

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

CRM-M-12656-2017

Date of decision: 6.10.2017

Neha Sibal

...Petitioner

Versus

Radhika Sibal & Another

..Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. S. N. Chopra, Advocate, with
Mr. Rakesh Chopra, Advocate
for the petitioner.

Mr. Aashish Chopra, Advocate,
for respondent No. 1.

Mr. R. S. Rai, Senior Advocate with
Mr. Gautam Dutt, Advocate
for respondent No. 2.

JAISHREE THAKUR, J.

1. The challenge in the instant petition, filed under Section 482 Cr.P.C., is to the order dated 07.03.2017 (Annexure P-1) passed by the Judicial Magistrate First Class, Gurugram, whereby an application dated 28.11.2016 (Annexure P-2), filed by respondent No. 1 Radhika Sibal, has been allowed thereby impleading her as a respondent in a complaint case filed under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (*for short* 'Act of 2005') by the petitioner herein against her husband Mickey Sibal-respondent No. 2.

2. To understand the controversy that has arisen in the instant case and to determine whether or not the JMIC, Gurugram has erred in allowing impleadment application filed by respondent No. 1 Radhika Sibal in a complaint case filed under Section 12 of the Act of 2005 by the petitioner against her husband, a few facts need to be noticed. The petitioner and respondent No. 2 allegedly solemnized their marriage on 05.10.2013 as per Sikh rites and customs at 218/B, Tower 2, 18th Floor, Magnolias DLF Phase-V, Gurugram, which apartment was owned by and in possession of respondent No. 2. Both the petitioner and respondent No. 2, started living as husband and wife. A marital discord arose between the parties with allegations that respondent No. 2 started harassing and beating the petitioner for petty issues. Resultantly, the petitioner made a complaint to the police and ultimately filed a complaint under Section 12 of the Act of 2005. Learned trial Court followed the procedure and appointed a Protection Officer who gave his report and thereafter the JMIC, Gurugram passed order dated 05.11.2015 (Annexure P-5) restraining respondent No. 2 from dispossessing the petitioner from the said residential accommodation i.e. Flat No. 218-A. Immediately thereafter, respondent No. 1 Radhika Sibal claimed that her marriage with respondent No. 2 Mickey Sibal was still in subsistence, and filed an application for being impleaded as a respondent claiming that the flat in question was in her ownership. It was also alleged that the flat had been transferred in the name of her son Rahul Sibal, by a Conveyance Deed dated 10.04.2015 following which her son transferred $\frac{1}{2}$ share in the flat in favour of respondent No. 1 (Radhika Sibal) vide transfer deed dated 10.11.2015 and subsequently she transferred $\frac{1}{4}$ th share in the flat in favour of her own mother (i.e. maternal grandmother of Rahul Sibal), vide transfer deed dated 23.11.2016.

Respondent No. 1 Radhika Sibal alleged herself to be the legally wedded wife of respondent No. 2. Learned JMIC, Gurugram allowed the said application and permitted respondent No. 1 to be a party to the proceedings. Aggrieved against the impleadment of respondent No. 1, the petitioner has filed the instant petition.

3. Learned counsel for the petitioner raises an argument that the application so preferred seeking impleadment is not maintainable since Radhika Sibal is a stranger to the *lis* that exists between the petitioner and her husband Mickey Sibal, respondent No. 2 herein. It is further argued that Flat No. 218-A, in which the petitioner was residing along with her husband, had been bought and paid for by respondent No. 2. It is also argued that this was a second marriage for both the parties and the relations became strained in the year 2014 itself which led to the lodging of FIR No. 359 dated 07.08.2014, under Section 498-A IPC at Police Station Sushant Lok, Gurugram and in order to circumvent the rights of petitioner, the conveyance deed, pertaining to the aforesaid flat, was got executed in favour of his son Rahul Sibal and such transaction would be hit by the provisions of Benami Transaction (Prohibition) Act. The son was minor, aged about 11 years, at the time when the installments on the said flat started on 30.11.2005 and he would have had no source of income to make payments towards the said flat amounting to Rs. 3,10,16,621/-. It is also argued that the application that has been filed in the present form, under Order 1 Rule 10 of the CPC, would not be maintainable in proceeding initiated under the Domestic Violence Act, 2005. Mr. S. N. Chopra, learned counsel for the petitioner, also urges that there has been a direct violation of the order dated 05.11.2015, wherein the respondent No.2

had been restrained from dispossessing the petitioner, since an overt attempt has been made to have her evicted by maligning her reputation and by getting the electricity connection disconnected.

