

Date of decision : 19th December, 2022

+ **CRL.REV.P. 329/2022**

DALBEER KAUR & ANR. Petitioners
Through: Ms. Mansi Sharma and
Ms. Astha Baderiya, Advs.
through Legal Aid
alongwith petitioner No. 1
and 2 in person.

versus

BALBIR KAUR Respondent
Through: Ms. Shobha Gupta, Ms.
Sanskriti Gupta and Mr.
Sourabh Dahiya, Adv.
alongwith respondent in
person.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

AMIT MAHAJAN, J (Oral)

1. The present petition under Section 401 of the Code of Criminal Procedure, 1973, is filed challenging the judgment dated 25.11.2021 (impugned judgment) passed in CA No. 427 of 2019 by the learned Additional Sessions Judge (**ASJ**), Saket.

2. By impugned judgment, the learned ASJ has allowed the appeal filed by the respondent, challenging the order dated 14.08.2019 passed by the learned Metropolitan Magistrate (**MM**), under Section 29 of the Protection of Women from Domestic Violence Act, 2005 (**DV Act**).

3. Learned MM, by order dated 14.08.2019, had allowed the

application filed by the respondent to the extent that the petitioners were restrained from committing any act of domestic violence. However, no order for eviction of petitioner from the property - 2/55, Second Floor, Jangpura Extension, New Delhi, was passed.

4. The respondent is the mother of petitioner No. 2 and petitioner No. 1 is the wife of petitioner No. 2.

5. The proceedings were filed before the learned MM under Section 12 of the DV Act by the respondent alleging that she has been constantly victimised and the violence was inflicted on her by the son and daughter – in – law. Learned MM accepted the complaint and passed the order dated 14.08.2019. Since no order for eviction was passed, respondent filed an appeal being CA No. 427 of 2019, which was allowed by impugned judgment.

6. Learned counsel for the petitioners submits that the order passed by the learned MM was an *ex parte* order.

7. She submits that petitioner No. 1 had also filed a complaint under the DV Act alleging domestic violence against the respondent, which was also listed along with the application filed by the respondent before the same Magistrate.

8. She submits that both proceedings were listed on 24.05.2019 when the complaint filed by the petitioner No. 1 was dismissed on a statement given by the complainant / petitioner No. 1 that she has decided to settle the matter amicably.

9. She submits that the present complaint filed by the respondent was also listed on the same date and since the complaint filed by the petitioner No. 1 was already withdrawn,

petitioner No. 1 was under the impression that the complaint filed by the respondent was also dismissed as withdrawn. It was for this reason, she did not appear before the learned MM on subsequent dates, which led to passing of the order dated 14.08.2019.

10. She further submits that the petitioners came to know about the filing of the appeal only when the notice, in that appeal, was served on the petitioners. She submits that even the proceedings in appeal before the learned ASJ were *ex parte*.

11. She points out towards the orders passed by the learned ASJ in order to show that even though the petitioners appeared in person on 27.09.2019, but subsequently could not appear on account of COVID-19 pandemic because the matter was adjourned *en bloc* from time to time.

12. She submits that when the matter was finally taken up on 18.09.2021, the petitioners, being not aware of that date, could not appear and were also not aware of the subsequent date given by the learned ASJ. The matter was thereafter heard *ex parte* which led to passing of the impugned judgment.

13. She also submits that the dispute relates to the property which is jointly owned by the respondent and her sons, that is, petitioner No. 2 and Mr. Ajit Singh. The mother has decided to evict the petitioner No. 2 from the house, at the instance of his brother Mr. Ajit Singh. Petitioner No. 1 has an independent right to stay in the house being a shared household.

14. Learned counsel for the respondent submits that the respondent has been subjected to the cruelty in the hands of the

petitioners and despite being the owner of the house, the respondent has been forced to stay out of the house. She has not been staying in her own house since March, 2019.

15. She submits that the property is admittedly in the name of the mother. Both of her sons had relinquished their share, if any, in the property through a deed executed in the year 2010. The said fact is not disputed by the petitioner No. 2.

16. She further points out that the respondent has also apart from the application under Section 12 of the DV Act, initiated proceedings under Maintenance and Welfare of Parents and Senior Citizens Act, 2005 (**Maintenance Act**) wherein again the eviction of the petitioners from the subject property has been sought. She points out that the petitioners have been appearing in those proceedings regularly and the fact of pendency of the complaint under the DV Act was specifically mentioned in those proceedings under the Maintenance Act.

