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

+ CrI.M.C. No. 1498/2020 and CrI.M.A. No. 7370/2020

INSIYA SHEIKH & ORS.

..... Petitioners

Through: Mr.Sunil Mittal, Sr. Advocate with
Mr.Rahul Sharma, Ms. Jyoti Dutt
Sharma, Mr. C.K. Bhatt, Ms. Sunanda
Pandey, Advocates
Petitioner no.1 in person

versus

SAIYID ASAD UL ISLAM

..... Respondent

Through: Ms.Kawaljit Kochar and Mr.Shreyas
Malhotra, Advocates with
Respondent in person

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

20.07.2020

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(hearing through Video Conferencing)

Vide the present petition, the prayers made by the petitioners are to the effect:

"a. Quash/ set aside! modify the impugned order dated 29.05.2020, the Learned Metropolitan Magistrate [Mahila Court], South, Saket Courts, New Delhi to the limited extent of:

i) Allowing/ permitting the Petitioners to reside in the shared household i.e Y -86, First Floor, Hauz Khas, New Delhi [solely owned and possessed by the Petitioner no.1 and is her self-acquired property];

ii. Restrain the Respondent to vacate/ leave and remove himself from the shared household and live in his owned, separate and independent property bearing no. Y-86, Ground Floor, Hauz Khas, New Delhi;

iii. Prohibiting/ Restraining/ Desisting the Respondent from entering the shared household [First Floor of property bearing no. Y -86, Haus Khas, New Delhi] and disrupting and interfering in the peaceful possession and living of the complainants in the shared household and from using filthy and abusive language against the Petitioners;

b. Any other further order(s) which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and in the interests of Justice."

During the course of the proceedings dated 9.6.2020, it was submitted on behalf of the petitioners that an appeal under Section 29 of the Protection of Women from Domestic Violence Act, 2005 would lie and sought to reserve their rights to file an appeal qua the proceedings before the learned Metropolitan Magistrate-02 (Mahila Court), South, and it was only in relation to the aspect of residence of the petitioners that the matter was urgently pressed in as much as the petitioners were not residing in the matrimonial home of the petitioner No.1 which it was submitted by the learned senior counsel for the petitioners belonged to the petitioner No.1 herself and that the petitioners had been turned out with the petitioner No.1 on 20.4.2020.

A submission has been made on behalf of the respondent that the present petition is not maintainable and that an appeal would lie against the order of the learned Magistrate and time was sought on behalf of the respondent to submit the response.

During the course of proceedings on 9.6.2020, it was considered appropriate to refer the petitioner no.1 and the respondent to the Delhi High Court Mediation and Conciliation Centre to explore the possibility of a settlement and the matter was referred to the Delhi High Court Mediation and Conciliation Centre.

Vide the proceedings dated 18.6.2020 in as much as it was informed on behalf of either side that the mediation proceedings were still then in progress and the matter was renotified for thse date 29.6.2020.

The report of the Co-ordinator of the Delhi High Court Mediation & Conciliation Centre dated 26.6.2020 had been received which indicated that despite discussions at length and best efforts, no settlement had been arrived at between the parties.

Though the pleadings of the parties qua the present petition are complete, in as much as vide the present petition the petitioners have assailed the impugned order dated 29.5.2020 of the learned MM-02, Mahila Court, South, Delhi with the limited prayers in relation to the aspect of the user of the shared house hold between the petitioners and the respondent it is essential to advert to the impugned order itself which specifies to the effect vide paragraphs 8,9,10, of the impugned order which read to the effect:

“The second urgent interim relief sought on behalf of the complainant is a residence order under Section 19 of the D.V. Act, praying that the respondent be removed from the

matrimonial house and the complainant be permitted to re-enter her matrimonial house with her children. It is the case of the complainant that she had left the matrimonial house with her children on 20.04.2020 on account of the continuous physical and mental abuse inflicted upon her and the children by the respondent and ha alleged, inter alia, that on 16.4.2020, the respondent had tried to strangle her in front of her daughter and the complainant was constrained to call the police and file a complaint. The complainant has filed a copy of all the complaints that she has in the past made to the police against the violent and abusive behaviour of her husband/respondent. It is submitted that the respondent, if removed from the matrimonial house, would not be left homeless as the ground floor, of the same is in his name and that his mother is currently occupying the same and the respondent can join his mother at the ground floor. The respondent has denied all allegations of domestic violence made against him and has stated that his relationship with the complainant in the recent two to three years has been disrupted on account of the interference by the family members of the complainant and prior to that they were living peacefully and happily. Further, the respondent has stated that he with the complainant and his children have been residing on the first floor of Y-86, Hauz Khas, New Delhi and the very purpose of filing this case is to oust the respondent from the said premises. As rightly pointed out by the Ld. Advocate for the complainant, it does seem sourness has crept in the marital relations of the complainant and the respondent. The complainant claims that she is the owner of the matrimonial house and she has filed a copy of the sale deed executed in her favour in respect of the said property. The respondent claims that he has contributed in purchase and furnishing of the property/matrimonial house, however, at this stage has not filed any documents in support of his claim. Admittedly, during the lockdown, the complainant with her children had left the matrimonial house on

