections 26 & 29 of the Protection of Women from Domestic Violence Act, 2005 (in short, “the Act, 2005”) at the instance of the Daughter-in-law, the present Opposite Party under Annexure-9.

2. Undisputed fact remains and as has been categorically admitted in course of submission by Mr.P.K.Lenka, learned counsel for the Petitioner that the Opposite Party remains to be the Daughter-in-law of the present Petitioner and for there exists dissention between Wife and Husband, both are staying away from the other. Learned counsel for the Petitioner in his attempt to assail the impugned order at Annexure-13 challenged the same on the following grounds :-

A. For the nature of dispute involved herein and looking to the manner of disposal of the Interlocutory Application under Annexure-9, no Revision under Section 115 of C.P.C. lies to the District Forum.

B. Even assuming such an Application is entertainable looking to the definition of “shared household” (Section 2(s), learned counsel for the Petitioner submitted that for her own pleading the Opposite Party in no case is entitled to right to residence in the house at Bhubaneswar, as in the maximum it should be construed to be matrimonial home may be a house at Balasore.

C. Further on the premises that there has been pendency of some family court disputes; one being at the instance of the Husband and the other being at the instance of the Plaintiff, the Wife even the Civil Suit is not entertainable.

Advancing his submission, taking this Court to the pleadings in the Plaint involved herein and reading through Paragraph-8 of the same, Mr.Lenka, learned counsel for the Petitioner attempted to submit on his dispute to the impugned action under the premises that the Plaintiff referring therein to be in matrimonial home, the entire action appears to be misdirected as ultimately the order involved a residence at Bhubaneswar.

Coming to assail the entertainability of the Revision, taking this Court to the provision of Section 115 of C.P.C., learned counsel for the Petitioner attempted to submit that the Revision does not lie involving the order at Annexure-9 and it is reading through the provision indicated herein above, Mr.Lenka attempted to justify his such claim.

Referring to the disclosures of pendency of a number of family court proceedings before the Family Court, Bhubaneswar, learned counsel for the Petitioner also advanced his submission in resistance of the impugned order.

3. Mr.D.P.Dhal, learned senior counsel for the Opposite Party in his opposition while objecting to the stand of the Petitioner on all the three grounds again referring to the provision under Section 115 of C.P.C. submitted that it is wrong to claim that no Revision lies involving the order at Annexure-9. Similarly referring to the averments in other

paragraphs of the Complaint accompanying the same, Mr.Dhal, learned senior counsel submitted that the Plaintiff has a clear case of her residence involved herein at Bhubaneswar. So far as the submission of the learned counsel for the Petitioner involving pendency of family court proceedings becoming an impediment in the entertainability of the Interlocutory Application involved in the trial court decided under Annexure-9, Mr.Dhal, learned senior counsel submitted that all such proceedings are aiming to different reliefs, therefore, pendency of family court proceedings cannot come on the way in moving the Application under the Act, 2005. In the above circumstance, Mr.Dhal, learned senior counsel prayed for dismissal of the Civil Misc. Petition for having no merit.

4. Considering the rival contentions of the Parties, this Court from the factual scenario finds, Civil Suit No.1911/2020 involving the Parties involved herein involves the following relief :-

“i) Declaring the Plaintiff’s right of possession, use and occupation and free enjoyment over the suit land;

ii) To restrain the Defendant, his agent(s), representative(s) or any person claiming through him or under his authority permanently by way of a decree of perpetual injunction to drive the plaintiff out of the suit house and/or alienate the suit house or to create any third party interest over the suit house or to change the nature and character of the suit house in any manner;

iii) To direct the defendant not to create any hindrances/obstacles/barriers of free stay/occupancy in the suit house not limited to her room but all other common facility available in or attached with the Flat No.403-A, Bishnu

Residency, Injana, Bhubaneswar by way of mandatory injunction;

iv) Any other relief(s) in favour of the Plaintiff and against the Defendants as would be deemed fit and proper in the interest of justice may be passed.”

Looking to the pleadings in the Plaint, this Court from the disclosures in Paragraphs-11 & 12 of the Plaint finds, the Opposite Party herein being the Plaintiff has the following disclosures :-

“11. That after transfer to Bhubaneswar the Plaintiff is staying in the said house and her husband was also staying with her till December, 2019 however after December, 2019 the son of the Defendant started maintaining distance with the Plaintiff without any reason and the Plaintiff discovered from the behavior and conduct her husband and in-laws that they are aggrieved for not getting dowry to their expectation and chalked out a plan to sever the marital relationship with the Plaintiff. In order to execute their such plan the son of the Defendant pressurized the Plaintiff to leave the job and to work like a maid in her house. The Plaintiff however tolerated all harassment and cruelty inflicted on her with an expectation that they may change and accept the Plaintiff as one of their family member and goodness to prevail on passage of time but all in vein.

12. That the husband of the Plaintiff although staying in his sister house at Baramunda, Bhubaneswar however is not coming to the Plaintiff for consummation of marriage for which the Plaintiff constrained to file case in the Family Court, Bhubaneswar vide C.P. No.663/2020 seeking a decree of restitution of conjugal rights in her favour.”

