

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

**Criminal Misc. No. M-14825 of 2016 (O & M)
Date of Decision:-07.10.2016**

Subhash Mehta and another

...Petitioners

Versus

Shivani and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. Abhilaksh Grover, Advocate
for the petitioners.

Mr. Pankaj Mehta, Advocate
for the respondent.

Mr. Vishal Garg, Additional A.G., Haryana.

HARI PAL VERMA J.

Petitioners namely Subhash Mehta and Shashi Mehta, who are the in-laws of respondent Shivani have filed this petition under Section 482 Cr.P.C. for issuance of direction to respondent No.1 to give effect to the order dated 3.12.2015 passed by this Court in CRR No.4675 of 2015 so as to ensure their right of independence, privacy and rights to stay in the house inependently, who are otherwise owners of the house in question.

Briefly stated respondent No.1 Shivani was married with

Prateek Mehta i.e. son of the petitioners, on 16.10.2010 in accordance with Hindu rites and ceremonies at Hisar. Respondent Shivani had filed a complaint under Section 12 read with Sections 18, 19, 20, 22 and 23 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter called 'the Act') with the allegations that her mother and brothers had spent about Rs.15,00,000/- on her marriage and had given adequate dowry articles, which included Rs.2,00,000/- in cash. But the petitioners were not happy with the dowry articles. Petitioners along with their son Prateek rather started torturing respondent Shivani for bringing insufficient dowry. When respondent has showed her inability to fulfil the demands of the petitioners, she was given merciless beatings. However, after six months of marriage, Prateek (husband) had taken respondent Shivani with him to Gurgaon, where he was working in HDFC Bank. Her husband used to come home late at night in drunk conditions and used to give beatings to respondent-Shivani and raised demand of dowry. He was also having an extra-marital affair with one women. In June 2011, respondent-Shivani was ousted by her husband from the house at Gurgaon. Respondent-Shivani had made a phone call to her father-in-law and complained about the matter. On hearing it, petitioner No.1 reached Gurgaon and had taken respondent-Shivani back with him to Fatehabad, where she started residing at her matrimonial home in Fatehabad. In the matrimonial home, petitioner No.2 (Shashi Bala Mehta) used to pass comments upon respondent-Shivani. In the beginning of the year 2012 respondent-Shivani was given beatings by the petitioners and they tried to oust her from her matrimonial home. On

18.3.2012, on an application moved by respondent-Shivani to the Police Station City, Hansi, an FIR No.154 dated 19.3.2012, under Sections 498-A, 406, 323, 34 IPC was registered against the petitioners including her husband Prateek Mehta. In the petition, filed by the respondent Shivani under the Domestic Violence Act, learned Magistrate directed her husband to pay the maintenance to complainant-Shivani @ Rs.6000/- per month from the date of filing of the petition under the Domestic Violence Act vide judgment dated 4.6.2015. At the same time, respondent-Shivani was held entitled for residence in the shared household situated in Fatehabad and accordingly petitioners were directed to provide one room, one toilet, one bathroom and kitchen (toilet, bathroom, kitchen all three either shared or separately subject to availability). Respondent-Shivani was further granted liberty to approach the SHO concerned within whose jurisdiction petitioners are residing for compliance of the order dated 4.6.2015 passed by learned Magistrate and the SHO was directed to ensure compliance of the said order. However, aggrieved against the said order dated 4.6.2015 passed by learned Magistrate, the petitioners preferred an appeal before the learned Additional Sessions Judge, Hisar. The Appellate Court vide order dated 17.10.2015 did not interfere in the appeal and affirmed the judgment passed by learned trial Court.

The petitioners preferred the criminal revision petition before this Court against the judgment dated 17.10.2015 passed by learned Additional Sessions Judge, Hisar, whereby the judgment dated 4.6.2015 passed by learned Sub Divisional Judicial Magistrate was affirmed.

