



**THE HIGH COURT OF SIKKIM AT GANGTOK**  
(Civil Extra Ordinary Jurisdiction)

DATED : 13.09.2013

**CORAM**

**HON'BLE THE CHIEF JUSTICE  
MR. JUSTICE PIUS C. KURI AKOSE**

W.P. (Crl.) No. 02 of 2013

Sh. Samten Tshering Bhutia,  
S/O Late Tshering Dorjee Bhutia,  
R/o Nazitam, P.O. – Sang,  
P.S. Singtam,  
East Sikkim.

... **Petitioner.**

**- versus -**

1. Smt. Passang Bhutia,  
W/o Sh. Samten Tshering Bhutia,  
R/O Bhutia Gaon,  
Metro Point, Tadong,  
Gangtok, East Sikkim.
2. Miss Tshering Chomu Bhutia,  
D/o Sh. Samten Tshering Bhutia,  
R/o Bhutia Gaon,  
Metro Point, Tadong,  
Gangtok, East Sikkim.
3. Miss Tshering Lhamu Bhutia,  
D/o Sh. Samten Tshering Bhutia,  
R/o Bhutia Gaon,  
Metro Point, Tadong,  
Gangtok, East Sikkim.



4. Miss Tshering Ongmu Bhutia,  
D/o Sh. Samten Tshering Bhutia,  
R/o Bhutia Gaon,  
Metro Point, Tadong,  
Gangtok, East Sikkim.
5. State of Sikkim,  
Through  
the Chief Secretary,  
Government of Sikkim,  
Gangtok, Sikkim.

... **Respondents.**

For Petitioner : M/s. Eklovyia Rai Nagpal and Rahul Rathi,  
Advocates.

For Respondents : M/s. B. Sharma, Sr. Advocate with B. N.  
Sharma, Advocate for Respondents No. 1 to 4.

M/s. J. B. Pradhan, Public Prosecutor with S. K.  
Chettri, Asstt. Public Prosecutor for Respondent  
No.5.

## **ORDER ( O R A L )**

***Pius, CJ***

Under challenge in this writ petition filed under Article 226 of the Constitution of India is Annexure-P1, Order passed by the learned Judge, Family Court, East and North Sikkim at Gangtok.

2. The petitioner, Sri Samten Tshering Bhutia, was the sole respondent in Annexure-P2, Petition submitted by respondents no. 1,



2, 3 and 4 before the Family Court under Section 125 of the Cr.P.C.

The prayers which the respondent nos. 1, 2, 3 and 4 made in

Annexure-P2, Petition, are only the following: -

- a. To pay a cost of Rs.10,000/- (Ten thousand) per month by way of interim measure so that petitioners can peruse the case.
- b. To pay at least half of the net salary i.e. Rs.16,000/- (Sixteen Thousand) per month as maintenance allowance to the petitioners and the same may be passed after hearing the parties.
- c. The petitioner No.4 being unmarried and unemployed daughter she may be given extra amount of Rs.10,000/- (Ten thousand) maintenance cost apart from 50% salary as claimed above.
- d. Direct the Opposite Party to return all the documents including educational testimonials and Certificate of Identification of the Petitioner No.4.

3. The Annexure-P2, Petition stood posted before the Family Court, East and North Sikkim at Gangtok on 05.08.2013 for appearance of the petitioner, the sole respondent. On that day, the respondent nos. 1, 2, 3 and 4 (the petitioners in Annexure-P1) and the present petitioner were present in person. The petitioner is aggrieved by Annexure-P1, Order which was passed by the Family Court on 05.08.2013. Under Annexure-P1, learned Family Court has passed a residence order as contemplated under Section 19 of the Protection of Women from Domestic Violence Act, 2005 (in short, D.V. Act) and has also directed the Officer In-charge of the Police Station concerned to



ensure the safety of the petitioners while they are occupying the household in respect of which the residence order has been given.

4. The ground which is prominently raised in the writ petition is that Annexure-P1 is *per se* bad as in Annexure-P2, application, there is no prayer for a residence order under Section 19 of the D.V. Act. It is urged that the Court below has passed the Annexure-P1, Order even without giving an opportunity to the petitioner to defend an application by the respondents for relief under Section 19 of the D.V. Act. It is urged that there was no application either written or even oral from the part of the respondents. It is urged that the learned Judge on the fateful date “informed” the petitioners (respondents herein) that “they may also avail remedies under the Protection of Women from Domestic Violence Act, 2005”. After conveying the information to the respondents, the learned Judge has hurriedly granted relief even without bothering to find whether the respondents are inclined to act on the basis of the information conveyed by the learned Judge.

