

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-16041 of 2021 (O&M)

Reserved on : 25.5.2022

Date of Decision: July 8, 2021

Begraj Sharma and another

...Petitioners

Versus

Uma Sharma

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Manish Soni, Advocate
for the petitioners.

Mr. Bhupinder Ghai, Advocate,
for the respondent.

JAISHREE THAKUR, J.

1. The petitioners, who are none other than the in-laws of the respondent—Uma Sharma, have approached this court under Section 482 of the Code of Criminal Procedure (hereinafter referred to as “**the Code**”) with the prayer for quashing of order interim dated 16.12.2019 passed by Additional Sessions Judge, Gurugram, along with all subsequent/incidental proceedings, including order dated 20.12.2019, 03.01.2020 passed by the court of Judicial Magistrate Ist Class, under Section 12 of the Protection of Women from Domestic Violence Act, 2005 and in execution proceedings dated 16.8.2019.

2. A few brief facts need to be noted for adjudication by this court.

i) As alleged, a marriage was solemnized between Umesh Kumar son of the petitioners, as per Hindu rites and ceremonies with Uma Sharma on 21.11.2011. Out of this wedlock two girls were born on

14.4.2013 and 02.07.2016. Initially after the marriage, the respondent-complainant (**“the respondent”** for short) stayed in the house owned by petitioner No. 2, that is at House No. 1573/30, Block-G, Rajendra Park, Gurugram. However, both the husband and the wife shifted out on 13.10.2015 and stayed in a rented accommodation in Laxman Vihar, Gurugram. The house was taken on rent on 13.10.2015 where the husband and the wife continued to reside till 13.06.2018.

ii) A matrimonial dispute arose between Umesh Kumar son of the petitioners and the respondent, which was settled on a compromise having been effected between the parties. Another accommodation was taken on rent that is House No. 941/31, 2nd floor Laxman Vihar, Gali No. 2, Phase I, Gurugram. As the matrimonial dispute continued, the respondent moved out of the rented accommodation and went to live in her parental house from where she filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as **“the Act of 2005”**). She also filed an application under Section 23 of the Act of 2005 for grant of interim ex-parte order. The respondent prayed for right of residence before JMJC, Gurugram and the trial court directed Umesh Kumar to pay rent of house No. 518/31, Ground Floor, Laxman Vihar, Phase II, Street No. 7, Gurugram every month. The application filed under Section 23 of the Act of 2005 for interim maintenance was decided and the husband was directed to pay an amount of ₹12,000/-, including rent and other expenses per month. It was clarified that ₹

10,000/- would be paid as rent from 1.10.2019 and the remaining amount of ₹2000/- would be paid from the date of the order that is 01.11.2019. The prayer made to restrain the petitioners herein from disposing or alienating the property was declined.

iii) Thereafter, the respondent filed a revision petition before the Court of Additional Sessions Judge Gurugram against interim order dated 01.11.2019, which was modified on 16.12.2019 and the respondent and the two minor girls were allowed right of residence on the first floor of House No. 1573/30, Ekta Property Street, Rajendra Park, Gurugram, which house belonged to petitioner No. 2, the mother-in-law of the respondent. Furthermore, a direction was issued restraining the other two sons of the petitioners from entering the first floor, with a direction to the husband Umesh Kumar to pay a sum of ₹ 10,000/- per month as maintenance.

iv) Pursuant to the order dated 16.12.2019, the respondent was put in possession of the first floor and a report was submitted by the bailiff.

v) The order dated 16.12.2019 was challenged before this Court in CRM-M-2787 of 2020, which was dismissed by this very court on 4.2.2020 by imposing costs of ₹30,000/-.

vi) Having paid the amount of ₹30,000/-, the present criminal misc petition has been filed seeking to challenge the order dated 16.12.2019 as passed by the Additional District Judge, Gurugram, allowing right of residence to the respondent and the orders passed whereby possession has been handed over to the respondent.