However, on the offer made by the petitioners that they are ready to offer a room on the first floor of the house, the revisionary Court has granted liberty to the petitioners to move an application as and when the implementation of the impugned order is sought by the respondent-wife and the offer shall be taken into consideration in order to strike a balance between the rights of the aggrieved persons and her in-laws to enjoy their independence and liberty.

Through the instant petition, the petitioners have sought direction to respondent No.1-Shivani to give effect to the order dated 3.12.2015 passed by this Court in CRR No. 4675 of 2015 to ensure the independence, privacy and rights of the petitioners as owners of the house.

Learned counsel for the petitioners has argued that respondent No.1-Shivani has filed the petition under Section 12 read with Sections 18, 19, 20, 22 and 23 of the Protection of Women from Domestic Violence Act, 2005 with a sole motive to falsely implicate the petitioners and their son. The petitioners have moved an application before the learned Sub Divisional Judicial Magistrate, Hansi to give effect to the order dated 3.12.2015 passed by this Court and the petitioners have raised the specific objection that respondent is continuously harassing them by interfering into their day to day work and respondent-Shivani may be asked to shift to the first floor, which also has one bedroom, one bathroom and kitchen ensuring the independence and privacy of the parties, but the learned Magistrate did not interfere in the case and has dismissed the application vide order dated 30.3.2016. He states that the petitioners are owners of the house, and

whereas respondent is residing with them on the basis of a direction issued by this Court. She has never been a resident in the shared household. The respondent-Shivani is using the petitioners' kitchen and appliances, which disturbs the independence and privacy of the petitioners. The petitioners are willing to offer a similar set of accommodation on the first floor of the house and in support thereof, learned counsel has referred to the blue print site plan of the house. The house is measuring about 5.73 marlas i.e. 173.33 square yards. As per the drawing attached with the petition as Annexure P-5 there are two rooms on the ground floor having dimension of 12'-6" x 10'-6" and 12' x 10'-6" and one drawing room having dimension of 11' x 14'-6" alongwith lobby, kitchen and store. Whereas on the first floor there is one room having dimension of 13' x 7', kitchen and toilet with open terrace and covered lobby. The petitioners are old persons and are being harassed by the respondent-wife at all times and she has not complied with the order dated 3.12.2015 passed by this Court.

On the other hand, learned counsel for the respondents has argued that the present petition is not maintainable on the ground that earlier the controversy had been set to rest by this Court while dismissing the CRR No.4675 of 2015 vide judgment dated 3.12.2015. Vide said judgment the revision petition filed by the petitioners against the judgment dated 17.10.2015 passed by learned Additional Sessions Judge, Hisar, and the judgment dated 4.6.2015 passed by learned Sub Divisional Judicial Magistrate, Hansi, was dismissed. The respondent being a daughter-in-law is entitled to claim accommodation from the petitioners/in-laws.

I have heard learned counsel for the parties.

Section 2 (s) of the Protection of Women from Domestic Violence 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”.

The said definition has been considered by the Hon'ble Apex Court in **S.R. Batra & another vs. Smt. Taruna Batra 2007(1) RCR (Criminal) 403**. The Hon'ble Apex Court has observed that the term 'shared household' in Section 2(s) of the Act is not very happily worded, and appears to be the result of clumsy drafting. Therefore, when a husband along with his wife lives in a house owned by his parents and husband shifts to another place, wife would not be entitled to live in the house owned by husband's parents. The house owned by the husband's parents does not come within the definition of “shared household” under Section 2 (s) of the Act and in view of Section 17(1) of the Act, wife is only entitled to claim a right to residence in the 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 respondent has pleaded in the similar tone as in the case of **S.R. Batra & another** (supra). The Apex Court while disagreeing with the contention of the respondent, has observed as under :-

“25. We cannot agree with this submission.

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 grand parents, 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.

