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

+ **CRL.M.C. 2047/2015**

**VIPIN PANWAR & ORS**

..... Petitioners

Through: Mr. Mukesh Verma, Advocate

versus

**NIRMALA**

..... Respondent

Through: Mr. Bonny Laishram, Advocate with  
respondent in person.

**CORAM:**

**HON'BLE MR. JUSTICE R.K.GAUBA**

**ORDER**

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**04.02.2019**

Crl.M.A. Nos.34421-34422/2018 (delay), 49376/2018 (objection/reply),  
49381/2018 (delay) and Crl.M.A.34420/2018 (restoration),

For the reasons set out in the applications, delay in re-filing and filing are condoned. For the reasons set out in the application, the main petition Crl.M.C.2047/2015 is revived and restored for being considered on merits.

Applications stand disposed of.

CRL.M.C. 2047/2015

The controversy brought before this court through the petition under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) arises out of petition (CC No.64/1) of the respondent under Section 12 of Protection of Women from Domestic Violence Act, 2005 (for short "Domestic Violence Act").

The first petitioner is the husband of the respondent, the other petitioners being his close relatives including parents, *etc.* It appears that by

virtue of a separate order of the Metropolitan Magistrate in such proceedings, the first petitioner is obliged to pay maintenance allowance at Rs.4,000/- per month to the respondent. Though there are disputes as to the scrupulous compliance with the said order, that is not the controversy to be resolved by this court in these proceedings.

The respondent had also made a prayer in respect of her right to residence under the Domestic Violence Act and this led to order dated 05.11.2014 being passed by the Metropolitan Magistrate, which order was taken in appeal (Criminal Appeal No.129/2014) by the petitioners to the court of sessions, the appeal having been decided by order dated 05.02.2015 which is under challenge here.

The dispute essentially pertains to the claim of the respondent to right to residence in certain properties at Shahpur Jatt village, New Delhi, but, it is admitted position that the said property was owned by his grandfather Chander Singh, who has since passed away, the title in the said property now vesting in his widow, *i.e.*, the grandmother of the first petitioner. Though the Metropolitan Magistrate had issued certain directions for one room on the third or fourth floor of the said property being made available to the respondent, such directions having been upheld by the appellate court, it also being conscious of the fact that such portions were under tenancy of third party, and it being impracticable for any person to be forced out so as to accommodate the respondent, the first appellate court directed, in the alternative, Rs.15,000/- per month to be paid as rent so that the respondent could arrange her own residential accommodation. The directions to this effect would bind the first petitioner alone.

Given the admitted position that the above mentioned property is not owned by the first petitioner (husband), it is clear that the respondent cannot claim right to residence therein. At the same time, as has been ordered by the appellate court, arrangement has to be made by the estranged husband (first petitioner) for residence of the respondent wife.

When this petition was entertained and notice was issued, by order dated 15.05.2015, the operation of the impugned direction was stayed, but subject to the petitioner depositing Rs.3,000/- per month towards alternative accommodation. There is some dispute between the parties as to the strict compliance with the said additional direction.

Be that as it may, the amount of Rs.15,000/- fixed by the appellate court seems to have been picked up from the air. Before such directions could have been issued, some inquiry required to be made as to the market rent which was prevalent in the area of Munirka where the petitioner agrees the residential accommodation for the respondent is to be arranged.

In these circumstances, both parties, *i.e.*, the first petitioner and the respondent are called upon to produce before the court documents indicating the prevalent market rent. The documents will be filed supported by affidavits within four weeks hereof.

Be listed for final hearing on 13<sup>th</sup> March, 2019.

**R.K.GAUBA, J.**

**FEBRUARY 04, 2019**

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