**IN THE HIGH COURT AT CALCUTTA**
**CRIMINAL REVISIONAL JURISDICTION**
**APPELLATE SIDE**

**Present:**

**The Hon'ble Justice Ananya Bandyopadhyay**

**C.R.R. 941 of 2023**
**(Assigned)**

**Runa Sahai Roy**
**-Vs-**
**Arpita Khan & Ors.**

For the Petitioner : Mr. Manas Kumar Barman
Ms. Bina Baidya

For the Opposite Party No.1 to 4 : Mr. Sumanta Ganguly

For the State : Mr. Avishek Sinha

Judgment on : 01.10.2026

**Ananya Bandyopadhyay, J.:-**

1. The revisional application assails the judgment and order dated 7th February, 2023 passed by the Learned Additional Sessions Judge, 1st Court, Sealdah, South 24 Parganas in Criminal Appeal No.20 of 2022, whereby the appellate court affirmed the order dated 14th June, 2022 passed by the Learned Judicial Magistrate, 3rd Court, Sealdah in Domestic Violence Act Case No.24 of 2021, save and except the direction imposing costs upon the petitioner. The Magistrate had directed deletion of the names of respondent nos.1 to 4 from the cause title and from the proceeding and had declined the petitioner's prayer for interim protection of her possession in the shared household.

2. The petitioner, as the aggrieved person, instituted proceedings under Section 12 of the Protection of Women from Domestic Violence Act, 2005, read with the Protection of Women from Domestic Violence Rules, 2006, before the Learned Additional Chief Judicial Magistrate, Sealdah. The proceeding was registered as Domestic Violence Act Case No.24 of 2021. Respondent nos.1 to 4 before the Magistrate were her in-laws, while Bhaja Gobinda Roy, her father-in-law, was impleaded as respondent no.5. Respondent no.1 was her elder sister-in-law; respondent no.2 was the husband of respondent no.1; respondent nos.3 and 4 were the son and daughter of respondent nos.1 and 2 respectively. Bhaja Gobinda Roy died on 14th January, 2023, before delivery of the appellate judgment.
3. The proceeding was subsequently transferred by the Learned Additional Chief Judicial Magistrate, Sealdah to the Learned 3rd Judicial Magistrate, Sealdah for inquiry, trial and disposal. Respondent nos.1 to 5 entered appearance through their respective 'Vakalatnamas'. The petitioner's case was founded upon allegations of domestic violence within the meaning of Section 3 of the Domestic Violence Act, 2005, allegedly perpetrated by her in-laws over a prolonged period after her marriage while she resided in the house of her father-in-law.
4. The petitioner sought protection of her residence and possession in the shared household, namely Flat 4C, 4th Floor, LM Tower, 13/1 Kali Kumar Banerjee Lane, Police Station Chitpur, Kolkata-700002, where she stated that she had been brought by her husband after marriage and where she continued to reside with her children and her husband, the only son of her deceased father-in-law. Her principal prayer was for a residence order

in terms of Section 19(1)(a) of the Domestic Violence Act, 2005, restraining the respondents from dispossessing her or her children or disturbing her possession of the shared household. She did not seek monetary relief by way of maintenance under Section 20, although she claimed compensation in terms of Section 22 of the said Act.

5. An interim prayer was also made in terms of Section 23 of the said Act, supported by an affidavit in Form III prescribed by Rules 6(4) and 7, seeking immediate protection of her residence and possession, including an ex parte order. The petitioner asserted that the prayer for interim protection had remained pending from February 2021, although the predecessor Presiding Officer had earlier fixed the matter for consideration and was subsequently transferred.

6. Respondent nos.3 and 4 thereafter filed a petition dated 7th August, 2021 seeking deletion of their names from the proceeding on the plea that they were innocent, had no connection with the allegations and had been impleaded merely to cause them harassment. The petitioner opposed the prayer, contending that such deletion could not be considered at a premature stage by accepting the assertions in the petition without trial and evidence.

7. During the pendency of the proceeding, an issue arose concerning disclosure of income, assets and liabilities pursuant to the judgment of the Hon'ble Supreme Court in *Rajnesh v. Neha and another, reported in AIR 2021 SC (Criminal) 729; AIR Online 2020 SC 915*. The petitioner contended that since she had sought neither maintenance nor monetary relief from the respondents, she was outside the requirement of filing such

disclosure. By order dated 4th October, 2021, the Learned Trial Court rejected that contention and directed both sides to file affidavits disclosing their income, assets and liabilities. The petitioner thereafter filed her affidavit on 27th January, 2022, whereas the respondents did not file theirs.

8. In relation to the petition dated 7th August, 2021 seeking deletion of respondent nos.3 and 4, the Learned Trial Court recorded, at an earlier stage, that the question of maintainability involved questions of fact and law and would be decided after evidence. The matter was accordingly retained for later adjudication. The proceeding was thereafter fixed on 20th August, 2021 for consideration of the prayer concerning disclosure of assets and liabilities and was ultimately heard and disposed of on 4th October, 2021, when directions were issued requiring the parties to furnish the requisite affidavits by 10th November, 2021.

