

**CRR-35-2013 (O&M)**

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

**Decided on: January 21, 2015.**

**(1) CRR-35-2013 (O&M).**

**Hema Rawal and another**

**..... Petitioner(s)**

**Versus**

**Prashant Sharma**

**..... Respondent(s)**

**\* \* \***

**PRESENT Mr.R.L.Batta, Sr., Advocate, with  
Mr.Nikhil Batta, Advocate,  
for the petitioners.**

**Mr.P.S.Hundal, Sr., Advocate, with  
Mr.Dinesh Trehan, Advocate,  
for the respondent.**

**\* \* \***

**(2) CRM-M-14633-2013 (O&M).**

**Prashant Sharma**

**..... Petitioner(s)**

**Versus**

**Hema Rawal and another**

**..... Respondent(s)**

**\* \* \***

**CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI**

**PRESENT Mr.P.S.Hundal, Sr., Advocate, with  
Mr.Dinesh Trehan, Advocate,  
for the petitioner.**

**Mr.R.L.Batta, Sr., Advocate, with  
Mr.Nikhil Batta, Advocate,  
for the respondents.**

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**M.M.S. BEDI, J.**

This order will dispose of the above noted two petitions i.e., CRR-35-2013 filed by Hema Rawal and Saesha Sharma, wife and daughter of respondent and another CRM-M-14633-2013, filed by Prashant Sharma, husband of Hema Rawal.

Petitioner Hema Rawal wife has questioned the legality and propriety of order dated 30.11.2012, passed by the Additional Sessions Judge, Gurgaon. The husband has also challenged the same order by filing a petition under Section 482 Cr.P.C.

Vide order dated 4.5.2012, the Judicial Magistrate First Class, Gurgaon, while deciding the application under Section 12 of the Protection of Women from Domestic Violence Act, 2005, (for short 'the Act'), had directed the husband-respondent to pay a sum of Rs.15,000/- per month as monetary relief under Section 20 read with Section 23 of the Act.

Learned Additional Sessions Judge, Gurgaon, vide order dated 30.11.2012, has modified the said order on hearing the appeals of both sides reducing the interim maintenance granted to the wife from Rs.15,000/- per month to Rs.7,500/- per month. The order passed by the Magistrate is that husband shall provide expenses for the education, schooling and transport etc. and will bear half of the medical expenses of the child from the date of the petition.

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Both Hema Rawal-wife and Prashant Sharma-husband have preferred separate petitions as mentioned hereinabove.

Brief facts, relevant for the decision of the present case, are that the parties were married on 15.4.2007 according to Hindu rites at Gurgaon. The wife is a registered medical surgeon and double post graduate in Ophthalmology with super specialization in Vitreo Retinal (FNB Retina). In her application under Section 12 of the Act, she claimed that husband did not kept her with dignity and is an alcoholic. He humiliated her and demanded dowry from the complainant in connivance with his family members. He subjected her to physical, emotional and financial trauma. Her minor child is suffering from various health problems like RSV Bronchitis and low haemoglobin etc. which require frequent medical treatment. Along with her application under Section 12 of the Act, she filed an application for interim relief that she had been bringing up the child as a single parent taking care of all emotional, financial and medical requirements. The husband returned back to London without even meeting the minor child. She is unable to find work and is suffering financial problems.

The claim of the husband-respondent is that wife was working as senior surgeon in London and at present is working for well known Hospital in Delhi and is maintaining high standards of living and earning Rs.1.5 lacs per month.

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The Judicial Magistrate First Class, Gurgaon, taking into consideration the fact that the parties are in domestic relationship having lived together and related by marriage would fall under Section 2 (f) of the Act and they have lived together in the shared household; the wife being aggrieved person subject to domestic violence under Section 2 (a) read with Section 3 of the Act having been subjected to physical, mental, verbal and economic abuses would be entitled to interim relief. The Court taking into consideration the domestic incident report and the statutory duty of the husband ordered that husband shall not commit any act of domestic violence under Section 3 of the Act and shall pay an amount of Rs.15,000/- per month or provide suitable residence for the wife and her child besides ordering expenses for the child. He was directed to bear half of the medical expenses of the child from the date of petition.

