

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH.

CRR 4675 of 2015 (O&M)

Date of Decision: December 3, 2015

Subhash and another

.....Petitioners

Vs.

Shivani

.....Respondent

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

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Present:- Mr. T.S. Chandok, Advocate  
for the petitioners.

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**M.M.S. BEDI, J. (ORAL)**

An application filed by Shivani for a residence order and maintenance has been allowed by Judicial Magistrate, Hansi. The said order has been upheld by the Appellate Court.

A perusal of the order passed by the Magistrate indicates that the claim of respondent wife to have residence in the shared household in Fatehabad has been allowed to the extent of one room, one toilet, bathroom and kitchen specifying that toilet, bathroom and kitchen could be joint subject to the availability.

Counsel for the petitioner has submitted that the house belongs to petitioner No.1 who is father-in-law of the respondent and that husband and wife are not residing in the said house as such it will not fall within the definition of 'shared household'.

I have heard learned counsel for the petitioners and gone through the pleadings of the parties. The case of the respondent wife is that she stayed in the house at Fatehabad for six months but after six months of marriage her husband had taken her to Gurgaon with him where he used to harass her by different modes. He is alleged to have an extra-marital affair with one Nevadita and that she was ousted from the house at Gurgaon. Petitioner No.1 had arrived at Gurgaon and taken the respondent with him to Fatehabad where she resided. She was forcibly ousted from the said house. The plea taken by the husband and the petitioners in their reply is that respondent had voluntarily left the matrimonial home. The husband of the respondent has taken up the plea that he has left his job on account of compulsion of his wife and he started living in Fatehabad with his wife but she left the matrimonial home with her sweet will without the knowledge of the husband. The husband has also taken up the plea that he had been doing job in HDFC Bank where he was disturbed by his wife and that he is unemployed on account of misbehaviour of the wife with the employer of the husband.

In view of the above said pleadings, the short question which is required to be seen is whether the respondent wife could be said to have

stayed in the shared household as per definition of Section 2 (s) of the Protection of Women from Domestic Violence Act, for short 'the Act'.

Section 2 (s) of the Act reads as follows:-

“Section 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”.

Wife has got a right under Section 17 of the Act which reads as follows:-

“Section 17 (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.”

The Courts below after going through the pleadings and the material available on the record have passed interim orders granting residence order and maintenance to the respondent.

I have heard learned counsel for the petitioner who places reliance on the judgment of **S.R. Batra and another Vs. Smt. Taruna Batra**, 2007 (1) RCR (Crl.) 403 wherein it had been observed in the circumstances of the case that wife could only be 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 Supreme Court was pleased to observe that the definition of shared household in Section 2 (s) of the Act is not very happily worded.

I have considered the judgment cited by counsel for the petitioner in context to the provisions of Section 2 (s) of the Act which entitles a wife to resist eviction from shared household. A shared household, as per the Statute is where the wife (aggrieved person) lives or at any stage has lived in a domestic relationship either singly or along with the respondent and would also include a household whether owned or tenanted either jointly by the aggrieved person and her in-laws or owned or tenanted

by either of them in respect of which either the aggrieved person or the respondent (in laws) or both jointly or singly have any right, title, interest or equity. The respondent wife after marriage had stayed in the house and had acquired an interest and right to stay in the shared household. The judgment of **S.R. Batra's** case (supra) does not deal with a situation where the husband (respondent) is bent upon a mischief by camouflaging a situation by taking different residence and wants to wash his hands of his liability towards his wife by claiming that he is now unemployed and not having any residence. Even the husband has not come forward with any plea in order to enable his wife to enforce her legal rights under Section 17 (1) of the Act for a shared household for having a domestic relationship. The father-in-law, petitioner No.1 has certainly, a domestic relationship with the respondent.

In view of the above said circumstances, I do not find any ground to interfere in the order passed by the Courts below but it is observed that while implementing the orders of the trial Court, it will be ensured that the independence, privacy and the rights of the petitioners as owner of the house in Fatehabad are not prejudiced/ disturbed by the respondent in any manner.

Dismissed.

At this stage counsel for the petitioners has submitted that the petitioners are ready to offer a room on the first floor of the house.

In this context, they may move an application as and when the implementation of the impugned order is sought for by the respondent wife.

It is expected that the said offer will be taken into consideration in order to strike a balance between the rights of the aggrieved person and her in-laws to enjoy their independence and liberty.

December 3, 2015  
sanjay

(M.M.S.BEDI)  
JUDGE