

## Amalendu Bikash Saha and Ors Vs Smt. Kalyani Saha and Others

**Court:** Calcutta High Court

**Date of Decision:** July 29, 2011

**Acts Referred:** Protection of Women From Domestic Violence Act, 2005 " Section 12, 18, 19, 20, 23

**Hon'ble Judges:** Syamal Kanti Chakrabarti, J

**Bench:** Single Bench

**Advocate:** Sudipto Mitra, for the Appellant; Rana Mukhopadhyay and Manoj Malhotra, for the Respondent

**Final Decision:** Dismissed

### Judgement

Syamal Kanti Chakrabarti, J.

In the instant revisional application order dated 31.07.2010 passed by the learned Additional Sessions

Judge, 8th Court at Alipore in Criminal Appeal No. 52 of 2010 has been assailed.

2. The Petitioners contend that the opposite party No. 1 Smt. Kalyani Saha filed an application u/s 12 of the Protection of Women from Domestic

Violence Act, 2005 seeking reliefs under Sections 18, 19, 20 and 22 of the said Act along with an application u/s 23 of the said Act for interim

reliefs. On 12.04.2010 the learned Chief Judicial Magistrate at Alipore has passed an order in the said complaint case No. C-2276 of 2007

directing the three Petitioners and the proforma opposite party Nos. 3 and 4 to pay a sum of Rs. 2,000/- per mensem each, i.e., a total sum of Rs.

10,000/- per mensem to the opposite party No. 1 until further order. The learned Court below has also passed an order restraining the opposite

parties including the proforma opposite parties from committing any domestic violence in the nature of threatening and from committing any act

which is derogatory, undignified to the opposite party No. 1 and also directed them not to evict or oust the opposite party No. 1 from the share of

household particularly from two rooms at first floor and two rooms at fourth floor in occupation of opposite party No. 1 at premises No. 91/3C,

Tollygongue Road, P.S. Charu Market, District 24 Parganas.

3. The further contention of these Petitioners is that on receipt of such notice along with copy of the order dated 12.04.2010 which was passed ex

parte, the Petitioners were asked to appear before the learned Court below on 17.04.2010 for filing objection and hearing. Accordingly, they filed

objection and prayed for revocation of the said ex parte order. After hearing both the parties the learned Magistrate has upheld his interim order

by a subsequent order dated 07.05.2010. Thereafter, the Petitioners preferred an appeal u/s 29 of the Act challenging the legality and propriety of

both the aforesaid orders dated 12.04.2010 and 07.05.2010 passed by the learned Magistrate concerned for setting aside the same. But by order

dated 31.07.2010 the learned Additional Sessions Judge, 8th Court at Alipore has dismissed the Criminal Appeal, being No. 52 of 2010

confirming the judgment and orders dated 12.04.2010 and 07.05.2010 passed by the learned Magistrate concerned in Criminal Case No. 2276

of 2010. Being aggrieved by and dissatisfied with such order the Petitioners have now preferred instant revisional application contending, inter alia,

that the learned Appellate Court has failed to consider the fact that a probate case being No. 70 of 2010 is pending and as such the learned

Magistrate has no power to protect the right of residence demarcating any portion of the disputed premises which amounts to usurpation of the

power of Civil Court. The learned Appellate Court has also omitted to consider that the opposite party No. 1 has not prayed for any protection

for possession of any room in her application and as such the reliefs have been granted beyond prayer which is not tenable in law. He has also

failed to consider the provisions of Section 3(iv) of the Act pertaining to "economic abuse" but granted monitory relief u/s 20 of the Act which is

equally untenable. The learned Court has also failed to consider the documents of New Shri Ramkrishna Bakery which clearly spell out the

opposite party No. 1 from the business. The learned Court below has also omitted to consider that the Petitioner No. 1 Amalendu Bikash Saha

has no business. Nevertheless, he has been asked to pay Rs. 2,000/- per mensem to opposite party No. 1 and that there is no such law that the

brothers-in-law are liable to make any payment of maintenance. The Petitioners have also questioned the legality and propriety of granting any

relief in favour of the opposite party to get usufruct of their partnership business after the death of her husband in 1982 by virtue of the partnership

deed executed in 1992 after a lapse of 18 years from the date of execution of the partnership deed which can only be decided by the competent

Civil Court. Under the circumstances they have prayed for setting aside the order dated 31.07.2010 passed by the learned First Appellate Court

in Criminal Appeal No. 52 of 2010.

