

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

CRR - 1503 -2019
Date of Decision:- 4.10.2019

Neha Chawla**Petitioner**

Versus

Virender Chawla & another**Respondents**

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Sh. Arjun Chawla, Attorney of Petitioner alongwith petitioner in person

Sh. Ajay Jain & Sh. Vansh Chawla, Advocates, counsel for
Respondent no. 1 & 2

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GURVINDER SINGH GILL, J.

1. The petitioner challenges judgement dated 11.4.2019, passed by Court of Sessions Judge, Ambala whereby an appeal filed by respondents against order dated 30.7.2018 passed by JMIC Ambala has been accepted and said order dated 30.7.2018, passed under provisions of Protection of Women from Domestic Violence Act, 2005 (hereinafter, in short being referred to as Domestic Violence Act) granting maintenance, rental allowance and medical expenses to petitioner, has been set aside.
2. A few facts, necessary to notice for disposal of this revision petition are that the petitioner filed a complaint under Domestic Violence Act alleging therein that she is a resident of Jammu and that her marriage was solemnised

with Surinder Chawla in the year 1995 who somehow expired on 24.3.2010. The petitioner alleged that her brothers-in-law namely the respondents Virender Chawla and Rajinder Chawla had, however, been harassing her and also been giving beatings to her on various occasions while stating that the petitioner had not brought dowry as per their expectations. It is alleged that when the petitioner was living in shared household she was not permitted to move alone out of home and the respondents used to threaten her that they would cause friction in her relationship with her husband. It is further alleged that earlier she had been awarded maintenance at the rate of ₹5000 per month by the Courts at Jammu & Kashmir which was later enhanced to ₹11,000 per month. However, after death of her husband the petitioner or her son had not been given a single penny towards maintenance out of the property of her husband and the entire business of her husband had been usurped by her brothers-in-law i.e. the respondents who had also misappropriated all the articles of her dowry. It is further alleged that when her husband was on death bed the respondents forged his signatures and got all the money released from banks and also operated the lockers and took out gold ornaments lying therein. The complainant alleged that she was not being allowed to enter into the shared household by respondents and was not given a single penny from the property or business of her husband.

3. The respondents, in their reply, opposed the petition. While the factum of marriage of the petitioner with Surinder Chawla i.e the brother of the respondents was admitted but a stand has been taken that in fact Surinder Chawla was a divorcee and it was a simple marriage without any dowry. It is further stated therein that the marriage had been solemnized in a temple at

Jammu in a very simple manner. The respondents asserted that the relations between the petitioner and her husband were strained right from the very beginning and she resided in her matrimonial home barely for 2-3 months after her marriage and thereafter left while taking away the valuables not only those belonging to her but also those of mother and elder brother of respondents. It has been stated in reply that the petitioner had never made any complaint either under section 406 or 498-A of IPC against her husband during his lifetime but after his death she started a tirade against the respondents in order to pressurise them to part with their properties. The respondents have further taken a categorical stand that the property i.e. house No. 109, the Mall, Ambala Cantt, was never a shared household and the petitioner had never resided in the said house. It is further the case of respondents that the petitioner had been residing at Jammu since last more than 15 years and was getting Migration Allowance from Jammu & Kashmir Government. It is thus alleged by the respondents that the present petition has been filed by levelling false and concocted allegations against the respondents.

4. Both the parties led evidence in support of their respective stands. The JMIC accepted the application and awarded monthly maintenance @ ₹ 10,000, rental allowance at the rate of ₹ 5000 per month and medical expenses to the petitioner at the rate of ₹ 5000 per month apart from a compensation to the tune of ₹ 25,000, vide order dated 30.7.2018. Aggrieved by said order, the respondents preferred an appeal in the Court of Sessions Judge, Ambala, which was accepted vide impugned judgement dated 11.4.2019 and order dated 30.7.2018 passed by JMIC, Ambala, was set aside.

