

CWP No.2785 of 2015 (O&M)

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

**CWP No.2785 of 2015 (O&M)
Date of decision:24.09.2015**

Natasha Sood

...Petitioner

Versus

Chandigarh Administration and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Puneet Gupta, Advocate,
for the petitioner.

Mr. J.S.Toor, Advocate,
for respondents No.1 to 4.

Mr. Dinesh Kumar, Advocate,
for respondents No.5 and 6.

Rakesh Kumar Jain, J.

The petitioner was a bachelor girl when she was married to respondent No.7 on 25.03.2014, who had a daughter, aged about 14 years, and a son of 8 years from his first marriage. The petitioner was a Teacher in a private school at Panchkula. She was relieved from her job on 04.02.2015 because she did not qualify the Teachers Eligibility Test. From the date of her marriage, she has been living in her matrimonial home bearing House No.1512, First Floor, PUSH PAC Society, Sector 49-B, Chandigarh along with her husband, two children, mother-in-law and father-in-law, who are also arrayed as respondents No.5 and 6 in this petition.

The petitioner was allegedly tormented by respondents No.5 to

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7 for bringing less dowry and was deprived her of basic needs, therefore, she filed a complaint on 07.07.2014, under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the "Act of 2005"). She also filed an application on the same day under Section 23 of the Act of 2005 for interim relief. The application was contested by respondents No.5 to 7 with their separate replies. The interim application filed by the petitioner under Section 23 of the Act of 2005 was allowed by the Judicial Magistrate 1st Class, Chandigarh on 20.08.2014, restraining respondents No.5 to 7 to interfere in the peaceful possession of the petitioner of one bedroom along with attached toilet, bathroom and store, shown in red colour in the site plan of House No.1512, First Floor, PUSH PAC Society, Sector 49-B, Chandigarh. This relief was granted under Section 19 of the Act of 2005 but the prayer made for monetary compensation under Section 20 of the Act of 2005 was declined. In the end, copy of the order was sent to the concerned Station House Officer as well as to the Protection Officer for immediate compliance.

It is alleged that since the petitioner was harassed by respondents No.5 to 7 as they were interfering in her peaceful possession of the portion of the aforesaid house, therefore, she filed an application under Section 31 of the Act of 2005 for violating the order dated 20.08.2014 and also brought it to the notice of the SSP, Chandigarh through a complaint dated 06.01.2015. It is also averred that before the order dated 20.08.2014 could have been passed, respondents No.5 and 6 filed an application dated 14.07.2014 to the Deputy Commissioner, Chandigarh under Sections 21 and

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22 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as the “Act of 2007”), levelling allegations against the petitioner and alleging that they had disowned their son and daughter-in-law and had attended their marriage only because of a social obligation. In the said application, only the petitioner was made a party, though respondent No.7 was also alleged to have been disowned by respondents No.5 and 6. The said application has been allowed by the District Magistrate, UT, Chandigarh vide impugned order dated 22.01.2015. Hence, the present writ petition has been filed to challenge the order dated 22.01.2015.

After notice, reply has been filed on behalf of respondents No.5 and 6 separately and the petitioner has also filed replication to the reply filed by respondents No.5 and 6.

Counsel for the petitioner has submitted that the cross-case filed by respondents No.5 and 6 under the Act of 2007 and the order passed therein cannot make the order passed under the Act of 2005 redundant/irrelevant. In this regard, he has referred to a decision of this Court rendered by the Single Bench in the case of **Major Harmohinder Singh (Retd.) vs. State of Punjab through Secretary, Department of Social Welfare, Government of Punjab, Civil Secretariat, Chandigarh and others**, 2014(5) R.C.R. (Civil) 693, which has been upheld by the Division Bench of this Court in LPA No.1588 of 2014 titled as “**Major Harmohinder Singh (Retd.) vs. State of Punjab and others**”, decided on 14.10.2014.

