

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.75 of 2020

Aishwarya Roy (Female), aged about 24 years, Wife of Tej Pratap, Daughter of Chandrika Roy, Resident of - 10, Circular Road, P.S.- Sachiwalaya, District- Patna at present residing at 26/10 Bailey Road, P.S.- Shastri Nagar, District- Patna

... .. Appellant/s

Versus

Tej Pratap Son of Lalu Prasad, Resident of - 10, Circular Road, P.S.- Sachiwalaya, at present residing at 2M Strand Road, P.S.- Sachiwalya, District- Patna

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. P.N. Shahi, Sr. Advocate Mr. Nilanjan Chatterjee, Advocate Mr. Sahil Kumar, Advocate Mr. Anirav Chaudhiri, Advocate
For the Respondent/s	:	Mr. Gajendra Prasad Yadav, Advocate Mr. Jagannath Singh, Advocate Mr. Navnit Kumar, Advocate Md. Ghulam Mustafa, Advocate Ms. Jyoti Joshi, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL ORDER
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

12 10-05-2023 Heard learned counsels for the respective parties.

2. In the present Miscellaneous Appeal No. 75 of 2020, the appellant – *Mrs. Aishwarya Roy*, wife of respondent – *Mr. Tej Pratap* presented this appeal assailing the order dated 21.12.2019 passed in an interlocutory application filed under Sections 18, 19 and 26 of the Protection of Woman from Domestic Violence Act, 2005 (hereinafter referred to as ‘PWDV Act, 2005’) in a Matrimonial Case No. 1208 of 2018 on the file of the Principal Judge, Family Courts, Patna.



3. The marriage took place on 12.05.2018 between the appellant and respondent. Respondent – *Mr. Tej Pratap*, husband of the appellant – *Mrs. Aishwarya Roy* filed Matrimonial Case No. 1208 of 2018 under Section 13 (1) (1a) read with Section 14 (1) of the Hindu Marriage Act, 1955.

4. During pendency of the Matrimonial Case No. 1208 of 2018, the wife filed application under Sections 18, 19 and 26 of the PWDV Act, 2005. The Family Court, Patna proceeded to decide the application. Infact, in paragraph No. 1, the Family Court, Patna refers to Sections, 18, 19 and 26 of the PWDV Act, 2005. However, in the last paragraph proceeded to give findings with reference to Section 24 of the Hindu Marriage Act, 1955. Family Court, Patna exceeded its jurisdiction insofar as considering the appellant's application under Section 24 of the Hindu Marriage Act, 1955 in the absence of any application by the appellant. On this short ground, the appellant has made out a case. Accordingly, order dated 21.12.2019 passed by Family Court, Patna stands set aside while restoring the appellant's application filed under Sections 18, 19 and 26 of the PMDV Act, 2005 on the file of Principal Judge, Family Courts, Patna.

5. The Principal Judge, Family Courts, Patna is



requested to decide the aforementioned application filed by the appellant herein under Section 18 – Protection orders, Section 19 – Residence orders and Section 26 – Relief in other suit and legal proceedings under PWDV Act, 2005 within a period of three months from the date of receipt of copy of this order. Parties are hereby directed to co-operate in deciding the application.

6. Accordingly, present M.A. No. 75 of 2020 stands disposed of. If any office objection is yet to be removed, the same is ignored, since we have disposed of the present appeal with the consent of the respective parties.

7. It is reliably learnt that certain amount is stated to have been paid by the respondent – *Mr. Tej Pratap* to appellant - *Mrs. Aishwarya Roy* pursuant to Family Court order dated 21.12.2019. If it is so, the appellant is hereby directed to return the amount received by her under the order of Family Court, Patna dated 21.12.2019 within a period of three months from today.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

GAURAV S./-

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