5. The present petition has been filed by the petitioner in person challenging impugned order dated 11.4.2019. Upon a query made by this Court on 5.9.2019, the petitioner expressed that she does not wish to engage any counsel and would either be arguing the matter herself or her son would be arguing on her behalf. Subsequently, an application was moved on behalf of the petitioner seeking permission to place on record a Special Power of Attorney executed by petitioner in favour of her son Arjun Chawla, authorising him to present her case on her behalf which was taken on record vide order dated 17.9.2019 and the petitioner's son Arjun Chawla was permitted to address arguments before this Court.
6. I have heard Sh. Arjun Chawla, appearing on behalf of the petitioner and also the counsel representing the respondents and have also perused the impugned order as well as other documents annexed with the petition. Sh. Arjun Chawla, attorney of petitioner, submitted that the lower Appellate Court fell in error in placing undue reliance upon the fact that some decree for dissolution of marriage of the petitioner with her husband had been passed whereas the alleged decree dated 31.1.2001(Annexure P-9) is in the nature of an ex-parte decree and infact the passing of said decree is questionable inasmuch as although the said decree purports to have been passed in the year 2001, but the petitioner's husband had also filed a petition in the year 2005 u/s 13 of Hindu Marriage Act seeking dissolution of his marriage as would be evident from a copy of divorce petition dated 3.3.2005(Annexure P-11). It has also been submitted that in any case the alleged ex-parte decree dated 31.1.2001(Annexure P-9) virtually stood revoked upon the petitioner's husband having made a statement towards

compromise on 4.3.2003 whereby he agreed to take back his wife in his matrimonial home as would be evident from a copy of order dated for 4.3.2003(Annexure P-10) passed in execution proceedings pertaining to execution of a decree for restitution of conjugal rights passed in favour of the petitioner.

7. It has further been submitted that the Court of Sessions was also swayed unnecessarily by the fact that the petitioner's husband had expired whereas a petition under Domestic Violence Act is duly maintainable against the relatives of an aggrieved person's husband and the mere fact that the husband had expired would not debar the petitioner/wife from having recourse to provisions of Domestic Violence Act. It has also been submitted that the learned Sessions Judge did not take into account the fact that earlier the order granting interim maintenance to the wife had been upheld up the High Court inasmuch as this High Court did not choose to set aside the order granting interim maintenance to the petitioner. Sh. Arjun Chawla, attorney of petitioner, in this context has referred to order dated 18.1.2016(Annexure P-3) passed by this Court in CRM-M-25197 of 2013.
8. It has further been submitted that the conduct of petitioner's husband and of other members of his family was always cruel towards the petitioner and she was never permitted to settle in her matrimonial home and was continuously harassed and after death of petitioner's husband every effort has been made by brothers of petitioner's husband to defeat all the legitimate claims of the petitioner and of her son to the estate of her husband and she is not even permitted to reside in her matrimonial home at Ambala. It has thus been submitted that the petitioner having been subjected to domestic violence by

the respondents and having been thrown out of 'shared household', was entitled to claim relief under provisions of Domestic Violence Act. The petitioner while placing reliance upon a judgement of Supreme Court reported as 2019(2) RCR(Criminal) 1016, Ajay Kumar Vs. Lata @ Sharuti, has submitted that the impugned order dated 11.4.2019 is liable to be set aside and that of JMIC granting maintenance deserves to be restored.

9. On the other hand, the learned counsel for the respondents has supported the impugned judgement and has submitted that the same is well reasoned, passed after proper appreciation of the evidence on record and does not suffer from any infirmity. It has further been submitted that in fact the petitioner claims her pound of flesh from the respondents to which she is not at all entitled to as she had hardly ever resided with her husband and had always been residing at Jammu where she is getting Migration Allowance. It has further been submitted that in any case the petitioner had never resided in 'shared household' with the respondents so as to have 'domestic relationship' with the respondents to be entitled to stake any claim under provisions of Domestic Violence Act. It has further been submitted that in any case not only the marriage between the petitioner and her husband stood dissolved in year 2001 but subsequently the petitioner's husband expired in the year 2010 and that the present petition came to be filed after the death of petitioner's husband which would suggest that the same has been filed simply in order to pressurise the respondents to part with some property. It has been submitted that no petition under Domestic Violence Act or any criminal case was ever instituted by the petitioner during the lifetime of her husband and since she has continuously been residing at Jammu, away from

her matrimonial home since the year 1997 onwards, she cannot raise any claim after more than decade after leaving her matrimonial home, and that too against her brothers-in-law, which, in any case would be barred by limitation. A prayer has, thus, been made for dismissal of the petition.

10. The above noticed rival contentions *inter-alia* require the following questions to be answered for adjudicating on the controversy in hand:

- (1) Whether the complaint filed by the petitioner under provisions of Domestic Violence Act is barred by limitation?
- (2) Whether the fact that the marriage of the petitioner stood dissolved by way of decree of divorce when the complaint under Domestic Violence Act was filed, would render the complaint not maintainable?
- (3) Whether a complaint under provisions of Domestic Violence Act against brothers of petitioner's husband, filed after the death of petitioner's husband is maintainable?
- (4) Whether the petitioner had no option of assailing ex-parte decree of divorce obtained by her husband, after death of her husband?
- (5) Whether ex-parte decree of divorce(dated 31.1.2001) in favour of petitioner's husband, dissolving marriage of petitioner, is to treated as a sham decree as the petitioner's husband had filed another divorce petition in 2005 which was dismissed?

