

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

% Judgment reserved on: 19th December, 2018
Judgment delivered on: 10th January, 2019

+ CRL.M.C. 1868/2016 & CrI.M.A.35881/2018

SHACHI MAHAJAN Petitioner

versus

SANTOSH MAHAJAN Respondent

+ CRL.REV.P. 345/2016 & CrI.M.A.7580/2016

SANTOSH MAHAJAN Petitioner

versus

SHACHI MAHAJAN Respondent

Advocates who appeared in this case:

For the Petitioners: Mr. Rajeev Ranjan Pandey, Adv. with petitioner in person
in CRL.M.C. 1868/2016

Mr. Sunil K. Mittal, Mr. Khushbir Singh, Mr. Anshul
Mittal & Ms. Shaiza, Adv. in CRL.REV.P. 345/2016

For the Respondents: Mr. Sunil K. Mittal, Mr. Khushbir Singh, Mr. Anshul Mittal
& Ms. Shaiza, Adv. in CRL.M.C. 1868/2016

Mr. Rajeev Ranjan Pandey with respondent in person Adv.
in CRL.REV.P. 345/2016

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J

**CRL.M.C. 1868/2016 & CrI.M.A.35881/2018 (under Section 482
Cr.P.C. read with Section 12 Contempt of Courts Act)**

CRL.REV.P. 345/2016 & Crl.M.A.7580/2016 (under Section 482 Cr.P.C. read with Section 12 Contempt of Courts Act)

1. Both these petitions are between Mrs. Santosh Mahajan the Mother-in-Law and Mrs. Shachi Mahajan the Daughter-in-Law. Crl.Rev.P. 345/2016 has been filed by the Mother-in-Law, impugning order dated 25.04.2016, whereby, directions were issued to the Mother-in-Law to handover one set of keys to the Daughter-in-Law in pursuance to the protection order of residence dated 07.11.2012 granted to her in respect of Property No. D-113, Anand Vihar, Delhi (hereinafter referred to as the subject Property).

2. Crl.M.C.1860/2016 has been filed by the Daughter-in-Law, impugning order dated 02.04.2016 of the Metropolitan Magistrate the Magistrate did not direct registration of an FIR against the Mother-in-Law and further direction is sought for initiating proceedings under Section 31 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the Domestic Violence Act) for violating the protection order of residence.

3. The Daughter-in-Law was married with the son of Smt. Santosh Mahajan on 01.03.2008. After the marriage, they resided at Property No. D-113, Anand Vihar, Delhi. On 21.10.2012, the husband of Shachi Mahajan left her matrimonial house without informing anyone. It is alleged by the Daughter-in-Law that he had left the house with a view to unlawfully expel her from her matrimonial home.

4. Mother-in-Law is alleged to have instructed the Daughter-in-Law to leave the matrimonial home. Mother-in-Law is alleged to have filed a suit for permanent injunction against the Daughter-in-Law.

5. On a petition filed by the Daughter-in-Law, protection order was passed on 07.11.2012, restraining the Mother-in-Law from dispossessing her from the shared household.

6. Order dated 07.11.2012 was challenged by the Mother-in-Law by filing Crl.M.C. 418/2013. However, by order dated 08.04.2015, said petition was dismissed on the ground that a disputed question of fact arose as to whether the property was a shared household or not and the Mother-in-Law was permitted to raise all issues before the trial court.

7. Subsequently as the electricity bill was not paid, electricity supply to the said property was disconnected in May, 2015. It is alleged that as the electricity was disconnected, the Daughter-in-Law was constrained to shift to her mother's house.

8. When the Daughter-in-Law got an order for restoration of the electricity, she could not enter the premises as the locks of the premises had been changed by the Mother-in-Law. A complaint under section 31 was filed against the Mother-in-law. Mother-in-Law filed an application under Section 25 of the Domestic Violence Act, seeking modification of the protection order dated 07.11.2012.

9. By impugned order dated 02.04.2016, the Metropolitan Magistrate directed the Mother-in-Law to hand over the keys of the shared household to the Daughter-in-Law.

10. It is alleged by the Daughter-in-Law that the aforesaid order was not complied with.

11. Mother-in-Law filed a petition before the High Court (Crl.M.C.1643/2016) impugning order dated 02.04.2016, which was withdrawn with liberty to file a revision petition and consequently, the subject Crl.Rev.P. 345/2016 has been filed.