4. The opposite party No. 1 has opposed the move and contended, inter alia, that she was married to one Ardhendu Bikas Saha on 10th

December, 1980 and since then is occupying three rooms on the fourth floor of the five-storied building at 91/3-C, Tollygongue Road, Kolkata ?

700 033 at that time her matrimonial family comprised of her husband, her mother-in-law Smt. Sushma Bala Saha, her father-in-law Santosh

Kumar Saha, six brothers-in-law and four sisters-in-law. At present she has five brothers-in-law and three sisters-in-law. Her father-in-law used to

run a partnership business under the name and style of Shri Ramkrishna Bakery with his brother Pranotosh Kumar Saha, who is still living in a

separate portion of the aforesaid premises. They had also another partnership business in the name and style of Ellora Bakery, since closed.

Subsequently, the property and the partnership business of the two brothers were partitioned and the said Ramkrishna Bakery was allotted in

favour of Santosh Kumar Saha with 50 per cent ownership of the landed property at premises No. 91/3-C, Tollygongue Circular Road, Kolkata

? 700 033. The said premises is a five-storied building with five rooms in each floor along with bath and bath privy. After one year and 11 months

of her marriage her husband died on 06.11.1982 under mysterious circumstances. Her father-in-law also died on 20.04.1987. Thereafter, at the

instance of her mother-in-law she used to stay with her in her room in the first floor which was adjacent to their Puja room meant for the entire

family and she was entrusted by her mother-in-law to perform all the duties of daily and occasional Pujas but she was neglected and subjected to

various kinds of torture. Her mother-in-law in the meantime died on 01.07.2007. Thereafter, her three brothers-in-law, namely, Purnendu Bikas

Saha, Amalendu Bikas Saha and Hemendra Bikas Saha took away all family jewelry of the mother-in-law of the opposite party No. 1 which were

kept in her Almirah for her daily use on the plea of keeping the same in a bank locker at United Bank of India, Tollygongue Branch standing in the

name of Hemendra Bikas Biswas which was all along been used by her mother-in-law. The opposite party No. 1 was surviving with the expenses

brought to her mother-in-law from their family business. But after her death the said financial assistance was discontinued and thereby she was

deprived from her legitimate share in the family business as well as family property. Her signature was obtained on blank papers by her brothers-

in-law in the name of running their family business and for providing her maintenance allowance which was subsequently denied. Ardhendu Bikas

Saha is an accused in connection with Charu Market P.S. Case No. 99(7)/04 under Sections 306/384/34 IPC and facing the charges that he was

instrumental in causing unnatural death of Nabendu Bikas Saha along with his family members who was in occupation of three rooms in the second

floor of the aforesaid premises. In fact in various ways she has been deprived of her legitimate share in their joint family business and joint family

property for which she was compelled to approach the learned Chief Judicial Magistrate, Alipore for reliefs and entire reliefs as aforesaid. It is

further contended that the revisional application has been filed only by her three brothers-in-law and two others namely, Dibyendu and Sukhendu

Bikas Saha are not contesting the same. Rather they are paying her Rs. 2,000/- per mensem with effect from 12.04.2008 as usual as per above

order. The learned Additional Sessions Judge after careful consideration and scrutiny of all the materials on records has passed the impugned order

which should not be interfered with and there is no merit at all in this revisional application which is liable to be dismissed.

5. From the rival contention of all the parties it appears that the following points need be considered:

a) Whether deceased brother's wife can claim any relief or maintenance as well as share in the joint inherited property from the surviving brothers-

in-law u/s 12 of the Protection of Women from Domestic Violence Act, 2005 to be read with Sections 3(iv), 18, 19 and 20 of the said Act; AND

b) Whether the learned First Revisional Court is justified in passing the impugned order or not.