The husband filed petition under Section 29 of the Act against order dated 4.5.2012 alleging that the order passed by the Magistrate was harsh and unreasonable. The Additional Sessions Judge, Gurgaon, taking into consideration the circumstances of the case reduced the sum of Rs.15,000/- per month to Rs.7500/- per month.

The husband has filed petition challenging the orders passed by the Courts below contending that he has not resided with the wife in shared household and that on account of

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strained relations between them and for acts of wife, a divorce has been granted to the husband by a decree dated 26.9.2012 in BOW County Court, of U.K. A copy of the order has been placed on record as Annexure P7 and a copy of divorce/separation petition has been appended as Annexure R1 mentioning therein that both have lived at London. The husband being domicile and habitual resident of England and Wales having resided there for a minimum period of six months immediately prior to the petition was entitled for divorce on account of cruelty of the wife due to her absent behaviour and for causing mental and emotional trauma and stress to the husband besides being guilty of maligning and disrespecting the husband and having abused him in December 2009.

Mr.P.S.Hundal, learned Senior Counsel appearing on behalf of the husband has submitted that after an ex parte decree of divorce having been granted, the wife is not entitled to any relief under the provisions of Act. He has vehemently urged that there is no domestic relationship between the parties. At present she is not entitled to any order under the provisions of Act. He has placed reliance on judgment of Hon'ble the Apex Court in **S.R.Batra and anr. Vs. Smt.Taruna Batra, AIR 2007, SC 1118 (1)**, claiming that right of residence or right of alternative accommodation can be claimed from the husband only there being no house or shared household under Section 2 (s) of the Act. The aggrieved spouse can claim residence order or any amount in lieu of the same. He also argued that if the

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wife is professionally trained and earning a handsome amount, she will not be entitled to any monetary relief. He argued that the judgment having been passed regarding divorce, there is a presumption of the same having been pronounced by a Court of competent jurisdiction.

He also relied upon the judgment in **Harbans Lal Malik and others Vs Payal Malik, 2010 (7) RCR (Crl.) 1397,** to contend that the domestic relationship between the aggrieved person and the respondent must be present and alive at the time when complaint under the Act is filed and if this relationship is not alive on the date when complaint is filed, the domestic relationship cannot be said to be there. In the said case the judgment of Metropolitan Magistrate directing of monetary relief was set aside on the ground that the same has been passed ignoring the decree of divorce without devolving upon the domestic relationship. In that case, the parties had shared household in USA and husband was resident of USA. The Single Bench of Delhi High Court held that an adult male who is not in domestic relationship cannot be made liable under the provisions of the Act. He also relied upon **D.Velusamy vs D.Patchaiammal, AIR, 2011 SC 479,** to contend that even if the man and woman have been residing together and voluntarily cohabiting as being akin to spouses for a significant period of time, it cannot be said that they lived together in a shared household as defined in Section 2 (s) of the Act. On the basis of said judgments, it was

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argued that the wife not living together in shared household and divorce having been granted, the wife would not be entitled to any protection under Sections 18, 19, 20, 22 or 23 of the Act.

On the other hand, Mr.R.L.Batta, learned Senior Advocate, appearing on behalf of the wife has contended that the wife Hema Rawal being married to Prashant Sharma and having challenged the ex parte order of divorce before the U.K. Court, is entitled to protection under the Act besides “residence order” and monetary relief under Sections 18, 19 & 20 of the Act. He also argued that the respondent husband is financially sound to bear the expenditure of the residence of the petitioner and having committed acts of domestic violence being in domestic relationship with her and also having shared household, the wife would be entitled to the protection from domestic violence i.e., physical abuses, verbal abuses as well as emotional and economic abuses.

I have heard the learned counsel for both the sides and carefully considered their contentions as mentioned hereinabove.