4. *Per contra*, Mr. R.S. Rai, learned Senior Counsel along with Mr. Gautam Dutt, Advocate, appearing on behalf of respondent No. 2-Mickey Sibal, contends that there is no valid marriage between respondent No. 2 and the petitioner herein. In fact, the marriage of respondent No. 2 with Radhika Sibal still exists. It is also argued that respondent No. 2 solemnized marriage with respondent No. 1-Radhika Sibal on 10.04.1995 at Raipur, Madhya Pradesh and out of this wedlock, their son Rahul was born on 11.02.1996. It is argued that respondent No. 2 had written a letter to DLF requesting for transfer of the aforesaid flat in favour of his son Rahul prior to the registration of the complaint case under Section 12 of the Act of 2005. The request of transfer was accepted by the DLF and the flat had been transferred in favour of his son on 10.04.2015 and subsequently thereto, Rahul had transferred half of his undivided share in favour of his mother Radhika Sibal, who in turn transferred half of her share in favour of her mother (i.e. maternal grandmother of Rahul Sibal) by way of a registered transfer deed on 23.11.2015. It is also argued that the marriage certificate on which the petitioner is relying is itself a false and fabricated document and cannot be relied upon. In fact, the Gurdwara concerned, which maintains the record, has also issued public notice dated 01.10.2015 to the effect that no such marriage certificate was issued to Neha Dua i.e. Neha Sibal. A civil suit bearing No. 211 of 2015 has already been filed seeking injunction to restrain the petitioner from misusing/using the said marriage certificate in any form.

5. Mr. Aashish Chopra, learned counsel appearing for respondent No. 1, argues that respondent No. 1 is the legally wedded wife of respondent No. 2 Mickey Sibal and in order to protect her property in which the petitioner is claiming residence, she is a necessary party to the proceedings. It is also sought to be argued that there has been concealment of facts in so far as the petitioner has already acceded and acquiesced to respondent No. 2 being impleaded as a party. Respondent No. 2 filed an appeal against the interim order dated 05.11.2015 before the District Judge in which respondent No. 1 had filed an application for impleadment on the basis of the order dated 07.03.2017 (the impugned order) , to which the petitioner herein had got her '**no objection**' recorded and on the basis of the 'no objection' from the petitioner, impleadment already stands allowed and, therefore, the instant petition is nothing but an abuse of process of Court. Learned counsel for respondent No. 1 also placed reliance upon a judgment rendered by the Hon'ble Supreme Court in ***Thomson Press (India) Ltd. vs. Nanak Builders & Investors P. Ltd. and others, 2013 (2) R.C.R. (Civil) 875***, wherein it has been held that after there was a specific direction by a Court not to sell the property in question in a suit for specific performance, if the vendor in violation of the Court order allowed the said property to be sold, the purchaser may be added as a party defendant. In the instant case, the transfer of the suit property having taken place on to the name of Radhika Sibal, she is entitled to be impleaded as party to the proceedings.

6. I have heard learned counsel for the parties and with their assistance have also perused the record of the case.

7. The Protection of Women from Domestic Violence Act, 2005 was enacted to protect women against violence of any kind specially violence occurring within the family. In the '*Statement of Objects and Reasons*', it is noticed that the situation wherein a woman is subjected to cruelty by her husband or his relatives was originally sought to be dealt with by the addition of Section 498-A in the Indian Penal Code, however, this law did not cover the entire spectrum of the violence, maltreatment etc. meted out to a woman. It was in this background that the aforesaid Act of 2005 came into existence. The Act of 2005 proposes to cover and provide protection to those women who are or have been in a relationship with the abuser where both the parties have lived together in a "shared household" and are related by consanguinity, marriage or through a relationship in the nature of marriage or adoption or are family members living together as a joint family. Those women who are sisters, widows, mothers, single woman or living with the abuser are entitled to legal protection. Section 2(a) defines as to who would be an "aggrieved person" under the Act while defining "domestic relationship" under Section 2(f), "respondent" under Section 2(q) and "shared household" has been defined under Section 2(s). The definition of sections which are relevant for the purpose of adjudicating the controversy are reproduced for ready reference:

2(a) "aggrieved person" means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent;

2(f) "domestic relationship" means a relationship between two persons who live or have, at any point of time, lived

together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family;

2(q) "respondent" means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act;

Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner;

2(s) "shared household" means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household.

8. Admittedly, the petitioner was in relationship with respondent No. 2 and for this purpose, she is relying upon a marriage certificate that has been issued to her by the Gurdwara. Even though marriage certificate is under challenge in a civil suit that is pending adjudication, but till the same is set aside, this Court is seized of a marriage certificate which is still valid. Even otherwise, for the purposes of this petition, there is no doubt that the petitioner

and respondent No. 2 were in “*domestic relationship*” since they resided together for a considerable period of time after the alleged marriage till the relationship soured leading to an FIR being registered by the petitioner.

9. The term “domestic relationship” has been defined under Section 2(f) of the Act of 2005. In a judgment rendered by the Supreme Court in ***Hiral P. Harsora and others vs. Kusum Narottamdas Harsora and others, 2016 (4) R.C.R. (Civil) 750***, term “domestic relationship” as contained in Section 2(f) was elaborated. It was held as under:

“18. It will be noticed that the definition of “domestic relationship” contained in Section 2(f) is a very wide one. It is a relationship between persons who live or have lived together in a shared household and are related in any one of four ways - blood, marriage or a relationship in the nature of marriage, adoption, or family members of a joint family. A reading of these definitions makes it clear that domestic relationships involve persons belonging to both sexes and includes persons related by blood or marriage. This necessarily brings within such domestic relationships male as well as female in-laws, quite apart from male and female members of a family related by blood. Equally, a shared household includes a household which belongs to a joint family of which the respondent is a member. As has been rightly pointed out by Ms. Arora, even before the 2005 Act was brought into force on 26.10.2006, the Hindu Succession Act, 1956 was amended, by which Section 6 was amended, with effect from 9.9.2005, to make females coparceners of a joint Hindu family and so have a right by birth in the property of such joint family. This being the case, when a member of a joint Hindu family will now include a female coparcener as well, the restricted definition contained

in Section 2(q) has necessarily to be given a relook, given that the definition of ‘shared household’ in Section 2(s) of the Act would include a household which may belong to a joint family of which the respondent is a member. The aggrieved person can therefore make, after 2006, her sister, for example, a respondent, if the Hindu Succession Act amendment is to be looked at. But such is not the case under Section 2(q) of the 2005 Act, as the main part of Section 2(q) continues to read “adult male person”, while Section 2(s) would include such female coparcener as a respondent, being a member of a joint family. This is one glaring anomaly which we have to address in the course of our judgment.”

10. Even if, respondent No. 2 was to deny the factum of marriage, there can be no denial that both the petitioner and respondent No. 2 resided together in a relationship akin to marriage and, therefore, they were in a “domestic relationship” thereby entitling the petitioner herein to file a petition under Section 12 of the Act of 2005. It is settled law that in case of live-in-relation there is a presumption in favour of wedlock and that law leans in favour of legitimacy and frowns upon bastardy. In *D. Velusamy vs. D. Patchaimmal*, 2010 (10) SCC 469, the Hon'ble Supreme Court has held as under: -

20. Having noted the relevant provisions in The Protection of Women from Domestic Violence Act, 2005, we may point out that the expression “domestic relationship” includes not only the relationship of marriage but also a relationship “in the nature of marriage”. The question, therefore, arises as to what is the meaning of the expression “a relationship in the nature of marriage”. Unfortunately this expression has not been defined in the Act. Since there is no direct decision of

this Court on the interpretation of this expression we think it necessary to interpret it because a large number of cases will be coming up before the Courts in our country on this point, and hence an authoritative decision is required.