3. Mr. Manish Soni, learned counsel appearing on behalf of the petitioners, would vehemently argue that the order dated 16.12.2019 as passed by the Additional Sessions Judge, Gurugram, allowing right of residence to the respondent in the house belonging to petitioner No.2 is unsustainable. It is argued that the judgment rendered in **S.R Batra and another versus Smt. Taruna Batra 2007 (1) RCR (criminal) 403 (Supreme Court)** clearly holds that a house which is exclusively owned by father-in-law cannot be called as 'shared household' within the ambit of Section 2 (s) of the Act of 2005. It is argued that the revisional authority has failed to appreciate the fact that the house, in which right of residence has been allowed, belongs to the mother-in-law and not the husband of the complainant. It is also submitted that initially the parties, that is the respondent and the son of the petitioners, resided in that house, but soon after their marriage shifted from the said premises and took separate accommodation on rent. It is argued that the respondent thereafter shifted to her paternal home from where she initiated proceedings under the Act of 2005 and also sought maintenance under Section 125 of the Code. It is argued that she has been allowed the right of residence on the 1st floor of the house belonging to petitioner No. 2, however she does not reside therein and has kept the premises under lock and key only to harass the petitioners. Learned counsel for the petitioners would rely upon the site plan annexed with this instant petition to show that the petitioners are in possession of only a few rooms which is wholly inadequate for their needs as they have 2 other sons who are married and would require accommodation, whereas the entire 1st floor is with the respondent who doesn't reside there. It is argued

that the family members of the petitioners are at risk of having to face criminal prosecution at the hands of the respondent in case she is allowed to reside in the said premises, as she would have every opportunity to raise frivolous allegations against them. It is submitted that the brothers of the respondent are practicing advocates at the district courts at Gurugram who are harassing the petitioners herein and continuously threatening them. It is argued that the petitioners herein would be ready to find alternate accommodation for the respondent and make necessary payment for the same. In this regard, reliance is placed on a judgment rendered in **Ravneet Kaur Versus Prithpal Singh Dhingra 2022 (2) CivCC 186**, where the Delhi High Court allowed alternate accommodation.

4. Per contra, Mr. Bhupinder Ghai, learned counsel appearing on behalf of the respondent would argue that there is no infirmity in the interim order as passed by Additional Session Judge, Gurugram. Great emphasis has been laid upon the very maintainability of these proceedings considering the fact that the petitioners had in fact already approached this court challenging order dated 16.12.2019 of the Additional Session Judge allowing the right of maintenance/residence to the respondent by instituting *CRM-M-No 55374 of 2019*, which petition was dismissed as withdrawn with liberty to challenge the subsequent orders passed. The aforesaid petition was dismissed on 07.01.2020 and on change of counsel another petition came to be filed, that is *CRM-M-2787 of 2020*, which was also dismissed on 4.2.2020 as there was concealment of filing the earlier petition. It is argued that pursuant to the order dated 16.12.2019, the respondent and her two daughters are already in possession of the first floor,

while submitting that there is adequate evidence available to the effect that the petitioners themselves are residing elsewhere and using the ground floor for commercial purpose. In this regard, the respondent has sought to place reliance on the photographs, already taken on record.

5. Heard the counsel for the parties and with their assistance have gone through the pleadings of the case and the case law cited.

6. Learned counsel for the petitioners has argued that the impugned order dated 16.12.2019, which allows the right of residence to the respondent, cannot be sustained in the light of the fact that it is not a 'shared residence'. The house in question belongs to the mother-in-law and, therefore, the ratio as settled in **S.R. Batra's case (supra)** would be applicable. However, this argument is not sustainable in the light of the judgment rendered in **Satish Chander Ahuja versus Neha Ahuja (2020) 4 RCR(Criminal) 745**, which went into the question whether the judgment rendered in **S.R. Batra (Supra)** had correctly interpreted the provisions of Sections 2 (s) of the Act of 2005 and whether it lays down the correct law? The Supreme Court, while interpreting Section 2 (s) of the Act of 2005, which defines '*shared household*', has held that the interpretation given by the court in **S.R. Batra's case (Supra)** is not the correct interpretation and the said judgment has not laid down the correct law.

7. The question, whether this petition seeking to challenge the interim order dated 16.12.2019 passed by the Additional Sessions Judge, Gurugram, allowing the right of residence to the respondent is maintainable, will have to be answered in the negative. At the first instance, the order dated 16.12.2019 was challenged by way of filing *CRM-M-No 55374 of*

2019, but the same was withdrawn by the counsel on 7.2.2020 since the possession had already been handed over to the respondent. Reference may be made to the interim order dated 23.12.2019 passed in the said CRM-M-No.55374 of 2019, which took note of the contention of the counsel for the respondent. Part of the order is *reproduced as under*:

“Mr. Bhupinder Ghai, Advocate, who appears on behalf of respondent No.1, at his own, submits that subsequent to passing of the impugned order dated 16.12.2019, another order has been passed on 20.12.2019 and thereafter, possession has already been handed over on 21.12.2019.”

