

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

Date of decision: 20.01.2017

1. **CRR-212-2014 (O&M)**

Gurpreet Singh & others

...Petitioners

Versus

Amandeep

...Respondent

2. **CRR-1521-2014 (O&M)**

Amandeep

...Petitioner

Versus

Gurpreet Singh & others

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Ashok Singla, Advocate,
 for the petitioners in CRR-212-2014
 for respondents in CRR-1521-2014.

 Mr. G.S. Nahel, Advocate,
 for the respondent in CRR-212-2014
 for the petitioner in CRR-1521-2014.

JAISHREE THAKUR, J.

1. This order of mine shall dispose of two petitions i.e. CRR-212-2014 and CRR-1521-2014 arising out of the same impugned order. For

2. The instant revision petitions have been preferred seeking to challenge the order dated 18.12.2013 passed by learned Sessions Judge, Barnala whereby ₹ 8,000/- has been awarded against the husband as interim maintenance payable to the wife complainant and the minor daughter.

3. In brief the facts are that complainant Amandeep Kaur got married to Gurpreet Singh, (the petitioner in CRR-212-2014) on 30.03.2007. After the marriage, the petitioner started residing along with her husband and his family members in House No. 242, Street No.5, Prem Basti, Sangrur. Out of this wedlock, a female child namely, Shubamreet was born on 19.01.2008. On account of domestic violence, the complainant wife Amandeep was forced to live at her parental house at village Tapa along with her minor daughter, which led to filing of an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as 'DV Act'), seeking relief of residence in shared house as well as interim maintenance. In the complaint, it was alleged that she had no means for supporting herself and the minor daughter and sought the necessary relief as claimed.

4. The Magistrate after noting contentions of both the parties, directed that the complainant-wife would be entitled to residence in the matrimonial home and accordingly directed her husband Gurpreet Singh and his family members to make available accommodation on the first floor which was under tenancy by getting the same vacated from the tenant within one month from the date of order, with a further direction that in case they were unable to get the first floor vacated, the complainant would have a right to reside at the ground floor with the respondents. Further a sum of

₹ 10,000/- per month as interim maintenance was also provided to the applicant wife and a sum of ₹ 5,000/- to be made available for the minor child. Aggrieved against the said order dated 05.10.2013, passed by Chief Judicial Magistrate, Barnala, husband Gurpreet Singh along with his mother and father preferred an appeal.

5. It was argued that the residence belonged to appellant Nos. 2 & 3, namely, parents of the husband of the complainant and, thus, no right of residence could be given to the complainant-wife therein. It was further argued that a sum of ₹ 15,000/- assessed as interim maintenance, was on the higher side since the appellant husband Gurpreet Singh had lost his job on account of the pendency of the proceedings. Learned Sessions Judge after appreciating the facts of the case modified the orders passed and directed the husband-appellant to provide the complainant possession of one room along with kitchen, bathroom either on the ground floor of H. No. 42, Street No.5, Prem Basti, Sangrur and also modified the interim maintenance to the complainant @ ₹ 5,000/- per month and the minor daughter @ ₹ 3,000/- per month from the date of application.

6. Aggrieved against the order passed, two revision petitions have been preferred, one by the complainant which is numbered as CRR 1521 of 2014, wherein the complainant wife Amandeep sought restitution of the order passed by the trial Court, whereas CRR-212-2014 has been preferred by the husband.

7. Mr. Ashok Singla Advocate, urges that the interim maintenance of ₹ 8,000/- is totally arbitrary and not based on any income of the husband petitioner while also stating that the house in question was a self-acquired

property of Jagdev Singh, father-in-law of the complainant/father of Gurpreet Singh, her husband. It is also argued that the order passed by the Sessions Judge to provide one room to the respondent wife with kitchen and a bath room on the ground floor would not be possible as there is only one bathroom and kitchen on the ground floor and, therefore, the orders passed would not be feasible to implement. Counsel further argued that in such a situation where the relationship between the parties is extremely strained and if the wife is permitted to live in same house with both kitchen and bathroom being shared between them, there would be grave apprehension of unpleasantness, and every likelihood that the husband and his family members would be further implicated in false litigation. It is argued that in such a situation the Courts below ought to have made orders for alternate accommodation as per the alternate prayer made by the complainant wife herself in the petition filed under Section 12 of the DV Act.