9. The subsequent course of proceedings, however, reflected a departure from the earlier order concerning respondent nos.3 and 4. On 4th October, 2021, while directing filing of affidavits relating to income, assets and liabilities, the Learned Trial Court also fixed 10th November, 2021 for consideration of the prayer for deletion of respondent nos.3 and 4. The petitioner contended that such course was inconsistent with the earlier direction by which the issue of maintainability had been reserved for consideration after evidence.

10. The petition dated 7th August, 2021 was ultimately taken up on 1st March, 2022. The matter was fixed for 11th March, 2022 for orders and for consideration of the petitioner's prayer for interim protection under

Section 19(1)(a) of the said Act. No effective order was passed on 11th March, 2022 and the matter was adjourned to 31st March, 2022. On that date the matter was heard in part and 21st April, 2022 was fixed for orders in relation to both the interim prayer and the application of respondent nos.3 and 4. The matter was subsequently adjourned to 14th June, 2022.

11. By the order dated 14th June, 2022, the Learned Judicial Magistrate, 3rd Court, Sealdah declined the petitioner's prayer for interim relief and directed deletion not merely of respondent nos.3 and 4 but also of respondent nos.1 and 2, although the petitioner had not sought such deletion. The Magistrate further imposed a cost of Rs.15,000/- upon the petitioner and directed payment thereof to respondent nos.3 and 4 within fifteen days. The order also contained adverse observations concerning the petitioner, including a remark that, despite being an educated woman, she had misused or abused the process of law.

12. The petitioner preferred Criminal Appeal No.20 of 2022 under Section 29 of the Protection of Women from Domestic Violence Act, 2005 before the Learned Additional Sessions Judge, 1st Court, Sealdah, challenging the order dated 14th June, 2022 and seeking its reversal together with stay of its operation. The respondents appeared in the appeal on the date fixed for hearing of the stay prayer, having entered appearance *suo motu* before formal service of notice. The matter was thereafter adjourned for written objection on behalf of the respondents.

13. The appellate proceeding was delayed owing to the illness of the then Presiding Officer, Mr. Narendranath Dasgupta, who was hospitalised and subsequently died on 29th October, 2022. The appeal could not proceed

until his successor assumed charge. Contested hearing ultimately took place on 1st February, 2023, and 7th February, 2023 was fixed for pronouncement of judgment and order.

14. By judgment and order dated 7th February, 2023, the Learned Appellate Court partly allowed the appeal by setting aside the direction imposing costs upon the petitioner, while affirming the remaining portion of the order dated 14th June, 2022. Consequently, the appellate judgment maintained the substantive directions by which the names of the respondents had been deleted and the petitioner's prayer for interim residence protection had been declined.

15. The revisional challenge, therefore, arises from a proceeding in which the petitioner had invoked the protective jurisdiction of the Domestic Violence Act, 2005 principally for preservation of her residence in the shared household; respondent nos.3 and 4 had sought deletion of their names before trial; the Trial Court had initially indicated that the question of maintainability involved questions of fact and law requiring evidence, yet subsequently proceeded to delete respondent nos. 3 and 4 and, in addition, respondent nos.1 and 2; the petitioner's prayer for interim residential protection remained undecided for a prolonged period; and the appellate court, while removing the monetary cost imposed upon her, affirmed the remaining directions by its judgment dated 7th February, 2023.

16. The Learned Advocate appearing for the petitioner submitted, in substance, as follows: The petitioner, being the aggrieved person, instituted an application under Section 12 of the Protection of Women

from Domestic Violence Act, 2005 on 15th February, 2021, registered as D.V. Case No.24 of 2021, before the Learned Additional Chief Judicial Magistrate, Sealdah, together with a prayer for interim protection of her right to reside in the shared household. The proceeding was thereafter placed before the Learned 3rd Judicial Magistrate, Sealdah. The prayer for interim protection concerning the shared household came up for consideration on two occasions, before and after appearance of the opposite parties. An earlier order dated 23rd June, 2021 was subsequently recalled. The petitioner was thus left awaiting adjudication of the residential protection sought by her.

17. Respondent nos.3 and 4 thereafter presented an application dated 7th August, 2021 seeking their discharge from the proceeding on the plea that the case was not maintainable against them. The Learned Trial Court, by its order dated 7th August, 2021, expressly recorded that the question of maintainability involved both questions of fact and law and consequently directed that the application remain on record, with the issue to be adjudicated at a later stage after evidence.

18. The Learned Advocate submitted that the subsequent order dated 14th June, 2022 departed radically from the course expressly adopted by the Trial Court on 7th August, 2021. Without recording evidence and without adjudicating the disputed questions through trial, the Trial Court proceeded to discharge respondent nos.3 and 4 and, beyond the prayer made by them, also removed respondent nos.1 and 2 from the proceeding. Respondent no. 5 had meanwhile died on 14th January, 2023, subsequent to the order dated 14th June, 2022. The submission was that the Trial

Court could not, by a later order, reverse its earlier procedural determination concerning adjudication of the disputed questions after evidence, particularly when Section 362 of the Code of Criminal Procedure, 1973 placed a statutory restriction upon alteration or review of a judgment or final order after its signature.

