



**IN THE HIGH COURT AT CALCUTTA  
CRIMINAL REVISIONAL JURISDICTION  
APPELLATE SIDE**

*PRESENT:*

**THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE**

**CRR 3472 of 2022**

**Rani Bibi  
Vs.  
Sk. Nurullah & Ors.**

For the Petitioner : Mr. Apalak Basu  
Mr. Rahul Singh  
Mr. Subham Kanjilal  
Ms. Sarnali Gupta

For the Opposite Parties : Mr. Anupam Kumar Bhattacharya  
Mr. Amit Chowdhury  
Mr. Mrityunjoy Saha

Heard on : 08.12.2025

Judgment on : 18.02.2026

**Dr. Ajoy Kumar Mukherjee, J.**

1. The petitioner herein/wife has assailed the order dated 22<sup>nd</sup> August, 2022 passed by learned Chief Judge, City Sessions Court, Calcutta in Criminal Appeal no. 131 of 2022, arising out of a proceeding under section 12 of Protection of Women from Domestic Violence Act, 2005 (in short DV Act) vide MISCN Case no. 23 of 2020 filed in the court of erstwhile 11<sup>th</sup> Metropolitan Magistrate, Calcutta (in short 11<sup>th</sup> MM).



**2.** The petitioner's case is that she was married to the opposite party no.1 in accordance with Islamic rituals on 07.02.2013. It is alleged that inspite of receipt of sufficient amount of dowry, the opposite parties herein with a malafide intention maltreated the petitioner in every possible way and she was also not provided with sufficient food. They are blessed with a child. However, the opposite parties pressed for more dowry and the petitioner finding no other alternative had to leave the matrimonial home and presently had taken shelter at a rented accommodation within Taltala Police Station, Kolkata. Thereafter, she initiated a criminal proceeding against the opposite party under sections 498A/406/506/34 of the IPC, being Taltala Women P.S. Case no. 6 dated 17.3.2020

**3.** The petitioner's specific contention is that she took the room within Taltola P.S area, Kolkata, on rent from Sk. Salluddin, on a leave and license agreement which falls within the jurisdiction of aforesaid Trial Court, when she and her minor son was driven away from her matrimonial home. Being a resident of that rented accommodation she filed the instant Application under section 12 of the DV Act, being aforesaid MISCN. No. 23 of 2020, seeking relief under section 17,18,20,21 and 22 of the D.V. Act, against the opposite parties before the then MM 11<sup>th</sup> Court, Calcutta, having territorial jurisdiction to try and proceed with the said Application. The opposite parties received copy of the said Application and contested the same by filing written objection. However, instead of providing the petitioner and her son the equitable relief which they are entitled to get, the opposite parties herein had come up with the impugned Application of non-maintainability of the said Application filed under section 12 of DV Act, taking a stand that the



court concerned has no territorial jurisdiction to try the Application, because the petitioner is a resident of Medinipur District. Opposite Party no. 1 herein filed a Criminal Appeal being no. 87 of 2022 before learned Chief Judge, City Sessions Court at Calcutta, with a prayer for dismissal of the Application on the ground of jurisdiction and learned Sessions Judge thereafter directed the learned Magistrate to hear on the point of jurisdiction vide order dated 27.06.2022.

**4.** Learned 11<sup>th</sup> MM. court, Calcutta after hearing both the parties and after considering the documentary evidence placed on record, by his order dated 14.07.2022 came to a conclusion that the petitioner has rightly filed said application under section 12 of the D.V. Act. within the limits of the local jurisdiction where she resides.

**5.** Being aggrieved by the said order dated 14.07.2022 the OP no.1/husband again preferred a criminal appeal being no. 131 of 2022 before learned Chief Judge, City Sessions Court, Calcutta and the Court below by the impugned order allowed the Appeal on contest and directed the trial Court to return the Application to the aggrieved person for presentation before proper court, having territorial jurisdiction, since he has got no territorial jurisdiction to entertain the said Application.

