

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRR 1644 OF 2023

With

CRAN 3 OF 2025

DILIP DAS

VS.

THE STATE OF WEST BENGAL & ORS.

For the Petitioner : Mr. Moyukh Mukherjee, Adv
Mr. Ranjit Chowdhury, Adv.
Mr. Sidipto Chowdhury, Adv.

For the Opposite Party : Mr. Debasish Kar, Adv.
Mr. Husen Mustafi, Adv.
Ms. Paramita Mukherjee, Adv.
Ms. Suhana Parveen, Adv.

For the State : Mr. Madhusudan Sur, Adv.
Mr. Dipankar Pramanick, Adv.

Last heard on : 23.02.2026

Judgement on : 08.06.2026

Uploaded on : 08.06.2026

CHAITALI CHATTERJEE DAS, J. :-

1. This is an application filed under Section 397/401, read with Section 482 of the Code of Criminal Procedure, 1973 for setting aside the order impugned dated December 22, 2022, along with all other orders passed by the learned Additional Chief Judicial Magistrate , 2nd court, at Kalyani, Nadia in connection with Misc. No. 275 of 2022, where the petition under section 19 of the Protection of Women from Domestic Violence Act, 2005 filed by the opposite party no.2 was allowed ex-parte against opposite party no.3 with a direction to him to be restrained from dispossessing and disturbing the possession of the lady from shared household, till the disposal of the instant case and also restrained the husband from alienating the shared household where the Opposite Party no.2 /wife was residing, till the disposal of the case.

Brief fact of the case

2. The case of the petitioner is that he is a school teacher and purchaser of a land which he purchased from the opposite party no.3, Krishna Pada Ghosh, the husband of the Opposite Party no.2. He purchased the land after obtaining housing loan of ₹22, 00, 000/- from Union Bank of India, Ranaghat Branch, Nadia. The land was purchased by a registered deed of sale dated December 23, 2022 from the sole owner of the property that is the present Opposite Party no.3. The consideration amount of ₹27, 500, 00 for the said property was paid by the petitioner to the Opposite Party.3. The said property was purchased after obtaining the search report in respect of the property and made application for housing loan before the Union Bank of India who sanctioned such housing loan on the basis of the search report of the property made through its advocate. On January 17, 2023, the petitioner was shocked and

surprised when some police person came to such purchased property of the petitioner and without any reasons ousted the petitioner and his family members with all household items from the said purchased property on the strength of an order passed by learned Additional Chief Judicial Magistrate, 2nd court, Kalyani, Nadia on January 17, 2023.

3. The petitioner subsequently came to learn that the wife of Opposite Party no. 3, that is the present opposite party no.2 filed an application before the Additional Chief Judicial, Magistrate under the Protection of Women from Domestic Violence Act, 2005 against her husband and she filed the application under various provisions of such acts along with the prayer to give her permission to live in shared household of the petitioner or otherwise to grant monthly ₹20,000 for her accommodation. The learned Court allowed such petition in absence of Opposite Party no.2 and passed the above direction. The petitioner being a bona fide purchaser who purchased the property from the husband, the sole owner of a property, is highly prejudiced because of such order, who is otherwise no way connected with the parties to the proceeding. The petitioner having no other alternative filed the instant revision application for setting aside of such order.

Submissions

4. Mr. Mayukh Mukherjee, the learned advocate representing the petitioner submits that on 22 December 2022 the restrain order was passed as Ex parte against the husband and the deed was registered on December 22, 2022. The record was put up on 16 January 2023, on the application filed by the aggrieved wife and the direction was given by the court to the concerned police official to appear on 17 January 2023 and on 17 January 2023, passed the

order of restoration of possession. On 18th of May 2023, this revisional application was filed when the order dated 17th January, 2023 was stayed and such order was extended from time to time and on 7th May 2024 time was given to the opposite party no. 2 to find out alternative accommodation. The said order was challenged before revisional court which was dismissed. The order of dismissal was never challenged but the possession was not handed over. Learned advocate relied upon the decisions on shared household **Satish Chander Ahuja versus Sneha Ahuja¹, Prabha Tyagi versus Kamlesh Devi², Mithilesh Kumar versus Shyam Lall Paik³ and Smt. Vinita Sethia versus Vinay Kumar Sethia and Anr⁴.**

5. Per Contra it is contended by the learned advocate representing the opposite party no.2, that the order of Sessions Court was never challenged by the husband and the present petitioner has no locus standi to raise the issue in connection with a proceeding under PWDV Act. The order was passed, restraining the husband to transfer the property, which was violated since the date registration was on the next day and in terms of the provision of section 19 of the PWDV Act, 2005 the wife is entitled to have shared household in the property of her husband.

Analysis

6. Heard the submissions. The present petitioner is a bona fide purchaser who purchased the property from the Opposite Party no.3 by way of registered deed of sale. The proceeding under PWDV Act was initiated by filing the application

¹ 2020 Supreme (SC) 598

² 2022 Supreme (SC) 446

³ 2003 Supreme(Cal) 637

⁴ 2016 Supreme (Cal) 720

on August 26, 2022, where it was categorically stated by the Opposite Party no. 2 that on July 4, 2022, she was driven out from the matrimonial house that is the disputed property. She claimed maintenance as well as shared household in the said premises alternatively, to pay monthly 20,000 towards her accommodation. The opposite party no. 2 affirmed the affidavit on August 26, 2022, and the case was registered as Misc. Judicial case number 275 of 2022 and transferred to the court of learned, ACJM. 2nd Court , Kalyani for trial and disposal. The date was fixed on November 30, 2022 for S/R and steps. On that date, the petitioner /Opposite Party no. 2 was found absent and the next date was fixed on March 21, 2023 for S/R. Direction was given to file fresh requisite. On December 22, 2022, the record was put up and the petition under Section 19 of the domestic violence act was taken up for consideration and the interim order as passed.