19. The Learned Advocate further submitted that the Trial Court, instead of confining itself to the statutory inquiry arising from the petition under the Domestic Violence Act, imposed a cost of Rs.15,000/- upon the petitioner and made several adverse observations against her, describing her as a highly educated woman holding a Master's degree in Political Science who had allegedly abused the process of law. The prayer for residential protection was rejected along with remarks concerning the petitioner's alleged motive and conduct. The appellate court subsequently set aside the monetary cost, holding it to be absurd and without basis, but retained the remaining portion of the Trial Court's order.

20. The petitioner challenged the order dated 14th June, 2022 by preferring Criminal Appeal No.20 of 2022 on 1st July, 2022 before the Learned Additional Sessions Judge, 1st Court, Sealdah. By judgment and order dated 7th February, 2023, the appellate court set aside the imposition of costs but affirmed the remaining directions contained in the order of the Learned Magistrate. The petitioner consequently invoked the jurisdiction of the High Court by a petition under Sections 482 read with Section 401 of the Code of Criminal Procedure.

21. The Learned Advocate assailed both orders on the ground that the Trial Court and the appellate court had proceeded upon conjecture and

inference rather than upon evidence, and had attributed motives to the petitioner which had never been established through trial. According to the submission, the courts below travelled beyond the jurisdiction entrusted to them at the relevant stage and treated disputed questions concerning domestic relationship, residence, domestic violence and entitlement to protection as though such matters stood conclusively established against the petitioner.

22. Particular emphasis was placed upon the contradiction between the order dated 7th August, 2021 and the subsequent order dated 14th June, 2022. Having recorded that the question of maintainability involved questions of fact and law requiring evidence, the Trial Court could not thereafter determine the very questions without permitting the petitioner to lead evidence. The later course, according to the petitioner, rendered the earlier judicial determination incapable of coherent reconciliation with the subsequent discharge of the respondents.

23. The Learned Advocate further submitted that the courts below had overlooked the statutory scheme of the Domestic Violence Act, 2005 and had thereby deprived the petitioner of the opportunity of establishing her entitlement to protection. The petitioner's case was that respondent nos.1 to 4 had subjected her to cruelty, torture and domestic violence, both at the earlier residence at Baguiati and at the address disclosed in the cause title as her present residence. The allegations contained in paragraphs 5, 6, 7, 9, 10, 13, 16 and onwards of the Section 12 application, according to the petitioner, disclosed the nature of the allegations against respondent nos.1 to 4 and could not have been discarded without evidence.

24. The Learned Advocate submitted that the Trial Court and the appellate court had selectively relied upon isolated expressions appearing in the petition while disregarding the pleadings as a whole. Such an approach, according to the petitioner, resulted in attributing to her an intention to seize her father-in-law's property and to exert pressure upon the respondents, although no evidentiary adjudication had taken place. The courts below, it was argued, thereby transformed proceedings intended to secure statutory protection from domestic violence into proceedings directed against the aggrieved person herself.

25. A further submission concerned the petitioner's prayer for interim residence protection. The petitioner had asserted that she resided in the shared household and had furnished the address in the cause title together with supporting documentary material. The courts below, according to the submission, disregarded such pleadings and documents and proceeded upon the contrary premise that the petitioner was not residing in the house in question. The finding that interim protection had not been sought in respect of the house where she was residing was therefore challenged as contrary to the record.

26. The Learned Advocate placed particular reliance upon *Prabha Tyagi v. Kamlesh Devi, reported in (2022) 8 SCC 90*, to submit that Section 17(1) of the Domestic Violence Act, 2005 confers upon every woman in a domestic relationship a statutory right to reside in the shared household, irrespective of whether she answers the description of an aggrieved person and irrespective of proof of a particular act of domestic violence by the respondent. The Supreme Court, according to the submission, recognised

the breadth of the expression "domestic relationship" and held that the right of residence cannot be curtailed merely because the woman had not actually resided in the shared household at the precise point when the application was instituted.

27. Reliance was further placed upon the principles stated in *Prabha Tyagi* (supra), particularly paragraphs 32, 44, 45, 46, 72 and 75.3, as well as upon *Satish Chander Ahuja v. Sneha Ahuja, (2021) 1 SCC 414 / (2021) 1 SCC (Cri) 667; V.D. Bhanot v. Savita Bhanot, (2012) 2 SCC (Cri) 102 / (2012) 3 SCC 183; Juveria Abdul Majid Patni v. Atif Iqbal Mansoori, (2014) 10 SCC 736 / (2015) 1 SCC (Cri) 241*; and *S. Vanitha v. Deputy Commissioner, Bengaluru Urban District, (2021) 2 AICLR (SC) 5*. The submission was that a proviso or qualifying circumstance cannot be employed to extinguish a substantive statutory right conferred by the enactment.