6. The order of the learned Magistrate was assailed on the grounds that the period of appeal u/s 29 of the Act is 30 days and that period has

expired with effect from the expiry of the order dated 12.04.2010 while the appeal was filed after expiry of the period of limitation on 19.05.2010.

The appeal was also assailed on the grounds that two orders dated 12.04.2010 and 07.05.2010 cannot be clubbed together for preferring single

appeal.

7. So far as first point is concerned the learned First Appellate Court below has observed that interim ex parte order was passed on 12.04.2010

and notice has been served upon the opposite parties through local police station on 16.04.2010. On receipt of such notice all the Defendants

appeared before the learned Chief Judicial Magistrate on 17.04.2010 and filed objection against the interim order on 26.04.2010 itself. But other

three Respondents prayed for time on 17.04.2010 and 26.04.2010 and ultimately filed two objections u/s 25 of the Act on 29.04.2010 and

04.05.2010 which were heard and disposed of on 07.05.2010. He has further scrutinized the technical aspect of the matter and ultimately held that

the word "appeal" used in Section 29 of the Act is elastic and it can enlarge the scope for challenging any order affecting the right of a party which

can be clubbed together in appeal. He has further observed that the last order under challenge was passed on 07.05.2010 which was within the

period of limitation. Since the interim order has been affirmed by the last order the last order can be clubbed with the former one so far as the point

of limitation is concerned u/s 29 of the Act and the Appellant has the right to challenge the substantive order which is affecting his right along with

technical order passed in the same proceeding or case. He has also tried to follow the dictum of the Hon"ble Apex Court which has urged upon

the criminal Appellate Courts to hear the same on merit. Therefore, he is of the opinion that in criminal appeals two orders can be challenged and

since the later is within the prescribed period of limitation the appeal is not affected by marginal crossing of period of limitation or for failure to file

any petition praying for condonation of delay in preferring the appeal.

8. I also hold that the interim order dated 26.04.2010 ultimately has culminated into the final order dated 07.05.2010 and the final order has been

challenged before the learned revisional Court who has been pleased to take into account the date of final order as the starting point of limitation.

In fact, as soon as the final order is passed, the interim order stands merged with such final order and becomes non-entity. Therefore, though both

the interim and the final order were challenged before the revisional Court, in reality the final order only was ipso facto challenged which was very

much within the period of limitation. Therefore, I hold that there is no infirmity in the finding of the learned First Revisional Court on the above

point. Therefore, in the instant case there was no legal necessity for filing any statutory objection praying for condonation of delay. The learned

Court below has rightly accepted such contention which also does not suffer from any infirmity.

9. The maintainability of the application was also assailed before the learned Court below on the grounds that according to Rule 6 Sub-rule (4) and

Rule 7 an application u/s 23 must be supported by affidavit in form No. (iii). The application of the aggrieved person in the instant case was not

supported by any such affidavit which is mandatory. The same also suffers from non-compliance of Section 12 which provides that every

application shall be made in such form and contain such particulars as may be prescribed or as nearly as possible thereto according to Sub-section

(3) of Section 12 of the Act. Much emphasis was made upon the word "shall" used in Rules 6 and 7 and also in Section 12(3) of the Act. While

considering this matter the learned First Revisional Court has accepted a liberal construction of the aforesaid provisions while interpreting a

beneficial legislation like the present one and held that strict compliance of rules and formats prescribed under such rules is not necessary to

consider a case for interim and final order under the present Act and as such the petition u/s 23 of the Act is maintainable. In this connection he has

relied upon the principles laid down by the Hon"ble Apex Court in the case of Saif Uddin ?Vs.- Abdul Ghani Loan, AIR 1980 SC 301 in which it

is observed inter alia by the Hon<sup>ble</sup> Apex Court that ""The fact that the statute uses the word "shall" while laying down a duty is not conclusive on

the question whether it is a mandatory or directory provision. In order to find out the true character of the legislature the Court has to ascertain the

object which the provision of law in question is to subserve and is designed and context for which it is enacted. If the object of law is to be

defeated by non-compliance with it, it is to be regarded as mandatory. But when a provision of law relates to the performance of any public duty

and the invalidation of any act done in disregard of that provision causes serious prejudice to those for whose benefit it is enacted and at the same

time where no control over the performance of the duty, such provision should be treated as a directory one. ? A procedural rule accordingly

should not be construed as mandatory if the defect in the act done in pursuance of it can be cured by permitting appropriate rectification to be

carried out at a subsequent stage unless by according to such permission to rectify the error later on, another rule would be contravened.

