IN THE HIGH COURT AT CALCUTTA

CRIMINAL REVISIONAL JURISDICTION

APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRR 544 OF 2024

MADHUMANGAL BISWAS

VS.

SIMA BISWAS

For the Petitioner	**:**	**Mr. Sumanta Das,Adv.**
For the Opposite Party	**:**	**Ms. Karabi Roy, Adv.**
Heard On	**:**	**14.10.2026**
Judgement on	**:**	**14.10.2026**
Uploaded on	**:**	**14.10.2026**

CHAITALI CHATTERJEE DAS, J.:-

1. The revision application has been filed against the judgement and order of affirmation dated 12.12.2023 passed by the learned District and Sessions Judge, Nadia in criminal appeal no. 4 of 2023, dismissing the appeal preferred by the petitioner affirming the order dated 15.11.2022 passed by the learned Judicial Magistrate, 5th Court, Krishnanagar, Nadia.

Factual matrix of the case

2. It is the case of the petitioner that an application under Section 12 of the PWDV Act was filed by the opposite party against the petitioner with an

allegation that from the inception of the marriage, she was pressurised for bringing more money from her parental house and due to non- fulfilment of such demand, she was subjected to physical and mental torture. It was for the unbearable torture opposite party was compelled to lodge diary and accordingly the case under Section 498A, IPC started against the petitioner and after that was driven out with her younger daughter from her in law's house after being assaulted. Furthermore the husband is a Ration Dealer at Paikpara and earns ₹80,000 per month but despite such handsome amount of income the opposite party refused to be maintained with her minor child by the petitioner and he never provided any maintenance to them. In the said proceeding, the husband entered appearance and disclose that he was a patient of chronic hepatitis with seasonal fever with Coryza. In addition he suffers from several ailments for which he had to spend huge amount of money. It was his stand that the wife is a cantankerous lady and used to misbehave with the petitioner and entire allegations are false and concocted. He is ready to obey the order of the court and wants to accommodate the opposite party in a separate rented accommodation and submitted that he earns ₹15,000 per month from his business.

3. The learned Magistrate after hearing vide order dated 15.11.2022, directed the opposite party to stay at their shared household. The husband was directed to pay an amount of ₹5,500 per month to the wife and ₹6,500 per month to her daughter within 10th day of each subsequent English calendar month from the date of filing of the case.

Being aggrieved by the order dated 15.11.2022, the petitioner preferred an appeal before the learned Sessions Judge, Krishnanagar and the appeal was heard by the learned Sessions Judge and on 12.12.2023 dismissed the appeal.

Submissions

4. The learned advocate representing the petitioner submits that both the learned court failed to take into consideration the various ailments for which the petitioner suffers severely and had to spend a major part of his income to such treatment. It was also not considered that the application under Section 12 of the Domestic Violence Act is not maintainable as no evidence was adduced by the parties.

5. The learned advocate representing the opposite party submits that since the petitioner has failed and neglected to comply with the order passed by the court an execution case has been filed being 178 of 2023, claiming the amount of ₹96,000 at the rate of Rs 12,000/- per month. The previous due for the period from 30.7.2023 to 29.3.2024 was Rs. 24,000/- and further from dues for the period from 30.3.2024 to 29.8.2024, was Rs 12,000/- so total due was of ₹1, 32, 000/- out of which Rs 1,03,000/- has been paid up to 3.6.2026 and ₹29,000 is still lying due and payable. It is further submitted that no payment has been made on 1.7.2026 and warrant of arrest has been issued .Another execution case being 141/20 was filed for the period 30.4.2025 to 29.12.2025, for an amount of ₹96,000 out of which 59,000 has been paid leaving an amount due of ₹37,000. Last two dates i.e. 3.7.2026 and 18.9.2026, no payment had been made and W/A has been

issued, and the next date is fixed on 6.1.2027. Apart from these claims maintenance from 30.12.2025 to 29.8.2026 is still due of an amount of ₹96,000, though no Execution case is filed for this period till now.

6. In course of hearing it was found that there are differences of the amount which has been paid as of now and direction was given to both the parties to submit their respective charts to assist the Court to find out as to the exact outstanding amount.

On behalf of opposite party/ wife, the chart has been filed, but on behalf of the petitioner/ husband, only the receipts are filed with a note that total paid amount is ₹8,35,000. The contention of the learned advocate of the petitioner was that the order passed by the learned Magistrate was not considering the evidences to be adduced before the court, and without giving him any opportunity to prove his case.

Analysis

7. The marriage between the parties were solemnised on 11.12.1991 as per the Hindu rites and customs. The order of the learned Magistrate by allowing the application under section 12 of the PWDV Act, 2005 prohibited the husband from committing any act of violence upon the wife and aiding or abetting in commission of any such act of violence. The wife was also directed to stay at the shared household. From the fact and circumstances of the case it is evident that no direction was passed to the parties to file their affidavit of assets and liabilities in consonants with the judgement passed in ***Rajnesh versus Neha & Ors. reported in***

MANU/SC/0833/2020. The Learned Magistrate passed the order on contest and finally disposed of the proceeding but only on the basis of documents made in the petition as well as in the written objection. It is a fact that the burden of proving the income being special knowledge rest upon the husband, but in absence of any document placed by the parties, the court passed the order directing the petitioner to pay the maintenance without ascertaining the actual income of the husband.

8. This revisional application was filed in the year 2024 the opposite party has not yet been allowed to enjoy the shared household as directed by the concerned court. It goes without saying that the learned Appellate Court failed to consider that aspect of the matter while affirming the judgement of the Court of Learned Magistrate that it is mandatory to submit the Affidavit of Assets and Liabilities by the parties in respect of any proceeding filed claiming maintenance in order to assess the actual income of the parties.

Conclusions

9. Accordingly this revisional application stands allowed in part. The judgement and order passed by the Learned Appellate Court as well as the judgement and order passed by the Learned Magistrate is hereby set aside.

10. Both the parties are directed to submit their Affidavit of Assets and Liabilities before the Learned Court of Magistrate on the date to be fixed by the Learned Magistrate. The Learned Magistrate is directed to hear the case afresh on the basis of the Affidavit of Assets and Liabilities.

11. The petitioner is directed to continue to pay the amount of Rs. 11,000/- to the opposite party and the daughter till such final assessment is decided by the Learned Magistrate. The petitioner is directed to pay the arrear amount in 6 equal instalments till the arrear is exhausted. In addition the petitioner is directed to pay a further amount of Rs 5000/- towards the monthly rent to the petitioner with effect from this date as an alternative arrangement for shared household.

12. It is made clear that the opposite party is given liberty to proceed with the execution in the event the petitioner failed and neglected to comply with this direction.

13. All other connected applications, if any, hereby stand disposed of.

14. Urgent Photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

[CHAITALI CHATTERJEE (DAS), J.]

High Court Calcutta