

March 17, 2025
Sl. No. 33
Court No.34
s.biswas

CRR 3074 of 2024

Rajni Sharma
Vs.
Amit Sharma

Mr. Rachit Lakhmani
Mr. Avishek Das
Mr. Soubhik Dey

.. for the petitioner

Mr. Sayak Chakraborti
Mr. Wrickbrata Roy
Mr. I. Das
Mr. S. Chatterjee

... for the opposite party

Affidavit of service filed on behalf of the petitioner is taken on record.

The petitioner is aggrieved by the order passed by the learned Sessions Judge (In-Charge), Alipore on 29th June, 2024 in Criminal Appeal No.148 of 2024.

Learned counsel for the petitioner submits that the petitioner filed applications before the learned Judicial Magistrate, 8th Court, Alipore under Section 12 and Section 23 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as 'the Act of 2005'). By an order passed on 20th May, 2024 in C Case No.1373 of 2024, the learned trial court allowed the prayer of the petitioner under Section 19(1)(a) read with Section 23 of the Act of 2005 ex parte and restrained the opposite party/husband from dispossessing the petitioner from her residence situated at Flat No.5C, Block No.20, Green Field City, E-3/398, Jote Shibrampur, Police Station – Maheshtala, till 29th June, 2024, the order being extended from time to time.

Learned counsel further submits that the opposite party ordinarily resides in Jaipur where he works for gain and comes to Kolkata twice a year. When he visits Kolkata, he resides at the house referred to above, which is jointly owned by the parties and during such time, he inflicts severe physical and mental torture upon the petitioner in presence of their minor daughter.

Though the petitioner sought direction restraining the opposite party and his men and agents from entering into the said household or approaching the area within hundred meters radius thereof, the prayer was not considered by the learned trial court. In the criminal appeal preferred by the petitioner against the said order, the learned appellate court also refused the prayer of the petitioner by the order impugned. The appeal is still pending.

Per contra, learned counsel for the opposite party submits that the opposite party visits Kolkata occasionally and resides in the same house as the petitioner. The belongings of the opposite party are in the said house. An opportunity ought to be given to the opposite party before any order is passed by the learned trial court.

In view of the fact that the opposite party intends to contest the application under Section 23 of the Act of 2005 before the learned trial court, pendency of the appeal before the learned appellate court shall not serve any purpose. The appeal is deemed to be disposed of.

The learned trial court is directed to consider and dispose of the application filed by the petitioner under Section 23 of the Act of 2005 within a period of six months from the date of communication of this order, upon affording reasonable opportunity of hearing to

the parties and without granting unnecessary adjournments to either of the parties, in accordance with law.

It is expected that in the event the opposite party visits Kolkata in the meantime and resides in the same house as the petitioner, he shall restrain from inflicting any torture, mental or physical, upon the petitioner. The opposite party shall intimate the learned trial court in advance about his visit to Kolkata and the period of his stay in the city and also as to whether he decides to stay in the same house as the petitioner.

It is made clear that this court has not gone into the merits of this case and the learned trial court shall be at liberty to deal with the matter independently in accordance with law.

The revisional application is accordingly disposed of.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon compliance of all necessary formalities.

(Suvra Ghosh, J.)