Whenever a statute prescribes that a particular act is to be done in a particular manner and also lays down that a failure to comply with the said

requirement lead to a specific consequence, it would be difficult to hold the requirement is not mandatory and the specified consequence should not

follow.

10. In the four-corners of the present act there is no such provision which provides that on account of failure to comply with the technical aspect of

any provision like Rule 7(4) or absence of any affidavit in form No. (iii) certain consequences will follow. Therefore, the learned Court below has

rightly followed the above principle of the Hon<sup>ble</sup> Apex Court which is applicable in the facts and circumstances of this case and I hold that too

much emphasis upon hyper-technical aspect of the format of the application of a deserted widow should be avoided to grant relief for her survival

which was the object of the legislature in enacting this special law for protection of women from domestic violence. Therefore, I hold that there is

no illegality and infirmity in the findings of the learned Revisional Court on this point also.

11. I find from the impugned order that the learned Chief Judicial Magistrate by his order dated 12.04.2010 granted reliefs in respect of a)

Protection of the residents and b) Monetary reliefs to the Petitioner which has been affirmed by the First Revisional Court.

12. So far as the first aspect is concerned it was entertained u/s 23 of the Act. Learned Advocate appearing for the Petitioner also assailed the said

order on three grounds

a) The Petitioner has not prayed for protection of her possession and such relief was granted without any specific prayer;

b) The Direction of the Hon"ble Apex Court in Taruna Batra's case has not been followed; AND

c) Despite pendency of the probate case the learned Chief Judicial Magistrate has usurped the power of the civil Court and opposed the impugned

order.

13. Referring to paragraph 5 of the petition u/s 23 of the Act the Petitioners herein contended that the opposite party No. 1 occupied three rooms

on the fourth floor with her husband but the Court has passed order after allowing her to occupy two rooms on the fourth floor and two rooms on

the first floor. In this connection the explanation given by the aggrieved party in paragraphs 8 and 10 of the petition was relied upon by the learned

Court below. In the said paragraphs the aggrieved party has stated that she was asked by her mother-in-law to sleep with her in her room on the

first floor which was adjacent to the Puja room. It was also noticed that out of the earlier three rooms Ardhendu Bikash Saha has taken away one

room on the fourth floor. There is no averment that the Petitioner is occupying rooms in excess of what were admissible to a co-sharer by way of

succession. There is no denial that there are 25 rooms in the said building and occupation of four rooms, as directed by the learned Court below

out of those 25 rooms, is not in excess of the legitimate claim of the aggrieved party. However, since a probate case is pending such order will be

subject to the result of such probate case and in granting urgent reliefs to the aggrieved woman the learned Court below has neither exceeded its

jurisdiction nor granted anything which is not permissible under the law. While supporting the contention of the learned Trial Judge, the learned

First Revisional Court has carefully considered the direction of the Hon"ble Apex Court in the case of Taruna Batra reported in 2007 (1) JCC 73.

In fact, the Petitioner herein has not come up with any plea that the "shared household" at 91/3-C, Tollygongue Road, Kolkata ? 700 033 is not a

shared house or exclusively belongs to someone else who has acquired right, title and possession thereof over the same personally. The learned

First Revisional Court has rightly decided the point and correctly interpreted the intention of the learned Trial Court to grant such relief giving

protection of the aggrieved woman from unlawful dispossession by using the words ""except in due course of law"". Therefore, aggrieved Petitioners

herein may at any time take steps for vacation or delivery of possession of the excess room by opposite party No. 1 after disposal of the aforesaid

probate case under Act 39 No. 70/10. Such finding also does not suffer from any infirmity which calls for interference by this Hon"ble Court

because neither party will be prejudiced by such order which will obviously abide by the result of the aforesaid probate case filed on the basis of

last will of one Sushma Bala Saha.