28. The petitioner relied upon *Prabha Tyagi* to contend that a woman may acquire or assert the right of residence even where, after marriage, circumstances had prevented her from actually residing in the shared household. A woman may have lived elsewhere for a reasonable cause and, upon a subsequent change of circumstances, may still invoke the statutory protection attached to her domestic relationship. The right of residence extends not merely to the husband's personal residence but also to the shared household in which the family of the husband resides. Paragraph 75.3 of the judgment was relied upon for the proposition that an aggrieved person may invoke Section 12 of the Domestic Violence Act, 2005 even where she is not residing with the respondent in a shared

household at the time of filing, provided the statutory conditions concerning her domestic relationship and right of residence are otherwise satisfied.

29. The Learned Advocate consequently submitted that the finding that the petitioner had no right to residential protection merely because of the courts' assessment of her actual residence could not survive in law. The question whether the petitioner had a domestic relationship with the respondents, whether the premises constituted a shared household and whether she was entitled to protection required adjudication upon pleadings and evidence. Such questions could not properly be converted into final findings at the threshold.

30. Reliance was also placed upon *Bhawna v. Bhay Ram and Others, reported in 2023 LiveLaw (SC) 148*, arising from SLP (Criminal) No. 1090 of 2023. The Learned Advocate submitted that the Supreme Court in that case deprecated the imposition of onerous conditions upon a complainant under the Domestic Violence Act which effectively operated as a penalty for pursuing the proceeding. The appellate court and the High Court in that case had imposed costs upon the appellant for examination of witnesses and had also deprived her of interim maintenance; the Supreme Court held such conditions impermissible and directed that the complainant be permitted to lead evidence without such onerous requirements.

31. The said decision was relied upon to reinforce the submission that a proceeding under the Domestic Violence Act, 2005 cannot become a vehicle for penalising the aggrieved person for pursuing statutory

remedies. The petitioner contended that the adverse observations made against her and the manner in which the proceeding had been dealt with by the courts below disclosed precisely such an approach.

32. The Learned Advocate further assailed the appellate judgment as internally inconsistent. The appellate court accepted that the imposition of Rs.15,000/- cost upon the petitioner was without basis and consequently set it aside. Yet, according to the petitioner, the very reasoning which had led to the imposition of that cost remained substantially embedded in the appellate court's treatment of the petitioner's case. The petitioner therefore questioned how the reasoning could be rejected for the purpose of costs while the conclusions flowing from the same reasoning were retained.

33. Another serious submission concerned the Trial Court's treatment of disputed facts. The order dated 7th August, 2021 recorded that disputed questions could be adjudicated only after evidence. The impugned order nevertheless proceeded to hold that the petitioner did not require residential protection and that she had sought to exert pressure upon the respondents or to obtain her father-in-law's property. The petitioner submitted that such conclusions necessarily required evidentiary adjudication and could not properly arise from a preliminary consideration of the pleadings.

34. The petitioner further relied upon the fact that the Trial Court had adopted inconsistent standards while dealing with the rival applications. The application of respondent nos.3 and 4 seeking their deletion was treated as sufficient to result in their discharge, while the petitioner's prayer for interim residential protection was rejected by reference to

disputed facts which the same court had earlier recognised as requiring evidence. Respondent nos.1 and 2 were also discharged although no corresponding prayer had been made by them. According to the petitioner, such course altered the complexion of the proceeding beyond the relief actually sought.

35. The Learned Advocate submitted that the observations made against the petitioner extended far beyond the adjudication required for determining her statutory claim. Expressions suggesting that she had attempted to create a new legal regime by alleging domestic violence through distance, had committed a "brutal abuse of legal process", had invoked the Act for personal ego and grudge, or had falsely implicated the respondents were, according to the petitioner, grave conclusions unsupported by evidence. The remark that the petitioner was fortunate to have a loving and caring husband was also assailed as extraneous to the judicial determination required in a proceeding concerning statutory protection from domestic violence.

36. The petitioner also challenged the criticism arising from the affidavit relating to disclosure of income, assets and liabilities pursuant to *Rajnesh v. Neha and another, AIR 2021 SC (Criminal) 729; AIR Online 2020 SC 915*. The submission was that the prescribed form itself contains several fields which may have no application to a particular litigant. A statement that a particular field was "not applicable" could not, by itself, furnish a basis for branding the petitioner as a litigant who had failed to approach the court with candour.

37. The Learned Advocate further submitted that the courts below had overlooked the documentary material accompanying the petition, including the petitioner's address disclosed in the cause title, which according to her demonstrated her residence in the shared household. The contrary conclusion that she was not living there was, according to the submission, reached without an evidentiary exercise and in disregard of the pleadings and documents produced by her.

38. The petitioner accordingly submitted that the conclusions concerning the absence of a domestic relationship, the alleged attempt to appropriate her father-in-law's property, the absence of need for residential protection and the alleged misuse of the Domestic Violence Act, 2005 could not be sustained at a stage preceding trial. The determination of such matters required consideration of the pleadings, documentary material and oral evidence in accordance with the statutory scheme.

39. The Learned Advocate concluded by submitting that the judgment dated 7th February 2023 passed by the Learned Additional Sessions Judge, 1st Court, Sealdah in Criminal Appeal No.20 of 2022, affirming the order dated 14th June, 2022 passed by the Learned Judicial Magistrate, 3rd Court, Sealdah in D.V. Act Case No. 24 of 2021, save for setting aside the cost, deserved to be set aside and quashed. The prayer was for return of the Lower Court Record and for a direction upon the Trial Court to reopen the proceeding and proceed from the stage preceding the discharge of the opposite parties, after their appearance, and to adjudicate the petitioner's application in accordance with law.