11. Before proceeding to consider the aforesaid questions, it is apposite to bear in mind the relevant provisions under the scheme of the Domestic Violence Act, which vests a wife with certain rights in case she is wronged by her husband or other members of his family. Section 12(1) provides that an aggrieved person may present an application to the Magistrate seeking one or more reliefs under the Act. Under the provisions of Section 20(1), the Magistrate while dealing with an application under sub-section (1) of

Section 12 is empowered to direct the respondent(s) to pay monetary relief to meet the expenses incurred and losses suffered by an “aggrieved person” and any child of the aggrieved person as a result of domestic violence. An “aggrieved person” has been defined section 2(a) of the Act as follows:

2(a) “*aggrieved person*” means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent;

12. The term "respondent", as occurring in section 2(a) of the Act is defined in Section 2(q) as follows:-

2(q) “*respondent*” means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act:

Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner;

13. A perusal of section 2(q) indicates that the expression "respondent" means any adult male person who is, or has been, in a domestic relationship with the 'aggrieved person' and against whom relief has been sought. The proviso indicates that both, an aggrieved wife or a female living in a relationship in the nature of marriage may also file a complaint against a relative of the husband or the male partner, as the case may be.

14. Section 2(f) defines "domestic relationship" as follows:

2(f) "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;

15. The expression "shared household" is defined in Section 2(s) as follows:-

- 2(s) "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 house hold 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;

16. The above referred definitions reveal the scheme of the Act in creating both an obligation and a remedy in terms of the enactment. While bearing in mind the aforesaid scheme of the Act, this Court proceeds to notice some of the relevant facts, as extracted from various documents annexed with the petition, which may be stated chronologically as follows :

15.2.1995 : Marriage of petitioner was solemnised with Surinder Chawla. It was second marriage of Surinder Chawla.

31.1.2001 : Marriage of petitioner was dissolved vide ex-parte judgement and decree dated 31.1.2001(Annexure P-9) passed by Court of Additional District Judge Ambala, pursuant to a petition u/s 13 of HMA filed by petitioner's husband.

9.2.2001 : An ex-parte judgement and decree for restitution of conjugal rights was passed on 9.2.2001(Annexure P-7) in favour of the petitioner/wife by Court of Additional District Judge, Jammu.

4.3.2003 : Execution proceedings were initiated by petitioner against her husband Surinder Chawla for implementation of judgement and decree 9.2.2001(Annexure P-7) . However, the parties stated that matter had been compromised and they were ready to settle under one roof and to lead happy

marital life. The statements of the parties were recorded and consequently the execution application was dismissed as having been compromised.

- 4.9.2003 The petitioner had earlier filed a petition in the Court of JMIC Jammu, claiming maintenance under Hindu Adoption and Maintenance Act wherein amount of ₹ 5000 p.m. had been awarded as maintenance which was subsequently enhanced Rs. 20,000 by Hon'ble High Court. During execution of said orders, the petitioner's husband was arrested and produced before a Court at Jammu on 4.9.2003.
- 23.3.2005 : Another petition(Annexure P-11) under section 13 of Hindu Marriage Act filed by Surinder Chawla, husband of petitioner seeking dissolution of his marriage with the petitioner.
- 14.7.2009 : The aforesaid petition under section 13 of Hindu Marriage Act filed by the husband Surinder Chawla was dismissed vide judgement and decree dated 14.7.2009(Annexure P-13) as the husband did not lead any evidence in support of his petition and did not even himself step into the witness box.
- 24.3.2010 : Surinder Chawla, husband of Petitioner expired.
- 25.4.2011 : Complaint filed by petitioner under Domestic Violence Act against brothers of her husband i.e. against the respondents.
- 15.9.2015 : A suit seeking declaration that petitioner and her son were jointly holding the properties with the respondents was dismissed by the Court of Civil Judge (Junior Division) Ambala. The appeal against the said judgement was also dismissed by the Court of Additional District Judge, Ambala on 16.05.2016 and so was the Regular Second Appeal dismissed by this High Court on 15.12.2017.

Another suit filed by petitioner seeking declaration as regards some partnership firms was also dismissed on 17.07.2015, which was affirmed upto High Court.

