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

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*Reserved on: 21.09.2023
Pronounced on: 03.11.2023*

+ **CRL.M.C. 960/2020 & CRL.M.A. 3906/2020, CRL.M.A. 8174/2022, CRL.M.A. 9534/2023**

COLONEL T.K CHATERJEE Petitioner

Through: Petitioner in person.

versus

BHRAMAR CHATERJEE Respondent

Through: None

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The instant petition under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed on behalf of petitioner seeking directions to dispose of the pending Criminal Appeal bearing no. 11/2020 under Section 29 of the Protection of Women from Domestic Violence Act, 2005 ('DV Act') against the impugned order dated 31.10.2019 passed by the learned Metropolitan Magistrate (Mahila Court-02), Dwarka Courts, New Delhi, under Section 12 of D.V. Act with directions to learned Magistrate to first decide



maintainability of D.V. complaint dated 15.01.2015 filed under Section 12 by the respondent.

2. Briefly stated, the facts of the present case are that the marriage between the petitioner and respondent was solemnized on 15.04.1990. An application under Section 12 of D.V. Act read with Section 18/19/20/21/22 of D.V. Act was filed by her against the present petitioner praying *inter alia* for an order restraining the petitioner from evicting her from the matrimonial home i.e. House no. A-503, Plot 33, Sector-4, Defence Officers Department, Dwarka, New Delhi, and for directing the appellant to continue to pay the rent of aforesaid house. On 12.02.2015, the petitioner herein was summoned and Domestic Incident Report was directed to be filed. On 23.06.2015, an application under Section 151 of CPC was filed by the petitioner herein praying that respondent be directed to vacate the aforesaid rented house and co-operate to hand over the rented house to the petitioner prior to 30.06.2015. Notice of the application was directed to be issued to the respondent for 27.06.2015 and when the application was taken up for hearing on 27.06.2015, the respondent/wife was present. The petitioner had prayed that respondent be directed to shift to a new accommodation found by him. On 04.07.2015, reply was filed on behalf of respondent to the application and on 01.08.2015, respondent had moved an application for early hearing and interim relief for restraining the petitioner from evicting her from the aforesaid house. However, on 24.08.2015, the respondent submitted that she was ready to shift to the new flat arranged by the petitioner i.e. D-602, Sector-4, Om Satyam



Apartments, Dwarka, New Delhi, if he was ready to undertake to bear the rent as well as electricity and water charges till she resides there. The statement of the petitioner and undertaking was recorded separately. On 03.09.2015, the respondent had moved an application stating that on the date that had been fixed for her shifting to new house, she had found that the petitioner was already living in that house and it was not feasible to live alongwith him in the same house. It was therefore requested that either he be directed to arrange different accommodation similar to the flat in which she and her children were residing, or he himself should shift out of the new accommodation as the new accommodation is meant only for her and the children. It was also stated that the landlord of the present accommodation had threatened to disconnect the water and electricity services, at the best of petitioner.

3. Thereafter, on 09.09.2015, the learned Magistrate had passed the order, relevant portion of which is extracted as under:

“...There is no dispute about the fact that at this stage, it is not possible for both the parties to stay together in the same house in view of the allegations levelled by the parties against each other. The Protection of Women from Domestic Violence Act, 2005 is a piece of social welfare legislation and primary purpose is to protect the women from the violence occurring within the family. In view of the whole scenario and without commenting upon allegations levelled by the complainant in her application and in the complaint made to the SHO, PS Dwarka North, respondent Col. T.S. Tapash Kumar Chatterjee is directed to remove himself from the new rented flat i.e. D-602, Sector-4, Plot No. 13, Om Satyam Apartment, Dwarka, New Delhi and is further restrained from entering any portion of the said flat, till further orders of this Court. Copy of the order be sent to the Protection Officer as well as SHO concerned for necessary compliance. Notice of the



application along with a copy of the order be also sent to the respondent. Copy of the order be given dasti to the complainant."

4. The aforesaid order was challenged before the learned Special Judge (PC Act & CBI)-03, Dwarka Courts, New Delhi in an appeal under Section 29 of DV Act on the grounds that the principles of natural justice had been disregarded and the order had been passed based on incorrect facts. The learned Special Judge, after hearing both the parties, had observed that the order dated 09.09.2015 passed by the learned Magistrate was only till further order and in view of the peculiar circumstances of the case and the learned Special Judge had directed the learned Magistrate to finally dispose off the application moved by the respondent expeditiously, preferably within twenty days. The relevant portion of order dated 01.12.2015 passed by learned Special Judge reads as under:

"7.2 However, it is pertinent to note that the directions passed by the Ld. Trial Court vide order dated 09-09-2015 are till further orders. Vide the said order, notice of the application was again directed to be sent to the appellant. Apparently, the Ld. Trial Court is yet to pass final order on the application dated 03-09-2015 moved by the respondent after hearing both the parties. Further, both the parties have also submitted that pursuant to the aforesaid order, on 13-09-2015, the respondent has vacated House No. A-503, Plot-33, Sector-4, Defence Officers Apartment, Dwarka, New Delhi- 110075 and shifted to house No. D-602, Sector-4, Plot No. 13, Om Satyam Apartment, Dwarka, New Delhi and on 17-09-2015 the appellant has removed himself from house No. D-602, Sector-4, Plot No. 13, Om Satyam Apartment, Dwarka, New Delhi. Ld. Trial Court has observed that it is not possible for both the parties to stay in the same house in view of the allegations levelled by the parties against each other. In view of the aforesaid peculiar facts and



circumstances of this case, it is considered that the only order that may be proper is to direct that the application dated 03-09-2015 moved by respondent is finally disposed off by the Ld. Trial Court expeditiously and preferably within twenty days, after hearing both the parties and considering all the pleas raised by them. It is ordered accordingly. Parties are directed to appear before the Ld. Trial Court on 03-12-2015 at 2.00 PM. The appeal is disposed off in aforesaid terms.

5. On 11.04.2016, the learned Magistrate after hearing arguments on the application seeking residence orders filed by the respondent/complainant had directed as under:

“...After hearing both the parties in detail I have come to the following observation:

The Ld. Predecessor court has passed an order for removal of the respondent and had restored the residence of the complainant in Flat no. D 602, Sector 4, Plot No. 13, Om Satyam Apartment, Dwarka, New Delhi which is rented accommodation where both the parties was initially residing together and due to a fight which ensued between the parties the complainant moved an application for removing the respondent from the said house. The complainant has been restored the possession of the house by specific orders of the court and passing of any order for removal of the complainant from the said house would against the spirit of the domestic violence act as the same would render the complainant homeless as she is totally dependent on the respondent for her day to day needs and is not working. She cannot be expected to hire a new house for herself immediately for the purpose of shelter. The respondent on the other hand is a retired army officer and earning very well from his pension, retirement benefits as well as getting rental income. Further, he has no other responsibility except to maintain the complainant and his children, the son being already major. The respondent is, therefore, directed to look for an alternative accommodation of the same level where the complainant is presently residing and make arrangement for her stay in that house. It is further impressed that the security deposit of the said house shall be made by the respondent only and



respondent is directed to make this arrangement only for three months only. He is further directed that he shall get flat no.403, Tower No.A-4,Olive Country, Vasundhara, Ghaziabad, Uttar Pradesh vacated by due process of law which is in the joint name of the complainant and the respondent within three months and handover the vacant and peaceful possession of the same to the complainant for the residence of herself and her children.

Till the respondent finds an alternative accommodation for the complainant, the complainant shall be residing in the same house where she is already residing and the status quo shall be maintained. Application of the complainant is accordingly disposed off.

To come up for further proceedings now on 12.07.2016.”

6. As stated in the petition, eventually the parties had entered into settlement talks and the matter was referred to Mediation Centre for 06.04.2017 *vide* order dated 27.03.2017 passed by learned District & Sessions Judge, South West District, Dwarka Courts, New Delhi in TA No.11580/2016. Thereafter, a settlement was arrived at between the parties before the Family Court that the parties would take divorce by mutual consent and therefore, the petition i.e. Mt. No. 691/2017 was disposed of as compromised. An application was thereafter also filed by the respondent/wife before the Family Court seeking re-framing of the terms of the settlement, however, the same was dismissed by the learned Family Court, since the parties had already acted upon the settlement, *vide* order dated 12.12.2017.

7. Thereafter, in the present complaint case pending under Section 12 of DV Act, the petitioner herein had filed certain written arguments and prayed that since matter had already been settled



before the Family Court, the proceedings in this case cannot be continued. The relevant order dated 27.04.2018 reads as under:

“Respondent has filed written arguments with documents total running into 98 pages submitting that the present matter can not be proceeded further as the matter has been amicably settled in Family court and the application of the complainant for change of the terms of the settlement has also been dismissed. Complete set is supplied.

Ld. Counsel for complainant submits that petition has been filed before Hon'ble High court of Delhi against the order of Family Court. He seeks time to file copy of order passed by Hon'ble High Court of Delhi. It is clarified that if there would be no stay from the Hon'ble High Court to the proceedings, this Court would proceed further.

Be put up for consideration on 28.11.2018.”

8. During this period, the Transfer petition filed by the petitioner, seeking transfer of appeal filed under Section 29 of DV Act against order dated 11.04.2016 passed by learned Magistrate, was decided by the learned District & Sessions Judge, South West District, Dwarka Courts, New Delhi vide order dated 18.07.2018 and the said appeal was transferred to the Court of another learned Judge.

