

Crl. Misc. No.M-19019 of 2013 (O&M)

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

**Crl. Misc. No.M-19019 of 2013 (O&M)
Date of decision : 02.11.2018**

Barkha Ram

....Petitioner(s)

Versus

Daya Rani

....Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Anil Chawla, Advocate
for the petitioner.

Mr. Mohan Singla, Advocate
for the respondent.

ANITA CHAUDHRY, J.

The petitioner has assailed the order dated 17.05.2013 passed by Sessions Judge, Kaithal whereby the revision filed by the petitioner challenging the Magistrate's order was dismissed.

It is necessary to give the essential facts. A complaint under the Domestic Violence Act was filed. The wife sought a residence order in the matrimonial home and also the custody of her children. The trial Magistrate directed the respondent to provide suitable accommodation to the petitioner. It also directed that both the children would reside with the mother and all three of them would reside in the house of the husband and the husband would provide them daily necessities.

Aggrieved by the order Barkha Ram challenged the order passed by the Magistrate. The Revisional Court dismissed the revision.

I have heard counsel of both the sides.

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Counsel for the petitioner submits that the petitioner has two rooms and in one room there is a Majar where prayers are offered. It was urged that the petitioner had filed a divorce petition on account of acts of cruelty and it is not possible for him to stay and provide a separate room to the wife as there is only one room left and he is ready to pay rent. The counsel for the petitioner submits that the respondent has joined as a Constable and she was allotted accommodation. Counsel for the petitioner urges that a settlement was effected earlier and the copy is available on record, according to which the petitioner had entered into an agreement to buy a plot and had paid Rs.30,000/- as earnest money and he has lost that money as the respondent is not ready to stay in that property which he was to construct.

The submission on the other hand is that there is a typing error in the application (Annexure P-3) and the respondent was demanding maintenance of Rs.20,000/- per month and there was no agreement of lump sum amount. It was urged that the respondent has not joined as a Constable nor any accommodation has been provided to her.

The short issue involved here is whether the order passed by the Court below needs to be modified since parties cannot live together.

A perusal of the record shows that a settlement was effected between the parties and pursuant to that settlement the petitioner had entered into an agreement of sale and some amount was paid as earnest money. The previous orders show that the respondent was not ready to live in the plot as according it was at a isolated place. The case had been adjourned a number of times to enable the parties to arrive at a settlement. The parties have been unable to arrive at a settlement.

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The matter was heard on merits. The differences between the parties have widened. The petitioner states that he is unable to provide a separate room as he has only two rooms and cannot provide the second room to the wife as his earnings are from the 'Majar' which is in the other room and the petitioner instead is ready to pay rent to the respondent.

No document has been placed on record by the petitioner to show that the respondent was appointed as a constable or that she had been allotted any accommodation. In the light of the circumstances, the order passed by the Court below should be modified and the petitioner instead of providing residence in his two room tenement would pay Rs. 3,000/- per month in lieu of residence from date of order passed by the trial Magistrate. The order passed by the Magistrate is modified. The petition is disposed of accordingly.

02.11.2018
sunil

(ANITA CHAUDHRY)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No