30.7.2018 : The JMIC, Ambala accepted the petition filed by the petitioner under provisions of Protection of Women from Domestic Violence Act 2005, vide order dated 30.7.2018(Annexure P-4) directing the respondents to pay an amount ₹ 10,000 per month to the petitioner as maintenance from the date of order and also to pay another amount of ₹ 5000 towards rent for alternate accommodation and also another amount of ₹ 5000 per month towards medical expenses.

11.4.2019 : Upon an appeal having been filed by the respondents challenging aforesaid order dated 30.7.2018(Annexure P-4), the appeal was accepted and the aforesaid order dated 30.7.2018 was set aside.

17. In order to determine as to whether the petitioner had a domestic relationship with respondents, one of the material fact to be considered is as to during which period the petitioner has been staying together with her husband in her matrimonial home. The said position can be discerned from averments made by the petitioner as well as by her husband at different points of time in different proceedings. The relevant extracts from various petitions filed by them are reproduced below:

Sr. No.	Description of Document	Averments made in the Document / Relevant extract from order/judgement
1.	Petition u/s 13 of Hindu Marriage Act <u>filed by husband</u> at Ambala on 8.6.2000	9. That the respondent left the matrimonial home in the absence of the petitioner and while leaving the petitioner took all the jewellery including that of the petitioner. 10. The petitioner even sought the help of relatives of the respondent to resolve the matter and even took his own

	(Annexure P-8)	relatives to Jammu but the respondent did not accept to come to Ambala. 11.That the petitioner's health has completely broken down because of these acts and omissions and commissions of the respondent and he suffered a heart attack on 17.3.1998 and thereafter remained admitted in Ram Manohar Lohaya Hospital, Delhi where angiography of the petitioner was got done and subsequently was treated for angioplasty in the hospital at Delhi. The petitioner feels loneliness and he has been deprived of the love and affection of a son and of the wife.
2.	Petition u/s 9 of Hindu Marriage Act <u>filed by the wife</u> at Jammu on 11.9.2000. Decreed on 9.2.2001 (Annexure P-7)	Petitioner Neha Chawla has deposed that she was married to the respondent on 15.2.1995 as per Hindu rites and ceremonies and lived with the respondent husband for <u>8 to 9 months only</u> and thereafter the respondent started making demands of more dowry and she couldn't fulfil the demands and was turned out of the matrimonial home. <i>(aforesaid is an extract from judgement dated 9.2.2001 - Annexure P-7)</i>
3	Order dated 4.3.2003 passed in execution proceedings in respect of a decree for restitution of conjugal rights which had been passed in favour of the petitioner Neha Chawla at Jammu. (Annexure P-10)	Execution proceedings against Surinder Chawla was in progress and case was posted for appearance of the judgement debtor Surinder Chawla for 12th March 2003 when an application for summoning the file for today came to be initiated by both the parties on the ground that parties have compromised with each other and are ready to settle under one roof and want to lead happy congenial and cordial marital life. The file was summoned. The statements of the parties were recorded over leaf the compromise application. Since the parties have settled their grievances and want to lead a happy married life as such the petition is dismissed as compromise. Hence disposed off. File be consigned to records after due completion. <i>(aforesaid is an extract from order dated 4.3.2003 - Annexure P-10)</i>
4	Another petition <u>filed by husband</u> Surinder Chawla u/s 13 of Hindu Marriage Act at Ambala on 23.3.2005 seeking dissolution of his marriage. (Annexure P-11)	11.That in the month of March 1996 the respondent left matrimonial home along with jewellery and valuable articles in the absence of the petitioner and without any information to the petitioner and his family members. On enquiry the petitioner came to know that the respondent reached at Jammu and thereafter on 30.4.1996 she gave birth to a male child at Central Hospital Jammu against the wishes of the petitioner. The petitioner and his family members always wanted to have delivery of the child at Ambala where all types of facilities regarding delivery etc. are available in their presence and care and in spite of all this she left the matrimonial home. 13.That thereafter the respondent started pressing hard upon the petitioner as she wanted to shift her at Jammu for which she started compelling the petitioner to shift his

