

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

CWP 1959 of 2013

Date of Decision: April 5, 2017

Rekha Kara

.....Petitioner

Vs.

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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**Present:- Mr.Shiv Kumar, Advocate
for the petitioner.**

Mr. Gaurav Jindal, Addl.A.G., Haryana.

Mr. Madan Sandhu, Advocate for respondents No.4 and 5.

Mr. Thakur Ashwani Verma, Advocate for respondent No.6.

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M.M.S. BEDI, J.

The petitioner is daughter-in-law of respondents No.4 and 5 and wife of respondent No.6. She has sought the quashing of the order dated September 25, 2012, annexure P-2, passed by the Maintenance Tribunal under Maintenance and Welfare of Parents and Senior Citizen Act, 2007, for short 'the Act', and order dated January 1, 2013, annexure P-6, passed by the

Appellate Tribunal under the Act, directing respondent No.6 to vacate the house owned by the father-in-law of the petitioner.

The petitioner has averred that she was married to respondent No.6 on November 30, 2003 and has been residing since then in their matrimonial home bearing No. 733, Sector 23, Faridabad. Husband of the petitioner is a habitual drinker and is in the habit of coming late to the house and used filthy language besides giving her beatings. The petitioner has got a minor son born out of the wedlock with respondent No.6. Respondents No.4 to 6 in connivance with each other wanted to oust the petitioner from the matrimonial house. All the three respondents connived with each other and got filed an application before respondent No.3 under the Act. Said application was forwarded to the District Social Welfare and Conciliation Officer, Faridabad for report but no notice was served upon the petitioner and without giving an opportunity of hearing, respondent No.3 passed an order of eviction against respondent No.6. It was respondent No.6 who appeared before the Tribunal and gave an undertaking that he would vacate the house. The petitioner claims that respondents No.4 to 6 colluded with each other and used the provisions of the Act to oust her. Respondent No.6 has filed a divorce petition against the petitioner whereas the petitioner has also filed a petition under Section 12 of the Protection of Women from Domestic Violence Act, against respondents No.4 to 6. The complaint pending before the Judicial Magistrate Ist Class has been appended as annexure P-3. After passing of the ejectment order, a notice was issued to

the petitioner to appear before respondent No.3 on November 27, 2012. That notice was also received by husband of the petitioner. The petitioner was never informed about the ejectment order but she was informed about the order by the police official who rang her up for the vacation of the house.

Notice was issued to the respondents. Two separate written statements have been filed, one by respondents No.4 and 5 and another by respondent No.6. Respondent No.6 has pleaded that after the ejectment order, the matter was compromised with respondents No.4 and 5. Respondent No.6 was allowed to stay in the house with a condition that petitioner and respondent No.6 will live peacefully and will maintain and look after the ill and old aged respondents No.4 and 5. Respondent Nos. 4 and 5 have contested the petition stating that on September 6, 2008, respondents No.4 and 5 had disowned respondent No.6 from the property and complaints were made to the police. So far as petitioner is concerned, it is pleaded that she has filed false and frivolous complaint under Sections 12, 18, 19, 20, 22 and 23 of the Protection of Women from Domestic Violence Act.

A Coordinate Bench of this Court deemed it appropriate to direct the parties to appear before the Mediation and Conciliation Centre. The decision of the Mediator dated August 11, 2014 has been placed on the record wherein it is mentioned that the compromise has been arrived at between the parties and that it has been agreed that the petitioner and respondent No.6 decided to join each other's company and decided to stay

at House No. 733, Sector 23, Faridabad and not to pursue the petition under Protection of Women from Domestic Violence Act filed by the petitioner and divorce petition filed by respondent No.6.

It appears that the terms of settlement have not been adhered to by the parties as the petitioner has pressed for the adjudication of the dispute on merits.

I have considered the facts and circumstances of this case and considered the plea of the petitioner that she was not given opportunity of hearing and that her husband had appeared before the authorities under the Act. Her husband had not contested the petition under the Act. It is also admitted fact that the husband of the petitioner had filed a divorce petition and obtained an ex-parte order against the petitioner and the petitioner has filed an application for setting aside the ex-parte proceedings which are pending.

The eviction order against the petitioner is liable to be set aside solely on the ground that on account of matrimonial dispute of the petitioner with her husband- respondent No.6, respondent No.6 has not contested the proceedings for eviction under the Act. Since the husband of the petitioner has colluded with respondents No.4 and 5, his parents, and an attempt is being made to evict the petitioner under the provisions of the Act without giving her a fair opportunity to put-forth her case, a fraud appears to have been played upon the petitioner in seeking ejectment against her by her husband and his parents who are respondents No.4 and 5. Annexures P-2

and P-6 having been obtained by respondents No.4 and 5 ex-parte qua the petitioner without giving her an opportunity of hearing, the petition is allowed. Annexures P-2 and P-6 are hereby set aside. It will be open to respondents No.4 and 5 to file a fresh petition against the petitioner or her husband. In case any such petition is filed, it will be open to the petitioner to contest the same in her individual capacity irrespective of any admission or compromise made by her husband. Since the ejectment orders have been set aside on ground of violation of rules of natural justice, the launching of fresh proceedings for eviction will not be barred. It is ordered that in case any fresh petition is filed by respondents No.4 and 5, the same will be decided after giving fair opportunity to the petitioner and enabling her to show cause against the proposed eviction order.

April 5, 2017
sanjay

(M.M.S.BEDI)
JUDGE

Whether speaking/ reasoned:	Yes/ No.
Whether reportable:	Yes/No.