14. So far as the grant of monetary relief is concerned the learned Trial Court directed all the Respondents to pay a sum of Rs. 2,000/- each per

month to opposite party No. 1 herein for her maintenance with effect from 12.04.2010. The said order was assailed on the grounds of a) the

learned Court below has not mentioned the provision of Section 3(iv) of the Act pertaining to economic abuse but granted order of monetary relief

u/s 20 of the Act, b) The document of New Shri Ramkrishna Bakery have been relied upon by the learned Court below which has failed to

appreciate and weigh those documents which clearly spell out that Petitioner has no connection with the business of that bakery in any way and c)

Respondent Ardhendu is not running any business and enjoying its property though he was directed to make monthly payment at the rate of Rs.

2,000/- as a co-sharer of the said business and d) There is no law under which the Petitioner is entitled to get maintenance from brothers-in-law.

15. For the purpose of considering these points the object of the Act and following provisions thereof need be placed on record for ready

reference.

16. The Protection of Women from Domestic Violence Act, 2005 has intended to provide for more effective protection of the rights of women

guaranteed under the Constitution where victims of violence of any kind accruing within family and for matters connected therewith or incidental

thereto.

Section 2(a). "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). "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, adoption or are family members

living together as a joint family.

Section 2(g). "domestic violence" has the same meaning as assigned to it in Section 3.

Section 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 ?

3(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.

3(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).

Explanation I.

(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, household necessities

for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment or rental related

to the shared household 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.

17. In the above context the learned Courts below have taken into consideration the question of inheritance of property by opposite party No. 1

from her deceased husband, the fact of her residence at 91/3-C, Tollygongue Road, since her marriage in a portion of their family dwelling house,

the admission of receipt of a sum of Rs. 80,000/- by the Petitioner upon her husband by her father-in-law as per his desire to invest into the same

in two bakery business namely, Sri Ramkrishna Bakery and New Sri Ramkrishna Bakery and admitted position is that the source of both the

business units in the family was derived from same capital from Sri Ramkrishna Bakery. The learned Courts below have also taken into account

that admittedly the opposite party No. 2 was given a share of their family business by way of her maintenance upon implied contract with the family

members which will be run by the Respondents but a portion of the profits of such business would be shared by her regularly. In fact, from the

conduct of two brothers-in-law of opposite party No. 1 i.e., proforma opposite parties 3 and 4 it is evident from record that they are regularly

providing the maintenance allowance from out of the income of the said joint family business and accepted the order of the learned Magistrate. The

trouble began after the death of her husband and precepted after the death of her mother-in-law. The learned Courts below have also taken into

account that their family dispute was settled in Women Grievance Cell of Kolkata Police and opposite party No. 1 was paid Rs. 8,000/- per

mensem as Amalendu Bikash Saha was not paying any thing but others were paying at the rate of Rs. 2,000/- each per mensem. They have also

considered three deeds of partnership of New Ramkrishna Bakery executed on 01.04.1992, 01.04.1993 and 01.04.2004 respectively. It is

observed that as per partnership deed dated 01.04.1992 all the brothers excluding Ardhendu Bikash Saha, who died, have been partners of Sri

Ramkrishna Bakery but all these deeds are silent regarding source of fund or quantum of capital invested by the partners in such business.

18. On 01.04.1993 the partners executed another deed pertaining to New Sri Ramkrishna Bakery whereby and whereunder Hemendu and

Purnendu remained as partners and other partners namely, Dibyendu, Sukhendu, Nabyendu and Amaledu retired. It is admitted by Sukhendu

Bikash Saha in his written objection that funds to start New Sri Ramkrishna Bakery has been taken out from Sri Ramkrishna Bakery. Therefore,

primarily the learned Courts below have accepted the claim of the opposite party No. 1 that the subsequent bakery was started with capital

investment of their family business of Sri Ramkrishna Bakery. On 01.04.2004 the partnership deed of New Sri Ramkrishan Bakery was

reconstituted. In terms of such deed son of Hemendu Bikash Saha has been inducted as partner and the profit of the partnership business was

divided at the rate of 50 per cent in favour of Purnendu Saha, 25 per cent in favour of Hemendu Saha and 25 per cent in favour of Hindon Saha.