		business and residence at Jammu as she had to collect every month Relief. The petitioner requested the respondent that it is not feasible for the petitioner to leave Ambala as he earns livelihood from Ambala. 14. That on 16.2.1997 the respondent along with minor child left Ambala in the absence of the petitioner and she also took all the jewellery and costly clothes etc.
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18. From the above referred averments of the parties it can safely be discerned that the parties barely resided together for about 1-2 years after their marriage. In fact the petitioner herself, in her petition filed under section 9 of Hindu Marriage Act, has stated that that she was married in the year 1995 and they barely lived together for about 8-9 months and was thereafter turned out of her matrimonial home. Though there is some inconsistency in the averments made by the petitioner and her husband as regards the exact period when the petitioner left matrimonial home but it is apparent that the parties have not been residing together after 1997 because in any case even the petition under section 9 of the Hindu Marriage Act came to be filed by the petitioner in the year 2000 and that too at Jammu while the petitioner's husband was residing in Ambala where he was carrying on his business as well. The fact that respondent resides separately is also borne out from the fact that petitioner's husband had got his marriage dissolved way back in the year 2001 vide judgement and decree dated 31.1.2001(Annexure P-9).
19. Thus, while it can be safely said that the parties had been residing separately since prior to the year 2000, they complaint under Domestic Violence Act came to be filed after about 11 years from the time when the relations apparently became strained. However it is well settled that there is no limitation prescribed for instituting a complaint under Domestic Violence

Act and it is only if any person is to be prosecuted under the provisions of section 31 of Domestic Violence Act that there would be a limitation of one year in terms of section 468 of Cr.P.C. This Court, in a recent judgement reported as 2018(3) RCR(Criminal) 307 Vikas & others vs. Smt. Usha Rani and another (Pb. & Hr.), held as follows:

- “16. An aggrieved person is permitted to present an application to the Magistrate seeking one or more reliefs under this Act and the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer also. section 12 of the Domestic Violence Act is enabling provision to file an application, whereas Sections 18 to 22 of the Domestic Violence Act provide for rights of the aggrieved person to seek different reliefs like protection, residence, monetary relief, custody of minor and compensation. No limitation has been prescribed for seeking any such relief. Penal provisions under section 31 of the Domestic Violence Act would get attracted on a breach of a protection order. It is only in a situation when there is a breach of any protection order on an application under Section 12 or on any of the reliefs under Sections 18 to 22 of the Domestic Violence Act, then and then only, an application under section 31 of the Domestic Violence Act is to be filed within one year from the date of such breach and not thereafter. Therefore, the court is of the opinion that there is no limitation prescribed to institute a claim seeking relief under Sections 17 to 22 of the Domestic Violence Act.”
20. While there can be no doubt that an application under provisions of section 17 to 22 of Domestic Violence Act would be maintainable even if filed belatedly after the alleged incident of domestic violence as no limitation is prescribed under the Act for instituting such an application, but the Court, as a matter of caution, would be required to satisfy itself as regards the genuineness of a claim made therein so as to rule out the possibility of any concocted version which may have been put forth as an afterthought to settle scores with the applicant's husband or other members of his family merely on account of the relations having turned sour between the applicant

and her in-laws. Question no. (1), thus stands answered accordingly to the effect that there is no limitation prescribed for instituting a complaint under provisions of Sections 17 to 22 of Domestic Violence Act.

21. Having held that no limitation is prescribed for instituting a complaint under provisions of section 17 to 22 of Domestic Violence Act, and that an applicant cannot be thrown out of the Court solely on account of delay in approaching the Courts, the next question before this Court is as to whether in view of the circumstances that the marriage between the petitioner and her husband stood dissolved and in fact even the husband had expired, an application on behalf of a divorced wife after death of her husband would be maintainable under provisions of Domestic Violence Act.
22. The petitioner, in order to contend that grant of divorce would not absolve the liability of the respondents under provisions of Domestic Violence Act has pressed into service a judgement of Hon'ble Apex Court reported as 2014(10) SCC 736 Juveria Abdul Majid Patni Vs. Atif Iqbal Mansoori and another.
23. On the other hand the learned counsel for respondents cites 2011(12) SCC 588 Inderjit Singh Grewal vs. State of Punjab and another, to contend that once the relationship of husband-and-wife stood severed by a decree of divorce, no complaint under provisions of domestic violence act would be maintainable.
24. The above cited judgements have been perused. Hon'ble Apex Court in 2011(12) SCC 588 Inderjit Singh Grewal vs. State of Punjab and another, wherein a wife whose marriage stood dissolved by a decree of divorce but

even after the said divorce, had allegedly been staying together with her ex-husband, held that a complaint under provisions of Domestic Violence Act was not maintainable as the marriage between the parties no longer subsisted. The relevant extract read as such:

“33. In view of the above, we are of the considered opinion that permitting the Magistrate to proceed further with the complaint under the provisions of the Act 2005 is not compatible and in consonance with the decree of divorce which still subsists and thus, the process amounts to abuse of the process of the court. Undoubtedly, for quashing a complaint, the court has to take its contents on its face value and in case the same discloses an offence, the court generally does not interfere with the same. However, in the backdrop of the factual matrix of this case, permitting the court to proceed with the complaint would be travesty of justice. Thus, interest of justice warrants quashing of the same.”