40. The Learned Advocate appearing for the opposite parties submitted as follows: The revisional application suffered from suppression of material facts. The petitioner, while invoking the revisional jurisdiction of this Court, had omitted to disclose the institution and pendency of the civil proceedings between the parties. No document relating to institution of the civil suit or the subsequent proceedings in appeal had been annexed to the revisional application. Such omission, according to the Learned Advocate, was deliberate and assumed significance in appreciating the real purpose for which the proceeding under the Protection of Women from Domestic Violence Act, 2005 had been instituted.

41. The Learned Advocate submitted that D.V. Case No.24 of 2021 had been invoked by the petitioner as a means of securing an advantage in relation to the civil remedies pursued by her husband. The Learned Magistrate had already noticed such circumstance while dealing with the petitioner's prayer for interim relief by order dated 24th June, 2022. The submission was that the Domestic Violence proceeding had been employed as a collateral route in aid of a dispute which, in substance, concerned civil rights over property.

42. A further submission was that no domestic relationship within the meaning of Section 2(f) of the Protection of Women from Domestic Violence Act, 2005 existed between the petitioner and the opposite parties. The courts below, according to the Learned Advocate, had recorded a specific finding to such effect. The complaint itself disclosed that the petitioner had never resided with opposite party nos.1 and 2. On the contrary, the

petitioner had acknowledged that opposite party nos.1 and 2 resided separately.

43. The Learned Advocate further submitted that the petitioner's own pleadings disclosed the absence of any grievance concerning domestic violence perpetrated by her husband, Arnab Roy, despite her assertion that she had continuously resided with him. According to the opposite parties, such circumstance was significant because the alleged domestic relationship relied upon by the petitioner did not correspond with the persons against whom relief had been sought in D.V. Case No.24 of 2021.

44. It was further submitted that the petitioner and her husband had repeatedly withheld material facts before courts for obtaining orders in their favour. The present revisional application, according to the Learned Advocate, concealed the civil litigation and its pendency. The conduct of the petitioner's husband was also relied upon by reference to the order dated 7th Marc,h 2022 passed by a Division Bench of this Court in C.R.M. No.10682 of 2020, presided over by the Hon'ble Justice Joymalya Bagchi, wherein adverse observations had allegedly been made concerning the husband's conduct in obtaining an order of anticipatory bail by practising fraud upon the court.

45. The Learned Advocate submitted that such conduct had also been noticed by the Learned Sessions Judge while disposing of Criminal Appeal No.20 of 2022. Reference was made to the certified copy of the appellate judgment dated 7th February, 2023, particularly the second last paragraph at internal page 3, where the conduct of the petitioner was

considered in the context of the proceeding under the Domestic Violence Act, 2005.

46. The Learned Advocate further contended that the real purpose behind D.V. Case No.24 of 2021 was to gain control over the ancestral property of the petitioner and opposite party no.1. The disputes between the parties, according to the submission, were essentially civil in character, and the complaint itself disclosed the nature of such dispute. The statutory remedy under the Domestic Violence Act, 2005, according to the opposite parties, could not be converted into an instrument for securing an advantage in a property dispute.

47. The Learned Advocate therefore submitted that the petitioner had sought to give a criminal complexion to a dispute which, in substance, concerned proprietary rights and civil remedies. The absence of any allegation of domestic violence against the petitioner's husband, coupled with the petitioner's admitted residence with him, was relied upon as an indication that the proceeding against the opposite parties had been instituted for a purpose distinct from protection against domestic violence.

48. The Learned Advocate maintained that the finding of the courts below concerning absence of a domestic relationship deserved to receive due weight in the revisional proceeding. The petitioner, according to the submission, could not invoke the protective provisions of the Domestic Violence Act, 2005 against persons with whom she had neither shared a domestic relationship nor resided in the manner contemplated by the statute.

49. The submission concerning suppression was advanced as a further reason for declining revisional relief. The petitioner, according to the opposite parties, had approached the High Court without placing before it the complete procedural and civil litigation between the parties. Such omission, when considered alongside the civil proceedings and the allegations concerning the conduct of the petitioner's husband, was relied upon to demonstrate that the present proceeding did not arise from a straightforward claim for protection against domestic violence.

50. The Learned Advocate accordingly supported the orders passed by the Learned Judicial Magistrate and the Learned Additional Sessions Judge. According to the opposite parties, the Trial Court had examined the pleadings and the circumstances placed before it and had reached the conclusion that the statutory relationship necessary for invoking the Domestic Violence Act, 2005 against the opposite parties was absent. The appellate court, while setting aside the cost imposed upon the petitioner, had retained the substantive conclusions of the Trial Court.

51. The Learned Advocate consequently prayed for dismissal of the revisional application, submitting that the petitioner had sought to employ the Domestic Violence Act, 2005 in aid of a civil property dispute, had omitted material particulars concerning the pending civil litigation, and had failed to establish the domestic relationship necessary to sustain the proceeding against the opposite parties.