**6.** Being aggrieved by the aforesaid order learned counsel for the petitioner Mr. Basu submits that the petitioner is victim of the atrocious activities of the opposite parties and she is living at present within the territorial jurisdiction of the trial court at Kolkata. She further submits that she is the permanent resident of the address furnished in the cause title of the application but she is temporarily residing at her rented house at the



address mentioned in the cause title, after being driven out from her matrimonial home by the opposite parties which the court below failed to consider.

7. He further submits that though learned counsel for the opposite party herein has agitated much about the maintainability and nomenclature of the present application contending that application under section 482 of the erstwhile Cr.P.C is not maintainable, since a proceeding under section 12 of the D.V. Act is civil in nature but such contention is fallacious since the caption or nomenclature of an application is hardly of much relevance as application under section 397/401 and under section 482 of the Code of Criminal Procedure are both criminal revisional application. Moreover such argument is also self-contradictory. Since no specific remedy is provided, the inherent power of the High Court may be invoked to ensure that the grievances of the aggrieved individual are effectively redressed. Referring the judgment of ***Akankha Arora Vs. Tanaya Maben, 2024 SCC Online SC 3688*** he contended that the application under section 482 of the Code is completely maintainable and the High Court in such cases has the option to treat the application under section 482 as an application under section 397/401 of the Code and address the issue without considering that to be a bar or a fitter on the availability of the remedy.

8. He further submits that the object of the DV Act clearly suggest that the same was enacted to meet the exigency and to ensure and to provide for the remedies for the victims of the domestic violence. Therefore, even when two views are possible, the interpretation which advances the cause of the victim in a special enactment has to be adhered. He further submits that in



any event the husband/opposite party cannot claim prejudice in the case, if it is taken by learned MM, Calcutta as he has not even pleaded the hardship which may be caused to him, if such application is permitted to be taken up by the Court below. He further submits that from the pleadings made in the application under section 12 of the DV Act, it is clear that the petitioner has clearly dealt with the jurisdiction of the trial court in her pleading. Moreover various documents filed on behalf of the petitioner suggest that she ordinarily resides at the address tendered in the cause title of the application under section 12 of the Act. He further submits that the resident certificate issued by the local councillor in favour of the petitioner along with copies of the Aadhar Card, Voter I Card, Driving License and Ration Card of the petitioners have also been enclosed. It has been further submitted on her behalf that postal envelopes containing court papers were refused at Medinipur address and was subsequently delivered at 15 Imad Ali Lane, Kol-16, where the petitioner resides. The Domestic Incident Report and the charge sheet also refer to the address where she is ordinarily residing. There is no reason to disbelieve the protection officer who has been entrusted with the position, which has been created especially for the administration and effective implantation of the DV Act.

**9.** Furthermore, the charge sheet filed in the proceeding under section 498A of the IPC would reflect that her place of residence is within Taltala P.S. Similarly the letters sent to the petitioner by the opposite party no.1 for serving notice upon her in connection with Criminal Revision no. 128 of 2023 was also served upon the present petitioner by the postal department at the address mentioned in the cause title and not any other address,



which leaves no room of doubt to conclusively held that at least she resides there temporarily. All the aforesaid three different documents which are all endorsed by public servants would show that she is residing within the jurisdiction of learned MM, Calcutta (Presently JM, Calcutta).

