

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRR-2232-2023 (O&M)

Date of decision: 03.10.2023

Narinder Singh & Others

...Petitioner(s)

Vs.

Smt. Chhinder Kaur

...Respondent(s)

CORAM:

HON'BLE MS. JUSTICE NIDHI GUPTA

Present: -

Mr. Naresh Kumar Bansal, Advocate
for the petitioners.

NIDHI GUPTA, J.

Challenge in the present petition is to the judgment dated 18.08.2023 passed by the learned Additional Sessions Judge, Chandigarh, whereby criminal appeal No.132 of 2020 filed by the petitioners has been dismissed; and to the order dated 16.01.2020 whereby petition filed by the respondent under Sections 12, 17, 18, 19, 20, 22 and 23 of Protection of Women from Domestic Violence Act, 2005, has been partly accepted by learned Judicial Magistrate, 1st Class, Chandigarh.

2. Learned counsel for the petitioners submits that vide impugned order dated 16.01.2020, the petitioners had been directed to pay Rs.4,000/- per month as maintenance to the respondent in equal share; and vide the second impugned order dated 18.08.2023, the said amount has been enhanced to Rs.9000/- per month to be paid by the petitioners in equal share. Learned counsel contends that the petitioners are daily wagers and do not have any means to pay the said amount to the respondent. It is further submitted that in any event, the respondent has sufficient means of

her own to maintain herself and therefore, the impugned order is prima facie unfair and unjust and deserves to be set aside.

3. No other argument is raised on behalf of the petitioners.

4. I have heard learned counsel for the petitioners.

5. Perusal of record of the case shows that the sole respondent herein is the 80-year-old mother of the petitioners herein. On 05.06.2012, the respondent had filed an application under Sections 12, 17, 18, 19, 20, 22 and 23 of Protection of Women from Domestic Violence Act, 2005, before the learned Judicial Magistrate, 1st Class, Chandigarh, which was accepted vide impugned order dated 16.01.2020 and the petitioners were directed to pay Rs.4,000/- per month to the respondent-mother as maintenance in equal share from the date of order. Against the said order, the petitioners filed appeal bearing No.132 of 2020 which has been dismissed; and the respondent-mother had also filed a Criminal Appeal No.137 of 2020 which was accepted by the learned Additional Sessions Judge, Chandigarh vide common impugned order dated 18.08.2023.

6. Perusal of record of the case further reveals that it has been pleaded by the petitioners that upon the death of the husband of the respondent on 15.06.2013, the respondent sold her share in matrimonial home at Kajehri on 02.09.2013 for Rs.10 lakh and she made a panchayati compromise and DDR was registered on 09.09.2013. It has been further alleged that on 14.12.2013, the respondent withdrew entire amount of Rs.4 lakh from joint SBI account. It has further been pleaded

that on 10.04.2023, the respondent has also received compensation of Rs.8 lakh due to death of her husband, and therefore, she has sufficient means to maintain herself.

7. However, it has also come on record that the matrimonial home of the respondent at Kajehri the same being House No.377, Main Bazaar, Kajheri, Chandigarh consists of total 16 rooms, out of which 11 rooms had been rented out by the petitioners @ Rs.4,000/- per month each and ten shops on the ground floor in the main bazaar, were also given on rent @ Rs.12,000/- to Rs.15,000/- per month each. The petitioners fraudulently got executed some documents in the shape of a Will and said that as per the same, the sons and the daughters of the respondent were being given equal share in the property. Thereafter, the respondent requested the petitioners that since they have agreed that the share should be given to the daughters, therefore, share of their rent should be paid to them. It has been alleged that at this, Sukhjit Kaur the daughter-in-law of the respondent/wife of petitioner No.2 herein, abused the respondent and gave beatings to her without considering the fact that the petitioner is an old age lady and is her mother-in-law. In the month of January 2012, said, daughter-in-law, abused the respondent and gave her slap and fist blows. Moreover, the petitioners never gave a copy of the Will to the respondent and they also gave beatings to the respondent and threw her out of her house. For few days respondent stayed with her brother Nirmal Singh at Phillaur. Later, she shifted to the house of her daughter Gurpreet Kaur in the month of March 2012. Respondent and her

daughters tried their level best to convince the petitioners and requested them to take care of the respondent. But they flatly refused to keep the respondent. Respondent being an old age lady, had no source of income to maintain herself as even her property had been misappropriated by the petitioners who had given 11 rooms and ten shops on rent and were earning about Rs.2,00,000/- per month, out of which 50% actually belongs to the respondent. However, due to the fraud played by the petitioners, respondent was constrained to live in the house of her daughter. She did not have any shelter to reside in, nor any sufficient means to meet out the day-to-day expenses and was totally dependent upon her daughter.

