

Ashish Bhowmik and anr. Vs. Tapasi Bhowmik and anr.

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Court : Kolkata

Decided On : Jun-30-2010

Judge : Prasenjit Mandal, J.

Acts : [Protection of Women from Domestic Violence Act, 2005](#) - Sections 18, 19, 20 and 22; ;[Constitution of India](#) - Article 227

Appeal No. : C.R. R. No. 10 of 2009

Appellant : Ashish Bhowmik and anr.

Respondent : Tapasi Bhowmik and anr.

Advocate for Def. : Swapan Mullick, Adv. for State and; Abhra Mukherjee, Adv. for O.P. No. 1

Advocate for Pet/Ap. : Jaharlal Dey and; Suniti Sengupta, Advs.

Judgement :

Prasenjit Mandal, J.

1. This application under Article 227 of the [Constitution of India](#) is at the instance of the husband's brother and his mother against the wife and is directed against the order dated December 4, 2008 passed by the learned Additional Sessions Judge, First Court, Barasat, District - North 24 Parganas in Criminal Appeal No. 13 of 2008 arising out of the order dated August 26, 2008 passed by the learned

Chief Judicial Magistrate, Barasat, District - North 24 Parganas in C. Case No. 864 of 2008.

2. The wife/opposite party was married to Debasish Bhowmik, elder brother of the petitioner No. 1 and son of the petitioner No. 2. After marriage, they lived together and one daughter was born in the wedlock. The husband expired on November 20, 2007 and after his demise, the petitioners subjected the wife to torture and ultimately the wife was sent to her father's house along with the minor daughter. The husband was an LIC agent. So after death of the husband, the wife is entitled to get 2/3rd share of the property left by her husband for herself and her minor daughter. The petitioner No. 1 is a service holder and he earns Rs. 16,000/-per month and the petitioner No. 2 earns Rs. 15,000/- per month from her properties. After death of the husband of the wife, her mother had withdrawn Rs. 3,32,000/- on December 5, 2007 behind the back of the wife as service benefits of the deceased husband. The wife was not given any amount out of the said sum. For that reason, the wife filed a Title Suit before the City Civil Court, Calcutta. On the other hand, the wife has no independent source of income and so she has prayed for protection in accordance with the provisions of the Sections 18, 19, 20 and 22 of the [Protection of Women from Domestic Violence Act, 2005](#). That application was duly heard before the learned Chief Judicial Magistrate, North 24 Parganas at Barasat. Upon consideration of the materials placed before her along with the report of the protection officer, the learned Chief Judicial Magistrate directed the petitioners to provide residential accommodation to the wife and her daughter in their shared house. Being aggrieved, the wife has preferred an appeal which was disposed of by the learned Additional Sessions Judge, First Court, Barasat by the impugned order directing the petitioners to pay a sum of Rs. 2,000/- per month in favour of the appellant in order to enable her to secure the same level of alternate accommodation. Being aggrieved, the petitioners have preferred this revisional application.

3. After hearing both the sides and on perusing the materials on record, I find that it is not disputed that the wife/opposite party herein was married to Debasish Bhowmik (now deceased) and such marriage was the culmination of love affairs between the two. It is not in dispute that the wife is a non-Bramhin lady. It is also

not in dispute that one daughter was born in the wedlock. The learned Chief Judicial Magistrate directed the protection officer to submit a report on the basis of the allegation made by the wife and the protection officer held an enquiry and thereafter he submitted a report. According to such report, though the petitioners did not subject the wife to torture they abused her because she was a non-Bramhin. It reveals that immediately after the death of her husband, the wife was compelled to reside at her father's house. The wife has one daughter and it is also living with its mother. So after death of the husband, the wife and her daughter are entitled to pay 2/3rd share of the properties left by the deceased husband. But, on careful scrutiny of the orders passed by two lower courts, I find that both the courts have held concurrently that the wife was compelled to reside at her father's house along with her minor daughter. The two courts have arrived at such conclusion on the basis of the materials placed in the case. So, such concurrent view of the lower two courts, based on the materials on record, should not be changed or modified by an application under Article 227 of the [Constitution of India](#). The learned Chief Judicial Magistrate, Barasat held that the wife should be accommodated in the house of the petitioners. But in consideration of the attitude of the petitioners towards the wife for being a non-Bramhin lady, the appellate court granted an amount of 2,000/- per month for the alternate accommodation of the wife. When the brother and mother of the deceased have expressed their unwillingness to allow the wife to stay in their house because the wife belongs to a non-Bramhin female, I am of the view that the learned Additional Sessions Judge was justified in passing orders for payment of a sum of Rs. 2,000/- per month in favour of the wife in order to enable her to secure the same level of alternate accommodation. The wife is also entitled to get her stridhan property.

4. I do not find any illegality in the matter in the given circumstances. So, the order of the learned Additional Sessions Judge should be confirmed. As regards other claims, those are to be decided separately and one litigation is pending as I find from the materials available.

5. Therefore, this application has no merit at all. It is, therefore, dismissed. The order dated 04.12.2008 passed by the learned Additional Sessions Judge, First Court, Barasat in criminal appeal No. 13 of 2008 is hereby confirmed.

6. Considering the circumstances, there will be no order as to costs.
7. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.

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