25. In the subsequent judgement, relied upon by the petitioner i.e. Juveria Abdul's case (supra), the Hon'ble Supreme Court noticed the earlier judgement rendered in Inderjit Singh Grewal's case (supra) but upon finding the factual matrix to be distinct, held the complaint under Domestic Violence Act to be maintainable. The distinction noticed is that while in Inderjit Singh Grewal's case, the marriage stood finally dissolved amongst the parties and neither any complaint under provisions of Domestic Violence Act had been filed nor any FIR/complaint under section 406 or 498-A IPC or under any other penal provisions had been instituted prior to grant of divorce whereas in Juveria Abdul's case (supra), a FIR under provisions of section 498-A IPC already stood lodged before the husband got his marriage dissolved. It was on account of the said distinguishable facts in Juveria Abdul's case that Hon'ble Supreme Court held that complaint under provisions of Domestic Violence Act was maintainable.

26. It, thus, follows that there is no such rule that divorce between a couple would absolutely debar a wife from invoking provisions of Domestic Violence Act and that in certain exceptional circumstances, as in Juveria Abdul's case(supra), a wife, despite her divorce, may still be able to make out a case for grant of relief. However, as far as the present case is concerned, the facts are more akin to the facts in Inderjit Singh Grewal's case inasmuch as neither any complaint under Domestic Violence Act nor any FIR under section 406 or 498-A of IPC or under any other penal provisions had ever been instituted before the dissolution of marriage. Rather, another glaring fact is that the husband also had expired before institution of an application under provisions of Domestic Violence Act. In these peculiar circumstances of the present case, the complaint filed by the petitioner against her brothers-in-law under provisions of Domestic Violence Act, filed after a decade of dissolution of her marriage with her husband and also after death of her husband, especially when no FIR for any offence u/s 406 or 498-A had ever been lodged at the instance of wife, has to be held as an abuse of process of law. The aforesaid conclusion is fortified from the fact that there is no convincing evidence even to show that the petitioner had resided in shared household with the respondents or that the respondents had subjected the petitioner to domestic violence. Question no. (2) and (3) are, thus, answered accordingly, against the petitioner.
27. Question no. (4) pertains to the position of law as regards maintainability of an application at the instance of wife for setting aside an ex-parte decree of divorce in favour of husband, after death of husband. In the present case, although the petitioner's marriage stood dissolved by way of an ex-parte

decree but no step whatsoever has ever been taken by the petitioner for getting the said the ex-parte decree set aside. During the course of arguments, it was contended on behalf of the petitioner that after the death of petitioner's husband she had no option to get the decree set aside since by the time the petitioner came to know about ex-parte decree her husband had already expired, but this Court is unable to accept the aforesaid contention inasmuch as the death of her husband would not have debarred the petitioner from assailing the ex-parte decree as the same could have been challenged by impleading some legal representative of her deceased husband. Hon'ble Supreme Court in (1996)6 SCC 371 R. Lakshmi Vs. K. Saraswathi Ammal , while dealing with a matter pertaining to right of a wife to challenge *ex-parte* decree of divorce, after death of her husband, held as follows:

“4. We are of the opinion that the wife should be and is competent to maintain the application under Order 9 Rule 13. Even though the husband is dead, yet the decree obtained by him is effective in law and determines the status of the appellant. If the appellant says that it is an *ex-parte* decree and ought to be set aside, her application has to be heard on merits. The decree of divorce determines her status as a wife apart from determining her rights in the properties of her deceased husband. This gives her sufficient *locus standi* and right to contest the divorce proceedings even after the death of her husband.”

28. To a similar effect is another judgement of Hon'ble Supreme Court reported in 1997(11) SCC 159 Smt. Yallawwa Vs. Smt. Shantavva, wherein it has been held as follows :

“8. It must, therefore, be held that after a decree of divorce is obtained by the petitioning husband against his wife

she has right to file an appeal and such appeal does not abate on account of the death of the respondent-husband whether such death takes place prior to the filing of appeal or pending the appeal. Similarly if an ex-parte decree of divorce is obtained against the wife and thereafter if the husband dies, the aggrieved wife can maintain an application under Order 9, Rule 13, C.P.C. even though the husband might have died prior to the moving of that application or during the pendency of such application. In all such cases other legal heirs of the deceased husband can be brought on record as opponents or respondents in such proceedings by the aggrieved spouse who wants such decree to be set aside, and when the other heirs of the deceased-husband would naturally be interested in getting such decree confirmed either in appeal or under Order 9. Rule 13, C.P.C. ...”

