

**COURT OF THE SUBDIVISIONAL JUDICIAL MAGISTRATE
BHUBANESWAR**

Present:

**Sri Deepak Ranjan Sahoo, LL.M.,
S.D.J.M., BHUBANESWAR**

Crl. M.C. No. 37/13

T.R. No.

Smt. Bidulata Mohanty,
Age about 63 years
W/o. Late Brahmananda Mohanty
Plot No. 979, At/P.O.- Budheswari,
P.S. Laxmisagar, Bhubaneswar
Dist. - Khurda.

... Aggrieved person

Vrs.

1. Pratha Sarathi Mohanty
 2. Puspalata Mohanty
- All are of Plot No.979,At/Po- Laxmisagar
P.s- Laxmisagar, Bhubaneswar,
Dist- Khurda.

... Respondents

Date of conclusion of Argument : 04.12.2013

Date of Judgment : 18 .12. .2013

For the aggrieved person Rajshree Bhal ,& Associates,

For the Respondents Sri S.D. Swain & Associates

UNDER SECTION 12 OF THE
PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005
J U D G M E N T

The present case has been filed U/s 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the 'Act') for granting of reliefs U/Ss. 18, 19,20 and 22 of the Act.

2. Bidulata Mohanty, the present aggrieved person, is the mother of the respondent No.1, Pratha Sarathy Mohanty and Mother-in-law of the respondent No.2, Puspalata Mohanty. The allegation of the aggrieved person is that the respondents are assaulting her physically and inflicting violence mentally as well as physically to her and to her daughters and even they are not sparing to the tenants. Out of her six children, the respondent No.1 is her eldest son who was major at the time of the death of her husband on dtd. 31.12.1989. At that time the other children of the aggrieved person were minor excepting one daughter who was elder than the respondent No. 1. To look after the distress family the present petitioner permitted the respondent No. 1, to apply for compassionate appointment under rehabilitation assistance scheme to save the family from distress condition. Accordingly, the respondent No.1 got appointment as peon in the year 1991 and till date he is in service. In the year 1995, the respondent no.1 got married to the respondent No.2 and after marriage both the respondents started ill treating the petitioner as well as her daughters. The aggrieved person has further 'submitted that she had purchased the plot bearing No.979 at Laxmisagar area in her name by

selling her gold ornaments and from the money given by her parents and has constructed a house over it in which they are residing. She had taken hand loan with high interest for the arrangement of marriage of her three daughters and the respondent no.1 did not help a single pie for the marriage of his sisters. It is the specific allegation of the petitioner that whenever her daughters are coming to their parental house , the respondent No. 1 assaults them by the instigation of respondent No.2. Since 1995 the respondents are assaulting the petitioner physically and mentally even to her married daughters and the youngest daughter who is a student residing with her mother. Due to such torture, the study of youngest daughter hampers a lot. The respondents are also not sparing the tenants and are scolding filthy languages with a motive that the tenants will vacate the house for which the petitioner will fail to maintain herself and her unmarried daughter. It is the further submission of the petitioner that due to extreme physical and mental cruelty of the respondents, she is suffering from various disease. Further the respondent No.1 is getting salary of Rs. 20,000/- per month and he has other side business from where he is earning Rs.30,000/- and in such circumstances the aggrieved person (petitioner) has prayed to pass order U/s.18 (a),(b), (d),(e) and f and to restrain the respondents to enter her house U/s.19(c) , (d),(e),(f) and to direct the respondents to pay maintainable relief of Rs. 10,000/- per month towards her and on her unmarried daughter's maintenance U/s. 20 A,B,C,D, and to direct the respondents to grant

compensation or damage U/s 22 of the Act.

3. On the other hand, the respondents while negating the allegation of the aggrieved person, have submitted that the proceeding is not maintainable and the petitioner has no cause of action to bring such case before the Court. The respondents have submitted that the father of the respondent No.1 purchased the alleged plot in the name of the petitioner and there are 5 to 7 tenants who are residing in the said house and the petitioner is collecting the rent from them. Moreover, the petitioner is getting Rs. 6,000/- towards family pension per month and Rs. 19,100/- as rent from the said house and Rs.10 ,00000/- from the agricultural products. The respondents have further submitted that the above income of the petitioner is sufficient for maintenance and they have never inflicted any violence either to the petitioner or to her daughters, Denying all the allegations made by the petitioner, respondents have submitted that the respondent no.1 is working as helper at office of the Director of Industries, Cuttack and getting Rs. 13,000/- per month as salary and he has no other business except his service. They have further 'submitted that soon after death of his father , the respondent No.1 obtained loan from his frined and well wishers to incur the loan towards the expenses of education of his sisters and that after the death of his father he has taken all sincere efforts for the maintenance of the aggrieved person as well as her daughters. He has also paid the bank dues of his late father for construction of the house. But, after his marriage the petitioner started torturing to the respondent no.