**10.** His further contention is other documents which includes the court records and address proof of her family members, which trace back to more than a decade from the date of the filing of the application, under DV Act would also suggest that all her relatives are residents of Calcutta. It was further argued that even otherwise without any proof of address, a lady is entitled to take refuge at her paternal place, which would also have jurisdiction not only to treat the proceeding under DV Act but also proceeding under 498A of the Indian Penal Code and in this context he relied upon the judgment of **Rupali Devi Vs. State of UP and others, (2019) 5 SCC 384.**

**11.** In the instant case learned Appellate court was not required to enter into nitty-grities and hold a mini trial at this stage, when an application for maintainability is taken up for hearing and more so when a well-reasoned order considering all aspects was already passed by the trial court. It is trite law that a substitution of view by the learned Appellate Court is impermissible unless their existed cogent and overwhelming circumstances warranting such interference. In the instant case no cogent or overwhelming circumstances have been cited. Moreover, disbelieving a protection officer by the learned Sessions Court seems to be contrary to the age old tradition. He also submits that merely because an Aadhar Card was issued contemporaneously with the lodgement of the FIR, although prior to the



lodgement of the proceeding under the DV Act, does not suggest any foul play and therefore, the order impugned is not sustainable in the eye of law.

**12.** Mr. Anupam Kr. Bhattacharya learned counsel appearing on behalf of the opposite party in support of the order passed by the court below argued that the petitioner while staying at her paternal house which is within the district of Purba Medinipur had made the complaint and in paragraph 9 of the said Application there is no whisper as to the residence either temporary or permanent within Taltala P.S. and for the purpose of making the complain, the petitioner set forth the alleged address at Taltala, Kolkata. The complainant failed to show that any cause of action arose within that police station. He further contended that though petitioner relied upon an agreement dated 2<sup>nd</sup> February, 2021 such agreement was for limited period and it has also been expired in the meantime. The letter of complaint dated 12.03.2020 and the agreement for limited period at the Kolkata address vide agreement dated 02.02.2021, clearly suggests that the petitioner never resided at Taltala P.S. on 12.03.2020 or the date of registration dated 17.03.2020. He further argued that the petitioner relied upon an Aadhar card, which bears the date of issue as 17.03.2020 and it was used for the purpose of filing the application under section 12 of the DV Act, but such document was created on the date of registering the FIR i.e. on 17.03.2020. It is also absurd that the agreement was entered on 02.02.2021 but the ward councillor had issued residential certificate on 30.10.2019 and accordingly such documents is also fraudulent. A councillor cannot give any residential certificate to anyone without examining the document(s) of such person but in this case the ward councillor gave the residence certificate by



way of fraudulent practice. In fact the address of the petitioner showing at Taltala Police Station area is fleeing address and thereafter he procured the Aadhar Card dated 17.03.2020 and after filing of the application under section 12 of DV Act, the petitioner procured the agreement for leave and license on 02.02.2021 only for the purpose of D.V. Act application to attract Kolkata Jurisdiction. The Opposite party herein in his supplementary affidavit has also annexed documents which goes to show that the petitioner is the voter of Santipur Assembly constituency within district Purba Medinipur. Therefore, it can be safely presumed that the petitioner is the resident and voter within the district of Purba Mediniupur

**13.** He further submits that since the proceeding under section 12 of the Act is civil in nature, the appellate court can consider the subsequent documents under the provision of order XLI rule 27 of CPC, but not by way of Revision under section 482 of Cr.P.C. Referring several authoritative decisions passed by courts regarding the scope and consideration of Application under section 12 of the DV Act, he further submits that the application under the said section is a civil litigation and thus it must fall within the civil side jurisdiction which obviously come within the ambit of Article 227 of the Constitution of India and in the present case the nature of relief is civil and therefore revisional application may be preferred within the civil side or it may be preferred against the impugned judgment under Article 227 of the Constitution of India but not within the scope of section 482 of the Code of Criminal procedure.

**14.** In this context he relied upon the judgment of ***P. Pathmanathan and others Vs. V Monica and another, 2021 SCC Online Mad 8731*** and





contended that proceeding under section 12 of DV Act is absolutely civil in nature and remedy is within the four corners of the civil side. He also relied upon the judgment of Delhi High court passed in ***Sarad Kumar Pandey Vs. Mamta Pandey, 2010 DMC 600 (Delhi)*** and contended since the address shown by the petitioner is fleeing address, it cannot be called as temporary residence of the petitioner. Said address also is not a continuing residence from the alleged date of acquiring residence till filing the application under section 12 of the Act and for which the agreement for fleeing residence was executed on 02.02.2021 for a limited period of 11 months. Therefore the judgment passed by Appellate court below are proper to the perspective of the case of the petitioner and does not call for interference by this court. Accordingly he prayed for dismissal of the instant application.

