

18.10.2023
Court No. 19
Item no.11
CP

C.O. No. 3873 of 2023

Mrs. Eshita Bhattacharya
Vs.
Dr. Anirban Bhattacharya

Mr. Debjit Mukherjee
Ms. Susmita Chatterjee
Ms. Dipanwita Ganguly
Mr. Kaustav Bhattacharya
Ms. Sinjini Chakraborty

.....for the petitioner.

Mr. Anindya Chakrabarty

....for the opposite party.

This is a unique case where the wife has been enjoined by the learned Additional District Judge, 2nd Court, Sealdah, from entering into the matrimonial home. Such order was passed in a suit for dissolution of marriage being Matrimonial Suit No. 114 of 2023.

Mr. Mukherjee, learned advocate for the petitioner, submits that the petitioner had an acrimonious relationship with the in-laws. She was advised by her husband to primarily reside at her parents' place so that over a period of time the relationship could get better. The petitioner used to occasionally reside with her parents and also at the matrimonial home. Even between 8th to 15th October, 2023, the petitioner resided at the matrimonial home. At that juncture, the summons were received

by the mother at the parental home of the petitioner with regard to the filing of the matrimonial suit. In the matrimonial suit, an application for injunction was filed by the husband.

By the order impugned, the learned court restrained the petitioner from entering into the matrimonial home at 12M/1A, Paikpara Road, P.O. Belgachia, P.S. Chitpur till November 18, 2023.

The learned advocate appearing on behalf of the opposite party, submits that the petitioner is of a violent nature. She suffers from psychological disorder. She has assaulted the in-laws and the husband on many occasions. Thus, her presence in the matrimonial home would be against the safety and security of the family members.

This court is of the view that the issue ought to have been decided by the learned trial court on evidence. The court was conscious of the fact that the petitioner had a right to reside in the matrimonial home in view of the provisions of other laws and the decisions of the Hon'ble Apex Court. Only because the wife went to the clinic for psychological evaluation, the court could not have written her off to be a potential danger to the family without further evidence from both sides. The medical documents of the parents also do not indicate that there was any injury.

Thus, in my opinion, the application filed by the husband ought to have been decided on the settled principles of law and the rights of the wife to live in a shared household, even if the same belonged to the in-laws.

Even assuming that the petitioner was not living in the matrimonial home, but had returned to the matrimonial home after receiving information about the suit, only to frustrate and/or prejudice the matrimonial suit, such ground can also not be a reason to injunct the wife from living in her matrimonial home.

In the matter of Vidya Dalmia vs. Nilanjana Dalmia, reported in 2008 SCC Online Del 371, the Hon'ble High Court of Delhi has considered the judgment of the Hon'ble Bombay High Court, in the matter of Abdur Rahim v. Padma, reported in AIR 1982 Bom 341 and the decision of the Court of Appeal in Nanda vs. Nanda, 1963 (3) All ER. 401. The relevant portion of the decision is quoted below:-

“17. In Abdur Rahim (supra), a Division Bench decision of the Bombay High Court, dealt with the right to residence of a wife in the matrimonial home. The marriage between the parties there was subsisting, yet broken down beyond repairs. The husband filed a suit for injunction, restraining the wife from entering the matrimonial house. The court held that an injunction subject to certain terms and conditions could be granted. The parties, due to their strained relationship could not be forced to live together. The court noted that flat was big enough to allow them to live

separately. The High Court set apart separate portions for the parties, for living separately and restrained the wife from entering the portion in occupation of the husband. The husband was an eminent surgeon; the court held that he could have peace of mind to enable him to discharge his duties, efficiently. The husband was also directed to pay maintenance to the wife. Nanda on the other hand, is a decision by the Court of Appeals, where the parties had married each other in India. The wife had succeeded in securing a decree for restitution of conjugal rights and sought to enter the husband's new home, where he was staying with another woman. The husband's claim for injunction on the ground of the wife's trespass was upheld. The court held that the order for restitution could not be enforced."

Under such circumstances, the order impugned is set aside.

The house is double storeyed. There will be adequate space for the parties to live separately.

The petitioner shall be allowed to enter the matrimonial home. She will use one room in the ground floor and a bath and privy. She will make arrangements for her own food by ordering in. She will live separately, not use any other room or facilities either in the ground floor or on the first floor. She shall not interact either with the in-laws or with the opposite party.

This order shall not be construed as an opinion of the court on the claim of the petitioner with regard to the issues involving the matrimonial disputes.

The learned court below shall decide the application in accordance with law, upon allowing

the parties to adduce both oral and documentary evidence.

The opposite party and the in-laws shall ensure entry of the petitioner to the house. It is made clear that the petitioner shall have access to the house through the main door and to the room in which she will remain along with the toilet which she will use in the ground floor.

The petitioner shall enter the house within October 20, 2023, upon intimation of this order to the local police station.

The petitioner will also be entitled to go outside the said house in order to attend office and to run errands. Spare keys to the main entrance door and the room which the petitioner used, should be supplied to her.

The revisional application is accordingly disposed of.

There shall be no order as to costs.

All parties to act on the learned advocate's communications.

Parties are also to act on the server copy of this order.

(Shampa Sarkar, J.)