52. The proceeding under Section 12 of the Protection of Women from Domestic Violence Act, 2005 had been instituted by the petitioner on 15th February, 2021. The petitioner sought, inter alia, interim protection and

residential relief. An earlier order dated 23rd June, 2021 had recalled the previous order concerning interim relief, whereafter the application relating to maintainability against opposite party nos.3 and 4 was taken up. By order dated 7th August, 2021, the Learned Magistrate recorded that the question of maintainability involved both questions of fact and law and directed that the application be retained with the record for determination at a later stage after evidence.

53. The petitioner has assailed the subsequent order dated 14th June, 2022 principally on the ground that the Learned Magistrate departed from the course indicated by the earlier order dated 7th August, 2021, discharged the opposite parties without recording evidence, declined residential relief and made observations which, according to the petitioner, traversed matters capable of determination only after evidence. The petitioner has also criticised the judgment of the Learned Appellate Court dated 7th February, 2023 for having sustained such conclusions.

54. The Learned Advocate for the petitioner submitted that the Trial Court had travelled beyond the permissible limits of its jurisdiction by deciding disputed questions concerning domestic relationship, residence, domestic violence and the petitioner's alleged purpose in instituting the proceeding without affording her an opportunity to establish her case by evidence. Particular emphasis was placed upon the earlier order dated 7th August, 2021. It was argued that the Magistrate, having recorded that the question of maintainability involved questions of fact and law and required consideration after evidence, could not thereafter reach a contrary conclusion upon contested factual assertions.

55. Learned Advocate further relied upon *Prabha Tyagi v. Kamlesh Devi, (2022) 8 SCC 90*, and the other decisions referred to in the written submissions, to contend that the expression "domestic relationship" under Section 2(f) and the right of residence under Section 17 cannot receive a narrow construction. The submission was that actual physical residence in the shared household at the time of institution of the proceeding is not an indispensable condition where the legal relationship and the right to reside in the shared household are otherwise established. The petitioner also relied upon the principles stated in *Satish Chander Ahuja v. Sneha Ahuja, V.D. Bhanot v. Savita Bhanot, Juveria Abdul Majid Patni v. Atif Iqbal Mansoori* and *Smt. S. Vanitha v. Deputy Commissioner, Bengaluru Urban District*.

56. Learned Advocate also referred to *Bhawna v. Bhay Ram*, arising from SLP (Criminal) No.1090 of 2023, for the proposition that a woman invoking the protective jurisdiction of the Domestic Violence Act cannot be burdened with onerous conditions which effectively impede her opportunity to pursue the proceeding. The Supreme Court in that case dealt with the closure of evidence and conditions imposed for reopening the proceeding, and held that such onerous conditions could not be sustained.

57. The Learned Advocate appearing for the opposite parties, on the other hand, submitted that the petitioner had not placed before this Court the complete litigation between the parties and had suppressed the pendency of civil proceedings. It was contended that the proceeding under the Domestic Violence Act had been employed as a means of advancing claims arising from a civil dispute relating to property. The opposite parties

further relied upon the concurrent findings that no domestic relationship within the statutory meaning existed between the petitioner and the concerned opposite parties.

58. It was submitted that the complaint itself disclosed that opposite party nos.1 and 2 had been residing separately and that the petitioner had not resided with them. Learned Advocate also relied upon the circumstance that the petitioner had been residing with her husband, Arnab Roy, against whom, according to the opposite parties, no corresponding allegation of domestic violence had been made. The order dated 7th March, 2022 passed by a Division Bench of this Court in C.R.M. No.10682 of 2020 was also relied upon in support of the submission concerning the conduct of the petitioner's husband.

59. The rival submissions require examination within the statutory scheme of the Protection of Women from Domestic Violence Act, 2005. Section 2(f) of the said Act defines "domestic relationship" by reference to persons who live or have, at any point of time, lived together in a shared household when they are related by consanguinity, marriage, a relationship in the nature of marriage, adoption or as members of a family living together as a joint family. Section 17 confers upon every woman in a domestic relationship the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same. Sections 18 and 19 of the said Act provide the protective and residence remedies which may follow upon an application under Section 12.

60. The Supreme Court in *Prabha Tyagi* (supra) has given the expression "domestic relationship" a broad construction and has held that the

statutory expression extends to a past domestic relationship; the relationship contemplated by Section 2(f) of the said Act is not confined to one subsisting in the present. The proposition, however, does not dispense with the statutory requirement that the relationship asserted by the aggrieved person must be established in relation to the person against whom relief is sought. A broad construction of the statute does not amount to a removal of the statutory ingredients.

61. The distinction assumes importance in the present case. The petitioner cannot succeed merely by establishing that she was married to her husband. The relief claimed against each opposite party has to bear a legally recognisable connection with the domestic relationship pleaded against that particular respondent. The question is therefore not merely whether the petitioner possessed a matrimonial relationship with her husband, but whether the opposite parties against whom the reliefs were sought stood within the domestic relationship contemplated by Section 2(f), upon the facts pleaded and materials available before the courts below.

