

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

(1)

Crl. Revision No.1253 of 2017(O&M)
Date of Decision: February 21, 2018

Krishan Kumar and others

...Petitioners

Versus

Navneet Alias Seema and others

...Respondents

(2)

Crl. Revision No.2471 of 2017(O&M)

Navneet @ Seema

...Petitioner

Versus

Sandeep Kumar and others

...Respondents

CORAM:- MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Akshay Jindal, Advocate
for the petitioners in CRR No.1253 of 2017 and
for the respondents in CRR No.2471 of 2017.

Mr. Rahul Deswal, Advocate
for the petitioner in CRR No.2471 of 2017 and
for the respondents in CRR No.1253 of 2017.

JAISHREE THAKUR, J.

The above captioned two criminal revisions are being disposed
of by a common order since parties to the said litigation are common and
both challenge the same order dated 08.03.2017 in proceedings arising out

of a complaint filed under the Protection of Women from Domestic Violence Act (for short 'the DV Act') .

2. In order to understand the lis between the parties, a few brief facts are being taken from CRR No.1253 of 2017, which has been preferred by petitioner No.1-Krishan Kumar (father-in-law), petitioner No.2-Chameli (mother-in-law) and petitioner No.3-Sandeep Kumar (husband) against complainant-respondent No.1 Navneet alias Seema and others. The parties would be referred to in this order, as has been referred in CRR No.1253 of 2017.

3. Complainant/respondent No.1-wife herein solemnized a marriage on 10.12.2006 with petitioner No.3 herein, out of which wedlock a female child was born on 15.09.2007. She was turned out of her matrimonial home, on account of her husband and his parents not being satisfied with the dowry given. Eventually, a petition under Section 12 of the DV Act along with reliefs claimed under Sections 17, 18, 19, 20, 22 and 23 of the DV Act with the specific reliefs of maintenance and right to reside in the alleged shared household *i.e. House No.568, Gali No.11, Gandhi Nagar, Karnal* was preferred. The trial court dismissed the relief of residence in the shared household, on the ground that the said house belonged exclusively to the father-in-law and granted maintenance to the tune of Rs.4000/- per month from the date of the order. The said order was an *ex parte* order, which was challenged in appeal by the complainant-wife before the Addl. Sessions Judge, Karnal, who allowed the appeal and modified the order of the trial court, to the extent of allowing residence to complainant/respondent no.1-wife in the shared household i.e. House

No.568, Gali No.11, Gandhi Nagar, Karnal and also enhanced the maintenance to the tune of Rs.6000/- per month, while also allowing the maintenance to be paid from date of filing of the complaint, instead of maintaining the order passed by the trial court, granting maintenance from the date of the order. In the said impugned order a restraining order was issued against petitioner no 1 from alienating the house in question. Aggrieved against the said order, CRR No.1253 of 2017 titled as "*Krishan Kumar and others vs. Navneet Alias Seema and others*" has been preferred by father-in-law, mother-in-law and husband of the complainant-wife whereas, CRR No.2471 of 2017 titled as "*Navneet @ Seema vs. Sandeep Kumar and others*" has been preferred by the complainant-wife. In CRR No.1253 of 2017, the petitioners are seeking to challenge the judgment passed in appeal, allowing right of residence in the house belonging solely to father-in-law of the complainant-wife and the restraining order, whereas in CRR No.2471 of 2017, the petitioner i.e. complainant-wife challenges the said judgment, on the ground that the maintenance so awarded is inadequate, since she has the responsibility of bringing up a minor child and that income of his husband is around Rs.40,000/- and that he has given incentive of Rs.12 lakhs for giving a good business to the bank.

4. Mr. Akshay Jindal, learned counsel appearing on behalf of the petitioners (in CRR No.1253 of 2017) contend the impugned judgment dated 08.03.2017 passed by the Addl. Sessions Judge, Karnal in appeal, allowing right of residence is not sustainable, since the house in question belongs solely to father-in-law of the complainant-wife i.e. petitioner No.1- Krishan Kumar, which fact cannot be ignored. It is argued that the