28. Learned counsel for the respondent Smt Taruna Batra has relied upon Section 19(1)(f) of the Act and claimed that she should be given an alternative accommodation. In our opinion, the claim for alternative accommodation can only be made against the husband and not against the husband's in-laws or other relatives.

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'.

30. No doubt, the definition of 'shared household' in Section 2(s) of the Act is not very happily worded, and appears to be the result of clumsy drafting, but we have to give it an interpretation which is sensible and which does not lead to chaos in society."

Even this Court in the case of **Hamina Kang vs. District Magistrate (U.T.), Chandigarh and others 2016(1) RCR (Civil) 976** has interpreted Section 17(1) and 2(s) of the act, wherein it has been held that the house owned by father-in-law is not a shared household and the daughter-in-law has no right of residence under the Act. While dealing with the aforesaid provision, this Court in **Hamina Kang's** case (supra) has observed as under :-

"43. The term shared household is defined in the 2005 Act, as under :

"Section 2. Definitions

(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;”

44. The Hon'ble Supreme Court in **S.R. Batra v. Taruna Batra, (2007) 3 SCC 169**, held that the wife could claim the right of residence in terms of Section 17 (1) of the Act, only 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. It was held that the house which was the exclusive property of the mother-in-law could not be said to be a 'shared household' entitling the daughter-in-law to claim a right of residence therein. The Hon'ble Court negated the contention on behalf of the daughter-in-law that as per the definition, 'shared household' would include a household where the aggrieved person lives or at any stage had lived in a domestic relationship. It was observed that if such submission is accepted it would lead to chaos, because in that event every place where the husband and wife had resided would be a shared household. The Hon'ble Court also observed that the definition of 'shared household' in Section 2(s) appears to be the result of clumsy drafting and that it had given it

a sensible interpretation.

45. The pertinent observations of the Hon'ble Court are as under:

“24. Learned counsel for the respondent Smt. Taruna Batra stated that the definition of shared household includes a household where the person aggrieved lives or at any stage had lived in a domestic relationship. He contended that since admittedly the respondent had lived in the property in question in the past, hence the said property is her shared household.

25. We cannot agree with this submission.

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 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.
28. Learned counsel for the respondent Smt. Taruna Batra has relied upon Section 19(1) (f) of the Act and claimed that she should be given an alternative accommodation. In our opinion, the claim for alternative accommodation can only be made against the husband and not against the husband's (sic) in-laws or other relatives.
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 2, mother of Amit Batra. Hence it cannot be called a "shared household".
30. No doubt, the definition of "shared household" in Section 2(s) of the Act is not very happily worded, and appears to be the result of clumsy drafting, but we have to give it an interpretation which is sensible and which does not lead to chaos in

society.”

46. This decision has been reiterated by the Hon'ble Supreme Court in **Vimlaben Ajitbhai Patel v. Vatslaben Ashokbhai Patel, (2008) 4 SCC 649**. In this case, the Hon'ble Supreme Court adverted to the legal position that in terms of Sections 18 and 19 the Hindu Adoption and Maintenance Act, 1956, liability in regard to maintenance of wife is upon her husband and only on his death does it become the liability of the father-in-law. In the context of the 2005 Act, it was observed that it provided a higher right in favour of wife, which extends to the joint properties in which the husband has a share. It was held that an order of maintenance against the husband can be executed only against the husband and his properties but not against the property of her mother-in-law.

The relevant observations in this context are as under:

- “27. The Domestic Violence Act provides for a higher right in favour of a wife. She not only acquires a right to be maintained but also thereunder acquires a right of residence. The right of residence is a higher right. The said right as per the legislation extends to joint properties in which the husband has a share.
28. Interpreting the provisions of the Domestic Violence Act this Court in *S.R. Batra v. Taruna Batra* held that even a wife could not claim a right of residence in the property belonging to her mother-in-law, stating: (SCC p.173, paras 17-19)

“17. There is no such law in India like the British Matrimonial Homes Act,

1967, and in any case, the rights which may be available under any law can only be as against the husband and not against the father-in-law or mother-in-law.

