

Crl. Revision No.1980 of 2015 (O&M)
with
Crl. Revision No.2829 of 2015 (O&M)

-1-

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

CRR No.1980 of 2015 (O&M)
Date of Decision: 15.09.2016

Rajender Kumar @ Rajinder

...Petitioner

Versus

Pooja

...Respondents

with

CRR No.2829 of 2015 (O&M)

Aman

...Petitioner

Versus

Pooja and another

...Respondent

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the digest? No

Present: Mr. B.D. Sharma, Advocate
for the petitioner(s).

Mr. Rahul Sharma, Advocate
for the respondent(s).

ANITA CHAUDHRY, J.

Two revisions have been filed against the order dated
04.05.2015, passed by Sh. Aman Deep Dewan, Addl. Sessions Judge,

Kurukshetra, one by the father-in-law and other by the husband assailing the order which allowed the appeal filed by Pooja. Rajinder Kumar (father-in-law) was directed to accommodate the daughter-in-law in his residential house, situated in Kurukshetra. In the same order it also enhanced the maintenance to Rs.5,000/- each which is assailed by the husband

Few facts are necessary to be delineated. Pooja was married to Aman in November, 2010. Aman is a Constable with the Haryana Police and was posted at Madhuban (Karnal). The father-in-law is also in police service. A complaint under the Domestic Violence Act was filed in May, 2012. A prayer for interim maintenance and residential accommodation was made. The trial Magistrate vide its order dated 03.09.2013 considered the income which was Rs.15,569/- per month and considering the other liabilities allowed Rs.2,000/- per month each to the wife and the child. With respect to the order regarding residence, the same was declined. The reasons are disclosed in para no.6 of the order. The Court had observed that it was yet to be ascertained as to whether the wife had left the matrimonial house on her own or she had been compelled to leave the matrimonial home. It was noted that several litigations were going on between the parties and there were at daggers drawn and there was no need for make a residential order.

Aggrieved by that order, the wife filed an appeal seeking enhancement of the maintenance amount and prayed for the residence

order. The appeal was filed in July, 2013. It came up for final disposal in May, 2015. The Appellate Court considered the monthly tuition fees of the child and noted the same as Rs.1750/- per month and as it was led to believe as those were the expenses the mother was making for the monthly tuition fees and considering the net salary to be Rs.24,536/- per month, it allowed Rs.5,000/- each to the appellants from the date of application. With respect to shared house-hold it was observed that since the marriage was still subsisting and if the parties resided together, there could be a possibility that the matter between them could patch up and it could give a fresh lease to the matrimonial life. The Court noted that the allotment letter was in favour of the father-in-law in Sector - 5, Kurukshetra. It had observed that the wife and the minor child were residing with the in-laws, therefore, they could accommodate in that house instead of directing them to reside in a separate accommodation at Madhuban (where the husband was posted).

Aggrieved by the order, the father-in-law namely Rajinder Kumar filed CRR-2829-2015. The matter was taken up firstly on 28.05.2015 and the following order was passed by the Co-ordinate Bench:-

In an application filed by Pooja wife of Aman Kaushik, learned Judicial Magistrate 1st class, Kurukshetra vide order dated 03.07.2013, directed an amount of Rs.2000/- per month to be paid each to her as also to the daughter. However, the prayer with regard to directions for

shared house hold were declined. In an appeal preferred by Smt. Pooja, the Additional Sessions Judge, Kurukshetra has enhanced the monetary relief from Rs.2000/- each to Rs.5000/-. That apart, even the prayer regarding shared household has been dealt with and directions have been issued to provide atleast one room along with kitchen and bathroom in House No.1194, Sector-5, Urban Estate, Kurukshetra to Smt. Pooja.

The instant petition has been filed by the father-in-law, namely, Rajender Kumar assailing the order dated 04.05.2015 passed by the learned Additional Sessions Judge, Kurukshetra confined only as regards directions with regard to shared household.

Counsel appearing for the petitioner would inter alia argue that the premises in question i.e. House No.1194, Sector-5, Urban Estate, Kurukshetra are self acquired property of the petitioner and as such, the respondent i.e. his daughter-in-law, who otherwise was residing along with her husband at Madhuban could not have been granted such relief. That apart, it has been argued that son of the petitioner, namely, Aman Kaushik and husband of the respondent is a part of police force and has been allotted an official accommodation at his place of posting at Madhuban, where Smt. Pooja was staying and as such, there was no occasion for the Court to have passed the impugned directions with regard to shared household in a totally self acquired property at Kurukshetra and such directions are also not in terms of the import of Section 19 of the Protection of Women from Domestic Violence Act, 2005.

Notice of motion, returnable for 02.07.2015.

Notice re: stay as well.

Process dasti as well.”

Subsequently, on 15.07.2015, the operation of the order was stayed by the same Bench.