It is an admitted fact that the husband is working at London. As per the allegations of wife, she is aggrieved wife and the respondent husband is drawing a salary of Rs.40,000/- per day. He also owns property in New Delhi, Noida and Mumbai having right title and interest in the family business. It is also a fact that the parties have been residing separately on account of their matrimonial

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dispute. Who is guilty for the matrimonial wrong is not to be considered under the provisions of the Act, taking into consideration the objectives of the Act which are always required to be taken into consideration. While enacting the Act, it was acknowledged that domestic violence is undoubtedly a human rights issue. The United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women in its General Recommendations had recommended that State parties should act to protect women against violence of any kind, especially that occurring within the family. The phenomenon of domestic violence in India is widely prevalent but has remained invisible in the public domain and there being no civil law addressing this phenomena in its entirety the legislation had enacted the Protection of Women from Domestic Violence Act, 2005. When a women is subjected to cruelty by her husband or his any relative, it certainly is an offence under Section 498-A of the Indian Penal Code but in order to provide remedy in the civil law for protection of women from being victim of domestic violence and to prevent occurrence of domestic violence the Act was enacted in the Parliament.

It is important to refer to following definitions in the Act: -

*“(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;*

*(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;*

*(g) "domestic violence" has the same meaning as assigned to it in section 3;*

*(q) "respondent" means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act:*

*Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner."*

The definition of domestic violence is wide enough to include various acts of omission, commission and conduct of the respondent.

For ready reference Section 3 of the Act reads as follows: -

*"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 -*

*(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so*

*and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or*

*(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; or*

*(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); or*

*(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.*

*Explanation I.-For the purposes of this section,-*

*(i) "physical abuse" means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;*

*(ii) "sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;*

*(iii) "verbal and emotional abuse" includes-*

*(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and*

*(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.*

*(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 of 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."*

Shared household has been defined in Section 2 (s) of the Act, which reads as follow: -

*“2 (s) "shared household" means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household.”*

A simple procedure has been prescribed to file an application to the Magistrate under Section 12 of the Act for obtaining protection order including the relief for payment of compensation and damages. A statutory right has been granted to the wife under Section 17 of the Act. It is right to reside in shared household.

Section 17 of the Act reads as follow: -

*“17. Right to reside in a shared household.-(1) Notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same.*

*(2) The aggrieved person shall not be evicted or*

*excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law.*

A perusal of Section 17 of the Act clearly indicates that every women in domestic relationship shall have a right to reside in the shared household whether or not she has any right, title or beneficial interest in the same. Aggrieved person cannot be thrown out of the shared household or from any part of it except by adopting due procedure of law. Section 18 of the Act provides for protection order. Section 19 of the Act enables a Magistrate to grant residence order whereas monetary relief can be granted under Section 20 of the Act. Section 23 empowers the Magistrate to pass any interim order in case an application, prima facie, discloses that aggrieved woman has been subjected to domestic violence or there is likelihood that the respondent may commit an act of domestic violence. All the reliefs available under Sections 18, 19, 20, 21 and 23 can be granted by way of an interim or ex parte order depending upon the circumstances of the case.

The short question which is required to be determined in the present case is whether the aggrieved person Hema Rawal would be entitled to protection order under the Act?

It is not disputed that the wife is an aggrieved person who has alleged that she is subjected to domestic violence. She has alleged in her petition that she was married to the

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respondent on 15.4.12007 at House No.8217, Gurgaon. The marriage was registered with the Registrar of Marriages at Gurgaon on 17.4.2007. The child was born to the couple on 24.6.2008 at Royaln London Hospital London. Child appears to be having some health problems whereas the respondent has abandoned the child. The husband is alleged to be an alcoholic, abusive and violative and has treated the wife with cruelty by demanding dowry. The husband claims that the wife has intentionally abandoned him and that she is not entitled for any financial relief being professionally trained and capable of earning.

After considering the rival contentions of both the sides, it is established that the petitioner falls under the definition of : "aggrieved person" being a women who has been subjected to the act of domestic violence. Once a female approaches the Court claiming that she has been turned out of the shared household and is deprived of any financial resources and statutory right of residence, she is presumed to be an "aggrieved person" because Section 2 (a) of the Act, clearly mentions that a women alleging to have been subjected to any act of domestic violence would fall under the definition of "aggrieved person". Mere allegation is sufficient enough by aggrieved person to set into motion the proceedings under the Act. There is no dispute that the aggrieved person in the present case had lived together with the respondent on an earlier point of time and they are related to each other as wife and husband.

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Domestic relationship is prima facie established between the parties. The husband falls under the definition of respondent being adult male person who had been in domestic relationship with the aggrieved wife. Both the parties had shared household as admittedly they lived together in a domestic relationship in India as well as in U.K. The claim of the aggrieved wife is that the family had left London for India on 24.12.2009, but the aggrieved person was abandoned at New Delhi, Airport and he went alone to his parent's house in Saket at New Delhi.