5. Mr. Eklovyai Rai Nagpal, learned counsel for the petitioner would address me on the basis of the grounds raised in the memorandum of the writ petition and submit that the impugned order Annexure-P1 cannot stand judicial scrutiny even for a moment. The



order is so wholly unreasonable that the same is liable to be corrected under the supervisory jurisdiction of this Court if not under Article 226.

6. Mr. B. Sharma, learned Senior Counsel for the respondents would defend Annexure-P1. He drew my attention to Section 26 of the D.V. Act and submitted that the Family Court has every jurisdiction to pass residence order which is contemplated under Section 19 of the above Act. He also highlighted that the shared household in respect of which the Annexure-P1 is passed by the learned Family Court was, in fact, built jointly by the respondent and the first petitioner. When the first petitioner has two buildings which are built jointly by her and her husband, she has every right to occupy at least one of them along with her daughters who have now been abandoned by their father.

7. Even though the learned Counsel for the petitioner and the learned Senior Counsel for the respondents addressed submissions before me touching the merits of claim of the respondents to maintenance from the petitioner and also to residence right in the building Annexure-P1 shared household. I do not think it necessary for me to take a decision or even to observe one way or the other regarding the merits. I am on complete agreement with Mr. Nagpal, learned Counsel for the petitioner that the fundamental rules of judicial procedure have not been followed by the learned Court below.



Annexure-P2 was the application which the petitioner was called upon to decide on 05.08.2013. The posting of Annexure-P2 was for appearance of the petitioner. The petitioner had not even been served with a copy of Annexure-P2. Annexure-P1 will show that the learned Judge, Family Court only passed a direction to the respondent to serve a copy of Annexure-P2 to the petitioner. While trying proceedings before the Family Court, the learned Judge is competent to grant reliefs which are available to the aggrieved persons under Sections 18, 19, 20, 21 and 22 of the D.V. Act. But I have no doubt in mind that the action on the part of the learned Judge in granting relief to the respondents under Sections 19 of the D.V. Act on the basis of Annexure-P2 was thoroughly irregular. Section 26 of the D.V. Act can be conveniently quoted as follows: -

**“26. Relief in other suits and legal proceedings. –**  
(1) Any relief available under section 18, 19, 20, 21 and 22 may also be sought in any legal proceeding, before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act.

(2) Any relief referred to in sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court.”

**8.** In the instant case, there is nothing on record to indicate that the respondents have sought for a relief under Sections 18, 19, 20, 21 and 22 of the D.V. Act. I find from the materials on record that



the learned Judge informed the respondents no. 1, 2, 3 and 4 of the availability of the remedies under Section 18, 19, 20, 21 and 22 of the D.V. Act. If the respondents wanted to avail the remedies under Sections 18, 19, 20, 21 and 22 of the D. V. Act, they should have sought for the same ideally by filing a written application.

**9.** In the absence of any application from the part of the respondents no. 1, 2, 3 and 4 for relief under Sections 18, 19, 20, 21 and 22 of the D.V. Act, the impugned order cannot be sustained. I set aside the same and remit the matter back to the Family Court, East and North Sikkim at Gangtok.

**10.** It is open to the respondents no. 1, 2, 3 and 4 to make requisite application before the Family Court, East and North Sikkim at Gangtok for getting relief under Sections 18, 19, 20, 21 and 22 of the D.V. Act. If any application is filed by them in that regard, the Court below will expedite the matter and will take a decision on such application at the earliest and at any rate within one month of receiving the application on file. It is needless to mention that the disposal of the application should be in accordance with law after giving an opportunity to the petitioner to resist the application.

**11.** I make it clear that nothing stated in this order should be understood as expression of opinion and the merit of the claims and



contentions of the respondents against the petitioner. If the respondents are desirous to file any application under the D.V. Act, they may do so on or before 19.09.2013 the date to which the Annexure-R2 is being posted. The parties will appear before the Family Court, East and North Sikkim at Gangtok on 19.09.2013.

*Sd/-*

**(Pius C. Kuriakose)**  
**Chief Justice**  
13.09.2013

Approved for reporting : ~~Yes~~ / No.  
Internet : Yes / ~~No~~.

pm