18. Here, the house in question belongs to the mother-in-law of Smt Taruna Batra and it does not belong to her husband Amit Batra. Hence, Smt Taruna Batra cannot claim any right to live in the said house.

19. Appellant 2, the mother-in-law of Smt Taruna Batra has stated that she had taken a loan for acquiring the house and it is not a joint family property. We see no reason to disbelieve this statement.”

47. Following these decisions, different High Courts have ruled that a residence belonging to the mother-in-law or father-in-law would not be a 'shared household' within the meaning of Section 2(s) of the 2005 Act and that a daughter-in-law would have no right of residence therein in terms of Section 17(1) of the 2005 Act. Following cases may be usefully referred to : **Ekta Arora vs. Ajay Arora and another, 2015 AIR (Delhi) 180, V.P.Anuradha vs. S.Sugantha alias Suganthi and others, 2015(4) RCR (Criminal) 631 and A.R.Hashir and others vs. Shima and others, 2015(5) RCR (Civil) 35.”**

In the case in hand, it is not in dispute that the house in question is owned by the petitioners under the name of Som Parkash alias

Subhash Chand son of Ishwar Dass and it has nowhere come on record that the house is an ancestral one. Therefore, unless it comes on record that the petitioner No.1 is not the owner of the house, it cannot be termed as a shared household. The dispute between the respondent-wife and her husband Prateek Mehta is not disputed but the petitioners, who are old in-laws must not be allowed to suffer because of the pending dispute between husband and wife.

During the course of arguments learned counsel for the petitioners has reiterated his offer that though petitioners are not under legal obligation to provide residence to respondent but still the petitioners are ready to offer accommodation to the respondent on the first floor, which consists one room, kitchen and toilet with open terrace and covered lobby. However, this offer is not accepted by learned counsel for the respondent, though the respondent-wife was present in Court in person.

Resultantly, this Court finds that the order dated 30.3.2016 whereby application filed by the petitioners for implementation of the order dated 4.6.2015 in consonance with order dated 3.12.2015 passed by the Court cannot be dismissed in the manner in which the same has been dismissed. Admittedly, the respondent-wife is not an owner of the house and the house in question, where she intends to claim residence, is not an ancestral one. There is *bona fide* offer on the part of the petitioners to the respondent-wife to shift on the first floor of the same house, where accommodation i.e. one room, one kitchen and one toilet, verandah and covered lobby is constructed. The dismissal order passed by the learned

Magistrate that it would not be appropriate to provide accommodation on the first floor to the respondent, who is alone and even from the security point of view, this Court finds that the learned Magistrate has exceeded its jurisdiction. No such material was brought on record by the respondent that as to in what manner the said portion is insecure for her. The offer made by the petitioners is genuine and, therefore, this Court finds that the order dated 30.3.2016 passed by learned Magistrate cannot sustain.

Accordingly, the present petition is allowed and the order dated 30.3.2016 passed by learned Magistrate is set aside.

However, in case the respondent-wife is ready to accept the first floor accommodation, she may submit an affidavit before the learned trial Court showing her inclination to shift on the first floor of the house. In case the respondent-wife feels that the portion needs security, she may point out the same to the petitioners, who shall raise security wall accordingly, though this Court finds that there is hardly any security threat in the house where the petitioners themselves are residing.

Accordingly, the respondent is directed to vacate the ground floor within two months from the date of receipt of certified copy of this order. Petitioners No.1 and 2 are also directed to offer her the first floor of the house and in case there is really some insecure area, the petitioners would cover it up and make it secure. It would be open to the respondent-wife to seek any appropriate relief as may be permissible in law against her husband.

It is clarified that the observations and findings in this case are

limited to these proceedings only. It is earnestly hoped that the parties would soon resolve their differences to live amicably.

October 07, 2016
Vijay Asija

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No