

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

CRM-M-36366-2016 (O&M)

Date of decision : 28.08.2018

Mohinder Kaur

.....Petitioner(s)

Versus

Sukhwinder Kaur and others

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Rajeshwar Singh Thakur, Advocate
for the petitioner.

Ms. Amarjit Kaur, Advocate
for respondents no.1 & 2.

Respondent no.3—Pargat Singh in person.

ANITA CHAUDHRY, J(ORAL)

This petition is by the mother-in-law who has assailed the order dated 09.08.2016, vide which the appeal filed by respondents no.1 & 2 had been allowed & order dated 04.06.2016 passed by the Magistrate has been modified.

It is necessary to have the facts first. Sukhwinder Kaur along with her daughter filed a complaint under the Domestic Violence Act. Sukhwinder Kaur was married to Pargat Singh in March 2002. A child was born in January 2003. Disputes arose in the very beginning of the marriage and an FIR was registered in 2004. Subsequently, compromise was effected and a petition for quashing of FIR was filed and the FIR was quashed.

In the complaint filed under the Domestic Violence Act, it was claimed that the husband was a permanent employee in Punjab University and was getting salary of Rs.17,000/- per month and he had other business i.e.

sale and purchase of old vehicles. It was pleaded that petitioner no.1 (wife) had no source of income and she required Rs.6,000/- per month for herself and some amount for the daughter's education, transportation, books etc.

The husband pleaded that a petition under Section 125 Cr.P.C. had also been filed. It was pleaded that the wife left the matrimonial home in May 2002 without informing anyone but she returned the next day. In view of this, he and his wife shifted to one portion of the house as his parents wanted to separate them. It was pleaded that in May 2003, the father of his wife got a DDR registered and he was got arrested. It was pleaded that he was getting salary of Rs.8,387/- per month as take home salary and there was no other source of income and the wife was earning by doing embroidery work.

Both the sides led evidence. The salary statement of the husband was produced, according to which his gross salary was Rs.34,912/- per month.

The trial Court noted that the relationship between the parties were strained from the very beginning and there was no domestic incident and the petitioner had admitted that she had got the FIR lodged in 2004 and had also given a complaint to the SSP in 2010. The trial Court found that the petitioner had not been able to prove any domestic incident and dismissed the complaint.

An appeal was carried by the wife and maintenance was allowed. The appellate Court also noted that the husband was not residing in house no. 1216, Sector 49-B and was living in rented accommodation. It also noted that house no. 1216, Sector 49-B was owned by the mother and therefore, the husband was directed to provide accommodation to the wife as per his status within two months from the date of order.

It was claimed on behalf of the wife that the husband did not arrange any accommodation and the wife filed an execution petition but when the husband disclosed that he had arranged an accommodation. Sukhwinder Kaur withdrew her execution petition on 05.07.2016 vide Annexure P-9.

The petitioner (mother-in-law) filed an application seeking enforcement of the order dated 28.07.2015 seeking eviction of the daughter-in-law from the room occupied in her house. The application was disposed of on 04.06.2016. The Executing Court noted that since the daughter-in-law was put in possession of the house pursuant to the interim order through the help of the police, therefore, it was the duty of the Court to restore the possession to the owner. It also noted that the mother-in-law was not required to pay any maintenance and directed the daughter-in-law to vacate the premises and also asked the concerned SHO to enforce the order so that the possession was delivered to the rightful owner. Against that order Sukhwinder Kuar filed an appeal and the order was reversed. The case was remanded back to the trial Court to reconsider the application in terms of the order passed by the Additional Sessions Judge, Chandigarh earlier. It also passed an order that the status of the husband shall have to be kept in view. It further made an order that whatever accommodation was to be provided, approval should be taken from the petitioner. The petitioner is aggrieved by the directions given by the Appellate Court as it modified the order passed by the First Appellate Court.

I have heard counsel of both the sides.