During the period interregnum the wife approached the police and presented the order to the police and asserted that she had been allowed to stay in one room and the basic facilities were to be provided to her and she could enter the house. She went to the in-laws house but was shown the door and again on 20.05.2015 she went with the Municipal Councilor, the house was found locked. Another D.D. Entry was made in the police records on 27.06.2015 and it reads as under :-

“General Diary Brief: At this moment it is recorded that I ASI along with HC/WHC Beena in connection with case No.579 dasti dated 27.6.2015 along with Rajender Kumar resident of 1194, Sector-5, Kurukshetra have returned back after verifying the case. It has been found that Pooja wife of Aman Kaushik son of the applicant had filed a Criminal Application No.100439/2013 in the Court of Sh. Amandeep Diwan, ASJ, Kurukshetra which was decided on 4.5.2015, wherein the Hon'ble Court has passed the orders for allowing Pooja to be allowed to stay in one room with necessary facilities and also for payment of maintenance. On this, when she tried to go in the house on 18.2.2015 and on 20.05.2015, along with MC Darbara Singh, the house was found closed and on this DDR No. 23 dated 20.5.2015 was registered. On 23.6.2015, when Pooja Kaushik and her father had come in the police station, were

informed that Rajender Singh has filed a case No. 1980 of 2015 in the Hon'ble Punjab and Haryana High Court, Chandigarh in this regard, wherein the next date of hearing is 2.7.2015 and notice regarding stay as well has also been issued, but both of them refused to give their signatures thereupon. Today on 27.6.2015, at about 10:00 A.M. Pooja was found to be living inside the house along with one person by the name of Sardara after opening the lock by a key. Enquiries were made from the men and women living in the opposite and adjoining houses and statements were recorded. Pooja informed WHC Veena from inside the window of the house that she has come into the house as per the orders of the Court and will got her statement recorded on 28.6.2015 after consulting with her advocate. Since the matter in the Court, legal opinion will be taken from ADA.”

Counsel for the petitioner Rajinder Kumar leading his submissions has urged that Aman was posted at Madhuban and had been allotted a Government accommodation and the house in Sector 5, Kurukshetra was allotted to the father-in-law in 1988. He refers to Annexure P-4. It was urged that the house in Kurukshetra is the self acquired property of Rajinder Kumar. It was urged that while the proceedings were going on before the Appellate Court against the order passed by the Magistrate in the D.V. Act proceedings the wife had made a statement Annexure P-5 that she wanted to accompany her husband and would reside with him in his official residence at

Madhuban and that statement was made on 29.11.2014. The counsel refers to Annexure P-6 to show the statement given by Aman. He urges that subsequently Pooja made a statement Annexure P-7 that the husband had left them alone and she wanted to reside in the house belonging to her father-in-law at Kurukshetra. It was urged that Pooja entered the house by breaking open the locks and started living in the house and the in-laws have been pushed out of that house and they are out of that property for the last one year. It was urged that the house in Kurukshetra was not the shared house hold and the Appellate Court has gone wrong and had passed a judgment which is contrary to the judgment of the Apex Court rendered in ***S.R. Batra & another Vs. Smt. Taruna Batra 2007(1) RCR (Criminal) 403***. It was urged that the daughter-in-law has no right of residence in the house which is a self-acquired property of the father-in-law and the couple had never stayed there as the husband was posted at a different stations and was allotted government accommodation.

It was further contended that the Appellate Court had gone wrong while enhancing the maintenance. The counsel had referred to Annexure P-1 to show that the salary slip of 2013-2014 was referred to by the trial Court when the income was Rs.15,569/- per month but the Appellate Court considered the salary of April, 2015-2016 (Annexure P-6) and allowed the maintenance from the date of application. It was urged that had the order been made from the date of order then it could have been different but when the Court was

allowing maintenance from the date of filing of the application, which was July, 2013 then income of 2016 could not have been considered. It was urged that the Appellate Court went wrong in noting that the monthly fees payable was Rs.1750/-. The counsel refers to Annexure P-5 and it was urged that the tuition fees was only Rs.350/- per month and the certificate placed on the record shows that the child was a student of Pre-Nursery and five months fee @ Rs.350/- which was equal to 5 months was deposited and the Appellate Court had assumed that the monthly fee was Rs.1750/- per month. Reliance was also placed upon *Sangeeta Vs. Om Parkash Balyan and another 2015(3) RCR (Crl.) 336, Suman Vs. Tulsi Ram 2015(1) RCR (Civil) 304 and Neetu Mittal Vs. Kanta Mittal and others 2008(4) RCR (Civil) 630*. It was urged that the wife had stayed away from the matrimonial home and she had refused to stay in the husband's house and the Court could not direct payment from the date of order and if it was directing the payment from the date of application then for there should have given some reason which is missing in this case. It was urged that the case is dragging on for the long time for obvious reasons and the Appellate Court did not assign any reason for awarding maintenance from the date of application. It was urged that they were willing to pay for the child but the wife was not entitled to any maintenance.

