

\$~A-

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

%

Date of decision: 10.08.2016

+ CM (M)816/2014 & CM No.14611/2014

VAISHALI GAUR

.....Petitioner

Through Ms.Urmi and Dr.Ashutosh, Advs.

Versus

PUSHPA GAUR & ANR.

..Respondent

Through Ms.Vibha Mahajan Seth, Adv.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. The present petition is filed under Article 227 of the Constitution of India seeking to impugn the order dated 15.3.2014 passed by the Appellate Court in appeal filed under Order 43 Rule (1) (r) of CPC. The respondent No.1 was aggrieved by an order dated 19.12.2013 passed by the trial court whereby the application of the said respondent under Order 39 Rule 1 and 2 CPC was disposed of directing the petitioner not to create any third party right in the suit property till further orders. Hence, the appeal was filed.
2. The respondent No.1 filed the present suit for declaration and permanent injunction seeking a decree of declaration against the petitioner and respondent No.2 declaring that they have no right, title or interest in the property bearing No.D-10, Gali No.12, East Arjun Nagar, Delhi. Permanent injunction was sought against the said petitioner/respondent No.2 to restrain them from dispossessing respondent No.1 from her property in question.

3. As noted, the trial court by the order dated 19.12.2013 passed an injunction order restraining defendant No.1 i.e. petitioner from creating third party rights in the suit property. The appeal was filed by respondent No.1/plaintiff seeking to impugn the said order dated 19.12.2013. By the impugned order the appellate court by order dated 15.3.2014 noted that from the pleadings it is clear that the respondent No.1 is the title holder of the suit property. The petitioner and respondent No.2 are husband and wife, the respondent No.2 being the son and petitioner being the daughter in law of plaintiff/respondent No.1. The court held that a prima facie case is made out in favour of respondent No.1 and balance of convenience also being in her favour the appellate court allowed the appeal and restrained the petitioner from visiting the suit property till disposal of the suit subject to the petitioner establishing her rights of residence/shared household against the respondent No.1. In the eventuality of such a right having been established, the injunction order would cease to be effective.

4. I have heard learned counsel for the parties. The basic grievance of the petitioner is that despite orders of the concerned court in exercise of powers under the Protection of Women from Domestic Violence Act, 2005 and promise made by her husband respondent No.2, she has not been given accommodation in the suit property. It is submitted that the petitioner was residing on the first floor of the suit property and was tricked into leaving the same on the terms that after the property is re-constructed, one of the floors would be given to her for her accommodation alongwith the children. However, it is urged that the respondent No.1 has deprived the petitioner of her rights and rented out all the flats that were available.

5. The stress of the appellant is on the orders passed by respective courts under Protection of Women from Domestic Violence Act, 2005. Reliance was placed on a judgment dated 30.8.2012 passed in a petition under section 12 of the Protection of Women from Domestic Violence Act, 2005, passed by the Metropolitan Magistrate (hereinafter referred to as M.M.) whereby the M.M. had noted that the relationship of husband and wife i.e. petitioner and respondent No.2 were not cordial and that petitioner was residing on the first floor of the house alongwith her children. The MM allowed the relief of right to residence to the petitioner/complainant and the respondent therein i.e. respondent No.2 herein was directed to allow the complainant and her children to reside in one of the floors which had been newly constructed. It was also clarified that the respondent No.2 herein is at liberty to give possession of any of the flats as per his own convenience. It was also directed that the children were entitled to maintenance @ Rs.10,000/- till they attain age of majority.
6. In an appeal filed by respondent No.2 against the said order dated 30.8.2012 the appellate court noted that the cruelty of respondent No.2 had been proved beyond reasonable doubt. The appeal was dismissed.
7. Subsequently, on 24.9.2013 the M.M. noting that no payment has been made to the petitioner took respondent No.2 into judicial custody. On 26.11.2013 the respondent No.2 was released from custody on a submission of the said respondent No.2 that he was willing to comply with the order of the court but needs to be released from custody. He was released by the court of Additional Sessions Judge for a period of 10 days to comply with the order of the trial court.

8. On 19.12.2013 the court of ASJ noted the submission of the petitioner that as per order of the Civil Court she was not to interfere in the peaceful possession of the mother of respondent No.2 i.e. respondent No.1 and that she herself does not visit the house. She also stated before the appellate court that she only wanted a roof over her head. The submission of respondent No.2 was noted that in view of the changed circumstances the said respondent No.2 will have to make arrangements for alternative accommodation for the petitioner. Hence, directions were passed against the respondent No.2 that he will clear the maintenance allowance, and will look for a house of the same standard as was occupied by the petitioner before she was removed from the house and shall be given possession of the house by the respondent No.2 and till the arrangement is made the respondent No.2 shall pay rent @ Rs.10,000/- per month to the petitioner.

9. I have heard the learned counsel for the parties.

10. Learned counsel for the petitioner submits that the appellate court passed an erroneous order and ignores the orders passed by the appropriate court in the petitions filed by the petitioner under Section 12 of the Protection of Women from Domestic Violence Act, 2005. Reliance is placed on the judgment dated 30.08.2012 of the MM whereby the MM allowed the relief of residence to the petitioner and directed respondent No.2 to allow the petitioner and her children to reside in one of the floors of the suit property. It is further urged that the petitioner was residing in the suit property. The respondents made the petitioner to go out of the suit property on the pretext that a collaboration for the development of the property has to be undertaken and an assurance was given to the petitioner to put her back into the possession once the property is built up. She was assured that she would be

given first floor out of the four floors. It was on these assurances, she shifted out. Now, after the construction of the property is complete, respondent No.1 has backed out and has rented out of the other portions of the property. It is further stated that the petition for divorce is pending and respondent No.2 is not maintaining her. The appeal filed by respondent No.2 was dismissed on 25.02.2013. Hence, it is submitted that the impugned order is erroneous and the petitioner is entitled to a residence as directed by the MM/appellate court.

11. Learned counsel for respondent No.1 has on the other hand pointed out that respondent No.1 was not made a party to the proceedings before the MM or the appellate court under the Protection of Women from Domestic Violence Act, 2005. Reliance is also placed on the order dated 19.12.2013 passed by the court of ASJ noting that the civil court has passed the present injunction noting the submission of the petitioner that she herself does not visit the suit property. It was her contention before the court of ASJ that all that she wanted was a roof over her head and that in view of the change in circumstances, respondent No.2 would have to make arrangement of alternative accommodation for the petitioner. The court of ASJ passed the orders that respondent No.2 shall look for a house of the same standard as was occupied by the petitioner before she was removed from the house and shall give the possession of the house to the petitioner by the next date of hearing. Respondent No.2 who was in custody was released from custody. Hence, he submits that no grounds are made out to interfere in the said order.

12. In my opinion, there are no reasons to differ with the views of the appellate court. Firstly, if there is non-compliance of the orders of the concerned MM/ASJ in the proceedings filed under the Domestic Violence

Act, the remedy of the petitioner is to approach the concerned court which had passed the appropriate orders, whose compliance is not being done. In any case the impugned order has clarified that the injunction order passed against the petitioner from visiting the suit property is only till her rights of residence/shared household are settled. Once her rights are established against respondent No.1 the injunction order shall cease to be effective. The impugned order also rightly noted that the petitioner had not made respondent No.1/her mother in law a party to the case filed before the MM under the Domestic Violence Act and hence the mother-in-law/respondent No.1 is not bound by the said orders of the said court of MM.

13. There is no infirmity in the impugned order and the petition is dismissed. All pending applications, if any, also stand dismissed.

(JAYANT NATH)
JUDGE

AUGUST 10, 2016
n/rb