

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

Criminal Revision No. 2270 of 2019 (O&M)
Date of decision: 27.2.2020

Mrs. Jagriti Pahwa

...Petitioner

Versus

Mr. Chander Prakash Pahwa

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Sahil Bhalaik, Advocate,
for the petitioner.

Mr. Vivek Lamba, Advocate,
for the respondent.

JAISHREE THAKUR, J. (Oral)

This is a revision that has been filed seeking to challenge the order dated 17.8.2019 passed by the Additional Sessions Judge, Gurugram, whereby the order dated 11.6.2019 passed by the Judicial Magistrate 1st Class, Gurugram allowing interim residence to the petitioner and the minor children under Section 19 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred as '**the Domestic Violence Act**') has been set aside.

Learned counsel for the petitioner herein contends that the marriage between the petitioner and Karan Pahwa son of the respondent took place on 2.12.2003 and out of this wedlock two children were born and at the present moment the custody of the children is with the petitioner herein. However, on account of some dispute which arose between the husband and the wife, the petitioner herein was constrained to file a petition

under Sections 12, 17, 18, 19, 20, 21, 22 and 23 of the Domestic Violence Act. However, since no one put in appearance on behalf of the respondent herein, an ex-parte interim protection of residence was allowed to the petitioner herein by order dated 11.6.2019. An application for revocation of the order dated 11.6.2019 was also filed and it was dismissed by the JMJC. Consequently, an appeal was filed by the respondent under Section 29 of the Domestic Violence Act before the Additional Sessions Judge, Gurugram, who set aside the interim protection allowing residence, in what was claimed to be 'shared household'. Learned counsel further contends that in fact the Additional District Judge fell in error in holding that in the absence of domestic incident report no interim protection could have been allowed, which is in direct contravention of Section 23 of the the Domestic Violence Act.

Learned counsel for the respondent would contend that the respondent is none other than the father-in-law of the petitioner and there is no domestic relationship inter-se the parties. The respondent is the sole and exclusive owner of the said property which he had purchased by way of sale deed dated 17.2.2010. It is contended that the son of the respondent, namely Karan Pahwa has already been evicted under the order of the District Magistrate passed under the provisions of the Maintenance and Welfare of the Parents and Senior Citizens Act, 2007 and, therefore, the petitioner too would not be entitled to a right of residence in his exclusive property.

I have heard learned counsel for the parties and find that the order as passed by the Additional Sessions Judge, Gurugram deserves to be set aside only on the ground that the District Judge has not appreciated

Section 23 of the Domestic Violence Act in its right perspective, which permits the Magistrate to pass any *interim order*, he deems just and proper.

Section 23 of the Protection of Women from Domestic Violence Act, 2005 is reproduced as under:-

“23. Power to grant interim and ex parte orders.—

(1) In any proceeding before him under this Act, the Magistrate may pass such interim order as he deems just and proper.

(2) If the Magistrate is satisfied that an application prima facie discloses that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he may grant an ex parte order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under section 18, section 19, section 20, section 21 or, as the case may be, section 22 against the respondent.”

Be that as it may, the parties are directed to appear before the Judicial Magistrate 1st Class, Gurugram on 17.3.2020, the date already fixed, who would decide the question whether or not the petitioner would be entitled to residence in residential accommodation which is claimed to be a “shared household”. The contentions of both the parties would be noted and any judgment to be relied upon by the learned counsel be taken into consideration, before coming to any such conclusion. Needless to say that the petitioner herein would be entitled to continue to reside in terms of the order dated 11.6.2019 till such time the Judicial Magistrate 1st Class decides the question as formulated above. In any case, if the Judicial Magistrate 1st Class does come to the conclusion that the residential accommodation is not a “shared household”, then the entitlement of the petitioner for alternative accommodation or rent in lieu thereof would be

decided simultaneously. The Judicial Magistrate 1st Class, Gurugram shall decide the aforesaid question expeditiously, preferably within six months from the receipt of a copy of this order.

The revision petition stands disposed of on the above terms.

27.2.2020
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No