A Division Bench of Dehli High Court in **Smt.Preeti Satija Vs. Smt.Raj Kumari and another, 2014 (2) RCR (Civil) 8,** has held that shared household has been defined widely in the Act giving right of residence in such premises by virtue of Section 17 of the Act. Under Section 26 of the Act, the rights could be invoked before any Court at any stage of the proceedings. The shared household will include any house owned or taken on rent. It is not necessary that parties should have stayed there together. Residence order is a revolutionary and path breaking step taken by the Legislature. The key to an understanding of the rights flowing from the Act are concepts such as domestic relationship which, inter alia, is 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). In the said judgment, it has been held that strategy of disowning sons through public notices or advertisement is

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not to be taken lightly to defeat the rights of the women under the Act.

So far as the claim of the husband that he has obtained ex parte decree of divorce against the aggrieved person is concerned, the wife has already sent communication to the Court concerned objecting to the finalization of the decree. Copies of the communications have been placed on record as Annexures R3 to R5 submitted through High Commissioner of India to the Court at U.K. It will certainly be a debatable issue whether the relationship on the basis of foreign decree would culminate the relationship of husband and wife. From the documents placed on record, I am of the considered opinion that the ex parte decree has not become final and the same will not defeat the rights of the wife under the local law i.e the Protection of Women from Domestic Violence Act. The provisions of the Act being beneficial and social legislation, the approach of the Court always has to be to uphold the parliamentary intentions and give it a liberal interpretation rather than avoiding it which would certainly lead to defeating the objectives of the law. It is settled principle of law that domestic violence is per se not an offence but its institution or occurrence enables a woman to approach the Court for multitarian reliefs. The Courts have been given power to grant ex parte relief and ensure its compliance including directing the police authorities to implement the order particularly those relating to residence and economic abuses.

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In view of Section 17 of the Act, the respondent is required to provide residence to the wife. Taking into consideration the shelter, security and protection deserved by an aggrieved person the endeavour should be to permit the wife to stay in the shared household.

The respondent is also required to secure the same relief of alternative accommodation for the aggrieved person as enjoyed by her in shared household. It will be the last resort to pay rent for the alternative accommodation if the circumstances so require. It goes without saying that a wife is entitled to residence in a shared household in the first instance but in case for any unavoidable exceptional circumstances she has to be provided other residence, it has to be a property commensurate with her life style and her current residence depending upon other circumstances. Mere offering money for alternative accommodation would not be a solution to prevent the domestic violence.

In the present case wife has been granted relief under Sections 19 & 20 of the Act and in the exercise of powers under Section 23 of the Act, the learned Magistrate had assessed the said amount at Rs.15,000/- per month besides expenses of the child. Merely because the wife is capable of earning being a Doctor, the husband will not be absolved of the duty to maintain the wife and provide residence. The appellate Court has not given any sufficient reason for reducing the amount from Rs.15,000/- per month to

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Rs.7500/- per month. The appellate Court appears to have ignored the fact that the wife is to be provided relief commensurate with her status may it be protection under Section 18 of the Act; residence order under Section 19 of the Act; order of monetary relief under Section 20 of the Act; compensation order under Section 22 of the Act; or an ex parte interim order under Section 23 (2) of the Act. The Act is not made to provide alms to a destitute woman but right claimed by aggrieved person is a statutory right irrespective of the economic status of the wife. Denying the relief to an educated professional aggrieved person would tantamount to classifying the woman for the purpose of the Act. The appellate Court has acted illegally in reducing the interim maintenance from Rs.15,000/- per month to Rs.7500/- per month on conjectures and surmises.

In view of above discussion, the order of the Magistrate dated 4.5.2012 granting maintenance is upheld whereas the order passed by the first Appellate Court dated 30.11.2012 is set aside. The wife will be entitled to the relief w.e.f., from the date of application as mentioned above.

The petition (CRM-M-14633 of 2013) filed by the husband is dismissed whereas the revision petition (CRR-35 of 2013) filed by the wife is allowed as mentioned above.

**January 21, 2015.**  
**rka**

**(M.M.S. BEDI)**  
**JUDGE**