The matter was adjourned to 7.1.2020 on which date counsel for the petitioners sought to withdraw the petition. Order dated 7.1.2020 reads as under: -

*“Learned counsel for petitioners herein seeks permission to withdraw the instant petition with liberty to file a fresh one by challenging the subsequent order passed in the meanwhile.
Dismissed as withdrawn with the aforesaid liberty.”*

Thereafter, the petitioners approached this court again and filed CRM-M-No. 2787 of 2020 challenging order dated 16.12.2019. This petition was opposed by the counsel for the respondent by contending that there was concealment of fact as it had not disclosed regarding the withdrawal of CRM-M-No. 55374 of 2019. In view of the above statement, on 4.2.2020 this court passed the following order:-

*“The main petition fixed for 01.04.2020, has been taken up for hearing today on an application (CRM-4379-2020) being filed by the respondent.
The instant petition has been filed seeking to quash the order*

dated 16.12.2019 passed by Addl. Sessions Judge, Gurugram whereby the order of JMIC, Gurugram dated 01.11.2019 has been set aside.

It has been brought to the notice of the Court by the respondent that there has been concealment on the part of the petitioners herein that the petitioners had already challenged the impugned order dated 16.12.2019 in CRM-M-55374-2019 before this Court and also without disclosing that the respondent-mother of the two minor daughters has already been put in possession of the 1st floor of the shared household, they preferred this second petition.

Faced with this, learned counsel for the petitioners herein, without submitting any argument, seeks to withdraw the instant petition with liberty to challenge the fresh orders which have been passed subsequently. He fairly submits at the bar that he had no idea of the earlier petitions that had been preferred by the petitioners herein.

In view of that, the instant petition is dismissed as withdrawn with the aforesaid liberty.

However, the act and conduct of the petitioners is deprecated as they should have been fair to both, the counsel who has filed the petition and should have brought it to his knowledge that the earlier petition had been got dismissed, as well as to this Court. Keeping in view the conduct of the petitioners, a cost of Rs.30000/- is imposed upon them and the same would be handed over to the respondent. In case the petitioners herein propose to file a fresh petition, for which liberty has been sought, they are required to annex a duly acknowledged receipt of Rs. 30,000/- from the respondent herein with the said petition.”

A con-joint reading of orders passed on 7.1.2020 and 4.2.2020 would clearly establish that the petitioners had sought to withdraw the petitions so

filed and challenge the orders passed subsequent to the orders dated 16.12.2019. In other words, order dated 16.12.2019 had attained finality. The petitioners have sought to reopen and re-agitate the interim order dated 16.12.2019 which had allowed the right of residence to the respondent. Learned counsels had sought permission to challenge the subsequent orders passed, that is order subsequent to order dated 16.12.2019. This is the third attempt made by the petitioners to challenge the order dated 16.12.2019 allowing right of residence to the respondent, which cannot be permitted under any circumstances. The petitioners had given up their right to do so on the withdrawal of CRM-M-55374-2019, with liberty to challenge the subsequent orders passed.

8. Once the interim order dated 16.12.2019 had attained finality, it would be a natural consequence that the respondent is put in possession of the said premises and therefore this court finds no infirmity in the orders dated 20.12.2019 and 3.1.2020 passed by the executing court which are under challenge before this court.

9. The matter is still *subjudice* before the trial court and evidence has to be led (if not already done so) by the parties concerned regarding whether or not the premises is a '*shared premises*'. The parties would be at liberty to raise any or all pleas at the relevant time as to whether the first floor is being occupied or is under lock and key, whether the premises are being occupied by the petitioners or not etc. etc. No opinion is being given by this court on the issues raised. As regards the question of alternate residence, since the order of 16.12.2019 has attained finality, this court is not inclined to interfere in the possession already handed over.

10. However, it would be expected of the court below to strike a balance as has been held in the case of **Satish Chander Ahuja (supra)** where it has been held that “*Before we close our discussion on Section 2 (s), we need to observe that the right to residence under Section 19 is not an indefeasible right of residence in shared household especially when the daughter-in-law is pitted against aged father-in-law and mother-in-law. The senior citizens in the evening of their life are also entitled to live peacefully not haunted by marital discord between their son and daughter-in-law. While granting relief both in application under Section 12 of Act, 2005 or in any civil proceedings, the Court has to balance the rights of both the parties.*”

11. Consequently, with the aforesaid observations, this petition is dismissed.

July 8, 2022

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(JAISHREE THAKUR)

JUDGE

Whether speaking/reasoned : Yes

Whether Reportable : No