Counsel for the petitioner contends that the petitioner is the owner of the house and the daughter-in-law had been directed to vacate the premises and the assistance of the police was ordered to be given and the

petitioner's son is living in rented accommodation in village Umra in Mohali and he has taken a room on rent @ Rs.2,300/- per month, which is referred to in the earlier orders. The counsel submits that the wife had already withdrawn the execution and it was the application filed by the petitioner (mother-in-law) upon which an order was passed and directions were given to respondents no.1 & 2 to vacate the premises but the First Appellate Court modified the order passed by the Appellate Court on 28.07.2015 going beyond what was ordered, which it could not have.

Counsel for the petitioner further contends that Pargat Singh-respondent no.3 is present in the Court and earlier also they had shown some houses but the wife is not willing to move out of that house and is demanding that a house should be taken near the school. Pargat Singh states that he is ready to pay rent @ Rs.5,000/- per month and houses are available on rent in Sector 45 @ Rs.3,500 - 4,000/- per month. He states that he is living in Sector 68, Mohali.

On the other hand, the counsel representing respondents no.1 & 2 states that the Apex Court in ***Vaishali Abhimanyu Josi Vs. Nanasaheb Gopal Joshi 2017(2) RCR (Civil) 1021*** has given a right to the wife to stay in the house of the father-in-law and she can maintain a counter claim. The counsel submits that the child is studying and they cannot be asked to take a house on rent which is 10 kilometers away and the flats which are near the school are available on rent @ Rs.15,000/- per month and no house is available at the rate being offered.

The operation of the impugned order passed by the Additional Sessions Judge had been stayed in November 2016. Thereafter, certain efforts were made for mediation. The parties were also called in the Court

several times. Respondent no.1 was not ready to vacate the premises nor she was ready to accept any rent. It is necessary to reproduce the order dated 10.05.2018, which reads as under:-

“Both the parties are present in person. Respondent no.1 is not ready for any settlement nor she is ready to accept any rental amount. She is presently in possession of the property which is in the name of petitioner (mother-in-law).

Adjourned to 07.08.2018.

Learned counsel for the petitioner states that there is a connected matter i.e. CRR-1295-2015 which is pending before the Co-ordinate Bench.

Registry is directed to list both the cases together before the same Bench.”

The First Appellate Court vide its order dated 09.08.2016 went into questions which were not before it and wrongly remanded the case, directing the trial Court to reconsider and implement the order passed by Additional Sessions Judge, forgetting all together that the application filed by the wife seeking execution of the order had been withdrawn by her and the application was not filed by the wife. It was the mother-in-law who had approached the trial Court seeking restoration of her house and implementation of the order passed an order on 04.06.2016. Mohinder Kaur was to get back possession of the portion which was occupied by the daughter-in-law. It was the Court who had ordered the police to deliver possession to the daughter-in-law, so their assistance was ordered to regain possession. It is against that order that Sukhwinder Kaur filed an appeal. The limited question was only with respect to whether the mother-in-law could re-possess her house. Instead of deliberating on the issue the

Additional Sessions Judge, wrongly remanded the matter to the trial Court asking it to implement the order of the Additional Sessions Judge. There was no execution pending at the instance of the wife. The order, therefore, passed on 09.08.2016 has to be set aside. Respondent no.3 is present and efforts for arriving at a consensus have failed. Alternate accommodation was suggested but some arrangement will also have to be made for the shelter of the wife and the child. Respondent no.3 was already ordered to pay Rs.10,000/- per month as maintenance.

The petition is allowed Respondents no.1 & 2 are directed to vacate the premises within 45 days from today. Since they would be occupying the premises owned by the petitioner, therefore, it is further directed that respondent no.3 would deposit rent of Rs.5,000/- per month in the bank account of respondent no.1 in lieu of residence from October 2018 onwards. The amount would be transferred in the first week of each month. Respondent no.1 would intimate her account number so that respondent no.3 can transfer the amount in her account regularly. In case, respondent no.1 fails to vacate the premises within 45 days, the petitioner would take the assistance of the trial Court for execution of the order.

28.08.2018

sunil

**(ANITA CHAUDHRY)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No