**15.** Therefore the issues which involves in the present context for determination by this Court are

- (a) Whether the instant application under section 482 Cr.P.C. is maintainable against the judgment and order passed by the Appellate court/Court below by which he directed to return the application filed under section 12 of DV Act to the petitioner for presenting the same before appropriate forum on the ground of territoriality principle of jurisdiction
- (b) Whether the learned CMM, Calcutta has the jurisdiction under section 27 of the DV Act to deal with the Application under section 12/23 of the DV Act.



**16.** Since learned counsel for the opposite party/Respondent raised preliminary objection contending that the order passed by the Session Judge in connection with Appeal under section 29 of the Act cannot be challenged before this Bench under section 482 of the Code, let such question be taken up for consideration at the outset.

**17.** It is true that in view of judgment passed by Madras High Court, Allahabad High Court and some other High Courts with the observation that proceeding under section 12 of DV Act are not strictly criminal, so they should be challenged under Article 227 of the Constitution of India and not under section 482 of Cr.P.C., there were conflict of judicial decisions as to whether challenge before High Court against an order passed by the Appellate Court against order of Magistrate would be dealt with under section 227 of the Constitution of India or under section 482 of Cr.P.C.

**18.** In the case of ***Sourabh Kumar Tripathi Vs. Vidhi Rawal*** reported in **2025 SCC Online SC 1158** the question which has been dealt with by the Apex court was whether the inherent jurisdiction of the High Court under section 482 Cr.P.C. can be exercised to quash the proceedings arising out of an Application under section 12(1) of the DV Act, though in that judgment Court has not dealt with other legal proceedings in which reliefs under section 18 to 22 are sought in the courts referred to in section 26 of the DV Act.

**19.** In this context Supreme Court also held that there is no doubt that notwithstanding the penal provision in the form of section 31 and 33 of Chapter V, the proceedings before the Magistrate under the DV Act 2005 are predominantly of a civil nature, however, in para 31 and 32 of the said



judgment the Supreme Court has set at rest the dispute and has clearly laid down the law.

**31.** *There are two parts of Section 482. Both parts save the inherent powers of the High Court. The first part is applicable where the power is exercised to make such orders as may be necessary to give effect to any order under ‘this Code’. When a notice is issued on an application under Section 12(1), the learned Magistrate does not pass any order under the CrPC. When orders granting any of the reliefs under Sections 18 to 23 are passed, the orders of the learned Magistrate are not under the CrPC. Therefore, the first part of Section 482 cannot apply to proceedings under Section 12(1) of the DV Act, 2005.*

**32.** *The second part of Section 482 saves the inherent power of the High Court to prevent the abuse of the process of any Court or otherwise to secure the ends of justice. Therefore, in a given case where a learned Magistrate is dealing with an application under Section 12(1), the High Court can exercise the power under the second part of Section 482 to prevent abuse of the process of any Court or to secure the ends of justice. Hence, the High Court can exercise jurisdiction under Section 482 of the CrPC to quash proceedings of an application under Section 12(1) or orders passed in accordance with Sections 18 to 23 of the DV Act, 2005.*

**20.** Therefore, from the aforesaid decision it is clear, when the Magistrate grants any of the specific relief under section 18 to 23, the orders of the Magistrate are not under the Cr.P.C. and therefore the first of part of section 482 cannot apply to proceedings under section 12 (1) of the DV Act. However since the second part of section 482 save the inherent power of the High Court to prevent the abuse of the process of any court or otherwise to secure the ends of justice, the High Court can exercise the power under the second part of section 482 to prevent the abuse of the process of any court or to secure the ends of justice.