29. The above referred judgements leave no manner of doubt that the petitioner, even after death of her husband did have a right to challenge the ex-parte decree of divorce obtained by her husband. Question no. (4) stands answered accordingly.
30. It was also contended on behalf of the petitioner that the ex-parte decree dated 31.1.2001 was a sham decree inasmuch as the petitioner's husband had in fact filed a petition seeking dissolution of marriage much later in the year 2005 as would be evident from a copy of petition annexed as Annexure P-11 and that in these circumstances no reliance can be placed upon the decree of divorce. A contention has also been raised that statement made by petitioner's husband on 4.3.2003 before executing Court where execution of decree in favour of wife for restitution of conjugal rights was pending, wherein he agreed to rehabilitate his wife, would have the effect of setting at naught the *ex-parte* decree of divorce obtained earlier.

31. I have considered the aforesaid submission. Although it is certainly unexplained as to how the second petition(Annexure P-11) u/s 13 of Hindu Marriage Act came to be filed at the instance of petitioner's husband when a decree of divorce(Annexure P-9) had already been passed in his favour and the same had not ever been set aside but this question need not detain this Court as the undisputed fact is that the decree dated 31.1.2001 dissolving marriage between the parties was still operative and had not been set aside. Hon'ble Apex Court in 2011(12) SCC 588 Inderjit Singh Grewal vs. State of Punjab and another, while dealing with validity of a judgement alleged to be obtained by fraud, held as follows:

“18. However, the question does arise as to whether it is permissible for a party to treat the judgment and order as null and void without getting it set aside from the competent Court. The issue is no more res integra and stands settled by a catena of decisions of this Court. For setting aside such an order, even if void, the party has to approach the appropriate forum. (Vide: *State of Kerala v. M.K. Kunhikannan Nambiar Manjeri Manikoth, Naduvil (dead) & Ors.*, AIR 1996 Supreme Court 906; and *Tayabbhai M. Bagasarwalla & Anr. v. Hind Rubber Industries Pvt. Ltd.*, 1997(2) R.C.R.(Civil) 473 : 1997(2) R.C.R.(Rent) 682).

19. In *Sultan Sadik v. Sanjay Raj Subba & Ors.*, 2004(1) R.C.R.(Civil) 767 : 2004(3) S.C.T. 395 , this Court held that there cannot be any doubt that even if an order is void or voidable, the same requires to be set aside by the competent court.

20. In *M. Meenakshi & Ors. v. Metadin Agarwal (dead) by Lrs. & Ors.*, (2006)7 SCC 470, this Court considered the issue at length and observed that if the party feels that the order passed by the court or a statutory authority is non-est/void, he should question

the validity of the said order before the appropriate forum resorting to the appropriate proceedings. The Court observed as under :-

“18. It is well settled principle of law that even a void order is required to be set aside by a competent Court of law, inasmuch as an order may be void in respect of one person but may be valid in respect of another. A void order is necessarily not non-est. *An order cannot be declared to be void in collateral proceedings and that too in the absence of the authorities who were the authors thereof.*” (Emphasis added)

A similar view has been reiterated by this Court in *Sneh Gupta v. Devi Sarup & Ors.*, 2009(2) R.C.R.(Civil) 129 : 2009(2) Recent Apex Judgments (R.A.J.) 145 : (2009)6 SCC 194.

21. From the above, it is evident that even if a decree is void ab initio, declaration to that effect has to be obtained by the person aggrieved from the competent court. More so, such a declaration cannot be obtained in collateral proceedings.”
32. Thus, as long as the earlier decree dated 31.1.2001 had not been set aside the same would be fully operative and the filing of some petition at a subsequent stage purported to be filed by petitioner's husband or any statement made by husband that he would start residing with his wife would not *ipso-facto* render the earlier decree of divorce void or redundant. Question no. 5 is thus answered accordingly and decree dated 31.1.2001 can not be said to be void or nonest till it is declared so and is set aside.
33. Although the death of petitioner's husband is not a factor which would dis-entitle petitioner to claim maintenance from those with whom she had resided in “shared household” and whose conduct had rendered her “aggrieved” but for getting such relief it is *sine-qua-non* that the wife establishes that she and the respondents had been living in a “shared household” and there had been a domestic relationship between them.

