

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CrI.M.C. No. 540/2009

Reserved on: 13th January, 2010
Pronounced on: 25th January, 2010

UMESH SHARMA Petitioner
! Through: Mr. Murari Tiwari, Adv.
Versus
\$ STATE Respondent
^ Through: Mr.C.M.Verma for R-2
* **CORAM:**
HON'BLE MR. JUSTICE V.K. JAIN

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| 1. | Whether the Reporters of local papers
may be allowed to see the judgment? | No |
| 2. | To be referred to the Reporter or not? | Yes |
| 3. | Whether the judgment should be
reported in the Digest? | Yes |

: **V.K. JAIN, J.**

1. This is a petition under Section 482 of the Code of Criminal Procedure challenging the Order of the learned Sessions Judge dated 29th January, 2009, whereby he directed respondent No.2, Shri Satish Chand Sharma, husband of the petitioner-Umesh Sharma to pay rent of Rs.5,000/- per month to her for maintaining an alternative accommodation w.e.f. 7th February, 2009. The petitioner was directed to vacate the shared household within 15 days of receiving the first payment of Rs.5,000/-.

2. A perusal of the Order dated 16th April, 2008, passed by the learned Metropolitan Magistrate, would show that the

petitioner, Smt. Uma Sharma, filed an application under Section 12 of Protection of Woman from Domestic Violence Act, 2005, seeking restraint order against the respondents—Anirudh Sharma, who is her brother-in-law, Lalita Prasad Sharma, who is her father-in-law and Satish Chand Sharma, who is her husband, alleging torture and cruelty with her, besides demand of dowry and ill-treatment. She sought order restraining the respondents from dispossessing her or her son from shared flat bearing No.A-18-C, Second Floor, Janta Flats, Raghubir Nagar, New Delhi.

3. The respondents contested the application, claiming that house No. A-18-C, Second Floor, Janta Flats, Raghubir Nagar, New Delhi is owned by respondent No.2- Lalita Prasad Sharma. The learned Metropolitan Magistrate restrained the respondents from dispossessing the petitioner from the aforesaid house and from disturbing her possession in any manner. The Order of the learned Metropolitan Magistrate was, however, modified by the learned Additional Sessions Judge, relying upon the decision of Hon'ble Supreme Court in **S.R. Batra vs. Taruna Batra** 2007 (3) SCC 169.

4. Though the petitioner claims that property No. A-18-C, Second Floor, Janta Flats, Raghubir Nagar, New Delhi, in which she is presently residing, is owned by her husband, admittedly,

the property stands in the name of her father-in-law, respondent No.2, Lalita Prasad Sharma and not in the name of her husband-Satish Chand Sharma. No material has been placed by the petitioner on record from which it may be inferred that the consideration for purchase of the aforesaid flat was paid by her husband and not by her father-in-law. Since flat in question, admittedly, stands in the name of Respondent No.2-Lalita Prasad Sharma, the onus was upon the petitioner to prove that it was purchased from the funds of her husband-Satish Chand Sharma, in the name of his father Shri Lalita Prasad Sharma. Neither there is any document nor any other material on record to discharge the onus, which was placed upon the petitioner. It is a settled proposition of law, if a person claims that the property, standing in the name of another person, is owned by him and not by the person in whose name it stands, the onus is upon the person making such a claim to substantiate the plea taken by him. In **Vimlaben Ajitbhai Patel vs. Vatslaben Ashokbhai Patel**, 2008 (4) SCC 649, the Hon'ble Supreme Court, inter alia, observed as under:

“It is well-settled that apparent state of affairs shall be taken as the real state of affairs. It is not for an owner of the property to establish that it is his self-acquired property and the onus would be on the one who pleads contra.”

5. In the absence of the petitioner, discharging the onus, which the law places upon her, it cannot be accepted that the flat, in which she is residing, is owned by her husband and not by her father-in-law.

6. In **S.R. Batra vs. Taruna Batra** 2007 (2) SCC (Crl.) 56, the petitioner-wife had, for some time, lived with her husband in the house, owned by her mother-in-law. A learned Single Judge of this Court held that the premises, in which she had resided with her husband, was her matrimonial home and mere change of residence by the husband thereafter would not shift the matrimonial home. It was held by learned Single Judge of this Court that wife was entitled to continue to reside in premises in question, as it was her matrimonial home. The view taken by this Court was, however, not approved by the Hon'ble Supreme Court which, *inter alia*, held that it could not be said to be 'shared household' within the meaning of Section 2(s) of Protection of Women from Domestic Violence Act, 2005. The Hon'ble Supreme Court rejected the contention made on behalf of the wife that definition of 'shared household' includes a household where the person aggrieved lives or at any stage had lived in a domestic relationship. Rejecting the contention, the Hon'ble Supreme Court, *inter alia*, observed as under:

26. If the aforesaid submission is accepted, then it will mean that wherever the husband and wife lived together in the past that property becomes a shared household. It is quite possible that the husband and wife may have lived together in dozens of places e.g. with the husband's father, husband's paternal grandparents, his maternal parents, uncles, aunts, brothers, sisters, nephews, nieces etc. If the interpretation canvassed by the learned Counsel for the respondent is accepted, all these houses of the husband's relatives will be shared households and the wife can well insist in living in the all these houses of her husband's relatives merely because she had stayed with her husband for some time in those houses in the past. Such a view would lead to chaos and would be absurd.

27. It is well settled that any interpretation which leads to absurdity should not be accepted

29. As regards Section 17(1) of the Act, in our opinion the wife is only entitled to claim a right to residence in a shared household, and a shared household would only mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member. The property in question in the present case neither belongs to Amit Batra nor was it taken on rent by him nor is it a joint family property of which the husband Amit Batra is a member, it is the exclusive property of appellant No. 2, mother of Amit Batra. Hence it cannot be called a "shared household".

7. In view of the authoritative pronouncement of the Hon'ble

Supreme Court in the case of **Tarun Batra** (supra), the flat, where she is residing and which is owned by her father-in-law, cannot be said to be shared accommodation and she has no legal right to continue to live in that house, except with the consent of her father-in-law, Shri Lalita Prasad Sharma. Since admittedly, respondent Lalita Prasad Sharma, is not agreeable to the petitioner continuing to live in the flat owned by him, no restraint order against the respondents can be passed in respect of the aforesaid flat.

8. The learned Additional Sessions Judge directed payment of Rs.5,000/- p.m. to the petitioner in lieu of residence. During the course of hearing in this Court, respondent No.2, Satish Chand Sharma, husband of the petitioner, agreed to pay Rs.7,000/- p.m. to the petitioner as against Rs.5,000/- p.m., awarded by the learned Additional Sessions Judge.

9. In view of the above discussions, Respondent No.2, Satish Chand Sharma, shall pay Rs.7,000/- p.m. to the petitioner from the date she vacates Flat No. A-18-C, Second Floor, Janta Flats, Raghubir Nagar, New Delhi and hands over its peaceful and vacant possession to her father-in-law. No direction, however, can be given to the petitioner in these proceedings to vacate the aforesaid flat and the consequence of her not vacating the aforesaid flat would be that she would not get amount of

Rs.7,000/- p.m., directed to be paid to her.

The petition stands disposed of.

(V.K.JAIN)
JUDGE

JANUARY 25, 2010
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