17. She further submits that the application filed under the Maintenance Act has already been finalised and an eviction order has been passed by the Tribunal. The said order was challenged by the petitioners by filing an appeal before the Division Commissioner and the said appeal has also been dismissed by order dated 10.12.2022.

REASONING

18. I have interacted with the parties in person and heard the learned counsels for the parties. Respondent has categorically stated that she has been subjected to domestic violence, cruelty and harassment by the petitioners, due to which she is unable to

reside in her own house.

19. From the perusal of the orders passed by the learned MM, it is seen that the petitioners had appeared in person on 24.05.2019.

20. The argument that they were under the impression that the application filed by the respondent was dismissed on account of the statement of the petitioner No. 1, is not acceptable. When the respondent has not been made to stay in the property since March, 2019, there was no reason for the respondent to have withdrawn the complaint filed alleging domestic violence and also seeking eviction of the petitioners from the property.

21. Moreover, the admitted fact is that till date, the petitioners have not challenged the final order passed by the learned Magistrate, which has already attained finality.

22. It is an admitted position that the learned Magistrate, while deciding the application under Section 12 of the DV Act, has given a categorical finding holding the petitioners guilty of domestic violence. Therefore, in the absence of any challenge to the findings given by the learned Magistrate, the same has to be accepted and it cannot be argued in the present proceedings that the findings recorded are not as per law or facts.

23. It is also not in dispute that the petitioners were served with the notice of the appeal filed by the respondent. Even after receiving the notice, they chose not to challenge the order passed by the learned Magistrate. Therefore, it is not open for the petitioners to challenge the order passed by the learned MM on merits while arguing the present petition. The present proceeding

arises out of the impugned judgment passed in appeal filed by the respondent. Respondent had filed an appeal stating that on the facts accepted by the learned MM, an order of eviction should have passed.

24. The petitioner No. 1 may have an independent right to stay in the property on account of the household being shared household, however, the application filed by the petitioner under Section 12 of the DV Act agitating the said right has already been dismissed. The petitioner, who had already asserted her right by filing an application under Section 12 of the DV Act, decided not to pursue the said remedy after the said application was dismissed. The same cannot be allowed to be agitated in the present proceedings.

25. In so far as the argument that the property in question was a joint property of the respondent and her two sons including petitioner No. 2., it is not in dispute that the petitioner No. 2 had relinquished his share if any in the property in favour of respondent No. 2. Therefore, whether petitioner No. 2 still has some rights over the property or that the relinquishment deed was not executed out of his own free will, will not be a subject matter of the proceedings under the DV Act and would be decided by a Civil Court in an appropriate proceedings.

26. The learned ASJ passed the order of eviction making note of the fact that the respondent is admittedly the owner of the property in dispute. Once accepted the fact that the respondent is the owner and has been subjected to domestic violence, any order of eviction, in my opinion, does not suffer from any impropriety.

27. The only other ground taken by the learned counsel for the

petitioners in support of the present petition is that once the matters were adjourned *en bloc*, the learned ASJ should not have allowed the appeal without issuing a prior notice to the petitioners.

28. There is no rule or law which states that multiple notices are require to be issued to a party after service of initial notice. When the litigant is admittedly aware of the date, it is his duty to keep a track of subsequent dates. If the argument advanced on behalf of the petitioner is accepted, it would be used as a tool to delay the proceedings and keep them pending and burden the already overburdened courts. Moreover, from the perusal of record, it cannot be said that a failure of justice has occasioned because of the non-appearance of the petitioners. The argument which is raised before this Court or could have been raised before the learned ASJ, that the property was, in fact, a joint property of the respondent and her two sons has been rightly dealt with.

29. In view of the above, I find no infirmity in the impugned judgment dated 25.11.2021.

30. However, keeping in mind the fact that the petitioners have admittedly been staying in the subject property since the year 2015 and they have a minor child to take care of and the fact that the respondent, at the moment, is staying with her relative, this Court feels that two months' time be given to the petitioners to vacate the property - 2/55, Second Floor, Jangpura Extension, New Delhi.

31. In case the possession is not handed over in a period of two months, the respondent would be at liberty to recover the possession by filing appropriate proceedings.

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32. The present petition and all pending applications are disposed of in the above terms.

AMIT MAHAJAN, J

DECEMBER 19, 2022 / 'KDK'