Responding to the submissions, the counsel for the respondent sought to justify the order of the Appellate Court and it was urged that once the couple had started living at Madhuban but the

husband left the house and started living with his parents at Kurukshetra and Pooja had made a statement. It was urged that the family was joint and though the allotment was in the name of the father but it was yet to be ascertained as to who had paid the installments. It was urged that there was an order in favour of the wife and she was entitled to enter the property and she had informed the police and when she visited the house in June, 2015 the house was locked and in the presence of the Municipal Councilor a key was arranged and she had entered the property. Reliance was placed upon ***Kamla Devi Vs. Radha Rani and another 2016(1) PLJ (Criminal) 15.***

Two main issues arise in this petition. The first relates to the right of residence in the father-in-law's property. The second issue is whether the respondent was entitled to enhanced interim maintenance. On both counts the order passed by the Appellate Court is not justified for the reasons given below.

Admittedly, the house in Kurukshetra was allotted to the father-in-law in 1988. It would be the respondent who will have to prove at the trial that some resources were pooled in by her husband and it is difficult at this stage to say. Evidence on that account will have to be led.

It is necessary to notice the facts in S.R. Batra's case (supra). Taruna Batra was married to Amit Batra. The couple was living on the second floor of the house in Delhi. The house belonged to the in-laws. The son filed a divorce petition and the wife lodged an

FIR and the husband and the married sister-in-laws were arrested. Taruna shifted to her parent's residence because of a dispute with her husband. Later on she filed a suit for mandatory injunction to enable her to enter in the house. Before the Court could pass an order, Taruna forcibly broke open the lock of the house belonging to the mother in law and entered the property. The matter came to the Court and a stay was granted in favour of Taruna Batra. Against that order an appeal was preferred. The Appellate Court held that Taruna had no right in the property other than that of her husband. The appeal was allowed and application for temporary injunction was dismissed. Aggrieved, a petition under Article 227 of the Constitution of India was filed, which was decided in favour of the wife. The matter came before the Apex Court.

The submission made by the wife before the Apex Court were noted in para no.24 to 30 read 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 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 or 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."

In the light of numerous precedents following i.e. ***Sardar Malkiat Singh v. Kanwaljit Kaur and ors., 2010(2) PLR (Delhi) 59*** and ***Vimalben Ajitbhai Patel v. Vastslaben Ashokbhai Patel and Ors., 2008(2) R.C.R.(Criminal) 699:2008(3) Recent Apex Judgments (R.A.J.) 50 : 2008(4) SCC 649*** it has become established legal principle that daughter-in-law cannot claim right to live in the house of the parents of her husband against their wishes.

The issue has been settled, no directions could be given to the father-in-law and the daughter-in-law could not claim a right in his self-acquired property. There was ample material before the Court below to show that the husband was posted at another station and had been allotted Government Accommodation. The rational given by the Court below is absurd. The parties were aggressively pursuing litigation and then asking the father-in-law to accommodate the daughter-in-law in that house with too much of acrimony between the

couple would have led to chaos and was totally absurd. The record shows that the daughter-in-law instead of approaching the Court seeking execution of the order forcibly entered the property and occupied it. The in-laws had to leave their home and are now living somewhere else. It was a forced entry and it finds mention in the police records. Respondent no.2 would vacate the house within 10 days and would give an undertaking before the Court below that she had vacated and has removed all her articles on the next hearing after expiry of a fortnight.

So far as the maintenance is concerned, the Appellate Court went wrong by modifying the order. It took the income of the later years to enhance the amount. Maintenance was allowed from the date of application and therefore, it should have taken the income that was earned in that particular year. The appellate Court rational in considering Rs.1750/- per month as tuition fees was wrong. The reasoned exposition to consciously arrive at a decision was wrong as it was based on mis-reading of the document. The monthly fees for the Pre-Nursery Class was Rs.350/- per month and not Rs.1750/- per month. Therefore, the order of maintenance needs to be modified.

The income for the year 2013-2014, was Rs.15,569/- per month, the interim maintenance payable now to the wife would be Rs.3000/- per month and Rs.2000/- per month for the child from the date of order passed by the Magistrate. If there are any arrears, the petitioner would clear them in three months.

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Both the petitions are partly allowed subject to the modification mentioned herein. Nothing contained here-in-before would be taken as an expression on merits, which would be considered only on the basis of the evidence to be led by the parties.

(ANITA CHAUDHRY)
JUDGE

15.09.2016

'Sunil'

Whether speaking/reasoned : Yes/No

Whether reportable : *Yes/No*