12. It is contended by the learned counsel appearing for the Daughter-in-Law that the order, granting rights of residence, i.e., 07.11.2012, has been upheld by this Court and, accordingly, the Mother-in-Law cannot now impugn the same by challenging a consequential order of handing over of the keys of the premises to the Daughter-in-Law. Further, it is contended that since the Mother-in-Law is in breach of the orders of the Court and has not complied with the orders of the Court to handover possession of the subject premises, she is liable to be prosecuted.

13. Per contra, learned counsel appearing for the Mother-in-Law has submitted that the property is in the exclusive name of the Mother-in-Law, so no rights of residence could have been granted to the Daughter-in-Law. Alternatively, it is submitted that the Daughter-in-Law was granted residence in terms of the order dated 07.11.2012

and she was occupying the same and since she herself did not pay the electricity consumption charges, electricity was disconnected and thereafter she abandoned the property. It is alleged that the Mother-in-Law became aware of the Daughter-in-Law abandoning the property when she was informed by the police of a theft in the property. It transpired that the property had been abandoned and left unattended and unlocked by the Daughter-in-Law.

14. Further, it is submitted that subject property has now been sold to a third party by way of a registered Sale Deed dated 31.10.2018.

15. With regard to sale of the subject property, learned counsel appearing for the Daughter-in-Law contended that the property was originally purchased by the Father-in-Law by way of an agreement to sell and, as such, on the death of the Father-in-Law, his son i.e. her husband had a 1/3rd share in the subject property. It is submitted by the Daughter-in-Law that her husband has not shown any share in the subject property so as to defeat her rights and the rights of her minor son and further that she on behalf of her minor son has already filed a suit *inter alia* for declaration qua the same.

16. During arguments, several suggestions were made by the parties for amicably resolving the disputes. However, the same could not be resolved. A suggestion was made by the learned counsel appearing for the Mother-in-Law that since the property had been sold, alternative accommodation would be arranged for the petitioner.

17. Learned counsel appearing for the Daughter-in-Law contended that the Daughter-in-Law was not looking at an alternative accommodation of a tenanted premises as there would be no security or safety and she was only interested in a secured accommodation.

18. At this stage it would be expedient to refer to the relevant statutory provisions of the Domestic Violence Act.

19. Sections 12 of the Domestic Violence Act *inter alia* reads as under:-

“12. *Application to Magistrate.—*

(1) An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act: Provided that

(2) The relief sought for under sub-section (1) may include a relief for issuance of an order for payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent: Provided that

*(3) *****”*

20. In terms of Section 12 an aggrieved person, protection officer or any other person on behalf of the aggrieved person can file an application seeking one or more reliefs under the Act. The relief under section 12 may also include a relief for issuance of an order for payment of compensation or damages.

21. Section 19 and 20 of the Domestic Violence Act pertaining to Residence orders *inter alia* reads as under:

“19. Residence orders.—

(1) While disposing of an application under sub section (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:*

Provided that no order under clause (b) shall be passed against any person who is a woman.

(2) *****

(6) *While making an order under sub-section (1), the Magistrate may impose on the respondent obligations relating to the discharge of rent and other payments, having regard to the financial needs and resources of the parties.*

(7) *****

20. *Monetary reliefs.—*

(1) *While disposing of an application under sub-section (1) of section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include but is not limited to—*

(a) *****

(b) *****

(c) *the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and*

(d) *****

(2) *The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.*

(3) *****

*****”

22. Under Section 19 of the Domestic Violence Act, the magistrate on being satisfied that domestic violence has taken place, can pass a *residence order* restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household; directing the respondent to remove himself from the shared household; restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides; restrain the respondent from alienating or disposing of the shared household or encumbering the same; restrain the respondent from renouncing his rights in the shared household except with the leave of the Magistrate or 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. While making an order under 19 (1), the Magistrate may impose on the respondent obligations relating to the discharge of rent and other payments, having regard to the financial needs and resources of the parties.

23. Under section 20, while disposing of an application under 12(1) the Magistrate can direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person *inter alia* due to the destruction, damage or removal of any property from the control of the aggrieved person; and the monetary relief granted under this section has to be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.

24. Section 31 of the Domestic Violence Act reads as under:

“31. Penalty for breach of protection order by respondent.—

(1) A breach of protection order, or of an interim protection order, by the respondent shall be an offence under this Act and shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.