However, there is no such evidence forthcoming in this regard. Although the petitioner seems to have filed civil suits staking claim in the property and business of the respondents on the ground that it was a joint holding with her husband but the said civil suits stand dismissed upto High Court and no such declaration was granted in favour of the petitioner. The said fact has been noticed by the lower Appellate Court. Further, the fact that the present complaint under Domestic Violence Act came to be filed after about a decade of the petitioner residing separately leaves much to be explained and would cause some kind of doubt as regards the genuineness of the allegations regarding domestic violence made by the petitioner. The very fact that she chose to remain silent all these years would tend to put the Courts at caution particularly when no justifiable explanation is forthcoming to explain the whopping delay of a decade. As already mentioned that the petitioner has even been unsuccessful in the civil suits wherein she had raised a claim in the property and business of the respondents.

34. Although the material questions, as discussed above, stand answered against the petitioner, but to be fair to the petitioner, her contention that a complaint under Domestic Violence Act, in any case would be maintainable against brother-in-law deserves to be discussed. The petitioner places reliance upon a recent judgement of Hon'ble Apex Court reported as 2019(2) RCR (Criminal) 1016, Ajay Kumar vs. Lata @ Sharuti, the relevant extract of which reads as follows:

“16. At the present stage, there are sufficient averments in the complaint to sustain the order for the award of interim maintenance. Paragraph 10 of the complaint prima facie indicates that the case of

the complainants is that the house where the first respondent and her spouse resided, belong to a joint family. The appellant and his brother (who was the spouse of the first respondent and father of the second respondent) carried on a joint business. The appellant resided in the same household. Ultimately, whether the requirements of Section 2(f); Section 2(q); and Section 2(s) are fulfilled is a matter of evidence which will be adjudicated upon at the trial. At this stage, for the purpose of an interim order for maintenance, there was material which justifies the issuance of a direction in regard to the payment of maintenance.

17. However, we clarify that the present order as well as orders which have been passed by the courts below shall not come in the way of a final adjudication on the merits of the complaint in accordance with law.”

35. A perusal of the cited judgement would show that the Hon'ble Supreme Court has held that a brother of husband is liable in case the husband of the complainant had been carrying on joint business with his brothers and the said brothers and complainant's husband resided in the same household.

36. In context of the aforesaid issue, the following observations of Hon'ble Supreme Court pertaining to maintainability of complaint under Domestic Violence Act against relatives of husband, as made in S.R. Batra and another v. Taruna Batra (Smt.), (2007)3 SCC 169, also need to be borne in mind:

“24. 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.

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.”
37. In another case reported as (2008) 4 SCC 649 Vimlaben Ajitbhai Patel v. Vatslaben Ashokbhai Patel and others, Hon'ble the Supreme Court has, after referring to the provisions of section 3(b), 18 and 19 of the Hindu Adoptions and Maintenance Act, 1956, observed that maintenance of a married wife, during subsistence of marriage, is on the husband and that the same is a personal obligation and that such an obligation, upon death of husband, can also be met from the properties of which the husband is a co-sharer and not otherwise.
38. When the facts of the case in hand are examined in light of the ratio of above referred judgements, the materially distinct factual position make the application of Ajay Kumar's case (supra) rather inappropriate. The distinct facts, although already discussed above, may be summarised as follows:

- (i) After the marriage in 1995, the petitioner and her husband resided together for just about 1–2 years at Ambala and the petitioner/wife, thereafter, started residing in Jammu.
- (ii) The petitioner's husband expired in the year 2010 whereas the application under Domestic Violence Act came to be filed thereafter in the year 2011. In any case, the said application was filed after a decade of the the petitioner residing separately from her husband.
- (iii) The ex-parte decree of divorce passed on 31.1.2001 has not been set aside and nor any application for getting the same set aside has been filed by the petitioner till date.
- (iv) No FIR or any complaint for any offence under section 406 or 498-A of IPC or under any other penal provisions was ever instituted against the petitioner's husband or any other member of his family.
- (iv) The civil suits filed by the petitioner against the respondents claiming that the properties and bussiness were jointly held by respondents with the petitioner's husband already stand dismissed up to the High Court.

39. In these circumstances, in the absence of evidence to hold that the complainant was residing in a “shared household” with the respondents or that the respondents had committed any act of domestic violence so as to hold them responsible to pay maintenance or any amount towards rentals of residential accommodation to the petitioner, the respondents who are brothers of petitioner's husband can not be held liable in any manner to compensate the petitioner. The impugned order, thus, does not suffer from any infirmity so as to warrant any interference. Finding no merit in the petition the same is hereby dismissed.

40. Before parting with the judgement, it is clarified that the petitioner or her son shall be entitled to continue with their other cases, in case any are

pending, and the Courts concerned shall proceed in accordance with law without being influenced by the observations made in this judgement which have been made for the purpose of deciding the present petition.

4.10.2019

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned
Whether Reportable

Yes / No
Yes / No