

18.12.2023

SL. 5+6
Court No. 34
Sourav/
Suvayan

C.R.R. 4289 of 2023

In re: An application Under Section 482 of the Code of Criminal Procedure, 1973.

In the matter of: **Elina Dasgupta Dutta**

... petitioner.

With

C.R.R. 4113 of 2023

In re: An application Under Section 482 of the Code of Criminal Procedure, 1973.

In the matter of: **Sumantra Dutta**

... petitioner.

Mr. Ayan Bhattacharyya
Mr. Apalak Basu
Mr. Nazir Ahmed
Ms. Sanghamitra Mridha

...for the petitioner in CRR 4289 of 2023
and for the respondents in CRR 4113 of 2023.

Mr. Sandipan Ganguly, Sr. Adv.
Mr. Debdeep Sinha
Mr. Dipta Dipak Banerjee

...for the respondent in CRR 4289 of 2023
and for the petitioner in CRR 4113 of 2023.

Both the revisional applications being CRR 4289 of 2023
and CRR 4113 of 2023 are taken up together.

In CRR 4289 of 2023, the wife has approached this Court to expedite the proceeding being Complaint Case No. AC 842 of 2022 which was initiated under the provisions of Sections 12 and 23 of Protection of Women from Domestic Violence Act, 2005 and is pending before the learned Judicial Magistrate, 8th Court, Alipore.

While in CRR 4113 of 2023 the petitioner/husband has challenged the order dated 14.09.2023 passed in an appeal under Section 29 Protection of Women from Domestic Violence

Act, 2005 which arose out of the same case pending before the learned Judicial Magistrate, 8th Court, Alipore.

Mr. Sandipan Ganguly, learned Senior Advocate appearing on behalf of the petitioner in CRR 4113 of 2023 initially argued that the relief claimed by the wife and the orders so passed are beyond the scope of the learned appellate court and the learned appellate court erroneously passed the order affirming the order dated 31.03.2023 passed by the learned Judicial Magistrate, 8th Court, Alipore thereby holding that there is a rental earning in respect of a flat located at Mumbai to the tune of Rs. 2.5 lakhs and as such a sum of Rs. 1 lakh should be paid every month by the husband/petitioner to the aggrieved party/wife since the date of filing of the petition.

It was initially argued on behalf of the learned senior advocate that the prayer so advanced do not fall within the scope and ambit of Section 23 of the Act. However, having regard to the definition provided under Section 3(iv)(a) under the heading Economic Abuse, I am *prima facie* of the view that the issue covers the definition of Domestic Violence and as such falls within the ambit of Section 18 and the wife as such is entitled to pray relief in respect of the same under Section 23 of the Act.

Learned Senior Advocate thereafter submitted that the amount of Rs. 2.5 lakh is without any foundation and without any document being relied upon and the affidavit-of-assets and liabilities which have been filed by the petitioner/husband

would show that the rental earning is Rs. 18 lakhs before taxation (annually). The affidavit-of-assets and liabilities were not there before the learned trial court or the appellate court when the quantum of Rs. 2.5 lakh as rental income was held by both the courts below.

At this juncture, Mr. Bhattacharyya, learned advocate appearing for the wife/opposite party submits that at least 50 per cent of the amount which has been disclosed (without prejudice to the rights and contentions of the wife) be paid as till date no amount has been paid and for which Misc. Execution Case No. 723 of 2023 is pending before the learned Judicial Magistrate, 8th Court, Alipore. This petition for rental earning was filed in the month of January, 2023 so far as the Execution Case is concerned, learned Magistrate would consider the monthly amount to be Rs. 75,000/- instead of Rs. 1 lakh and exhaust the process of law accordingly.

Mr. Ganguly, learned Senior Advocate on instruction submits that the amount of Rs. 9 lakhs so accumulated till the month of December, 2023 would be liquidated in three installments by April 30, 2024. Accordingly, the husband/petitioner (Sumantra Dutta) is directed to pay first of the installment by January 30, 2024, the second installment by March 15, 2024 and the third installment by April 30, 2024, if such an amount is paid, the learned Magistrate would drop the Misc. Execution Case.

It has been submitted by Mr. Ganguly, learned Senior Advocate that he had been continuously paying towards

electricity, maintenance charges and monthly expenses of the petitioner since December, 2019. However, the rental income which has been decided has got nothing to do with the monthly expenses, which would be under the heading of monetary relief and the learned court would consider the same in accordance with law if an appropriate application is brought before the Court.

In the meantime, before the learned trial court the husband/petitioner would be at liberty to produce the receipts, income tax returns of last three years as also other charges which he is paying towards the property for which there has been direction for parting with 50 per cent of the rental income. Learned Magistrate would consider the same in accordance with law and decide whether if there is any requirement of any alteration of the said amount so decided.

Having considered the facts of the present case which was instituted in the year 2022, I direct the learned trial court to fix at least one date in every 60 days so that the trial of the case can be taken to its logical conclusion within a reasonable period of time. If any interim application is pending before the learned trial court, learned trial court would dispose of the same by taking into account the overall circumstances, the materials, the documents preferably within a period of 60 days.

With the aforesaid observations, the present revisional applications being **CRR 4289 of 2023** and **CRR 4113 of 2023** are disposed of.

Pending applications, if any, are disposed of.

All concerned parties are to act in terms of a copy of this order duly downloaded from the official website of this Court.

(Tirthankar Ghosh, J.)