62. The expression “domestic relationship” in Section 2(f) of the Domestic Violence Act, 2005 attaches to a relationship between the aggrieved person and the particular respondent against whom a relief is claimed. A marriage with one member of a family, by itself, cannot create a statutory domestic relationship with every other member of that family. The said Act requires a demonstrable relational nexus of the kind contemplated by Section 2(f), namely, a relationship by consanguinity, marriage, adoption, or a relationship in the nature of marriage, coupled with the statutory

requirement concerning living together in a shared household at some point of time. The breadth accorded to the expression "live or have, at any point of time, lived together" by the Supreme Court in *Prabha Tyagi v. Kamlesh Devi*, (2022) *8 SCC 90*, cannot be read as dispensing with the existence of the qualifying relationship itself. The judgment dispenses with a rigid insistence upon continuous or actual physical residence; it does not dispense with the necessity of establishing the statutory nexus between the aggrieved person and the respondent against whom the relief is sought. A right to reside also derives its legal significance from such relationship and from the character of the premises as a shared household. Consequently, where the pleadings and the evidence disclose separate residences, no period of shared living, no legally recognisable right of residence in the premises of the concerned respondents and no domestic interaction of the nature contemplated by Section 2(f), the mere existence of a family or matrimonial connection cannot, by itself, bring the parties within the protective jurisdiction of the Act. A contrary construction would enlarge the expression "domestic relationship" beyond the statutory language and would make every familial association a sufficient basis for invoking proceedings under Section 12 of the said Act, irrespective of the particular respondent against whom relief is claimed.

63. The jurisdiction conferred by the Domestic Violence Act, 2005 is protective in character, yet the protection must remain anchored to the statutory relationship pleaded and established against the person from whom relief is claimed; the protective purpose of the legislation cannot substitute a

relationship which the statute itself requires as a condition for invoking its remedies.

64. The materials referred to by both sides disclose that the petitioner had raised allegations against several persons and had sought reliefs of a protective and residential character. At the same time, the courts below considered the pleadings concerning residence and the relationship between the parties and reached the conclusion that the necessary domestic relationship with the concerned opposite parties had not been established.

65. The petitioner's reliance upon *Prabha Tyagi* (supra) does not alter the result. The judgment protects the statutory right of a woman from a construction which would deprive her of a remedy merely because she was not physically residing in the shared household on the date of presentation of the application. It does not lay down that every relationship connected with a matrimonial family automatically creates a domestic relationship with every member of that family for every relief claimed under the Act. The statutory relationship must still be established in the proceeding.

66. The submission concerning the earlier order dated 7th August, 2021 also requires examination in its proper procedural setting. The said order did not adjudicate the merits of the petitioner's claim. It recorded that the issue concerning maintainability involved questions of fact and law and directed that the application be kept with the record for consideration at a later stage after evidence. The subsequent order dated 14th June, 2022 was therefore required to be examined on the question whether the final

determination was legally sustainable on the materials then before the Magistrate.

67. Section 362 of the Code of Criminal Procedure, 1973 imposes a restriction upon alteration or review of a judgment or final order after it has been signed, save for correction of a clerical or arithmetical error. The provision has to be applied to a judgment or final order in the manner contemplated by the statute. The mere circumstance that a later stage of the proceeding produced a conclusion different from an earlier interlocutory observation does not, by itself, bring the later order within the prohibition contained in Section 362 of the Code of Criminal Procedure, 1973. The substance and procedural character of both orders have to be examined.

68. The present case also does not furnish a proper occasion for converting the revisional jurisdiction into a second appellate examination of every factual assertion. The revisional jurisdiction is directed towards correcting jurisdictional error, patent legal infirmity, perversity or a miscarriage of justice. A finding cannot be displaced merely because another inference may also be drawn from the same material.

69. The petitioner has placed considerable emphasis upon the observations made by the courts below concerning the purpose of instituting the proceeding, the civil litigation between the parties and the petitioner's conduct. Some of those observations may have been expressed in terms which were broader than what was necessary for adjudication of the statutory issue. Such observations, however, cannot by themselves furnish a ground for setting aside the substantive adjudication when the

result reached by the courts below is otherwise supported by the pleadings and the statutory requirements.

70. The allegation that the petitioner had been deprived of her right to lead evidence also requires distinction between a case where the denial of evidence causes substantive prejudice and a case where the controversy rests upon the absence of a statutory relationship apparent from the pleadings and admitted circumstances. The jurisdiction under Section 12 of the said Act cannot be invoked against a person who does not satisfy the statutory description of a respondent against whom relief under the Act can properly be claimed.

71. The reliance upon *Bhawna v. Bhay Ram* (supra) does not advance the petitioner's case to the extent suggested. The Supreme Court there dealt with a complainant whose opportunity to lead evidence had been closed and with onerous financial conditions imposed as a precondition for reopening the case. The Court held that such conditions could not be imposed upon a woman claiming protection under the Domestic Violence Act, 2005. The present controversy concerns the existence of the statutory relationship between the petitioner and the opposite parties and the sustainability of the concurrent findings on that issue. The factual and procedural circumstances are materially different.