The learned Courts below in this way have noticed that the partnership deed of Sri Ramkrishna Bakery is going on changing repeatedly without

any rhyme or reason which is unnatural and indicative of the fact that there is a hidden desire of some partners to deprive the helpless and hopeless

widow. Therefore, the learned Courts below have rightly observed that the opposite party No. 1 has prima facie interest in the business being run

by her brothers-in-law and as such she was granted monetary relief of Rs. 10,000/- per mensem which were originally agreed to by and between

the contending parties and still admitted by two of them.

19. If the object of the Act is visualized it will appear that the legislature has enacted this new piece of legislation to extend single window reliefs to

an "aggrieved person" as defined in Section 2(a) of the Act. There is no denial of the fact that after marriage she had "domestic relation" with her

brothers-in-law residing in the same ancestral house and such domestic relationship has been defined in Section 2(f) of the Act on account of

marriage. From the definition of the "domestic violence", as contemplated in Section 3 of the Act, particularly under the category of "economic

abuse", it appears that where the learned Magistrate is satisfied that the widow has acquired legitimate right of inheritance to movable property

from her deceased husband to be deprived of or threatened to be dispossessed from such existing possession and where the learned Magistrate is

satisfied that such wretched widow having no independent income of her own is deprived of her legitimate share in the joint family business there is

no illegality in such finding and the order is sustainable in law. It has been argued before the learned First Revisional Court that since a probate case

is pending the learned Magistrate cannot usurp power of the Civil Court in deciding the matter himself till disposal of such probate case. The

learned Magistrate has placed reliance upon the report of Smt. Joyeeta Adhikary, Protection Officer, who has recommended for extension of

effective protection to the women being victim of domestic violence. In fact, the learned Trial Court has extended the entire relief for protection of

residence and monetary relief required for sustenance of the widow, regard being had to the apprehension of persisting deprivation prevailing in the

mind of the aggrieved person. Therefore, the learned First Revisional Court has rightly observed that the order of restraint dated 12.04.2010

passed against the brothers-in-law of opposite party No. 1 is justified and warranted from the factual aspects of the present case and there is no

illegality in such finding.

20. u/s 23 of the Act the learned Magistrate is empowered to interim and ex parte orders if he is prima facie satisfied that an application discloses

that the Respondent is committing or has committed an act of domestic violence or there is likelihood that the Respondent may commit an act of

domestic violence in favour of an aggrieved person under Sections 18, 19, 20 and 21 or 22 of the said Act.

21. Such interim order cannot cause any prejudice to the Respondent in view of Section 25 of the Act which is quoted below:

Section 25. Duration and alteration of orders.-(1) A protection order made u/s 18 shall be in force till the aggrieved person applies for discharge.

(2) If the Magistrate, on receipt of an application from the aggrieved person or the Respondent, is satisfied that there is a change in the

circumstances requiring alteration, modification or revocation of any order made under this Act, he may, for reasons to be recorded in writing pass

such order, as he may deem appropriate.

22. In the above context the learned revisional Court has rightly observed that the interim order dated 12.04.2010 is absolute and the

Respondents/Petitioners herein may approach the learned Magistrate for vacating or modification of such order under changed circumstances and

on the basis of the result of the pending probate case.

23. In view of the above facts and circumstances I hold that there is no illegality or infirmity in the order dated 12.04.2010 which has culminated

and merged in the order dated 07.05.2010 passed by the learned Magistrate and affirmed by the learned First Appellate Court. Therefore, I do

not find any merit in this application which is accordingly dismissed. The interim order granted on 08.09.2010 passed by this Hon"ble Court stands

vacated and the amount paid in terms of the said order of this Hon"ble Court will be subject to adjustment against total claim of the opposite party

No. 1.

24. Urgent certified photocopies of this order, if applied for, be supplied to the parties, on compliance of all requisite formalities.