5. Before proceeding to decide the merit involved here in this Court, looking to the maintainability of the proceeding aspect takes into account the provision at Sections 19 & 26 of the Act, 2005, which are reflected herein below as follows :-

“19. Residence orders. - (1) While disposing of an application under sub-section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order - (a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household; (b) directing the respondent to remove himself from the shared household; (c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides; (d) restraining the respondent from alienating or disposing off the shared household or encumbering the same; (e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or (f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require: Provided that no order under clause (b) shall be passed against any person who is a woman. 9 (2) The Magistrate may impose any additional condition or pass any other direction which he may deem reasonably necessary to protect or to provide for the safety of the aggrieved person or any child of such aggrieved person. (3) The Magistrate may require from the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence. (4) An order under sub-section (3) shall be deemed to be an order under Chapter VIII of the Code of Criminal Procedure, 1973 (2 of 1974) and shall be dealt with accordingly. (5) While passing an order under sub-section (1), sub-section (2) or sub-section (3), the court may also pass an order directing the officer in charge of the nearest police station to give protection to the aggrieved person or to assist her or the person making an application on her behalf in the implementation of the order. (6) While making an order under sub-section (1), the Magistrate may impose on the respondent obligations relating to the discharge of rent and other payments, having regard to the financial needs and resources of the parties. (7) The Magistrate may direct the officer in-charge of the police station in whose jurisdiction the Magistrate has been approached to assist in the implementation of the protection order. (8) The Magistrate may direct the respondent to return to the possession of the aggrieved person her stridhan or any other property or valuable security to which she is entitled to.

26. Relief in other suits and legal proceedings.—(1) Any relief available under sections 18, 19, 20, 21 and 22 may also be sought in any legal proceeding, before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act. (2) Any relief referred to in sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court. (3) In case any relief has been

obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief.”

Now taking into account the provision at Section 19 read with Section 26 of the Protection of Women from Domestic Violence Act, 2005, this Court finds, for the provision indicated herein gives a scope to the disturbing wife to apply for an order for residence and involving any suit of such issue pending. It is in this view of the matter, this Court observes, there is no doubt on the maintainability of such Application being decided by both the courts.

6. Coming to the challenge of the learned counsel for the Petitioner on the maintainability of the proceeding in the Revisional Court, this Court takes into account the provision at Section 115 of C.P.C., which reads as follows :-

“115. Revision - 2 [(1)] The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears— (a) to have exercised a jurisdiction not vested in it by law, or (b) to have failed to exercise a jurisdiction so vested, or (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit: 3 [Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision would have finally disposed of the suit or other proceedings.] 4 [(2) The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto. 5 [(3) A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court.”

Reading the aforesaid provision, this Court finds, a Revision can very well be maintained against an order either taking out the suit or taking out even a proceeding. Finally on disposal of such proceeding, for the opinion of this Court, the Interlocutory Application involved herein since involves a proceeding and by finality of such proceeding, it ultimately took away such proceeding in the present scenario, there is no difficulty in maintaining a Revision under Section 115 of C.P.C. This Court, therefore, rejects the contentions of the learned counsel for the Petitioner on this score.

7. Coming to the challenge to the impugned order on the aspect of the Act providing protection in respect of “matrimonial home” and “shared house” mean “matrimonial home”, for the submission of the learned counsel for the Petitioner, this Court keeping in view the pleading of the Plaintiff in Paragraphs-11 & 12, as taken note herein above, in the suit taking into account the provision of Section 2(s) of the Protection of Women from Domestic Violence Act, 2005, finds the same reads as follows :-

“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 house hold 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.”

Reading the aforesaid definition, this Court finds, the provision nowhere reflects the claim of residence only on the matrimonial home, as it also includes a shared house having interest to stay even belonging to joint family accommodating the aggrieved person. Thus undisputedly, it includes a shared household. Reading the definition quoted herein above on specific claim of the Petitioner pertaining to shared household at Bhubaneswar and the Plaintiff/ Daughter-in-law has clear pleading through the Plaint, this Court finds, there is justified claim by the Wife involving right to residence in the shared household, particularly at Bhubaneswar. It is in this view of the matter, this Court finds, there is no force in the submission of the Petitioner and further there is no infirmity in deciding such issue in the manner by the Revisional Court.

8. Coming to challenge the impugned order on the premises of pendency of the family court proceedings, this Court observes, the issues in all three proceedings the suit and the family court proceedings are completely different and clearly aiming for different orders. For the opinion of this Court, there is no impediment in deciding the issue involved herein in the pendency of the suit and even in pendency of the matrimonial proceeding.

9. In the given scenario and the married Wife being deprived of right to residence, this Court observes, the Husband has a duty to maintain his Wife and having failed to cast such duty in the present and for the contest so far on the issue of residence of a married Wife, for the opinion of this Court, minor discrepancies here and there should not be given a handle to the Husband and Father-in-law to deprive the deserted Wife to at least get minimum dignity in maintaining her life.

10. It is in the light of above discussions, this Court looking to the reasoning of the 2nd Additional District Judge, Bhubaneswar finds, there is appropriate consideration of the issue involved, which does not require any interference. As required under law, copy of the order at Annexure-13 and judgment of this Court be served on the concerned Magistrate and also on the protection office functionaries under the Act, 2005 by the Opposite Party for effective implementation of the direction therein.

11. While parting away, this Court however observes, whatever observations and findings arrived at involving the Miscellaneous Proceeding involved herein shall not stand on the way for ultimate decision in the suit.

12. It is in the above view of the matter, this Court finds no substance in the ultimate submission of the learned counsel for the Petitioner

requiring to interfere in the impugned order. The Civil Misc. Petition is therefore, dismissed but however there is no order as to cost.

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(Biswanath Rath, J.)

Orissa High Court, Cuttack.
The 12th January, 2022/M.K.Rout, A.R.-cum-Sr.Secy.

