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08-11-2024
Ct. No.34
b.das

CRR No. 3075 of 2024

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CRAN 1 of 2024

In the matter of : Avishek Shaw.

..... petitioner.

Mr. Sandip Chakraborty

Mr. Anirban Dutta

Mr. Kaustav Das ...for the petitioner.

Mr. Debasish Kar

Mr. Husen Mustafi

Mr. Arka Tilak Bhadra ...for opposite party.

Heard learned counsels for the parties.

The petitioner who is the husband of the opposite party assails the order passed by the learned Additional Sessions Judge, Fast Track, 2nd Court, Barrackpore, North 24 Parganas on 21st May, 2024 in Criminal Appeal No.21 of 2024 arising out of the order dated 19th February, 2024 passed by the learned Judicial Magistrate, 5th Court, Barrackpore in Misc. Case No.219 of 2023 under Section 23(2) of the Protection of Women from Domestic Violence Act, 2005.

It appears that on the date of hearing fixed on 17th February, 2024, there was a resolution of the local Bar not to pass any adverse order in absence of any of the parties. The private opposite party was represented on that date. But none appeared for the present petitioner. The order

records that the next date was fixed by the learned Trial Court on 17th February, 2024, that is, the date of the order. The said date was changed to 19th February, 2024 and there is no initial of the presiding officer to authenticate the same.

On 19th February, 2024, the matter was taken up for hearing ex parte since the respondent (present petitioner) did not participate in the hearing. The case was disposed of by the learned Trial Court directing the present petitioner to pay Rs.4,000/- per month as interim maintenance until further order.

The petitioner was further directed to provide suitable accommodation for the opposite party/wife at their house at 1/2 A.K. Road, P.O. Talpukur, P.S. Titagarh, North 24 Parganas and not to disturb her in any manner.

Learned counsel for the petitioner submits that the petitioner is ready and willing to pay maintenance to the opposite party to the tune of Rs.4,000/- per month as directed by the learned Trial Court. He is aggrieved by the portion of the order directing him to provide a suitable accommodation for the opposite party in their house.

Learned counsel submits that being armed by this order, the opposite party has put her portion of the house under lock and key and has left the house.

Learned counsel for the opposite party denies and disputes such contention of the petitioner and seeks protection for the opposite party.

The said order was carried in appeal by the petitioner and by an order passed on 21st May, 2024, the learned Appellate Court dismissed the appeal upon hearing both the parties.

Since the order dated 19th February, 2024 was passed without granting an opportunity of hearing to the petitioner, the portion of the order directing the petitioner to provide a suitable accommodation to the opposite party in their house be set aside/quashed. The remaining portion of the order is affirmed. The learned Trial Court is directed to revisit the issue with regard to providing suitable accommodation for the opposite party/wife in the house of the petitioner, upon granting reasonable opportunity of hearing to both the parties and pass a reasoned order as expeditiously as possible, preferably within the next date of hearing fixed before him or soon thereafter. Till disposal of the said application by the learned Trial Court, the opposite party shall remain at the address where she is residing at present.

As a consequence, the order passed by the learned Additional Sessions Judge, Fast Track, 2nd Court, Barrackpore, North 24 Parganas dated 21st May, 2024 in Criminal Appeal No.21 of 2024 is also set aside.

The revisional application being CRR 3075 of 2024 along with CRAN 1 of 2024 are disposed of.

Urgent certified website copy of the order, if applied for, be given to the parties on compliance of requisite formalities.

(Suvra Ghosh, J.)