(2) The offence under sub-section (1) shall as far as practicable be tried by the Magistrate who had passed the order, the breach of which has been alleged to have been caused by the accused.

(3) While framing charges under sub-section (1), the Magistrates may also frame charges under section 498A of the Indian Penal Code (45 of 1860) or any other provision of that Code or the Dowry Prohibition Act, 1961 (28 of 1961), as the case may be, if the facts disclose the commission of an offence under those provisions.”

25. Section 31 makes breach of a protection order punishable and the offender liable to imprisonment upto one year or fine which may extend to Rupees twenty thousand or with both.

26. The allegation of the Daughter-in-Law is that the Mother-in-Law has violated the order of residence and has prevented her from residing in the subject property. It is alleged that when the residence order was in force, the Mother-in-Law locked the subject property and thereby prevented her from entering into the same. Further, it is

alleged that the Mother-in-Law has sold the subject property, thereby, preventing her from enforcing her rights of residence in the shared household.

27. On the other hand, the contention of the Mother-in-Law is that the issue as to whether the subject property was a shared household was left open by the High Court by its order dated 08.04.2015 and the issue is still pending. Further, it is contended that the Daughter-in-Law had voluntarily abandoned the property and left the same unattended and, as such, cannot now claim any rights of residence in the same.

28. Further, it is contended on behalf of the Mother-in-Law that under Section 19 of the Domestic Violence Act, the Magistrate has the power to pass an order restraining the respondent from alienating or disposing of the shared household or encumbering the same. However, no such order was passed in the present case and the order dated 02.11.2018 passed by the Trial Court, restraining the Mother-in-Law from selling the property was passed after the sale deed had already been registered and as such is unenforceable. It is contended that since there was no order restraining the Mother-in-Law from selling or alienating the subject property, the sale of the property by way of a registered sale deed to a third party does not amount to violation of the residence order attracting the penal consequences stipulated under Section 31 of the Protection of Women from Domestic Violence Act, 2005.

29. Further, reliance is placed on the judgment of this Court dated 16.11.2018 in Crl.M.C. 3381 of 2018 titled *Gauri Bhalla Versus Ashish Bhalla*, wherein, this Court has held that maintenance of a married wife, during subsistence of marriage, is on the husband. It is a personal obligation. The obligation to maintain a Daughter-in-Law arises only when the husband has died. Such an obligation can also be met from the properties of which the husband is a co-sharer and not otherwise. For invoking the said provision, the husband must have a share in the property. The property in the name of the Mother-in-Law can neither be a subject-matter of attachment nor during the lifetime of the husband, his personal liability to maintain his wife can be directed to be enforced against such property.

30. In the facts of the present case, it may be noticed that there was an order of residence in favour of the Daughter-in-Law which was in force. Said order had neither been vacated nor modified by either the Trial Court or any higher forum. No doubt, the issue as to whether such an order was liable to be modified in the facts of the present case was pending consideration before the Trial Court, however, pending the proceedings before the Trial Court, subject property now stands transferred to a third party by way of a registered sale deed. Neither the husband nor the Mother-in-Law have any surviving share in the subject property after the registration of the sale deed in favour of a third party.

31. Perusal of the documents, filed by the parties on record, show that Conveyance Deed of the subject property was executed in favour of the Mother-in-Law on 30.03.2010, much prior to the passing of the order of residence dated 07.11.2012. The issue whether the husband had a 1/3rd undivided share in the property having inherited the same from his father on his demise, does not arise for consideration in these proceedings and is the subject matter of civil proceedings between the parties.

32. In the facts of the case equities have to be balance. On the one hand the rights of third party i.e. the purchaser of the subject property has to be balanced *vis-a-vis* the rights that the Daughter-in-Law is seeking to enforce. The claim is that her husband had a 1/3rd share in the subject property. Sale Deed placed on record shows the sale consideration as Rs.3,40,00,000/-. Accordingly, direction is liable to be issued to the Mother-in-Law to deposit 1/6th of the sale proceeds (i.e. one half of 1/3rd) with the Trial Court for securing the rights, if any, determined in favour of the Daughter-in-Law and her minor son.