8. Per contra, Mr. G.S. Nahel, Advocate, appearing for the complainant wife Amandeep argued that the complainant is entitled to an order of residence in the home in which she entered into after her marriage. It is contended that it is a shared residence defined under section 2 (s) of the D.V. Act and hence the orders so passed are to be complied with. It also argued that the interim maintenance granted @ ₹15,000/- should be restored.

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

10. In the present case, the complainant was residing with her husband Gurpreet Singh in House No. 242, Street No.5, Prem Basti, Sangrur

after her marriage. This is borne out from the copy of the ration card and gas connection which have been placed on the record. The evidence reveals that the complainant resided in the aforesaid house which would be defined as a shared household under Section 2(s) of the D.V. Act, which reads as under :-

“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.”

11. Undisputedly, the complainant wife resided in the aforementioned house along with her husband after her marriage and their child was born while the complainant was residing in the same house. The husband of the complainant continues to reside in the said premises and as per Section 2(s) of the D.V. Act, the said house would be classified as ‘shared accommodation’. Therefore, there is no infirmity in the findings as given by the Sessions Judge regarding the right of residence to the complainant. However it has to be seen as to whether allowing the right of

residence within the same shared accommodation will be practical or not?

12. The report of the CDPO on the record, clearly shows that on the ground floor there are six rooms, one kitchen, one lobby and one bathroom and on the first floor, which is under tenancy, there are three rooms, one kitchen and one bathroom. Admittedly, the first floor is under tenancy and therefore the same is not immediately available to be given out to the complainant for her residence. The arrangement as proposed by the learned Sessions Judge of allowing residence to the complainant wife and her daughter on the ground floor, by sharing the kitchen and the bathroom, is not a practical one for all intents and purposes. The sharing of kitchen and the solitary bathroom when there is already bitterness and acrimony between the parties coupled with allegations of physical abuse, such a situation would in all probability result in altercation, unnecessary and unwarranted litigation between the parties. The old Indian saying 'two swords cannot survive in one sheath' is applicable in the present case. Therefore, while holding that the complainant-wife is entitled to a right of residence, in the facts and circumstances of the present case, on account of the lay out of the accommodation as available, it would be in the interest of the parties to modify the orders so passed. A perusal of the complaint filed under Section 12 of the D.V. Act shows that the complainant wife herself had asked for an alternate accommodation. Therefore, it is directed that the husband make available either alternate accommodation consisting of one room, a kitchen and a bathroom to the complainant wife or make available the first floor by getting the same vacated.

13. As far as the plea of the interim maintenance is concerned, this Court is inclined to interfere in the matter since the complainant wife is to unable to sustain herself and the minor daughter, who has to obtain education. As already noted, it is the duty of the husband to maintain his family, and therefore, the sum of ₹ 8,000/- awarded as interim maintenance is hereby maintained. It cannot be said to be highly excessive.

14. In view of the discussion above, both the criminal revisions as filed by the complainant Amandeep Kaur and Gurpreet Singh and his parents challenging the orders regarding right of residence and maintenance are disposed of with the following directions:-

- (i) It is directed that the husband is to provide accommodation as directed herein above within a period of two months of this order.
- (ii) It is directed that all arrears of maintenance as awarded are to be cleared upto date within a period of three months of this order.

15. Needless to say any observations made herein would have no bearing on the merits of the case which is to be decided in accordance with law.

20.01.2017
Satyawan

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes.
No.