

Avijit Biswas.

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Court : Kolkata

Decided On : Jul-18-2011

Judge : Kanchan Chakraborty, J.

Acts : [Protection of Women from Domestic Violence Act, 2005](#) - Section 12; Code of Criminal Procedure. - Section 482

Appeal No. : C.R.R.2927 of 2010.

Appellant : Avijit Biswas.

Advocate for Def. : Mr. Debabrata Acharyya. Adv

Advocate for Pet/Ap. : Mr. Asok Kr. Janah; Ms. Pampa Dey (Dhabal). Advs

Judgement :

1. Since Mr. Debabrata Acharyya, learned Counsel appearing on behalf of the opposite party/aggrieved wife entered appearance and the learned Counsel of both the parties have made the submissions in respect of the matter, this Court proposes to take up the petition itself without fixing any further date.

2. This application has been filed by Avijit Biswas praying for quashing of a proceeding under Section 12 of the [Protection of Women from Domestic Violence Act, 2005](#) initiated by his wife on the ground of cruelty. In the petition of complaint under Section 12 of the Act, specifically in paragraph 6, it has been averred that the signatures of the opposite party/wife were obtained forcibly and in paragraph

7, it has been averred that the said papers containing her signatures have been used in a proceeding under section 13B of the Hindu Marriage Act for the purpose of getting a decree of divorce on mutual consent although the opposite party/aggrieved wife had no such intention.

3. According to Mr. Janah, learned Counsel appearing on behalf of the petitioner, any dispute as to the consent in a proceeding under Section 13B of the Hindu Marriage Act is to be considered by the Court wherein the said application has been filed. A Court dealing with an application under Section 12 of the [Protection of Women from Domestic Violence Act, 2005](#), has nothing to do with such an allegation. Therefore, continuation of the proceeding, according to him, would be amounting to abuse of the process of the Court.

4. Mr. Acharyya, learned Counsel appearing on behalf of the opposite party/aggrieved wife contends that if the application is read as a whole, it makes abundantly clear that there are averments as to how the opposite party/aggrieved wife was physically and mentally tortured in the matrimonial house specially by her husband, petitioner herein, who is a habitual drunker and obtained her signatures forcefully on some papers and used those papers in a Court of Law for the purpose of obtaining a decree of divorce on mutual consent and finally closed the door of the house for her for ever. She has become a homeless lady now. In such a condition, an application under Section 12 of the Act has been taken out by the aggrieved wife.

5. I find sufficient materials in the petition of complaint for which an enquiry should be made by Protection Officer appointed for the purpose of this Act in the District of Nadia and submit report to the learned Magistrate in order to enable him to pass an adequate order on the petition filed by the aggrieved wife. The grounds taken by Mr. Janah, learned Counsel appearing for the petitioner do not appear to be convincing enough to quash any such proceeding. Whether the learned Magistrate at the time of disposal of the application will take this allegation regarding forcefully taking signatures of the aggrieved wife being a question of fact, cannot be considered by this Court. It can well be said that the petition under Section 12 of the Act filed by the aggrieved wife contains "violence" within the meaning of the

Act and that empowers a Court to take cognizance of the same and proceed in accordance with law.

6. I find no merit in the application. Accordingly, this revisional application stands dismissed.

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