2 by demanding dowry and when the respondent No. 2 did not fulfill the dowry demand, the petitioner has filed this case in this Court. Lastly the respondents have submitted that they have in good relation with the petitioner and this case has been filed only to harass them for which the petitioner is not entitled to get any relief.

4. The points for determination which arise in this case are:-

- 1) *Whether they have any domestic relationship or not?*
- 2) *Whether there is any domestic violence committed against the complainant or not?*
- 3) *Whether the applicant is entitled to the reliefs prayed for by her and any other reliefs under the Act*

5. In order to establish her case, the aggrieved person has examined herself as P.W. 1 and her daughter Laxmi Priya Das as P.W. 2 and another daughter Bandita Mohanty @ Mallick as P.W. 3. The aggrieved person has also exhibited the original R.S.D bearing No.2505 dtd. 02.04.1980 as Ext.1 and the R.O.R. pertaining to Khata No.328 as Ext.2 . she has also exhibited the certificate issued by Allahabad Bank regarding loan account No. 20438465971 standing in the name of Bidulata Mohanty and S. Mohanty as Ext.3 , the pay particular of the respondent No.1 has been marked as Ext.4 and the information obtained under the RTI Act regarding payment of the respondent No.1 under rehabilitation scheme has been marked as Ext.5. The registration certificate of Hero Honda Motor Cycle has been marked as Ext6 and registration certificate of Maruti Zen, a Tractor, a Scooter have been marked as Ext.7,Ext.8, Ext.9 respectively. The outdoor ticket dtd. 01.02.2013 of Laxmi Priya Mohanty has been marked as ext.10. On the other hand, the respondents have not exhibited

any document from their side.

6. Before going into the merits of the case, let us discuss who is an 'aggrieved person,' and what is the meaning of "domestic relationship" and what constitutes "domestic violence".

According to Section 2(a) of the Act,

'aggrieved person' means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent.

Section 2(f) of the Act says

'domestic relationship' means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage or through a relationship in the nature of marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family."

As per Section 3 of the Act,

"any act, omission or commission or conduct of the respondent causing physical abuses, sexual abuses, verbal, emotional, economic abuses shall constitute domestic violence.'

So far as the domestic relationship of the aggrieved persons with the respondents is concerned, it is to be proved by the aggrieved persons that she is domestically related to the respondents. It is the admitted fact that the aggrieved person is the mother of the respondent No.1 and mother-in-law of respondent no2. So, there is no need to further explain as regard to the domestic relationship exists in

between the aggrieved person and respondents.

7. So far as the second point for determination is concerned, it is to be proved by the aggrieved person that she is subjected to domestic violence by the respondents. In this regard, the aggrieved person who has been examined as P.W.1 in his evidence has clearly stated that she has been subjected to physical and mental torture by the respondents since 1995 till date, even she has alleged regarding the physical and mental assault by the respondents to her and regarding the torture given to her youngest daughter by the respondents. She has also deposed that the respondents are always using slangs to her and to her daughter and the tenants of her house are not in a position to reside there and the tenants have already vacated their house for which the aggrieved person is being affected in her financial earning and social prestige and she is facing difficulties to maintain herself and her daughter due to such illegal activities of the respondents. It is the specific allegation of the aggrieved person that the respondent No.1 is frequently assaulting him mercilessly with an ulterior motive and dishonest intention to occupy the entire building of which the aggrieved person is the absolute owner and the respondents are collecting the house rent from the tenants residing therein for which she is unable to maintain her house and her daughter and is facing acute financial difficulties. P.W.2 and P.W. 3, the daughters of the aggrieved person, also supported the version of the aggrieved person as regard to the domestic violence committed by the respondents to the

aggrieved person. On careful scrutinization made by the respondents. It is ascertained that nothing has been elicited from the aggrieved person as regard to her allegation i.e. the harassment caused by the respondents to her. However, it has been suggested during the cross-examination to the P.W.1 that the respondents have never assaulted her at any point of time.