**21.** In the instant case admittedly challenge is not against any order granting or refusing any relief under section 18 to 23 of the D.V. Act but by the order impugned, the court below directed return of Application for presenting before appropriate forum, which is definitely not an interlocutory order. Even in a civil proceeding against an order of return of plaint under order VII rule 10 appeal lies. Therefore, by no stretch of imagination the order impugned can be called as interlocutory order. In this context it is also important to note that the expression “interlocutory order” has not been defined in the Code. In ***Amar Nath Vs. State of Haryana*** reported in **(1997) 4 SCC 137** it has been laid down that the word “interlocutory” merely denotes order of a purely interim or temporary nature, which do not decide or touch the important rights or the liabilities of the parties. Any order which substantially affects the right of the accused or decides certain rights of the parties cannot be said to be an interlocutory order so as to bar a revision against that order.

**22.** In ***Madhu Limai Vs. State of Maharashtra***, **(1997) 4 SCC 551** It was held by the Supreme Court that “interlocutory order cannot be equated as invariably being converse of final order: An order passed during the course of a proceeding may not be final but, yet it may not be an interlocutory order, pure and simple. Same kinds of order may fall in between two which must be taken to be an order of the type falling in the middle course. The bar of section 397(2) is not meant to be attracted to such kinds of orders. An order rejecting the plea of the accused on a point, which when accepted, will conclude the particular proceeding, is an order of this kind not being an



interlocutory order within the meaning of section 397(2) of the Code of Criminal Procedure.”

**23.** In **Sourabh Kuamr Tripathi case** (Supra) also the Supreme Court has clearly observed in para 37 that there are decisions of the High Court taking a view that the jurisdiction under section 482 of the Cr.P.C. is not available to quash proceeding of an application under section 12(1) of D.V. Act 2005. The decisions are primarily based on the premise that proceeding under section 12(1) are predominantly of a civil nature. The said view is not correct for the reasons stated in the judgment.

**24.** The second part of section 482 deals with the cases to prevent ‘*abuse of the process of the court*’ and in cases ‘*or otherwise to secure the ends of justice*’. ‘Process’ is a general word meaning in effect anything done by the court. “*Abusing the process of the court*” is a term generally applied to a proceeding which is wanting in *bonafides* and is frivolous vexious or oppressive. Therefore while exercising power under section 482, it is for the High Court to take into consideration any special feature which appears in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. Similarly by using the words ‘*or otherwise to secure the ends of justice*’ the legislature intended to use the terminology in an unfathomable limits. It is neither circumscribed by any information nor can it be interpreted in a limited manner. To secure the ends of justice is much more than to decide case on legal points. The non-obstinate clause further makes it clear that the words ‘*otherwise to secure the ends of justice*’ are wide enough to justify interference with an improper order in appropriate cases.



**25.** Since in the instant case, the question which has been dealt herein by the court below as to the maintainability of the Application under section 12 of the D.V. Act before the said Trial court is on the ground of territoriality principle of jurisdiction, I am of the firm view that the order impugned attracts the second part of section 482 of the Cr.P.C. and therefore instant application under section 482 of the Code against the impugned order is maintainable.

**26.** Now let me consider the other aspect of the matter i.e. the legality and validity of the order impugned. While the petitioner agitated before the Trial court in support of it's jurisdiction that after being allegedly driven away from her matrimonial home she has taken shelter at a rented accommodation within Taltala PS, Kolkata as many of his near relatives reside in Kolkata and wherefrom she has also filed criminal proceeding under section 498A IPC and in support of her temporary stay she has placed certain documents, which includes her Aadhar Card, leave and license agreement, residence certificate and most importantly she claimed that she has even received notice of other litigations from the said address, the contention of the opposite party in contrast is that said address is fleeing address and the documents have been created afterwards for the purpose of said two proceedings and Aadhar Card was also issued on the same date of lodging FIR.

