

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

RESERVED ON : 16th OCTOBER, 2015

DECIDED ON : 11th JANUARY, 2016

+ CRL.REV.P.304/2014 & CRL.M.A.No.8245/2014

KAVITA KUMARI

..... Petitioner

Through : Mr.S.K.Bhalla, Advocate.

versus

STATE & ANR.

..... Respondents

Through : Mr.Ashok K.Garg, APP.

**Ms.Kamlesh Sabharwal, Advocate
for R2.**

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Instant revision petition has been preferred by the petitioner – Kavita Kumari to challenge the legality of a judgment dated 19.04.2014 of learned Addl. Sessions Judge in CrI.A.26/2013 whereby order dated 15.12.2011 passed by Mahila Court, Central District, Delhi, dismissing application for interim relief under Protection of Women from Domestic Violence Act (in short DV Act) was upheld. Petition is contested by respondent No.2.

2. I have heard the learned counsel for the parties and have examined the file. Petition under Section 29 of DV Act has been filed by the petitioner against the respondent No.2 and is pending before the Trial Court. By an order dated 15.12.2011, the learned Metropolitan Magistrate dismissed the application moved by the petitioner for reinstatement in house bearing No.T-514 B near Budh Bazar, Hill Road, Baljeet Nagar, New Delhi. The appeal against the said order resulted in dismissal. Learned counsel for the petitioner urged that the impugned orders cannot be sustained as the petitioner, legally wedded wife of the respondent No.2 after her marriage on 16.04.1994 had lived at T-514 B near Budh Bazar, Hill Road, Baljeet Nagar, New Delhi, and had shared the said accommodation. In the month of August, 1998, they started living in a rented accommodation at T-443, Baljeet Nagar, New Delhi. She was forced to leave the said accommodation also on account of cruel treatment of respondent No.2. She lodged a complaint case under Sections 323/34 IPC against the respondent No.2 and his brother and it resulted in their conviction. A case vide FIR No.379/1998 under Sections 498A/406/34 IPC was also registered against the respondent No.2 and his brother. The respondent No.2 had filed a divorce petition on 20.09.2002 which was decreed vide judgment dated 02.05.2009. However, in appeal, the said

judgement and decree was set aside by this Court vide judgment dated 08.04.2011. Counsel urged that House No.T-514 B near Budh Bazar, Hill Road, Baljeet Nagar, New Delhi, is the petitioner's shared household as defined under DV Act and is exclusively owned by the respondent No.2. The rented accommodation at T-443, Baljeet Nagar, New Delhi, was with an oblique motive to desert her forever. It was further contended that the Trial Court had specifically directed the respondent No.2 to produce the title deeds of the said house vide order dated 09.03.2010. He, however, did not comply the said order and filed an affidavit on 17.04.2010 stating that the said house was not his property and was owned by his father. Respondent No.2 has concealed the material relevant facts before the Trial Court regarding the ownership of the said property. She is entitled for residence in her shared household No.T-514 B near Budh Bazar, Hill Road, Baljeet Nagar, New Delhi.

3. Learned counsel for the respondent No.2 refuting the contentions urged that the petitioner has not come to the Court with clean hands and has concealed various facts. After the marriage, the petitioner and respondent No.2 lived in a government accommodation bearing Quarter No.8, PS Patel Nagar, which was allotted to his father. She never lived at any point of time in house No.T-514 B near Budh Bazar, Hill

Road, Baljeet Nagar, New Delhi. After compromise before CAW Cell as recorded in DD No.6A dated 14.05.1998, the petitioner had shifted to T-510/EA-5, Vijay Marg, Baljeet Nagar, New Delhi. The parties thereafter lived in house No.T-443, Baljeet Nagar, New Delhi, a rented accommodation. House No.T-514 B near Budh Bazar, Hill Road, Baljeet Nagar, New Delhi, is not owned by him.

4. In the rejoinder, the petitioner has reiterated her version and claimed that respondent No.2's father has since expired on 10.06.2014 and the said property has devolved upon him.

5. On scanning the Trial Court record, it reveals that no cogent material / document has come on record to infer that after the marriage, both the petitioner and the respondent No.2 had lived together in House No.T-514 B near Budh Bazar, Hill Road, Baljeet Nagar, New Delhi. The petitioner has not placed on record any document about its ownership. The respondent No.2 was directed to produce on record title documents of the said house. However, in his affidavit, he claimed that he was not in possession of any such document. Till date no authentic documents have come on record before the Trial Court to ascertain as to who is the owner of the said accommodation or whether after marriage both the parties had lived together as husband and wife therein for any particular duration.

Admitted position is that at the time of their separation in 1998, both the parties were living together at T-443, Baljeet Nagar, New Delhi, in a rented accommodation. The respondent No.2 has placed on record copy of DD No.6A dated 14.08.1998 where the residential address of the petitioner has been shown as T-510/EA-5, Gali No.2, Vijay Marg, Baljeet Nagar, New Delhi. He has also filed an application dated 02.01.1999 moved before SHO PS Anand Parbat about recovery of dowry articles in case FIR No.379/1998 under Sections 498A/406/34 IPC from the house No. T-443, Baljeet Nagar, New Delhi. Recovery memo dated 03.01.1999 in the said FIR demonstrates that certain dowry articles were recovered in the presence of respondent No.2 from T-443, Panjabi Basti, Baljeet Nagar, New Delhi on 03.01.1999. In her counter-affidavit dated 21.05.2010, the petitioner claimed that while her stay at house No.T-514 B near Budh Bazar, Hill Road, Baljeet Nagar, New Delhi, the respondent No.2 had shown her certain documents comprising of General Power of Attorney, Special Power of Attorney, Agreement to Sale, Receipt, Affidavits and Will, etc. showing that the said house was purchased by him. In the absence of any such documents on record, it cannot be inferred with certainty that house No.T-514 B near Budh Bazar, Hill Road, Baljeet Nagar, New Delhi, is owned by respondent No.2. This aspect is yet to be

decided by the Trial Court after getting evidence of the parties during trial.

6. Since there was no clinching evidence / material on record to show the respondent No.2 to be the owner of the house No.T-514 B near Budh Bazar, Hill Road, Baljeet Nagar, New Delhi, or that the said accommodation was shared by the petitioner along with her husband after her marriage, the impugned orders whereby the petitioner was declined reinstatement in the said house cannot be faulted. The Appellate Court has already noted and accepted the petitioner's contention that the petition filed by her is within limitation and is maintainable.

7. In view of the above discussion, I find no illegality or irregularity in the impugned orders. Revision petition is dismissed. Pending application also stands disposed of. Trial Court record be sent back forthwith with the copy of the order.

8. Observations in the order shall have no impact on the merits of the case.

(S.P.GARG)
JUDGE

JANUARY 11, 2016 / tr