Appellate Court has ignored the dictum as laid down by the Supreme Court in **S.R. Batra and another vs. Taruna Batra (Smt.), (2007) 3 Supreme Court Cases 169**, wherein it has been held that a house belonging to the mother-in-law cannot by any stretch of imagination be considered as a 'shared household'. Moreover, petitioner No.3 (husband) is not residing in the said house and in fact, residing in Sarojini Nagar, near ITI Chowk, District Yamuna Nagar. It is also submitted that earlier a compromise had been arrived at between the parties i.e. petitioner No.3-husband and complainant-wife and a separate accommodation was taken in Hakikat Nagar, Karnal where, both the parties resided together for a period of one and half month. It is during the period of stay at Hakikat Nagar, Karnal that various litigations were instituted against the petitioners and on account of this enmity, it would be impossible for the complainant-wife to reside in the house belonging to his father, as allowed by the Appellate Court. Moreover, the order allowing maintenance from the date of the application is not sustainable, as no cogent reasons are forthcoming as to why, the enhanced maintenance should be paid from the date of the application, instead of from the date of the order. It is also contended that the Appellate court has also passed in junction, restricting petitioner No.1 (father-in-law) from alienating the house without the consent of the complainant-wife, which is also not sustainable.

5. Per contra, Mr. Rahul Deswal, learned counsel appearing on behalf of the complainant-wife argues that the relief of maintenance is wholly inadequate, since petitioner No.2-husband is working as Assistant Manager in HDFC Bank, Yamuna Nagar and is earning a sum of

Rs.40,000/- per month and the complainant-wife has the responsibility of bringing up a minor daughter, whose entire future is ahead of her. Learned counsel also submits that our own High Court in ***Subhash and another vs. Shivani, 2016(3) RCR (Criminal) 959***, had allowed the complainant therein a right to reside in the shared household, belonging to her father-in-law, since this was the house that she entered into after her marriage and continued to reside there till the dispute arose between the parties. It is argued that the divorce petition filed by petitioner No.3-husband is pending, in which petitioner No.3-husband has been directed to pay a sum of Rs.9000/- as maintenance to the complainant-wife under Section 24 of Hindu Marriage Act, from the date of application, which shall include the amount, which the complainant-wife is getting under the DV Act and the said amount would subsist only during the pendency of the petition under Section 13 of Hindu Marriage Act. It is also brought to the notice of the court that petitioner No.3-husband is not residing in Yamuna Nagar, as he was served at the residence described as House No.568, Gali No.11, Gandhi Nagar, Karnal in the complaint case that was filed and even in the instant criminal revision. It is further argued that the complainant-wife resided in the house in a portion shown as ECDF in the site plan Ex.P1 at the time of marriage and thereafter, two rooms, latrine and bathroom were constructed in the portion shown as ABEF in the site plan Ex.P1, with the money contributed by her parents, by selling their buffaloes for a sum of Rs.40,000/-, which was given towards utilization in the construction, and therefore, she has a right to reside in the said house. It is also argued that the complainant-wife has successfully been able to establish that she is a victim

of domestic violence and entitled to claim reliefs, as provided under the DV Act.

6. I have heard learned counsel for the parties and with their assistance, have perused the pleadings of the case.

7. Admittedly, the complainant-wife married with petitioner No.3- Sandeep Kumar and out of which wedlock, a minor child namely Payal was born. The complainant-wife was able to prove domestic violence through oral as well as documentary evidence i.e. her MLR in proceedings under the DV Act, which resulted in the petition being allowed by the Judicial Magistrate Ist Class at Karnal by an order dated 20.05.2015. Since the complainant-wife was not able to prove anything regarding monthly salary of her husband (petitioner No.3), an amount of Rs.4000/- per month was allowed, taking him to be a qualified labourer, capable of earning Rs.10,000/- to Rs.12,000/- per month. As far as claim for right of residence in the shared household was concerned, the same was disallowed, since there was nothing on the record regarding the ownership of the house. The Appellate Court allowed the appeal by the impugned judgment by relying upon ***Subhash and another vs. Shivani (supra)***, while also enhancing the maintenance to the tune of Rs.6000/- per month from the date of the application. Besides this, she was also allowed to live in the shared household and the petitioners herein were directed not to alienate the house in question, as shown in the site plan.

8. The primary questions that arises for consideration would be;

(i) Whether the complainant-wife is entitled to right of residence in the house that does not belong to her husband?

(ii) Whether the complainant-wife is entitled to enhancement of the maintenance amount?