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On the other hand, counsel for respondents No.5 and 6 has submitted that since respondent No.7 has taken two room set in House No.922-D, Adarsh Nagar, Nayagaon at the monthly rent of ₹15,000/- and is residing over there and has filed an application under Section 9 of the Hindu Marriage Act, 1955, for restitution of conjugal rights against the petitioner, therefore, the petitioner is not entitled to remain in possession of the portion of the house in question. He has also relied upon a decision of this Court in the case of **Suman vs. Tulsi Ram**, 2015(1) RCR (Civil) 304 to contend that the house in question exclusively belongs to respondent No.5 and as the husband of the petitioner, i.e. respondent No.7, is living separately, the petitioner has no right to live in the house in question, as the suit property cannot be held to be a 'shared household'.

In further contravention, counsel for the petitioner has submitted that the petitioner has also got registered an FIR against respondents No.5 to 7 and some others bearing No. 349 dated 22.07.2015, under Sections 498A of the Indian Penal Code, 1860 at Police Station Sector-34, Chandigarh.

I have heard learned counsel for the parties and examined the available record with their able assistance.

There is no dispute that the petitioner is a legally married wife of respondent No.7 who already has two children from his first marriage and the petitioner is no more in the job. She has lived in the house in question after her marriage in domestic relationship with respondents No.5 to 7 and presently also putting up there. The application was filed by the petitioner

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under Section 12 of the Act of 2005 prior to the application filed by respondents No.5 and 6 under the Act of 2007. The protection has been granted as an interim measure to the petitioner by the Court in regard to residence in terms of Section 19 of the Act of 2005 but the monetary relief has been declined, as claimed under Section 20 of the Act. Since the order of the Court was not being complied with, therefore, a complaint was made by the petitioner under Section 31 of the Act of 2005.

Respondents No.5 and 6, without impleading respondent No.7 as a party, filed a petition under Sections 21 and 22 of the Act of 2007 in which the direction has been issued to the petitioner to leave the house in question within 45 days from the date of issue of the order in which she had been allowed to live by the Court while passing the order under Section 12 read with Sections 19 and 23 of the Act of 2005.

It has been held by this Court in **Major Harmohinder Singh's case(supra)** that “....*Even a potent and protective legislation like Protection of Women against Domestic Violence Act, 2005 (for short, Act of 2005) will be rendered effete, if it were to be wrongly assumed that a father can throw out his daughter or daughter-in-law; that a husband can throw out the wife, estranged wife or divorced wife. The provisions of the Act of 2007 and the Act of 2005, referred to above, cannot be used for cross purposes, one annihilating the other. A parent who invokes the provisions of the Act of 2007 cannot create a situation that makes irrelevant the right of a female for securing a protection which is guaranteed under the Act of 2005. The provisions of the protection which is contemplated under Chapter V is an*

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empowering provision for the welfare of a senior citizen that must be read cohesively that the right of a woman to be protected which is guaranteed under the Act of 2005....”.

The aforesaid judgment has been upheld by the Division Bench in LPA No.1588 of 2014, holding that “....*the learned Single Judge has rightly observed that a divorced wife cannot be turned out of the house of the husband, because she has protection under the Protection of Women against Domestic Violence Act, 2005 (hereinafter referred to as ‘the Act of 2005’). Therefore, the provisions of the Act of 2007 and the Act of 2005 cannot be used for cross purposes, one annihilating the other....”.*

Insofar as the judgment relied upon by learned counsel for respondents No.5 and 6 in **Suman's case (supra)** is concerned, it is distinguishable on facts as in that case the petitioner Suman had never lived in the house of her in-laws, as she was residing at Panchkula and the house in question was situated at Sirsa, nor there was any order in her favour under the Act of 2005 like the one in the present case. Thus, it was held that the house in question was not a ‘shared household’.

In the present case, this question as to whether the house in question is a ‘shared household’ or not, is yet to be decided by the Court while passing the order finally in the main petition filed under the provisions of the Act of 2005 because so far only interim direction has been issued, while considering the application of the petitioner under Section 23 read with Section 19 of the Act of 2005.

Thus, in view of the aforesaid discussion, I am of the

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considered opinion that the impugned order passed by the District Magistrate, UT, Chandigarh under Sections 21 & 22 of the Act of 2007 cannot completely destroy/annihilate the order passed by the Court under Section 19 read with Section 23 of the Act of 2005.

Consequently, the present writ petition is hereby allowed and the the impugned order dated 22.01.2015 is set aside.

September 24, 2015
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(Rakesh Kumar Jain)
Judge