

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.87 of 2017**

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Alok Ranjan @ Bitu, Son of Satyendra Prasad Singh Resident of Village-
padariya, P.S. Imamganj, District-gaya

... .. Appellant

Versus

Anuradha Singh, Wife of Alok Ranjan @ Bitu, Resident of Village-Babapath
Hurhuru Road, New Colony, Hazaribagh, Jharkhand, at Present Village-
Belsara, P.S. Deo, District-Aurangabad

... .. Respondent

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Appearance :

For the Appellant/s	:	Mr. Rajeev Ranjan Ms. Bela Singh
For the Respondent/s	:	Mr. Anil Kumar Jha, Sr. Adv. Mr. Prabhat Kumar Dipak

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL ORDER

3 08-11-2017 Heard learned Counsel for the petitioner and learned
Senior Counsel appearing on behalf of the respondent.

The petitioner is aggrieved by an order, dated 15.12.2016,
passed by learned Principal Judge, Family Court, Aurangabad,
in Matrimonial Case No. 95 of 2015, whereby in a proceeding,
under Section 9 of the Hindu Marriage Act, instituted by the
petitioner's wife (respondent herein), the Court below has
directed the petitioner to provide separate accommodation with
all facilities in his residential house, exercising jurisdiction
under Section 26 (1) of the Protection of Women from Domestic
Violence Act, 2005 (hereinafter referred to as 'the Act').

Assailing the impugned order, learned Counsel for the



petitioner has submitted that in a proceeding under the provisions of the Hindu Marriage Act, the Court below could not have exercised jurisdiction under the provisions of the Act. He has further contended that the respondent, as a matter of fact, had approached for providing accommodation and she did not claim any right of residence in the shared household in her application before the learned Court below. He has, accordingly, submitted that the learned Court below, in that circumstance, could have directed for providing an accommodation to the respondent, but not an accommodation essentially in the residential house of the petitioner.

Learned Senior Counsel appearing on behalf of the respondent, on the other hand, has supported the impugned order and, referring to the language of Section 26 of the Act, has submitted that the impugned order is well within the jurisdiction inasmuch as the order under the provisions of the Act can be passed in any proceeding pending before commencement of the Act or after commencement of the Act.

On the question of jurisdiction of the learned Court below, I am of the view that the language of Section 26 of the Act is clear and states thus:-

“26. Relief in other suits and legal proceedings.- (1) Any relief



available under sections 18, 19, 20, 21 and 22 may also be sought in any legal proceeding before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this act.

(2) Any relief referred to in subsection (1) may be sought for in addition to and alongwith any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court.

(3) In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief.”

It clearly lays down that any relief available under Sections 18, 19, 20 and 21 of the Act can be sought in any legal proceeding before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after commencement of the Act.

Section 17 of the Act confers upon a woman, in a domestic



relationship, right to reside in the shared household.

From the impugned order, I notice that the learned Court below has directed to provide separate accommodation with all facilities in the residential house of the petitioner himself, apparently invoking the right of residence of woman under Section 17 of the Act, which is evident from the impugned order.

Mr. Jha, learned Senior Counsel, appearing on behalf of the respondent, has submitted that the respondent is not very much willing to invoke the right of residence, as contemplated under Section 17 of the Act. He submits that she will have no difficulty if any alternative accommodation is made available to her by the petitioner, as enjoyed by her in the shared household or rent is paid by the petitioner for the same.

I may notice at this stage the provisions as contained in Section 19 of the Act. Clause (f) of sub-Section (1) contemplates that a Magistrate, while passing any residence order, may direct the respondent to secure same level of alternate accommodation for the aggrieved person, as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require. Relevant portion of Section 19 (1) (f) of the Act is being re-produced herein below for the benefit of



convenience.

“19. Residence orders.- (1)

While disposing of an application under sub-section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order-

(a) xx xx xx

(b) xx xx xx

(c) xx xx xx

(d) xx xx xx

(e) xx xx xx

(f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so required.”

In view of the discussion, as above, I dispose of this application by setting aside the impugned order, dated 15.12.2016, and remanding the matter back to the learned Court below to pass an order afresh considering the provisions under Section 19 (1) (f) of the Act, keeping in mind the stand taken on behalf of the respondent that she is not, for the present, willing to invoke her right under Section 17 of the Act.

The Court expects that such order is passed within a period



of two months from the date of communication of the present
order, by the Court below.

Prabhakar Anand/-

(Chakradhari Sharan Singh, J)

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