9. The Protection of Women from Domestic Violence Act came to be enacted in the year 2005 when a need was felt that adequate protections were not being given to women, despite special provisions as provided under Section 498-A of Indian Penal Code. The legislature was of the opinion that there is abuse in a domestic relationship, which might be on account of dowry or otherwise and women were to be afforded protection in that relationship. The term 'abuse' was given a wide connotation, which could be sexual abuse, verbal and emotional abuse and economic abuse, besides the physical abuse. Section 2(s) of the DV Act defines the term “**shared household**” 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.”*

10. Section 2 (f) of the DV Act, defines the terms “**domestic relationship**” as under;

*“**domestic relationship**” means a relationship between two persons who live or have, at any point of time, lived*

together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family”

11. Section 17 of the DV Act provides for right to reside in a shared household, which reads as under;-

“17. Right to reside in a shared household-

- 1. Notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same.*
- 2. The aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law.”*

12. Further, Section 19 of the DV Act states as under;

“19. Residence orders.—

- 1. While disposing of an application under subsection (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order—*
 - a. restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;*
 - b. directing the respondent to remove himself from the shared household;*
 - c. restraining the respondent or any of his relatives from entering any portion of the shared household in*

which the aggrieved person resides;

d. restraining the respondent from alienating or disposing of the shared household or encumbering the same;

e. restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or

f. directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require:..”

13. The Appellate Court, in its impugned judgment dated 08.03.2017, while relying upon judgment of our own High Court in **Subhash and another vs. Shivani (supra)**, modified the order passed by the Judicial Magistrate Ist Class and has observed as under (para 14);

“....Keeping in view the dictum laid down by the Punjab and Haryana High Court in the above said judgment, coupled with the facts of the present case and in the considered view of this court, the complainant-appellant is entitled to reside in the shared house of the respondents and the respondents have no right to alienate the house in question without the consent of the complainant-appellant.”

14. In **Subhash and another vs. Shivani (supra)**, our own High Court observed as under;-

*“I have heard learned counsel for the petitioner who places reliance on the judgment of **S.R. Batra and another Vs. Smt. Taruna Batra, 2007 (1)***

RCR (Crl.) 403 wherein it had been observed in the circumstances of the case that wife could only be entitled to claim a right to residence in a shared household, and a shared household would only mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member. The Supreme Court was pleased to observe that the definition of shared household in Section 2 (s) of the Act is not very happily worded.

*I have considered the judgment cited by counsel for the petitioner in context to the provisions of Section 2 (s) of the Act which entitles a wife to resist eviction from shared household. A shared household, as per the Statute is where the wife (aggrieved person) lives or at any stage has lived in a domestic relationship either singly or along with the respondent and would also include a household whether owned or tenanted either jointly by the aggrieved person and her in-laws or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent (in laws) or both jointly or singly have any right, title, interest or equity. The respondent wife after marriage had stayed in the house and had acquired an interest and right to stay in the shared household. The judgment of **S.R. Batra's** case (supra) does not deal with a situation where the husband (respondent) is bent upon a mischief by camouflaging a situation by taking different residence and wants to wash his hands of his liability towards his wife by claiming that he is now unemployed and not having any residence. Even the husband has not come forward with any plea in order to enable his wife to enforce her legal rights under Section 17 (1) of the Act*

for a shared household for having a domestic relationship. The father-in-law, petitioner No.1 has certainly, a domestic relationship with the respondent.”

15. The two Judge Bench of Supreme Court in **S.R. Batra and another vs. Taruna Batra (supra)** has dealt with the definition “**shared household**” in detail, besides the other provisions of the DV Act. A similar question arose whether a house, which exclusively belonged to mother-in-law of the complainant wherein she only lived with her husband for some time in the past after their marriage, comes within the ambit of “shared household” under Section 2(s) of the DV Act. The Supreme Court while allowing the appeal has held that *'The house in question belongs to the mother-in-law of the respondent. It does not belong to her husband. Hence the respondent cannot claim any right to live in that house. There is no such law in India, like the British Matrimonial Homes Act, 1967, and in any case, the rights which may be available under any law can only be as against the husband and not against the father-in-law or mother-in-law.'* Learned counsel for the respondent Smt. Taruna Batra stated that the definition of shared household includes a household where the person aggrieved lives or at any stage had lived in a domestic relationship. He contended that since admittedly the respondent had lived in the property in question in the past, hence the said property is her shared household. The Supreme Court has further observed as under;-

“25. We cannot agree with this submission.

