

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

**CRR No. 1144 of 2014 (O&M)
Date of decision: 16.11.2016**

Santosh Rani

...Petitioner

Versus

Sonia Sachdeva & Another

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Atul Goyal, Advocate for the petitioner.

Mr. G. S. Sandhu, Advocate for respondent No. 1.

JAISHREE THAKUR, J. (Oral)

The instant revision petition has been filed to impugn the order dated 01.05.2013 by which the respondents herein have been allowed residence on the basis of shared accommodation in residential house bearing No. 1870/115, Near Durga Mata Mandir, Killa Mohalla, Ludhiana.

In brief, the facts of the case are that respondent No. 1-Sonia Sachdeva filed a petition under Section 12 read with Sections 17, 18, 19, 20, 22 and 23 of the Protection of Women from Domestic Violence Act, 2005 (*for short 'the Domestic Violence Act'*) on the ground that she, being married to Devinder Kumar, would be entitled to maintenance and residence in accommodation which was belonging to her husband. Notices in the said petition were served. However, on account of non-appearance before the Court, the petitioner herein was proceeded *ex parte*. Learned Judicial Magistrate First Class, Ludhiana partly allowed the said petition by giving her an amount of ₹3,000/- per month as maintenance but did not allow her right of residence in the said accommodation.

Aggrieved against the said order denying her right of residence, an appeal came to be preferred before the Additional Sessions Judge, Ludhiana who, by the impugned order, allowed the appeal holding that the appellants-respondents herein would be entitled to maintenance as well as residence in the shared accommodation i.e. the room where they used to reside, the kitchen where they used to cook food and the bathroom which they used. The petitioner herein was also restrained in interfering in the portion of the respondents herein.

Aggrieved against the said order, the instant revision petition has been preferred challenging the order *inter alia* on the ground that the order passed in the appeal is not sustainable on account of the fact that there is no proof or evidence showing that the accommodation is a shared accommodation as defined under Section 2(s) of the Domestic Violence Act and moreover no adequate opportunity of hearing was ever afforded to the petitioner herein as no notices were ever issued.

Counsel for the respondents herein contests the petition on the ground that the same has been filed after a considerable delay. It is contended that the petitioner herein was aware of the order dated 01.05.2013 and the instant petition should have been preferred within the period of limitation.

I have heard learned counsel for both the parties and also perused the case file.

Admittedly, the instant revision petition has been filed after a considerable delay but the same has been explained by the counsel for the petitioner who contends that the petitioners became aware of the orders passed in appeal only on account of the execution petition that was filed

before the JMIC, Ludhiana in which they filed their objection. But as objections to the execution proceedings were dismissed, they then approached this Court. It is contended that they were not aware of the proceedings filed before the Appellate Court since no notices were issued to them.

Admittedly, the order dated 01.05.2013 was passed without even issuing notices to the respondents therein. Counsel for the respondents herein was put to the question whether notices were issued and he fairly submits that the order passed by the Appellate Court itself reveals that since the respondents therein had been proceeded *ex parte* before the Magistrate, the Court did not issue notice to them in the appeal and their presence was dispensed with.

Learned Additional Sessions Judge, Ludhiana erred in not issuing notice in the appeal to the respondents therein. In all fairness, notices had to be issued. The rules of natural justice demand that no adverse orders are to be issued which would adversely affect the rights of the parties. *Audi alturam partem* is the well recognized principle of natural justice. Any orders so passed are in violation of the principles of natural justice and, therefore, an abuse of process of law and are liable to be set aside. Therefore, this Court is of the opinion that the Appellate Authority could not have dispensed with service even though the said respondents therein had been proceeded *ex parte* before the Magistrate.

Condonation of delay is not an empty formality as it vests a right in the opposite party. The person seeking condonation of delay is to make out a case for the said purpose, and only where no cause has at all been shown, i.e. where no explanation has been given for filing the

proceeding out of time, there arises no occasion for considering the sufficiency or otherwise for the reasons for delay, and then there cannot be any room for the exercise of the discretion. If the condition is satisfied, then, the Court has a discretionary power to grant or refuse the prayer for extension of time. The contention raised by the counsel for the respondents herein that the petition is ought to be dismissed on the ground of delay in filing the same is not sustainable on account of the fact that the petitioner(s) herein were pursuing their litigation by filing replies to the objections to execution that had been filed and it cannot be said that they were negligent in approaching this Court. Moreover, it cannot be lost sight of that they were never served in proceedings before the Appellate Court.

Accordingly, the application bearing CRM No. 11613 of 2014 filed under Section 5 of the Limitation Act for condonation of delay of 249 days in filing the present petition is allowed and the said delay is condoned. The matter is remanded to the Appellate Court for taking decision of the case on merits after giving an opportunity of hearing to the petitioner-herein.

Parties are directed to appear before the Appellate Court on 06.12.2016.

The above noted revision petition stands allowed accordingly.

November 16, 2016

Ansari

**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No