

**CRR 68 of 2023
with
CRAN 1 of 2024**

**Sanjay Kumar
Vs.
Mrs. Mahuya Kumar (Lahiri) & Anr.**

Mr. Kalloll Basu
Mr. Bratin Kr. Dey
Mr. Joydeep Das
Ms. Sreejita Sen

...for the petitioner

Mr. Tanmoy Bhattacharyya
Ms. Mithu Mallick

...for the Opposite party

Being aggrieved and dissatisfied with the impugned order dated 14.9.2022 passed by the learned Additional Sessions Judge, 4th Court, Howrah in Criminal Appeal no. 96 of 2019, the present application has been preferred by the petitioner herein. By the order impugned, the learned court below allowed the appeal filed by the appellant/wife and thereby restored the Misc. case being no. 234 of 2008 under Section 12 of the Protection of Women from Domestic Violence Act, 2005, in its original file with original number.

The background of the present application is that the wife/opposite party herein initiated a proceeding under Section 12 of the Act of 2005 praying inter alia with the order of restraint and also prayed for monthly monetary relief of Rs. 20,000/- against the opposite party. While the trial was going on before the court, the wife/applicant made a prayer for adjournment and the trial court asked the applicant/wife to file show cause as to why the case shall not be dismissed for not bringing her witness. On the

next date i.e. on 9.9.2019, the opposite party herein was represented through her lawyer and learned counsel for the wife/applicant submitted that the cause shown by her, may be heard through the legal representatives as the case is quasi civil in nature.

Learned Trial court rejected the said prayer made by the petitioner/applicant observing that on scrutiny of the record, it is detected that the case is lying pending since 2013 but the petitioner is not sincere enough to proceed with the case and she remained absent on previous dates. In the said background, the Trial court did not accept the cause shown by the petitioner and thereby dismissed the Misc. case being no. 234 of 2008 on the ground of default, though petitioner was represented through lawyer.

Being aggrieved by that order, the opposite party/wife/applicant herein preferred the Misc. appeal before the court below, being Criminal Appeal no. 96 of 2019. The court below by the impugned judgment dated 14.9.2022, allowed the criminal appeal noting that the cause in reply with an affidavit was filed by the aggrieved person on 26.7.2019 and no counter-affidavit was filed on behalf of the opposite party/husband denying the cause as stated by the aggrieved person in the said affidavit. He also noted that the personal appearance of the aggrieved person is not required on each and every date. At the same time, he observed that the Magistrate no doubt has a judicial discretion to direct appearance of a respondent in person, provided such appearance is found necessary for adjudication of the dispute. Ultimately, the court below held that the Act of 2005

being the welfare legislation meant for protection of women from domestic violence, the matter should be heard on merit and as such, he allowed the said appeal and thereby set aside trial court's order of dismissal and restored the Misc. Case no. 232 of 2008 in its original file and number with a further direction upon aggrieved woman to be present before the court on the next date.

Looking at the order of dismissal passed by the trial court, I find that the anguish expressed by him over long pendency of the proceeding is not unjustified. However by taking a pedantic and hyper technical view of the matter, the explanation furnished in the cause with affidavit should not have been rejected and dismissed the lis as a whole in the absence of counter affidavit and specially when stakes are high and/or arguable points of facts and law are involved in the case and when there is every likelihood that the termination of lis either due to default or due to inaction may defeat valuable right of aggrieved person to have the decision on merit. Even if the aggrieved person was found to be negligent, the other side could have been compensated by cost. It would be absolutely unjust to non-suit an aggrieved person for the said reasons, when she has knocked the door of court seeking her daily sustenance. Learned court below therefore has rightly turned down the order of dismissal passed by the trial court and restored the Misc. case in its original file for decision on merit, relying upon the weighty consideration, that so far as practicable, a litigant ought not to be denied a hearing on merit.

Having heard the learned counsel for both the parties and also taken into consideration the facts and circumstances of the case, I find that the proceeding has already reached at the stage of

trial and as such, the dispute among the parties is required to be adjudicated on merit.

Considering the aforesaid facts and circumstances of the case, I find nothing to interfere with the observation made by the court below as I do not find any gross illegality or impropriety or perversity or irrationality in the order impugned, which can call for interference of this court invoking jurisdiction under Article 227 of the Constitution of India.

In such view of the matter, the revisional application being CRR 68 of 2023 thus stands dismissed. Connected application being CRAN 1 of 2024 is also disposed of.

The Trial court is directed to make every endeavour for expeditious disposal of the aforesaid Misc. Case being no. 234 of 2008 and to make his best effort to conclude the entire proceeding preferably within a period of sixty days from the date of communication of the order.

Urgent Photostat certified copy of this order, duly applied for, be given to the parties upon compliance of all requisite formalities.

(Dr. Ajoy Kumar Mukherjee, J.)