

HIGH COURT OF CHHATTISGARH, BILASPUR

M.A. No. 72 of 2018

Jitendra Kumar Dewangan, S/o. Shri Ram Khilawan Dewangan, Aged About 40 Years, Presently R/o. Q.No. C-09, Krishnavatika, Phase-II, Shalini School Road, Boirdadar, Raigarh, Tahsil And District- Raigarh, Chhattisgarh
.....(Plaintiff)

---- Appellant

Versus

Smt. Neeti Dewangan, W/o. Jitendra Kumar Dewangan, Aged About 36 Years, R/o. Palace Road, Narsingh Mandir Street, Raigarh, Tahsil And District- Raigarh, Chhattisgarh
.....(Defendant)

---- Respondent

For Appellant : Mr. Ashish Shrivastava, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

29.08.2018

1. Learned counsel for the appellant submits that the appellant is in possession of the house and respondent may dispossess them as respondent wife has filed a petition under Section 12 of the Domestic Violence Act, 2005 (for short "*the Act, 2005*").
2. Section 17 of the Act, 2005 gives the right to woman, who is in domestic relation, a right to reside in the shared household irrespective of the fact that whether she has any right, title or beneficial interest in the same are not. Section 23 of the Act, 2005 has power to grant interim and ex parte orders in any proceeding, to grant any order which may be just and proper is vested with the Magistrate.
3. In an application filed under Order 39 Rule 1 & 2 of C.P.C. prayer has been made that the respondent be restrained to interfere in the peaceful possession of the suit house or be restrained to transfer the same and status quo may be maintained. Under what threat, the suit is filed is not clear except the cause of action has

been stated that it arose on 13.04.2017 when the respondent left a letter and went away with all her belonging to her maternal home. The prayer in the suit is made that declaration be made that the plaintiff and respondent are the joint owner of the suit house shown in Schedule 'A' and the permanent injunction be passed that the respondent should not transfer the property and also not to interfere in the peaceful possession of the plaintiff.

4. With respect to the suit property if any order is made in favour of wife to enter in her shared household in exercise of power under Section 23 of the Act, 2005 to a purported right granted under Section 17 of the Act, 2005 the same cannot be enjoined as it would amount arrest a judicial proceeding. With respect to the possession of the plaintiff, it is obvious that the plaintiff cannot be dispossessed otherwise then in due course of law. Since the suit in respect of the suit house is pending, it is further directed that no third party interest may be created in respect of the suit property to avoid the multiplicity of the proceeding.
5. With such observation, the appeal stands disposed of.

Sd/-
(Goutam Bhaduri)
Judge