8. It was in these circumstances that the respondent was constrained to file the complaint under Sections 12, 17, 18, 19, 20, 22 and 23 of the Domestic Violence Act, 2005. Accordingly, keeping in view the entire spectrum of facts brought on record, and after considering the submissions made on behalf of the parties, the learned Additional Sessions Judge, Chandigarh passed the impugned order. The relevant findings as contained in the impugned order dated 18.08.2023, are reproduced hereinbelow:-

“14- One of the appellant Narinder Singh stepped into witness box as RW-2 and has deposed that her mother is aged 80 years and is an illiterate lady. He admits that there are six shops in house No. 377 and does not know the rate of rent of these shops and deposed that he can only tell that the shop owned by him earns a rent of Rs. 4000/- per month and also disclose that he cannot tell number of rooms in house No. 377 and can only tell about rooms in his possession. He does not know his brothers Babu Singh and Narinder Singh are residing in rooms of house and does not know how many rooms are on second floor. Thus RW-1 had been evasive though he claims to be in

possession of part of the said house. RW-1 has deposed that he is a mason by profession and earning Rs. 15000/- per month. His brother Babu Singh is not doing any work and third brother Ravinder Singh is also Mason by profession. RW-1 admits that he is filing income tax returns for the last five years and then depose that he cannot produce ITR and also admits that his mother is residing with his sister since the year 2012. He has also admitted in cross examination that the Mother is not doing any work and earlier she was also not doing any work and deposed that sale deed Ex.RW1 was not executed in his presence. It is pertinent to mention that appellant claims that their mother had sold the property vide Ex.RW1 for a sum of Rs. 40 lakh and consideration money in sale deed was only mentioned as Rs. 10,000/-. RW-1 on other hand deposed that the said sale deed was not executed in his presence. Thus to contend that Mother has earned four million rupees from sale of property and does not require any financial assistance is not tenable. It has rightly been argued that as the proceeds of sale deed Ex.RW1 stands exhausted on medical treatment and living expenses of Mother so Mother has deposed that she has no income to maintain her. All the three sons are under legal and moral obligation to maintain their mother. Mother is residing with her married daughter at Yamuna Nagar and is at litigation with her three sons. It only shows the manner in which the three sons had treated their mother compelling her to live with her married daughter at Yamuna Nagar. It does not prevent the three major sons from their statutory obligation to maintain their 80 years old mother. On the other hand the mother is living with the married daughter and she is taking the care of her mother since the year 2012. Thus the appellant is being taken care of by one of her children and the said fact is relevant of determination of maintenance amount.

15- Ld. Trial court has granted maintenance sum of Rs.4000/- to be paid in equal share by the three sons. There has been a increase in the cost of living in the recent years and the same is required to be taken in consideration at least from the date of filing of present appeal. In case the sons are masons or their father was also mason and all the three sons are having their own families then the grant of maintenance sum of Rs.4000/- per month as ordered by the trial court cannot be said to be an order which do not require any modification. With each passing year the cost of living is increasing and the said fact is

required to be taken into consideration. So considering the entire facts of the entire case and the status of the family it is ordered that the appellants/respondents No. 1 to 3 will continue to pay the maintenance sum of Rs.4000/- granted by the trial court in terms of order dated 16.01.2020 till the filing of the present appeal by the appellant mother. However, considering that there has been an increase in the living expenses all the three sons/respondent appellants No. 1 to 3 are directed to pay the maintenance sum of Rs.9000/- per month in equal share instead of Rs.4000/- per month as ordered by Id. Trial court from the date of filing of present appeal.

16- Appellant is residing with her married daughter. So the Id. Trial court has not committed any error in not providing the alternative accommodation to the appellant mother. It cannot be disputed that at the age of 80 years mother cannot live alone in a rented accommodation. Claim in the share in the rental income from the disputed property has not been granted by the trial court as there is no evidence on record that there is an rental income of Rs. 2 Lakh per month from any property owned by the mother or the three sons. Appellant mother has instituted a suit for declaration, partition and mesne profit with regard to properties for which she claims rental income and compensation. Said suit stands dismissed by a civil court vide Ex.R1 dated 20.09.2019. So claim raised by the mother for a sum of Rs. 5 lakh as monetary loss and grant of injunction to restrain the sale of house No. 377, Main Market, Khajeri Chandigarh is not tenable. Accordingly Id. Trial court has not committed any error in not granting the said reliefs.

17- In view of the discussion above the appeal titled Chinder Kaur Vs Narinder Singh is partly allowed and the impugned order dated 16.1.2020 passed by Id. Trial Court is modified to the extent that appellants/respondents No.1 to 3 being sons will continue to pay the maintenance sum of Rs.4000/- granted by the Trial Court in terms of order dated 16.01.2020 till the filing of the present appeal by appellant mother Chhinder Kaur and from date of filing of present appeal respondent sons No.1 to 3 will pay the maintenance sum of Rs.9000/- per month in equal share instead of Rs.4000/- per month as ordered by Id. Trial court. Appeal titled as Narinder Singh & Ors Vs. Chhinder Kaur being without merit stands dismissed. Record be returned

alongwith copy of this order. Revision file be consigned to the record room after due compliance.”

9. In the facts and circumstances of the case as discussed herein above, I find no error in the reasoning and conclusion of the learned Additional Sessions Judge, Chandigarh. Learned counsel for the petitioners has been unable to controvert the above said findings. Accordingly, I find no ground is made out to interfere in the impugned order(s). Present petition accordingly stands **dismissed**.

10. Pending application(s) if any also stand(s) disposed of.

03.10.2023

Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No