

CWP No. 13184 of 2015(O&amp;M)

Date of decision: 14.01.2016

**Pratibha Deb**

.....Petitioner

**versus****Sub Divisional Magistrate and others**

.....Respondents

**Coram: Hon'ble Mr. Justice Rakesh Kumar Jain****Present:** Mr. Aman Pal, Advocate  
for the petitioner(s).Mr. Sachin Mittal, Advocate  
for respondents No. 2 and 3.**Rakesh Kumar Jain, (Oral)**

The petitioner has challenged the order dated 19.06.2015, (Annexure P-5) passed by the Sub Divisional Magistrate, Gurgaon-North by virtue of which the petitioner has been ordered to vacate House No. 40, . South City-1, Gurgaon.

In brief, the petitioner, wife of respondent No. 4, who is the son of respondents No. 2 and 3, filed an application under Section 12 of the Protection of the Women from Domestic Violence Act, 2005(for short, 'the Act') seeking relief under Sections 18,19, 20, 22 & 23 of the Act.

In the said application, an interim order was passed on 16.09.2014(Annexure P-2) by the Civil Judge(Junior Division), Gurgaon in the following terms:-

*“Hence this Court deems it fit to order respondent No. 1 and complainant to arrange for alternate accommodation for themselves and their children and respondent No. 1 shall bear the rent/expenses of the alternate accommodation. The*

*respondents belong to educated, highly skilled and well to do business family. Keeping in view this fact, this court further orders the respondent No. 1 to provide complainant with Rs. 15,000/- as interim maintenance. Further, the respondents No. 2 and 3 have suffered statement that they are ready to bear education and other expenses of minor children. Therefore, in view of their statement, the respondents No. 2 and 3 are ordered to provide Rs. 25,000/- as monthly interim maintenance to complainant for expenses of minor children till the disposal of present complaint and complainant shifts to alternate accommodation. The order of maintenance shall be effective from the date of application and shall be liable to set off against any other amount granted to the complainant in any other case. Resultantly, the present application is accordingly disposed of. Now to come on 30.10.2014 for Cws.”*

A contempt petition was filed by respondents No. 2 and 3 before the same court on the ground that the petitioner and her husband have not vacated the house in question though the husband of the petitioner who was arrayed as respondent No. 1 in her application filed under the Act was ordered to arrange an alternate accommodation for his family. The said contempt petition was dismissed on 15.05.2015 with the following observations:-

*“An exhaustive and complete reading of the order dated 16.9.2014 reflects that the order for arranging the alternate accommodation is made in view of grave allegation of physical, mental and economical harassment of complainant by respondent. The order can only be seen so as to protect the body and mind of*

*complainant and her minor children. Hence, in view of discussion made above the present application of contempt and police help filed by respondent No. 2 and 3 is dismissed being devoid of merits. Now to come up on 5.6.2015 for Cws.”*

It is pertinent to mention that the said order is in appeal before the appellate authority and is now fixed for 26.02.2016. While this matter was pending, respondents No. 2 and 3 filed an execution application of the order dated 16.09.2014(Annexure P-2) passed by the Civil Judge(Junior Division), Gurgaon. The said application has now been allowed vide impugned order dated 19.06.2015(Annexure P-5) by the Sub Divisional Magistrate, Gurgaon-North.

Counsel for the petitioner has submitted that respondent No.4 had filed a civil suit for declaration that the said property in which the entire family is residing i.e. the petitioner along with her husband, two children and in-laws is a co-parcenary property. The suit was filed for declaration and permanent injunction alongwith an application for temporary injunction but the temporary injunction has been decided against respondent No. 4 on 20.11.2014 and his appeal filed against it was also dismissed. Counsel for the petitioner has further submitted that the impugned order has been passed by an authority who had no jurisdiction to pass the order under the provisions of the Act.

However, counsel for the respondents has submitted that concededly, body of the impugned order talks of the execution of the order dated 16.09.2014 but respondents No. 2 and 3 had filed a petition under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007(the Act of 2007) and the said application has infact been decided

by the Sub Divisional Magistrate, Gurgaon-North.

I have heard learned counsel for both the parties and after examining the record, am of the considered opinion that the impugned order dated 19.06.2015(Annexure P-5) has essentially been passed by the Sub Divisional Magistrate, Gurgaon-North, as if he has been executing the order dated 16.09.2014(Annexure P-2) because there is no reference of the application alleged to have been filed under the Act, 2007. Since there is no provision under the Act enabling the Sub Divisional Magistrate, Gurgaon-North to execute the order passed by Civil Judge(Junior Division), Gurgaon, therefore, the said order is patently illegal being without jurisdiction.

This petition is thus, allowed. Order dated 19.06.2015 (Annexure P-5) passed by the Sub Divisional Magistrate, Gurgaon-North is quashed. In case, any application, as alleged by counsel for the respondent, has been filed under the Act 2007, the same shall be proceeded within accordance with law.

**14<sup>th</sup> January, 2016**  
Shivani Kaushik

**[Rakesh Kumar Jain]**  
**Judge**