72. The submission that the question of domestic relationship could not have been determined without recording evidence also does not carry the matter any further. Evidence becomes indispensable where a material statutory ingredient is genuinely disputed and its determination depends upon proof of facts lying beyond the pleadings and the admitted record.

The right to lead evidence, however, cannot be converted into a right to compel a trial on an issue which the statutory requirements, the petitioner's own pleadings and the material placed before the Court have already rendered incapable of sustaining the relief claimed against the concerned respondents. Section 12 of the said Act furnishes the procedural gateway to the remedies created by Sections 17 to 23; it does not dispense with the necessity of bringing the case within the substantive conditions prescribed by Section 2(f). A Magistrate is therefore required to ascertain whether the relationship pleaded against the particular respondent answers the statutory description before granting a remedy which operates against that respondent. The decision in *Bhawna v. Bhay Ram*, arising from SLP (Criminal) No.1090 of 2023, cannot be read to mean that every objection to maintainability must await an elaborate trial irrespective of the materials already before the Court. The Supreme Court there deprecated the imposition of onerous conditions which effectively deprived the complainant of her opportunity to lead evidence; it did not hold that a proceeding must be prolonged where the very statutory nexus necessary for invoking the Act against a particular respondent is absent from the case pleaded and the material placed before the Court. The right to adduce evidence protects a litigant's opportunity to prove a legally sustainable case; it does not create the legal ingredients of that case.

73. A Court cannot permit the evidentiary process itself to supply a statutory relationship which the case as pleaded and the material already brought before it fail to disclose.

74. The contention founded upon the petitioner's right of residence also cannot be examined in isolation from Section 2(f). Section 17 confers a substantive right of residence upon a woman who is in a domestic relationship. The right is significant and receives protection under the statutory scheme. It cannot, however, be detached from the relationship contemplated by Section 2(f). A residence right under Section 17 cannot itself create the domestic relationship upon which Section 17 proceeds.

75. The Supreme Court has repeatedly recognised the protective character of the legislation and has also described proceedings concerning reliefs under Sections 18 and 20 of the said Act as predominantly civil in nature. Such character does not diminish the statutory requirements. Protection afforded by beneficial legislation remains protection administered according to the conditions prescribed by Parliament.

76. The argument concerning the civil suit also does not, by itself, establish that the proceeding under the Domestic Violence Act, 2005 was legally barred. The Act contains provisions enabling reliefs under it to coexist with remedies in other legal proceedings. The existence of civil litigation may constitute a relevant circumstance in assessing the pleadings and the nature of the dispute, but it does not by itself extinguish a statutory remedy under the Domestic Violence Act, 2005. The decisive consideration remains whether the petitioner has established the statutory ingredients necessary for the relief claimed.

77. Upon examination of the rival submissions, the pleadings referred to by the parties and the orders of the courts below, this Court finds that the principal conclusion rests upon the absence of the requisite domestic

relationship between the petitioner and the opposite parties against whom the proceeding was pursued. The petitioner's matrimonial relationship with her husband cannot, by itself, supply every statutory ingredient against persons who have separately been impleaded as respondents.

78. The criticism directed against the observations of the courts below concerning the civil dispute, property and the conduct of the parties may have some force as to the breadth of the language employed. Such criticism, however, does not furnish sufficient ground for interference with the operative adjudication. A Revisional Court is required to examine the legality of the result and the process by which it was reached; it is not called upon to substitute its assessment merely because certain observations could have been expressed with greater restraint.

79. The concurrent conclusions of the Learned Judicial Magistrate, 3rd Court at Sealdah and the Learned Additional Sessions Judge, 1st Court, Sealdah when tested against the statutory scheme, do not disclose such jurisdictional infirmity as would warrant exercise of the revisional power. The petitioner has not demonstrated a legal error of such character as would justify setting aside the impugned judgment and restoring the proceeding against the opposite parties.

80. The submission that the petitioner was entitled, as a matter of course, to an opportunity to lead evidence cannot be accepted as an absolute proposition. Evidence is required for adjudicating a disputed factual issue; it cannot supply a statutory relationship which the pleadings and admitted circumstances fail to disclose. The right to lead evidence does

not confer substantive jurisdiction upon the Magistrate where the statutory relationship necessary for the relief is absent.

81. For the reasons recorded above, this Court finds no sufficient ground for interference with the judgment and order dated 7th February, 2023 passed by the Learned Additional Sessions Judge, 1st Court, Sealdah, South 24-Parganas, in Criminal Appeal No.20 of 2022, affirming the substantive portion of the order dated 14th June, 2022 passed by the Learned Judicial Magistrate, 3rd Court, Sealdah, in D.V. Act Case No.24 of 2021.

82. In view of the above discussions, the instant criminal revisional application being CRR 941 of 2023 stands dismissed.

83. All pending applications, if any, stand disposed of.

84. The order dated 7 February, 2023 shall remain operative in terms thereof.

85. There is no order as to costs.

86. Let the copy of this judgment be sent to the learned trial court as well as the police station concerned for necessary information and compliance.

87. All parties shall act on the server copy of this judgment duly downloaded from the official website of this court.

**(Ananya Bandyopadhyay, J.)**