

ITEM NO.40

COURT NO.14

SECTION II-B

**S U P R E M E C O U R T O F I N D I A**  
**RECORD OF PROCEEDINGS**

Petition(s) for Special Leave to Appeal (CrI.) No(s).2600-2601/2016

(Arising out of impugned final judgment and order dated 17-09-2015 in CRR No. 3104/2014 17-09-2015 in CRAN No. 559/2015 26-11-2015 in CRR No. 3104/2014 26-11-2015 in CRAN No. 559/2015 passed by the High Court At Calcutta)

SANGITA SAHA

Petitioner(s)

VERSUS

ABHIJIT SAHA &amp; ORS.

Respondent(s)

Date : 28-01-2019 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE L. NAGESWARA RAO  
HON'BLE MR. JUSTICE M.R. SHAH

For Petitioner(s) Mr. P.S.Datta, Sr. Adv.  
Ms. Anwasha Saha, Adv.  
Mr. Fuzail Ahmad Ayyubi, AOR

For Respondent(s) Mr. Subhasish Bhowmick, AOR  
Mr. Goldy Goyal, Adv.  
Ms. Meera Kaura Patil, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

The petitioner is the wife of the respondent No.1. The respondent Nos.2 and 3 are the Father-in-law and Mother-in-law. Respondent No.4 is the Sister-in-law, who is married. The petitioner filed a case under the Protection of Women from Domestic Violence Act, 2005 seeking right of residence in the share household and for maintenance to herself and her daughter. The

Magistrate dismissed the case filed by the petitioner dated 18.5.2013. The appeal filed by the petitioner was allowed by the District Judge on 23.6.2014 by holding that the petitioner has a right to accommodation in the share household and maintenance of Rs.2,500/- for herself and Rs.4,000/- for the child.

The respondent filed a revision before the High Court, which was allowed. The High Court set aside the order passed by the learned District Judge in the appeal by observing that the petitioner was unable to establish any incident of torture or demand of money or physical violence. In that view of the matter, the High Court was of the opinion that the petitioner was not entitled to any order in her favour. It is pertinent to state that the High Court held that the petitioner was entitled to claim residence in the shared household. But that entitlement is only in case she establishes domestic violence, which she did not.

The learned counsel appearing for the petitioner submitted that the High Court fell in error in adding that the petitioner could not produce any evidence in support of her claim. According to him, the evidence of the petitioner was sufficient to conclude that she was subjected to domestic violence. He also submitted that in any event, the child is entitled for maintenance.

We are in agreement with the finding recorded by the High Court that there is absolutely no evidence to

prove domestic violence. However, we are of the considered opinion that the child has to be paid maintenance at the rate of Rs.4,000/- as was determined by the learned District Judge. The learned counsel for the respondent fairly acceded to the same.

For the aforementioned reasons, we dismiss the Special Leave Petition.

The respondent No.1 is also directed to pay Rs. 4,000/- p.m. as maintenance to the child w.e.f. May, 2013.

Pending application(s), if any, stand disposed of.

(B.Parvathi)  
Court Master

(Kailash Chander)  
Assistant Registrar