7. On careful perusal of the record it transpires on January 16, 2023, the record was put up on the strength of an application filed by the aggrieved wife when she stated that one sub inspector of Chakdah police station removed her from the shared household and handed over the keys to the present petitioner and the learned court directed such sub inspector to appear before the court on January 17, 2023, and on such date directed the police officer not to allow the present petitioner to enter into the shared household until further order. At the time of admission the learned coordinate bench found that the matter is required to be heard on exchange of affidavit but no affidavit was filed.

8. In the case of **Satish Chander Ahuja versus Sneha Ahuja (supra)** It was held that:- definition of shared household in Section 2(s) is an exhaustive definition and cannot be read to mean that the shared household can only be

that household which is household of joint family of which husband is a member or in which husband of aggrieved person has a share.

“54. The use of both expressions “means and includes” in Section 2(s) of the Act, 2005, thus, clearly indicate the legislative intent that the definition is exhaustive and shall cover only those which fall within the purview of the definition and no other.”

Therefore, shared household is where the aggrieved person was living at the time when application was filed or in the recent past, had been excluded from user, she is temporarily absent.

9. In the said case the husband, moved out of the first floor and started staying in the guest room on the ground floor. After filing of divorce petition, the wife, filed an application impleading the husband, along with the parents-in-law where an order was passed, not to alienate the alleged share household. In the case of ***Prabha Tyagi versus Kamlesh Devi (Supra)*** the husband died, and petitioner, wife after marriage was residing at the ancestral home of the respondent along with her mother-in-law and the lady did not remarry and continue to remain the daughter-in-law of the respondent family who claimed the shared household. It was held by the Supreme Court that under Section 23 of the PWD Act, the magistrate has the power to grant interim and ex parte order, if satisfied that an application prima facie disclose that the respondent is committing or has committed an act of domestic violence, or is, there is a likelihood of committing any act of domestic violence. Therefore, it is necessary to appreciate the significance and importance of the right of every woman in a domestic relationship to reside in a shared household. The object and purpose

of the D.V act is to protect a woman from domestic violence and section 17 is incorporated to confer a right on every woman in a domestic relationship to have the right to reside in a shared household.

10. The law laid down regarding shared household leaves, no room to deny the right of a woman in a domestic relationship who can enforce a right to reside there even in absence of actual residence in the shared household. The peculiar circumstances arises in the instant case as discussed above, also manifest that the opposite party no.2, never filed any application to vacate the interim order as passed by this court way back in the year 2023. The order dated January 15, 2024 was specific while reviving the interim order ,that pendency of the revisional application shall not prevent the petitioner from seeking modification of the orders passed by the learned ACJM by placing all subsequent pleading in the court below. In view of that direction, another application was filed by the petitioner with a prayer to direct the opposite party no. 2 to vacate the residential premises of the petitioner and further to direct the opposite party no. 3 to arrange for an alternative residence. The said application was heard on 3rd May, 2024, which was disposed of by the learned court directing the husband to give ₹15,000 per month to the wife for her alternative accommodation with effect from 4th May, 2024. That direction was given to the inspector in charge of Chakdah Police Station to restore the possession of Dilip Das by 4 p.m. after evicting all persons who are then residing in the house, including the aggrieved wife.

11. However, the wife filed an application under Section 23 of PWDV Act, 2005 for order dated May 3, 2024, which was heard by the learned court when an

opportunity was given to the lady for arranging alternative accommodation within 30 days and to handover the possession of the subject premises to the purchaser. The direction was given to the husband to pay the amount of ₹15,000/- per month to the wife by 5th of each month and further directed him to pay the arrear amount to the petitioner in equal monthly instalment. Challenging the said order a revisional application was filed by the wife Opposite Party no. 2 and by an order dated June 28, 2024 the present petitioner was directed to be added in the revisional application. The learned revisional court considering the pendency of the revisional application before this court on the self-same issue dismissed her application. The petitioner has filed a petition incorporating the said orders in this revisional application. Therefore as it can be found that after the petitioner came before this court much water has flown into the Ganges as number of subsequent orders passed thereafter whereby the court directed her to hand over the possession to the petitioner .

12. At present the order passed by the learned ACJM regarding restoration of possession by the wife in favour of the petitioner stands as not been under challenge. Accordingly the law demands that the wife should comply such order and also the husband should pay the amount of Rs. 15,000/- on each month towards her accommodation charges. It is clearly visible from the subsequent orders passed by the learned coordinate bench of this court, and the consequential orders passed by the learned Court of Magistrate as well as the learned revisional Court, that the wife has no right to be in possession of the disputed property, which was purchased on the strength of a registered

deed of sale by the present petitioner from the husband Opposite Party no.3. The silence on the part of the husband regarding payment of the additional amount of ₹15,000/- and his non-appearance before this court, despite having full knowledge, gives an adverse inference regarding the possibility of the allegation levelled by the petitioner against both the opposite party no. 2 & 3.

Conclusion

13. This Court is therefore of the considered view that the opposite party no. 2/wife must restore back the possession in compliance with the direction passed by the learned Magistrate to the petitioner forthwith.

14. Therefore this revisional application stands allowed.

15. The Learned Magistrate is directed to take all necessary steps in accordance with the law to restore back the possession to the petitioner who is the lawful owner of the disputed premises.

16. The Learned Magistrate is further directed to take all possible steps in accordance with law to ensure the presence of the opposite party no.3 in order to ensure the payment of additional amount as directed by the court which he never challenged.

17. Urgent Photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

[CHAITALI CHATTERJEE (DAS), J.]