33. No doubt, the action of the Mother-in-Law in disposing of the property by way of a registered sale deed has caused loss to the Daughter-in-Law, however it may be seen that there was no order restraining the Mother-in-Law from selling or alienating the subject property and, as such, she cannot be penalised in terms of Section 31 of the Domestic Violence Act.

34. However, the action of the Mother-in-Law in selling the subject property, though not strictly illegal, has caused loss to the Daughter-in-Law. Accordingly, one would also have balance the corresponding rights of the parties. On the one hand, Mother-in-Law is alleged to have sold the property for her *bona fide* needs and third party rights in the subject property have arisen and on the other hand, the Daughter-in-Law is deprived of her rights of residence in the subject property.

35. The contention of the Mother-in-Law is that the Daughter-in-Law was residing in only one room of the first floor of the subject property. On the other hand, the contention of the Daughter-in-Law is that the household was common and she was occupying the first floor of the subject property.

36. Documents on record *prima facie* show that the Daughter-in-Law was in possession of one room on the first floor, but was sharing the kitchen and common areas on the ground floor.

37. Without getting into the controversy, one may examine the rights that are granted by Section 19 of the Protection of Women from Domestic Violence Act, 2005.

38. Section 19(1)(f) *inter alia* stipulates that the Magistrate shall secure same level of alternative accommodation for the aggrieved person as enjoyed by her in the shared household or direct payment of rent for the same, if the circumstances so require.

39. In the facts of the present case, since the subject property is now not available, the only order that can be passed in favour of the Daughter-in-Law for securing her residence is to direct the Mother-in-Law to ensure that either a ground floor or a first floor is obtained on rent for the residence of the Daughter-in-Law in the locality 'Anand Vihar' in a similar property.

40. Since the action of the Mother-in-Law has also resulted in removal of a property from the control of the Daughter-in-Law, she has to be granted adequate, fair and reasonable compensation/monetary relief for the deprivation of said property.

41. Another factual dispute, which is still pending consideration before the Trial Court, is as to whether the Daughter-in-Law had abandoned the property and thereby the protection order of residence had worked itself out and she was not entitled to any residence in the subject property.

42. Keeping in view of the facts and circumstances, these petitions are disposed of with the following directions:-

- (i) *Mother-in-Law shall ensure that a flat is taken on rent either on the ground floor or on the first floor in the locality of Anand Vihar, Delhi in a property similar in nature to subject property.*
- (ii) *All formalities for taking on rent the said floor shall be undertaken by the Mother-in-Law. She shall be liable to pay the rental as well as the security deposit for such property.*

- (iii) *Mother-in-Law shall keep a security deposit, equivalent to 12 months rental, with the Trial court at all points of time.*
- (iv) *This exercise of obtaining the premises on rent shall be completed within a period of 4 weeks from today.*
- (v) *Trial Court shall, within a period of three months, determine the monetary compensation, which would be paid by the Mother-in-Law to the Daughter-in-Law, in terms of Section 20(1)(c) and Section 20(2) of the Domestic Violence Act, for the period that the Daughter-in-Law was deprived of the use of the subject property till she is provided an alternative residence. Trial Court while ascertaining compensation shall decide on the allegation of the Mother-in-Law that the Daughter-in-Law had abandoned the subject property and its effect, if any.*
- (vi) *In the meantime, Mother-in-Law shall pay an interim compensation of Rs. 75,000/- to the Daughter-in-Law within a period of 2 weeks. The amount paid as an interim compensation would be subject to adjustment, on final adjudication by the Trial Court.*
- (vii) *Mother-in-Law shall also deposit, with the Trial Court, Rs. 57,00,000/- (i.e. 1/6th of the sale consideration of Rs. 3,40,00,000/- (rounded off)), received from sale of the subject property.*
- (viii) *This deposit shall be for securing the rights, if any, determined in favour of the Daughter-in-Law and her minor son.*
- (ix) *The direction to deposit 1/6th of the sale proceeds are without prejudice to the rights and contentions of the parties and do not amount to expression of any opinion on the claim made by the Daughter-in-Law for herself and her minor son.*

43. Petitions and the pending applications are, accordingly, disposed of in the above terms. Interim order dated 02.11.2018 passed by the Trial Court and interim order dated 06.11.2018 passed by this Court in Crl.M.C. 1868 of 2016 is vacated.

44. Order *Dasti* under signatures of the Court Master.

JANUARY 10, 2019/st

SANJEEV SACHDEVA, J