26. If the aforesaid submission is accepted, then it will mean that wherever the husband and wife lived together in the past that property becomes a shared household. It

is quite possible that the husband and wife may have lived together in dozens of places e.g. with the husband's father, husband's paternal grand parents, his maternal parents, uncles, aunts, brothers, sisters, nephews, nieces etc. If the interpretation canvassed by the learned counsel for the respondent is accepted, all these houses of the husband's relatives will be shared households and the wife can well insist in living in the all these houses of her husband's relatives merely because she had stayed with her husband for some time in those houses in the past. Such a view would lead to chaos and would be absurd.

27. It is well settled that any interpretation which leads to absurdity should not be accepted.

28. Learned counsel for the respondent Smt Taruna Batra has relied upon Section 19(1)(f) of the Act and claimed that she should be given an alternative accommodation. In our opinion, the claim for alternative accommodation can only be made against the husband and not against the husband's in-laws or other relatives.

29. As regards Section 17(1) of the Act, in our opinion the wife is only entitled to claim a right to residence in a shared household, and a 'shared household' would only mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member. The property in question in the present case neither belongs to Amit Batra nor was it taken on rent by him nor is it a joint family property of which the husband Amit Batra is a member. It is the exclusive property of appellant No. 2, mother of Amit Batra. Hence it cannot be called a 'shared household'.

30. No doubt, the definition of 'shared household' in

Section 2(s) of the Act is not very happily worded, and appears to be the result of clumsy drafting, but we have to give it an interpretation which is sensible and which does not lead to chaos in society.

31. In view of the above, the appeal is allowed. The impugned judgment of the High Court is set aside and the order of Senior Civil Judge dismissing the injunction application of Smt. Taruna Batra is upheld. No costs.”

The ratio as laid down in ***S.R. Batra's case*** (supra) has subsequently been followed in a catena of judgments across various High Courts i.e. by the Kerala High Court in **Hashir vs. Shima, 2015(3) RCR (Criminal) 683**, by the Madras High Court in **V.P. Anuradha vs. S. Sugantha and others, 2015(4) RCR (Criminal) 631**, by Delhi High Court in **Harish Chand Tandon vs. Darpan Tandon and others, 2015(153) DRJ 273**.

16. In the case in hand, the relationship of petitioner No.3-husband and complainant-wife did not survive, which resulted in number of litigations between the parties. During the pendency of the complaint, in view of a compromise arrived at between the parties, both the complainant-wife and petitioner No.3-husband took a separate accommodation in Hakikat Nagar, Karnal. It was during their stay at this separate accommodation, the complainant-wife got a complaint registered against petitioner No.3-husband and he was, therefore, challaned under Section 107/151 Cr.P.C. It is thereafter, a battle of litigation started between both the husband and wife. Subsequent thereto, petitioner No.3-husband initiated divorce proceedings against the complainant-wife and thereafter, complainant-wife got an FIR No.1072 dated 19.11.2015, registered under

Sections 323, 406, 506 of Indian Penal Code and Section 25/54/59 of Arms Act at Karnal.

17. The argument raised that petitioner No.3 is residing at Karnal i.e as would be evident that service was effected upon him at the very address and therefore the complainant-wife is entitled to reside therein is an argument which is not sustainable. Mere service upon the husband at the said address in Karnal cannot be taken to be a proof that he is residing there, since his parents are parties to the litigation and that is their permanent address. **Moreover the salary slip relied upon shows petitioner no 3 to be working at Yamuna Nagar.** In the case in hand, neither the husband nor the wife are residing in the house in question, which belonged to petitioner No.1 (father-in-law) exclusively. In **S.R. Batra's case (supra)**, it has been clearly held by the Supreme Court that the house belonged to father-in-law or mother-in-law, cannot be termed as “**shared household**” merely because complainant-wife and her husband lived together in the past as husband and wife there. It has been further observed by the Supreme Court that the wife is only entitled to claim a right to residence in a shared household and a shared household would mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member. Therefore, decision of this court in **Subhash and another vs. Shivani (supra)** is distinguishable and is not applicable to the peculiar facts and circumstances of the present case. Merely on account of existence of a domestic relationship between the wife and other relation of her husband, it would not make out a case for a wife to claim residence in a house, which exclusively belonged to the relatives of the husband. A shared

household must be read to mean a house belonging to or taken on rent by the husband, or the house which belongs to the joint family, of which the husband is a member.

