IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

123 **Criminal Misc. No.M-22609-2018**
Date of Decision: May 25, 2018.

GURDEEP KAUR ..... PETITIONER

Versus

MANJIT KAUR ..... RESPONDENT

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. S.S. Narula, Advocate for the petitioner.

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LISA GILL, J.

The petitioner is aggrieved of order dated 17.05.2018 (Annexure P-7) dismissing her application for adjournment of the case on the ground that her counsel had not properly addressed arguments in a petition under Section 482 Cr. P.C in CRM-M-35430-2016 and the petitioner had filed another petition/application for recalling order dated 17.11.2017. It is further prayed that directions for providing residential accommodation to the respondent (daughter-in-law of the petitioner) in the matrimonial home be not implemented.

Brief facts necessary for the adjudication of this case are that, application under Section 12 of the Protection of Women from Domestic Violence Act, 2005, was filed by the respondent who is the daughter-in-law of the petitioner, against her husband (petitioner's son) as well the petitioner (her mother-in-law). Learned Judicial Magistrate Ist Class, Jalandhar (vide order dated 07.10.2015) directed husband of respondent No.1 to provide one separate room in the matrimonial home to the respondent alongwith access to the kitchen and washroom etc., as basic amenities.

The petitioner challenged the order dated 07.10.2015 while averring that the house in question is owned by the petitioner, who is the mother-in-law

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and can thus not be termed as the matrimonial and shared house.

The learned Additional Sessions Judge, Jalandhar while dismissing the petitioner's appeal on 16.08.2016 observed that the petitioner's son had 1/3rd share in the said property. It was this share which was subsequently, sold in favour of his maternal aunt (masi). Therefore, prima facie, it appeared that sale of his share in this property was merely an eye wash and an effort to prevent the respondent from entering the house in question. Copy of the order dated 16.08.2016 is not attached with this file and has been furnished during the course of hearing.

Both the orders dated 07.10.2015 and 16.08.2016 were challenged by the petitioner by way of filing CRM-M-35430-2016 which was dismissed by this Court on 17.11.2017 specifically holding that there was no merit in the plea raised by the petitioner and even the alternate plea of providing a separate residence to the respondent appeared to be an after thought as she herself had got no personal income being housewife. Observations of the Court in order dated 17.11.2017 in CRM-M-35430-2016 read as under:-

> 'It is not in dispute that the house in question is owned by the petitioner who is mother in-law of the respondent. The son of the petitioner having right in the property has sold his share to his maternal aunt, without consideration just to defeat the right of the respondent. The respondent has no source of income. The son of the petitioner is duty bound to provide shelter and to maintain his wife and minor child. As per the record, there are more than ten rooms in the house. The plea of the petitioner that the respondent would provide separate residence clearly appears to be an afterthought because she herself has got no personal income being a house wife. Perusal of the record would reveal that the son of the petitioner has admitted that he still resides in the house in question. The argument of learned counsel for the petitioner, that the Courts below has passed the impugned order on the basis of site plan, lacks merit, as the site plan was not controverted by the petitioner.

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> Under the given facts and circumstances of the case, this Court finds no merit in the present petition. There is no illegality, infirmity or perversity in the impugned orders which are hereby affirmed.'

The petitioner, thereafter moved an application for adjournment of the matter on the plea that an application for review was filed with a further prayer that order dated 07.10.2015 be not implemented. Learned trial court dismissed the said application while specifically observing that when the matter had come up for hearing before it on the earlier occasion an application was filed for granting time to the petitioner to file an SLP against order dated 17.11.2017. Thereafter counsel was changed by the petitioner and another application for adjournment was moved on the ground that the petitioner was seeking review/recall of order dated 17.11.2017 in CRM-M-35430-2016. The learned trial court after noting the entire sequence of events dismissed the application for adjournment alongwith the earlier application for adjournment for filing an SLP before the Hon'ble Supreme Court. It was directed that the concerned SHO shall ensure one separate room in the matrimonial home to the petitioner along with access to the kitchen and washroom etc.,

Aggrieved therefrom, this petition has been filed.

Learned counsel for the petitioner raises a sole argument that it was not open to the learned trial court to direct the concerned SHO to provide the premises in question as no such power is conferred upon the court.

I have heard learned counsel for the petitioner at length.

It is apparent that the petitioner has managed to delay the matter since 2015 till today. Effort is still being made to negate order dated 07.10.2015 despite the matter being decided conclusively against the petitioner by this Court as reflected in order dated 17.11.2017 (Annexure P-6). On a specific query of

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the Court regarding the status of the petition under Section 482 Cr. P.C allegedly filed for recalling of order dated 17.11.2017, it is candidly stated that the same was filed on 15.05.2018, however, the same has not even come up for hearing till date. No number has been appended by the Registry. There is no information available as to whether the said petition had been returned after any objections or is still pending with the Registry. The conduct of the petitioner clearly disentitles her from seeking any kind of relief. The present petition is obviously nothing more than another attempt to scuttle order dated 07.10.2015.

Therefore accepting the contention on behalf of petitioner that as per Rule 6 Sub Rule 5 direction could not have been issued to SHO for implementation of the order in question would lead to an anomalous situation whereby a premium would be given to the act of the petitioner which clearly lacks bona fide. This Court was of the opinion that present petition should be dismissed with exemplary costs, however learned counsel for the petitioner submits that the petitioner herself is a lady and not having any source of income, therefore, a lenient view be taken.

This petition is accordingly dismissed with no order as to costs.

(LISA GILL)
JUDGE

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Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*

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