**27.** The place of trial of application under the Domestic Violence Act is regulated by section 27 of the Act. On discernment of section 27, it is clear that the judicial Magistrate of first class in whose local limits, any of the



following things exists, shall be competent to grant protection and other orders:-

- (a) Where the aggrieved person permanently resides; or
- (b) Where the aggrieved person temporarily resides; or
- (c) Where the aggrieved person carries on business; or
- (d) Where the aggrieved person is employed; or
- (e) Where the respondent resides; or
- (f) Where the respondent is employed ;or
- (g) Where the cause of action has arisen.

**28.** Therefore a plain reading of the above provision makes it clear that the petition under DV Act inter alia can be filed in a court where the person aggrieved permanently or temporarily resides or where the cause of action has arisen. In the instant case the objection raised by the petitioner is mainly on the ground that the leave and license agreement which has been filed by the petitioner in support of her temporary residence is dated 02.02.2021 whereas the Application under section 12 of the DV Act was filed on 12.03.2020 and the residential certificate was issued prior to her licence agreement and the only document i.e. the Aadhar Card which has been issued allegedly prior to filing of the proceeding under the DV Act has also been made to create a jurisdiction which is evident from the fact that it was obtained on the date of lodging FIR under section 498A of the IPC. Opposite party's further contentions is that petitioner never resided at the given address at the time of filing of the Application under section 12. Therefore the question is what place can be considered as "temporary residence" within the meaning of section 27(1) (a) of the Act. The question



has been dealt with by Delhi High Court in **Sarod Kumar Pandey Vs.**

**Mamta Pandey, 2010 (118) DRJ 625** wherein it was observed.

*“9. All legislative enactments on matrimonial disputes or custody matters make ordinary residence or residence or the place where parties lived together or the place of cause of action as a ground for invocation jurisdiction of the Court. Domestic Violence Act is the first Act where a temporary residence of the aggrieved persons has also been made a ground for invoking the jurisdiction of court; The expression ‘residence’ means ‘to make abode’-a place for dwelling. Normally place for dwelling is made with an intention to live there for considerable time or to settle there. It is a place where a person has a home. In Webster Dictionary, the residence means to dwell for length of time. The words ‘dwelling place’ or abode are synonyms. A temporary residence, therefore, must be a temporary dwelling place of the person who has for the time being decided to make the place as his home. Although he may not have decided to reside there permanently or for a considerable length of time but for the time being, this must be place of her residence and this cannot be considered a place where the person has gone on a casual visit, or a fleeing visit for change of climate or simply for the purpose of filing case against another persons.”*

**29.** In the light of said judgment the temporary residence as envisaged under the Act is such residence where an aggrieved person compelled to take shelter in view of domestic violence perpetrated on her or she either been turned out of the matrimonial home or has to leave the matrimonial home. Of course the temporary residence does not include residence in a lodge or hotel or an inn or residence at a place only for the purpose of filing a domestic violence case, but the temporary residence must also be a continuing residence from the date of acquiring residence till the Application under section 12 disposed of and it must not be a fleeing residence where a woman comes only for the purpose of contesting the case and otherwise does not reside there.

**30.** In the instant case the document which has been relied by the petitioner and also considering the fact that the petitioner had received court notices from the Taltala Address it does not indicate that it is not her





continuing residence nor there is anything to suggest that the petitioner comes to that residence only for the purpose of contesting the said cases and otherwise does not reside therein.

**31.** Apart from what has been discussed above, the proceeding under section 12 of the DV Act can also be initiated under section 27(1)(c), where the cause of action has arisen. The expression cause of action does not refer to any particular fact or facts and it really means the fact or facts which give a person a right to judicial redress or relief against the adversary. It also refers to a situation or state of facts which would entitle a party to sustain action and give him or her the right to seek a judicial remedy in his or her behalf. Cause of action may arise in different way i.e. failure to perform legal obligation to do or refrain from performing it, unlawful violation or invasion of right etc. Therefore, cause of action embraces those facts which entitles one person to obtain a remedy from another person. It is to be mentioned in this context that unless there is any domestic violence within the meaning of section 3, there cannot be any cause of action for initiating any proceeding under the Act.