The ambit of domestic violence is very vast and the expression (domestic violence) refers to any act, emotion or commission or conduct including causing physical abuse, sexual abuse, verbal and emotional or economic abuse to the aggrieved person. The overall facts and circumstances clearly show that the both the aggrieved persons and respondents are residing in the same building and the aggrieved person is claiming to be absolute owner of the said building. In support of her contention, the aggrieved person has exhibited the registered sale-deed No. 2505 dtd. 02.04.1980 as Ext.1 and the R.O.R pertaining to Khata No.328 as Ext.2. So, there is no dispute of this fact that the relevant plot and building stands recorded in the name of the aggrieved person. The facts and circumstances and evidence on record further reveals that both the parties are residing in it. While the aggrieved persons is alleging that she has been subjected to mental and physical torture by the respondent, the respondents are negating such fact and the respondent No. 1, Pratha Sarathi Mohanty has deposed that his relationship with his mother is very affectionate and he along with his wife have utmost respect towards her mother. He has further deposed that there is absolute no dispute in

between them. When both the parties have allegation and counter allegation against each other duty casts upon the Court to consider the entire facts and circumstances of the case as a whole in connection to the evidence on record to find out the real controversy and real fact to deal with such type of delicate family dispute in between a mother and her son and daughter-in-law. First of all this Court prefers to mention here that the relationship between mother and a son is very pious and in usual course a mother cannot bring allegation against her son of whom she has taken care of by giving her life and blood. In this instant case, the present aggrieved person has alleged and has stated before this Court that she has been subjected to mental and physical harassment by the respondents which should not be taken in lighter sense to protect her life and liberty coupled with her right to live in a dignified manner. Coming to the evidence on record the aggrieved person who has been examined as P.W. 1 has categorically stated before this Court regarding the harassment caused to her both mentally and physically by the respondents and this fact has not been annulled by the respondents in any manner. The simple denial by the respondents cannot be believed upon in connection to the other facts and circumstances and evidence on record of this case. It is an admitted fact that the respondent No.1 has one unmarried sister but the respondent No.1 has deposed before this Court that she is residing outside of his house and he cannot say exactly where she is residing.. It is not expected from a brother that he has no knowledge as to where his

unmarried sister is residing of whom he has a moral obligation to take care of . Such aspect strengthened the allegation of the petitioner as regard to careless and callous activity of respondent no.1 as regard to discharge of his moral obligation towards his mother and unmarried sister.

The O.P.W-2 , Debendra Panda who claims himself to be one tenant in the house of the aggrieved person from 2009 to March, 2013 has also deposed that the petitioner and her son have different kitchen. Usually a mother and a son residing under one roof have one kitchen but in this case the evidence on record shows that the aggrieved person and respondents although residing under one roof have different kitchen which shows that the respondents are not taking care of the foodings of the aggrieved person which ultimately established the harassment caused by the respondents to the aggrieved person. So, this Court has no hesitation to come to the conclusion that the respondents have subjected the aggrieved person to mental and physical harassment and have caused domestic violence to her. So as per the prayer of the aggrieved person she is entitled to get the protection order U/s.18(a),(b),(d),(e) and (f).

8. The aggrieved person has prayed before the Court to restrain the respondents to enter the house of the petitioner U/s.19(c),(d),(e) and (f). Section 19 of the Act deals with the residence order which specifically mandates that while disposing of an application under Sub -section(1) of Section 12, the Magistrate may, on being satisfied that domestic violence

has taken place , pass residence order:-

- a) restraining 'the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved persons from the shared household , whether or not the respondent has a legal or equitable interest in the shared household;
 - b) directing the respondent to remove himself from the shared household;
 - c) restraining the respondent or any of his relatives from entering any portion of the said household in which the aggrieved person resides;
 - d) restraining the respondent from alienating or disposing of the shared household or encumbering the same;
 - e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate ; or
 - f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require:
- Provided that no under clause(b)shall be passed against any person who is a woman.** Admittedly the respondent No.2 is a woman. So, as per the provision she cannot be removed from the shared household but as has been discussed above as evidence on record reveals that the respondents are subjecting the aggrieved person to harassment for the better interest of justice, this Court feels that as both the parties are residing in their respective share, the respondents are restrained from entering the portion of shared household in which the aggrieved person resides and the respondents are further restrained from alienating or disposing of the shared household or encumbering the same. In such circumstances for the better interest of justice, it will be appropriate to pass order restraining the respondents from renouncing their rights in the shared household except leave of this Court.
- 9) It is the further prayer of the aggrieved person to pay monthly relief