20.04.2020 and since then they have been residing with the brother of the complainant at Noida. The question to be examined is whether the said residence order sought is of an urgent nature in the prevailing circumstances of the lockdown, particularly where a concomitant relief has been sought by the complainant of a direction to remove the respondent from the matrimonial house. For deciding the same, the court would have to consider the circumstances under which the complainant is currently residing. It is not the case of the complainant that she or her children have had to face any discomfort whatsoever in residing at the house of her brother in Noida. The house of her brother seems to be spacious with three bedrooms. The school of the children is in Noida and the children would not as such face any problem in commute to their school. Even otherwise, at present the children are not attending school and are having their school summer vacations till end of June 2020. On 22.05.2020, the respondent had requested that he be permitted to meet his children on the occasion of Eid on 25.05.2020 to which the complainant had expressed extreme displeasure and had informed the court that at present her children seem to have 'settled' at her brother's house and that she did not want any disruption or any kind of disturbance on account of the respondent in their lives. The daughter of the complainant during her conversation with the Presiding Officer on 22.05.2020 had stated that right now she did not wish to see or meet her father and she needed some time to heal, which could be few days or few months. She had also stated that after a long time she was feeling safe and happy in Noida with her mother. On the other hand, the respondent himself seems to be undergoing financial woes and the court cannot turn a blind eye to his grievances on account of the lockdown. The respondent cannot be removed from the matrimonial house without affording him an effective opportunity to put forth his entire case/defence before the court. Also, the respondent has repeatedly sought a chance

*to mend his matrimonial ties with his wife and give it a fresh start. There is always a possibility of reconciliation in the relationship of a husband and wife and it is for the court to afford an opportunity to the parties to explore that option by referring them to mediation. Owing to the lockdown, the court cannot refer the parties to mediation. An aggrieved does have a right of residence in her shared household under the D.V. Act, however, at this stage of the proceedings the court is of the view that the residence order sought in the present cases (under the existing circumstances of lockdown) is not an urgent relief and would be decided on resumption of normal functioning of the court. **It is clarified that the court has not declined the relief of residence but only postponed the hearing on the said relief till the normal functioning of the court.**"*

It is apparent thus that the prayer made in relation to the user of the shared household as made on behalf of the petitioner No.1 is still pending before the learned Trial Court. The said impugned order dated 29.5.2020 indicates that it was kept pending for disposal on resumption of normal functioning of the Court and the respondent was directed to file his reply to the said case on the next date of hearing with a copy to the counsel for the opposite side with the matter having been renotified for completion of pleadings on 20.7.2020, i.e., today.

It is informed on behalf of the petitioner that the matter would be taken up in routine in view of the present pandemic . It is submitted on behalf of either side that the pleadings qua the interim maintenance before the learned Trial Court have already been completed and the learned counsel for the respondent submits that the reply to the main petition as pending

before the learned Trial Court has not been filed in view of the pendency of the present petition but that the same would be filed before the next date of hearing. In as much as it has been submitted on behalf of the petitioner that the petitioner has had to move out from the residence of her brother where she had shifted after the alleged incident of having been removed from the matrimonial home in April, 2020 and it is submitted on behalf of the petitioner she has had now to move to a rented accommodation, in view of the pleadings of the respondent in the present petition, in the interest of justice and taking into account the urgency of the submissions made on behalf of the petitioner no.1 into account, it is considered essential that the learned Trial Court takes up the prayer for the grant of interim relief qua residence that has been prayed for by the petitioner No.1 along with her children within a period of 15 days from today, and which be disposed of in any event qua the said prayer of interim relief of residence of the petitioners in the stated shared household by the date 10.8.2020, and it is directed accordingly. No further action is called for in the present petition.

Nothing stated herein above shall amount to an expression on the merits or demerits of the proceedings that would take place before the Ld. Trial Court.

Learned counsel for the petitioner seeks to place on record an affidavit that the petitioner has had to move out from the residential accommodation of her brother. The same is allowed to be submitted before the learned Trial Court to which the response, if any, of the respondent be submitted before the Ld. Trial Court.

A copy of this order be sent to the to the learned Trial Court where the matter is pending as well as the learned District & Sessions Judge South, Saket, to ensure compliance of the same.

ANU MALHOTRA, J

JULY 20, 2020/sv