**32.** Section 3 of the domestic violence Act is quoted below for the sake of discussion

*“3. Definition of domestic violence.—For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it—*

*(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or*

*(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or*

*(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or*



(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

*Explanation I.—For the purposes of this section,—*

(i) “physical abuse” means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

(ii) “sexual abuse” includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

(iii) “verbal and emotional abuse” includes—

(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and

(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested;

(iv) “economic abuse” includes—

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, house hold necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared house hold and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

*Explanation II.—For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes “domestic violence” under this section, the overall facts and circumstances of the case shall be taken into consideration.*

**33.** The petitioner stated in her application in para 10 that the respondent no. 1 had married again and inspite of having sufficient income the respondent no. 1 had not spent a single money to the petitioner and his child and as such she and her child are completely dependent upon her aged ailing father and therefore in para 11 she submitted that unless and until the petitioners/wife will get proper maintenance, protection and residence order from the trial court she will be highly prejudiced

**34.** In view of aforesaid averments made in the Application under section 12 of DV Act, it is clear that petitioner herein/wife has alleged that she is



living in penury and suffering from economic deprivation and is interalia entitled to monetary relief from petitioner no. 1/ husband, who according to petitioner has sufficient income of his own. The aforesaid allegation per se discloses a case of “economic abuse” under section 3 of the Act, which includes “domestic violence”. “Economic abuse” *interalia* includes deprivation of financial or economic resources to which an aggrieved person is entitled to under the law or custom and such claim is a continuing one which continues from day to day. It is settled law that continuity of joint residence in a shared house hold or domestic relationship inter se is not a *sine qua non* for the perpetration of domestic violence to an aggrieved person in the form “economic abuse” under the Act.

**35. In Prabin Kumar Ghosh & others Vs. Jharna Ghosh and another, 2016 (2) Cal.L.J 154.** a co-ordinate Bench of this Court had the occasion to consider the question as to whether a divorced wife is entitled to claim relief under section 12 of the DV Act for the reason that after divorce, the wife had no occasion to live with her husband in the shared household and there was no scopes of domestic violence after divorce. The court held:-

*“18. If economic abuse is evident in respect of an aggrieved person, who was in a domestic relationship and in the event, such economic abuse continues from day to day, the aggrieved person, in my considered opinion, would be entitled to institute proceeding under section 12 of the Act of 2005 for necessary relief”*

**36.** Therefore if the aforesaid definition of “*economic abuse*” is judged in the context of averments made in the application filed by the petitioner under section 12 of the D.V. Act, it is clear that the petitioners application involves continuous/recurrent cause of action and as such, even if it is taken for granted that the petitioners other documents in support of



temporary evidence was issued subsequent to filing of the case under the DV Act, even then the filing court i.e. 11<sup>th</sup> MM Court has the jurisdiction to entertain the petitioners Application since continuous cause of action has arisen within the jurisdiction of M.M. Court. Furthermore though Adhar card is not a document of citizenship but it definitely indicative of the present address of a person issued by neutral agency and merely because it was reissued co-incidentally on the date of lodging FIR by the petitioner, it cannot be said that such document cannot be relied, in support of petitioners claim of temporary residence.

**37.** In view of aforesaid discussion I find that the order impugned passed by the court below dated 22.08.2022 is based on perverse finding and therefore, liable to be set aside.

**38. CRR 3472 of 2022 is allowed.**

**39.** The impugned order dated 22.08.2022 is hereby set aside and the order passed by learned MM 11<sup>th</sup> Court, Calcutta in connection with MISCN Case No. 23 of 2020 dated 14.07.2022 is hereby affirmed.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

**(DR. AJOY KUMAR MUKHERJEE, J.)**