

S/L.306.
December
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C.R.R. No.3384 of 2015

In the matter of : Gautam Bag and others.
...petitioners.
Versus
Smt. Kalpana Bag and another.
...opposite parties.

Mr. Ayanava Bhattacharyya,
Mr. Tapabrata Bhattacharyya.
...for the petitioners.

The petitioners have prayed for quashing of Misc. Case no.153 of 2015 instituted by the opposite party no.1 against the petitioners under Section 12 of the Protection of Women from Domestic Violence Act, 2005 before the court of learned Judicial Magistrate, Serampore by filing this revision under Section 482 of the Code of Criminal Procedure, 1973.

It appears from the petition of complaint filed by the opposite party no.1 against the petitioners before the trial court that the petitioner no.1 is the brother-in-law of the opposite party no.1 and other petitioners are members of family of the petitioner no.1. It also appears from the said petition of complaint that both the petitioners and the opposite party no.1 have been residing in the undivided dwelling house which belonged to one Sudhabala Devi, since deceased. Sudhabala Devi happens to be the mother-in-law of the opposite party no.1 and the mother of the petitioner no.1. It is alleged in the said petition of complaint that the petitioners threatened to dispossess the opposite party no.1 from the undivided dwelling house.

Learned counsel for the petitioners contends that the opposite party no.1 cannot have any remedy against the petitioners under the Protection of Women from Domestic Violence Act, 2005 without seeking remedy from the husband of the opposite party no.1. Learned counsel further submits that the husband of the opposite party no.1 started construction in one portion of the said undivided dwelling house during pendency of the partition suit and the civil court granted injunction against the husband of the opposite party no.1 restraining

him from making further construction till the disposal of the partition suit. Relying on the decision of the Supreme Court in “S.R. Batra and another V. Smt. Taruna Batra” reported in AIR 2007 SC 1118, learned counsel further submits that the opposite party no.1 has no right to get relief against the petitioner no.1 and members of his family under the Protection of Women from Domestic Violence Act, 2005. In “S.R. Batra and another V. Smt. Taruna Batra” (supra) the aggrieved wife claimed relief in respect of a dwelling house which belonged to her mother-in-law and not to the husband of the aggrieved wife. In the instant case, the undivided dwelling house in which the opposite party no.1 and the petitioner no.1 have been residing belonged to the deceased mother-in-law of the opposite party no.1. I am also informed that one partition suit between the petitioner no.1 and the husband of the opposite party no.1 is pending before the civil court in respect of undivided properties including the said dwelling house. Since the husband of the opposite party no.1 is a co-sharer of the undivided dwelling house in question, the ratio of “S.R. Batra and another V. Smt. Taruna Batra” reported in AIR 2007 SC 1118 is not applicable in the facts of the present case.

On perusal of the petition of complaint, I have found that there is domestic relationship between the petitioner no.1 and the opposite party no.1 and the opposite party no.1 has claimed relief before the trial court as an aggrieved person under Section 12 of the Protection of Women from Domestic Violence Act, 2005. The dwelling house in question resided by the petitioner no.1 and the opposite party no.1 may be construed as shared household within the meaning of Section 2(s) of the Protection of Women from Domestic Violence Act, 2005. Since the opposite party no.1 as an aggrieved person has prayed for relief against the petitioner no.1 under Section 12 of the Protection of Women from Domestic Violence Act, 2005, I am of the view that the present proceeding being Misc. Case no. 153 of 2015 pending before the court of learned Judicial Magistrate, Serampore is maintainable in law.

In view of my above findings, I do not find any merit in the submission made by the learned counsel for the petitioners. Criminal revision is, thus, dismissed.

(R.K. Bag, J.)