21. In our opinion Parliament by the aforesaid Act has drawn a distinction between the relationship of marriage and a relationship in the nature of marriage, and has provided that in either case the person who enters into either relationship is entitled to the benefit of the Act.

11. A contention has been raised that respondent No. 1 rightly preferred an application seeking impleadment as she is the owner of 1/4th share of the property/flat where the petitioner has been given a right of residence. This contention may be valid if impleadment was sought in proceedings ***other*** than proceedings under the Act of 2005. As has been noticed above, the purpose of enacting the Act of 2005 was to ensure some sort of protection to a woman who was in a “domestic relationship” in a “shared household”. Respondent No. 1, a resident of Mumbai, was neither in a “domestic relationship” with the petitioner nor in a “shared household” as defined under Section 2(s) of the Act of 2005. Respondent No. 1 who is seeking impleadment by way of proceedings herein is practically trying to establish her ownership and take possession in the said property by circumventing the proceedings in a Civil Court, where civil suit has already been filed seeking an injunction against the petitioner herein. By this oblique method, respondent No. 1 is trying to gain possession of the property in question which would certainly not be permissible in view of the fact that she has already instituted a suit (Civil Suit No. 211 of 2015) against the petitioner. In any case respondent No. 2 is always at liberty to raise a plea that he is not

an owner of the flat in which the petitioner has been given a right of residence.

12. Another contention that has been raised against the filing of the instant petition against the order allowing impleadment is that the petitioner has 'acquiesced' to the impleadment before the Appellate Court. This argument too does not seem to have much merit. Against the restraining order dated 05.11.2015, issued in favour of the petitioner by the Court, an appeal was preferred by respondent No. 2 Mickey Sibal in which proceedings, respondent No. 1 Radhika Sibal filed an application seeking impleadment on the basis of the impugned order dated 07.03.2017 and the petitioner (who was respondent therein) entered **“no objection subject to challenge”** on the said application which came to be construed by the appellate Court as a **“no objection”** given by the petitioner to the impleadment. Counsel for the respondent No. 1 urged that once a 'no objection' has been given it means that the petitioner had accepted the order dated 07.03.2017 and, therefore, having acquiesced, this petition itself becomes infructuous. The argument raised is not sustainable primarily on account of the fact that after the impugned order dated 07.03.2017 was passed, the same came to be challenged immediately by way of filing of the instant petition on 01.04.2017 in the Registry of this Court and the said 'no objection' was given on 17.04.2017. The 'no objection' was **“subject to challenge”**, which in other words, will be construed to mean that 'no objection' had been given subject to challenge in the instant Criminal Miscellaneous Petition. Therefore, once the very basic order i.e. order dated 07.03.2017 is under challenge, the said argument is not sustainable.

13. The argument raised by the counsel for respondent No. 1 that the ratio as settled in *ThomsonPress (India) Ltd. (supra)* is applicable, is not sustainable. The instant proceedings are under the Act of 2005 which was enacted to protect women from domestic abuse and violence. The facts of the instant case are distinguishable. The proceedings in *Thomson Press (India) Ltd* arose out of a suit for specific performance where despite an injunction not to transfer the suit property during the pendency of the suit, a sale was made and in that context an application for impleadment was allowed. The question of ownership is not to be decided in these proceedings. The Court has to see is whether there is an “aggrieved party” who in “domestic relationship” / “shared household” with respondent No. 2 has been subjected to any sexual abuse, physical abuse, verbal abuse, emotional abuse, economic abuse etc. Once an “aggrieved party” is able to establish a “domestic relationship”, the petition would be sustainable against the person who is the perpetrator of the offence claimed of, and seek relief as permitted under the Act of 2005. For the sake of repetition, it is again held that there is no ‘*lis*’ between the petitioner and respondent No. 1 and she is in fact a stranger to the entire proceedings arising out of a “domestic relationship” and, therefore, cannot be held to be a necessary party to the said proceedings.

