

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

Crl. Misc. No.M-17787 of 2015(O&M)

Date of Decision: 24.09.2016

Neeraj Verma @ Billa & Ors.

.. Petitioners

Vs.

Seema Verma & Anr.

.. Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

**Present: - Mr. N.S. Panwar, Advocate
for the petitioners.**

**Mr. Munish Dewan, Advocate with
Mr. Vipul Sharma, Advocate
for respondent No.1.**

ANITA CHAUDHRY, J.

The petitioners are aggrieved of the order dated 01.05.2015 vide which they have been directed to provide residence to respondent No.1.

The petitioners are the brothers, their wives and mother of Pawan Kumar respondent No.2. The parties are being addressed as they were before the Court below.

The facts gathered from the paper book reveals that a Complaint under the Protection of Women from Domestic Violence Act (for brevity, the Act) was filed by respondent No.1 against the petitioners and respondent No.2, her husband on the ground that her marriage was solemnized on 13.12.2013. She was maltreated on account of demand of dowry and it is alleged that she had been turned out of her matrimonial home i.e. House No.137, Shanti Nagar, Manimajra, UT, Chandigarh (hereinafter referred to as house in dispute).

The respondents claimed that the house in dispute was the self

acquired property of Neeraj Verma and the applicant who is the wife of his brother, had no right to claim residence.

The learned trial Court vide order 13.04.2015 declined her the right of residence and observed as under:-

“The learned counsel for the complainant has not placed on record any document to show the house in question to be a joint family property in which respondent No.1 i.e. husband of the complainant is having any right, rather on the other hand from the copy of documents placed on behalf of respondents No.2 to 6, it prima facie appears that the house in question is a self acquired property of respondent No.2. In view of the settled proposition of law already laid down by Hon'ble Supreme Court in case titled as S.R. Batra Vs. Taruna Batra 2007 (3)SCC 169, at this stage no residence order in favour of complainant can be passed because there is no document on record to show the house in question to be a shared house hold as per the meaning explained by the Hon'ble Supreme Court in the aforesaid case law....”

Dissatisfied, the wife filed an appeal, which was allowed vide order dated 01.05.2015 and it was held as follows:-

“10. On perusal of the judicial file, I find that the applicant has placed on record photographs of her marriage, photocopies of marriage cards from applicant side and respondent side, photocopies of complaints dt.3.3.2015 & 17.3.2015, photocopy of publication dt. 17.3.2015 in newspaper “Aaj Samaj” and a CD alleged to be containing the voice recording of respondent No.1 From these documents it is clear that the respondent No.1 was residing at House No.137, Shanti Nagar Gali NO.10, Manimajra, Chandighr. Moreover, it is not disputed by the respondents that after the marriage of the applicant with respondent No.1, their 'doli' came in

the above said house which is the matrimonial home of the applicant. Therefore, it cannot be said that the house in question is not matrimonial home of the applicant. After her marriage with the respondent No.1 she was residing in the said house with her husband till her dispossession. So far as the documents placed on record by the respondents to show that the house in question is self acquired property of the respondent No.2 and therefore, no residence order can be passed, I am of the considered view that the parties are yet to lead evidence in support of their respective assertions, so, it is not a stage to evaluate the evidence of the parties thread barely while deciding he interim relief. The applicant is entitled to have shelter in her matrimonial home so that she may not become shelter-less. Moreover the Court cannot leave her in the lurch to fry in her own fate and exposing her to destitution and vagrancy”.

The respondents (petitioners herein) were directed to allow re-entry of the wife in the house in dispute.

The contention raised on behalf of the petitioner was that the house in dispute was exclusively purchased by petitioner No.1 and it does not fall within the definition of matrimonial house, as claimed and the appellate Court below has erred in granting residence order.

It was urged by learned counsel for respondent No.1 that the house in dispute was purchased out of joint funds by petitioner No.1 and Pawan Kumar and at this stage it was satisfactorily shown that the house in dispute was the matrimonial home. He had referred to the information provided under the Right to Information Act to respondent-Seema.

I have heard learned counsel for the parties and have gone through the file carefully.

Sale deed, Annexure P-1 of the house in dispute dated 17.05.2011 is on record. The house was purchased by petitioner No.1 in his name.

In ***S.R. Batra & another Vs. Smt. Taruna Batra 2007 (1) RCR (Criminal) 403***, the Hon'ble Apex Court while dealing with a similar situation held as under:

“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.

We cannot agree with this submission.

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.

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

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. 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'.

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”.

From the aforesaid, it is evident that the right of shared accommodation can be claimed by wife in the property of husband and not in the exclusive property of other relatives of the husband. She cannot force her entry in the house against the wishes of petitioner No.1.

None has appeared on behalf of respondent No.2 today. No assistance is forthcoming from husband-respondent No.2. He is silent obviously to avoid his liability to maintain his wife. The arrangement/agreement made between the parties, which has been provided under the

RTI Act, primarily relates to the adjustment between the couple and nothing

more, it does not vest her with any right in the property.

Vide order dated 27.05.2015, operation of the impugned order passed by the Appellate Court was stayed. During the course of hearing on 20.09.2016, it was pointed out that respondent No.1 had entered the house with the help of police. Be that as it may, respondent No.1 is directed to hand over the vacant possession of the portion in her possession of the house in dispute to petitioner No.1 within a period of 15 days.

Respondent No.1 shall be at liberty to avail the remedies permissible under law against respondent No.2.

Nothing contained hereinabove shall be taken as an expression of opinion on the merits of the case.

Petition stands allowed accordingly.

September 24, 2016
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(ANITA CHAUDHRY)
JUDGE

Whether speaking/ reasoned

Yes/ No

Whether reportable

Yes/ No