18. In view of the foregoing discussion and ratio of law held by the Supreme Court in **S.R. Batra's case (supra)** the first question formed by this court is answered against the complainant-wife. The house in question, being exclusive belonging to petitioner No.1 (father-in-law), it cannot be called as a “**shared household**” within the ambit of Section 2(s) of the DV Act. Consequently, the impugned judgment dated 08.03.2017 passed by the Appellate Court is liable to be set aside to the extent that complainant-wife has no right to claim right of residence in the house in question, which belonged to her father-in-law and further that petitioner No.1 (father-in-law) cannot be restrained from alienating the house in question, being not a shared household. Instead, the complainant-wife is held entitled to claim for alternative accommodation or payment of rent in lieu thereof.

19. The second question which arises for consideration is whether the complainant-wife is entitled to enhancement of the maintenance amount? In the complaint filed before the trial court, the complainant-wife claimed the maintenance amount of Rs.6000/- per month. However, in the absence of any documentary record, the trial court by its order dated 20.05.2015 held the complainant-wife entitled to maintenance @ Rs.4000/- per month, which amount was enhanced to Rs.6000/- per month in appeal by the Appellate Court by an order dated 08.03.2017. In the divorce proceedings initiated by petitioner No.3-husband, on an application filed under Section 24 of the Hindu Marriage, the husband has been directed to

pay a sum of Rs.9000/- per month as maintenance, including the amount the complainant-wife is getting under the DV Act. However this court cannot loose sight of the fact that the said order passed under Section 24 of Hindu Marriage Act, shall remain in subsistence, only during the pendency of the divorce proceedings. In the instant criminal revision, the complainant-wife is seeking increase in the maintenance amount and is claiming Rs.10,000/- per month for herself, besides a sum of Rs.10,000/- per month to the minor girl child. The complainant-wife claimed that present salary of her husband is Rs.40,000/- per month and her daughter Payal is now studying in Class IV in Dev International School, Butana, District Karnal, which fact should be taken into consideration, while enhancing the maintenance amount. In CRR No.1253 of 2017, joining letter of petitioner No.3-husband as Assistant Manager has been produced on record, which reflects that basic salary of petitioner No.3-Sandeep Kumar is Rs.1,39,980/- per annum, apart from HRA Rs.30000/- per annum, Conveyance Rs.9600/- per annum, Medical Rs.15000/- per annum, Lunch Allowance Rs.10,920/- per annum, Personal Pay Rs.18,000/- per annum, Other Allowance Rs.98,040/- per annum. If the basic salary as well as personal pay and other allowance are calculated, it comes to Rs.2,56,020/- per annum. The said joining letter is dated March 10, 2015, which is almost three years old which would have increased over this period in the form of annual increments and other incentives. So, if the total salary of petitioner No.3 is taken to be Rs.3,00,000/- per annum, then the monthly salary comes to Rs.25,000/- per month. Keeping in view the fact that cost of living is increasing as well as the requirement of the minor female child, whom the complainant-wife is

looking after, this court is of the considered view that interest of justice would be met, if Rs.15,000/- per month is awarded as maintenance inclusive of rental towards accommodation (which she has been held entitled to in lieu of residence in father-in-law's house) to the complainant-wife for her maintenance as well as for the upbringing of the minor female child.

20. In view of the foregoing discussion, the second question is answered in favour of the complainant-wife. The complainant-wife is held entitled to maintenance @ Rs.15,000/- per month from the date of this order in criminal revision (CRR No.2471 of 2017). This amount of Rs.15,000/- would be subject to adjustments with the maintenance amount, which the complainant-wife is getting in any other proceedings. An argument has also been raised that the impugned order granting maintenance @ Rs.6000/- per month from the date of the complaint and not from the date of order, as allowed by the JMIC, is not sustainable, as no cogent reasons have been given by the Appellate Court for the same. This argument is not sustainable since petitioner No.3-husband has been fastened with the liability of paying maintenance @ Rs.9000/- per month under Section 24 of Hindu Marriage Act, which is substantially more than the amount, that has been awarded.

21. Both the petitions stand partly allowed accordingly.

February 21, 2018
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No