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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.M.C. 3391/2017 and CRL.M.A. 13845/2017

NEELAM GUPTA

..... Petitioner

Through Ms. Divya Malhotra, Adv.

Versus

MAHIPAL SHARMA GUPTA & ANR

..... Respondents

Through Mr. Arun Batta, Adv. for respondent
no. 1

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

% **15.11.2018**

Petitioner (wife) filed a petition under the Protection of Women from Domestic Violence Act, 2005 against the respondents, that is, respondent no. 1 Shri Mahipal Sharan Gupta (husband) and respondent no. 2 Shri Arnav Gupta (step son). Vide order dated 17th June, 2008 respondents were restrained from disturbing possession of the petitioner from the premises bearing flat no. 2426 A, First Floor, Hudson Line, Mall Road, Delhi-110009.

Respondent no. 2 filed an application for variation of the order dated 17th June, 2008. This application was allowed by the learned Metropolitan

Magistrate, Delhi, vide order dated 26th October, 2016. Interim order dated 17th June, 2008 was modified. Respondent was directed to provide similar accommodation in the same locality where complainant was presently living or rent of ₹15,000/- per month in lieu of same.

Petitioner preferred an appeal before the Additional Sessions Judge, North District, Rohini Courts, Delhi, which has been dismissed by the impugned order dated 15th April, 2017.

That is how, petitioner is before this Court by way of present petition under Section 482 Cr.P.C.

Facts of this case are peculiar. After the death of his wife on 10th October, 2004, respondent no. 1 married the petitioner on 21st January, 2006. No child was born from their wedlock. Petitioner as well as respondents started living in the aforesaid flat after the marriage. Respondent no.2 and his grandmother were also living in the same flat, which was in the name of deceased wife of respondent no. 1. With the passage of time, disputes arose between the petitioner and respondent no. 1, resultantly, respondents and mother of respondent no. 1 had to leave the flat. Respondent no. 1 is presently living in Mumbai. As per the respondent no.1, he is living in a rented accommodation which fact has been disputed by the

petitioner.

It is noted that respondent no. 2 filed a suit for partition in this Court being CS(OS) no. 858/2010 titled Arnav Gupta vs. Mahipal Gupta & Anr., which was decreed. Paras 20 and 21 of the order dated 3rd April, 2013 passed in CS(OS) No. 858/2010 reads as under:-

“20. The final decree for partition is accordingly passed in respect of properties i.e. (i) residential flat no. 2426-A, First Floor, Hudson Line, Kingsway Camp, Delhi and (ii) residential plot no. B-8 situated at Khasra No. 276-278 situated in village Liabas Pargana and Tehsil Dadri Colony, Paradise City, Distt. Ghaziabad, U.P., by sale of the said properties and distribution of sale proceeds between the plaintiff and the two defendants equally. It is clarified that all the parties shall be entitled to participate/bid in the said sale and the highest bidder would be entitled to acquire the share/shares of the other party/parties.

21. The decree qua Flat no. 2426-A is however made executable subject to vacation/variation of the order dated 17th June, 2008 in the Domestic Violence Act proceedings initiate by Smt. Neelam Gupta second wife of defendant no. 1 against the plaintiff and the defendant no. 1 as well as the order in the civil suit instituted by the said Neelam Gupta against the defendant no. 1. The plaintiff and the defendant no. 1 are at liberty to apply for variation/vacation of the order in the said proceedings.”

It is noted that said suit was filed by the respondent no.2 against the

respondent no.1, wherein he also impleaded his sister as defendant no.2.

Petitioner approached the Division Bench by way of RFA(OS) No. 96/2013, which was dismissed vide order dated 19th February, 2014.

In view of the order passed in the civil suit, respondent no. 2 filed an application for variation of the interim order dated 17th June, 2008, which was disposed of by the Trial Court vide order dated 26th October, 2016, relevant para whereof reads as under:-

“It is seen that petition suit has already decreed and property at Hudson Lines has been ordered by Hon’ble High Court subject to variation of order dated 17.6.08. Further, it is seen that respondent has offered to complainant the premises at the place where she is not comfortable. It is settled law that complainant is entitled to same standard of living as she had during her marriage, at the time when she was living at her matrimonial home. Keeping in view the above facts respondent is directed to provide similar accommodation in the same locality where complainant is presently living or rent of ₹15,000/- p.m. in lieu of same. Accordingly, application stands disposed of.”

After the decree of partition has been passed, respondent no. 1 has no exclusive right in the flat in question. It is the respondent nos. 1, 2 and daughter of respondent no. 1, namely, Ms. Garima Gupta, have equal share in the flat in question, which has been ordered to be sold and sale proceeds to be distributed between them in equal share. Petitioner can only claim

right of residence against her husband, that is, respondent no. 1 and not from the respondent no.2 and his sister. Respondent no.1 has no exclusive right over the entire property.

For the foregoing reasons, I am of the view that courts below have not committed any error or illegality resulting in miscarriage of justice to the petitioner by modifying the interim order and directing the respondent to pay rent of ₹15,000/- to petitioner, keeping in view the financial condition of the respondent no.1 (husband).

Petition is dismissed. Miscellaneous application is disposed of as infructuous.

A.K. PATHAK, J.

NOVEMBER 15, 2018

r.bararia