of Rs.10,000/- per month towards maintenance and towards maintenance of her unmarried daughter U/s.20, clause (a),(b),(c) and (d) and to grant compensation or damage U/s.22 of the Act. The aggrieved person in her evidence at para-14 has specifically admitted that she is receiving the pension of Rs.7,000/- after death of her husband. However, she has denied the fact that she is earning amount of Rs. 19,100/- as rent per month from the tenants and Rs. 1,00,000/- per year from the rented property and from its usufructs situated at different areas. At the same time, she has admitted the fact that her son i.e. respondent No.1 is not engaged in various business and has not been allotted any Govt. quarter which she alleged in her petition. So, from the very version of the aggrieved person, it is found that she is getting Rs 7,000/- as pension per month and at the same time her son(respondent No.1) has no other source of income except his salary. But the registration certificate of the Tractor, Maruti Zen car stand registered in the name of respondent No.2 vide Ext.7 and vide Ext.6 reveals that the respondents have some vehicles. From the salary certificate, from the pay slip of the respondent No.1 vide Ext.4, it is ascertained that his gross salary is Rs.18, 882/- and he is getting monthly Rs.14, 717/- salary after deduction of Rs. 4,175/-. The evidence on record further reveals that the respondent No.1 has to maintain his wife and school going children within his limited salary. So better interest of justice can be achieved if this Court will consider the financial constraint of the present respondents and the aggrieved persons and if strike a balance in between it by directing the respondents not to receive the monthly rent of the tenants residing in the house stands recorded in the name of the aggrieved person. It is specifically directed that the aggrieved person shall receive rent from the tenants residing in her house which she shall utilize for her maintenance and towards the maintenance of her unmarried daughter. On the other hand, respondents are directed not to enter any portion of shared household in which the

aggrieved persons resides. As per the direction made above and taking consideration of the financial status of the respondents this Court does not feel it proper to pass any order directing the respondents to pay any compensation U/s.22 of the Act. Hence this Order

ORDER

The Misc. case be and same is allowed on ex parte against respondents but without cost.

- 1) The respondents are restrained from committing any act of domestic violence or abating in the commission of acts of domestic violence against the aggrieved person u/s 18 , (a),(b),(d),(e) and (f) of the Act.
- 2) The respondents are restrained from entering any portion of the shared household in which the aggrieved person resides.
- 3) The respondents are further restrained from alienating or disposing of the shared household or encumbering the same and from renouncing their right in shared household except with the leave of this Court.
- 4) The respondents are restrained from receiving monthly rent from the tenants residing in the house of the aggrieved person and such rent shall be received by the aggrieved person towards her maintenance.
- 5) The respondents are further restrained from communicating any derogative words which will degrade the prestige and which will cause hindrance of a peaceful living of the aggrieved person in her house and society.
- 6) The respondents are further restrained from inflicting any type of mental or physical harassment to the daughters of the aggrieved person in any manner. As this court feels that there will be a dispute in between the parties as regard to the share household, the protection officer is directed to take immediate and necessary steps

to report before this Court as to in which specific portion of the shared household, the aggrieved person and the respondents are residing separately in order to deal with the future complication and dispute in between the parties preferably within two months from the date of passing such order. Issue free copy of this order to all the parties, concern, protection officer, the IIC Laxmisagar P.S. for implementation of the order.

Dictated

S.D.J.M, Bhubaneswar

Order pronounced in the Open Court on this The 18th day of December, 2013 being dictated & corrected by me under my hand and seal of the Court.

S.D.J.M, Bhubaneswar

Witnessed examined on behalf of the aggrieved person

P.W.1 : Bidulata Mohanty

P.W.2 : Laxmiprya Mohanty

P.W.3 : Bandita Mohanty

Witnessed examined on behalf of the respondent

OPW.1: Pratha Sarathi Mohanty.

OPW.2: Debendra Panda.

Extib list on the behalf of the aggrieved person

Ext.1: Original arrest bearing No.2508 on dtd. 02.04.1980

Ext.2: R.O.R. pertaining Khata No.328

Ext.3: Loan account No. 20438465921 of Allhabad Bank.

Ext.4: Pay particular of Respondent No.1

Ext.5: RTI information of the respondent No.1 under rehabilitation scheme.

Ext.6 : Registration certificate of Hero Honda Motor Cycle

Ext.7: Registration certificate of Maruti Zen.

Ext.8: Registration certificate of a Tractor

Ext.9, Registration certificate of a Scooter.

Ext.10. Outdoor Ticket of Laxmi Priya Mohanty.

List of Exts. On behalf of the respondents.

Nil.

S.D.J.M, Bhubaneswar