14. It is settled law that it is the prerogative of the plaintiff-complainant to choose against whom he wants to litigate or seek relief. The plaintiff is a *dominus litis* to his suit and consequently a party, not impleaded, has no right to be impleaded against the wishes of the plaintiff. The general rule of Order 1 Rule 10 CPC is subject to Order 1 Rule 10(2) CPC which allows a Court to either add or strike out a party in a suit. Such an addition or

deletion is subject to the decision taken by the Court to effectively and completely adjudicate and settle all the questions involved in a suit. The ratio of the judgment laid down in *Mumbai International Airport Private Limited vs. Regency Convention Centre and Hotels Private Limited*, (2010) 7 SCC 417 has interpreted Order 1 Rule 10 CPC and held as under:

13. The general rule in regard to impleadment of parties is that the plaintiff in a suit, being dominus litis, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. Consequently, a person who is not a party has no right to be impleaded against the wishes of the plaintiff. But this general rule is subject to the provisions of Order I Rule 10(2) of Code of Civil Procedure ('Code' for short), which provides for impleadment of proper or necessary parties. The said sub-rule is extracted below:

"10. (2) Court may strike out or add parties.-- The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added."

14. The said provision makes it clear that a court may, at any stage of the proceedings (including suits for specific performance), either upon or even without any application,

and on such terms as may appear to it to be just, direct that any of the following persons may be added as a party: (a) any person who ought to have been joined as plaintiff or defendant, but not added; or (b) any person whose presence before the court may be necessary in order to enable the court to effectively and completely adjudicate upon and settle the question involved in the suit. In short, the court is given the discretion to add as a party, any person who is found to be a necessary party or proper party.

15. A “necessary party” is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the Court. If a “necessary party” is not impleaded, the suit itself is liable to be dismissed. A “proper party” is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in disputes in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance.

Conversely, in case the petitioner had impleaded respondent No. 1 as party, being owner of the premises in dispute, an argument would have been raised that there is no “domestic relationship” or “shared household” between respondents and the petitioner, which argument would certainly have been sustainable. There is no *lis* between the petitioner and Radhika Sibal and the respondent No. 2 is not a necessary or even a proper party to the proceedings

initiated under the Act of 2005. The dispute and the relief sought is against Mickey Sibal and, therefore, it is held that the JMIC, Gurugram erred in allowing the impleadment application.

15. A contention has also been raised that the premises/flat, in which the petitioner is residing, belonged to Rahul Sibal s/o respondent No. 2, as per conveyance deed dated 10.04.2015 and, therefore, the petitioner has no right of residence in the said premises. Whether the respondent No. 2 has transferred the property in the name of his son to circumvent the right of the petitioner / whether the marriage is a valid one / whether the petitioner has been duped / if she has a right to residence are all questions that are yet to be determined. At the present moment, any such argument cannot be entertained by this Court primarily on the ground that proceedings under the Act of 2005 are still pending adjudication. The scope of interference by this Court would be limited to the order dated 07.03.2017 passed by the JMIC, Gurugram on an application that was filed by respondent No. 1 seeking impleadment therein.

16. Therefore, in view of the above discussion, it is held that Radhika Sibal is not a necessary or a proper party to the *lis* between the petitioner and respondent No. 2. Any relief that respondent No. 1 claims against the petitioner would be in proceedings other than the ones under the Act of 2005. Resultantly the instant petition is allowed and the impugned order dated 07.03.2017 is hereby set aside.

17. Before parting with this judgment, it is noticed that an application has been preferred by the petitioner seeking restoration of the electricity which stands disconnected. An application seeking to initiate

contempt proceedings is already pending before the JMIC. Let the question of restoration of electricity be decided forthwith, at the very first instance, so that the petitioner can reside with dignity under the order dated 05.11.2015 till the same is either set aside or modified.

Parties are directed to appear before JMIC, Gurugram on 09.10.2017.

06.10.2017

Ansari

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No