9. On 31.10.2019, the learned Magistrate had allowed the application of the complainant seeking directions to the petitioner herein to pay rent and other charges towards the accommodation of the complainant and had directed as under:

“...In view of the decision herein-above the respondent is directed to pay sum of Rs.21000/- towards rent. The complainant has placed copy of the receipt to show that on an average, she is paying electricity charges of Rs 2500/- to Rs 3000/- per month. The respondent is accordingly further directed to pay sum of Rs 2500/-per month towards electricity charges. The respondent shall further pay



society maintenance and other charges to the complainant on furnishing receipt/ demand note. The respondent is directed to deposit the payment by 10th of every month either in the account of complainant or he can pay the rent directly to the landlord. He is directed to deposit electricity charges in the account of the complainant and society maintenance charges and other charges shall also be deposited in her account. The respondent is directed to make the payment w.e.f from October 2019 till further orders.

The application of the complainant is accordingly allowed and disposed of...”

10. Thereafter, the appeal under Section 29 of DV Act i.e. CA No. 37/2020 against the aforesaid order was dismissed by the learned Principal District & Sessions Judge, South West, Dwarka Courts, New Delhi *vide* order dated 31.07.2021 with costs of Rs.25,000/- alongwith the direction that the payment of cost shall be a condition precedent for the petitioner herein to participate further in the proceedings before the learned Magistrate.

11. The aforesaid order dated 31.07.2021 passed by the learned Principal District & Sessions Judge was challenged before this Court by the petitioner by way of Crl.Rev.P. 432/2021 and vide order dated 17.12.2021, the petition was disposed of as withdrawn alongwith certain directions, and the relevant portion of the order reads as under:

“4. It is contended by the learned counsel for the petitioner that the parties have settled the matter before the Counselling Cell, Family Court, Dwarka Courts and the respondent/wife was trying to get over the settlement entered into between the parties. The learned Counsel for the petitioner states that the issue as to whether the petitioners have been living in a shared household or not is to be seen first before directions can be issued.



5. When confronted with the fact that the issue as to whether the petitioner and the respondent were having a shared household is a question of fact which can be decided only after evidence is led and the petitioner cannot have a piecemeal recording of evidence, the learned counsel for the petitioner seeks permission to withdraw the present petition.

6. This Court is also not inclined to interfere with the cost imposed on the petitioner for the simple reason that an order making costs easy would entail issuing notice to the respondent No.2 which this Court is not inclined to do at this juncture.

7. Needless to state that since shared household is a sine qua non of a petition under the Protection of Women from Domestic Violence Act, 2005 and if it is found that there was no shared household at all then it is for the learned Trial Court to pass appropriate orders while adjusting equities.

8. In view of the fact that the parties are litigating since 2015 in various forums, the Trial Court is requested to dispose of the application filed under the Protection of Women from Domestic Violence Act, 2005 as expeditiously as possible preferably within one month.

9. With these observations the petition is disposed of as withdrawn along with the pending applications.”

12. The petitioner who was present in person before this Court had addressed certain arguments and had handed over his written submissions. The same have been perused and considered by this Court. The Trial Court Record has also been perused.

13. In light of the aforesaid factual background, this Court at the outset notes that the present petition i.e. *CRL.M.C. 960/2020* and the application seeking stay i.e. *CRL.M.A. 3906/2020* have already become infructuous, inasmuch as the relief that was sought by way of the main petition was issuing direction to the learned Appellate Court



under DV Act to expeditiously dispose of the pending appeal, filed by the petitioner herein against the order dated 31.10.2019 passed by the learned Magistrate and stay of proceedings was sought till the learned Appellate Court under the DV Act disposes of the appeal. As taken note of in preceding discussion, the appeal i.e. CA No. 37/2020 filed by the petitioner stands already decided by the learned Principal District & Sessions Judge, South West, Dwarka Courts, New Delhi *vide* order dated 31.07.2021, i.e. during the pendency of present petition, and even the revision petition against the order dated 31.07.2021 preferred before this Court stands disposed of *vide* order dated 17.12.2021 by the Co-ordinate Bench.

14. Thus, nothing survives for adjudication in *CRL.M.C. 960/2020* and *CRL.M.A. 3906/2020*.

15. As regards the two other pending applications i.e. *CRL.M.A. 8174/2022* and *CRL.M.A. 9534/2023*, this Court notes that by way of first application, the petitioner seeks stay of all execution cases/petitions filed by the respondent before the learned Magistrate on the ground that the matter had already been compromised before the learned Family Court in the year 2017 and *vide* order dated 27.04.2018, it was also recorded by the learned Magistrate that the petitioner herein had written arguments and had prayed case under Section 12 of DV Act cannot be proceeded further in view of settlement arrived at between the parties. Further, by way of second application, the petitioner seeks issuance of direction to the learned Magistrate to first adjudicate upon the pending order dated 27.04.2018 i.e. to first decide as to whether the proceedings can



continue under Section 12 of DV Act after the parties had entered into a settlement and the same had been acted upon.

16. In regard of the aforesaid prayers, this Court notes that after the Co-ordinate Bench in Crl.Rev.P. 432/2021 vide order dated 17.12.2021 had directed the learned Magistrate to decide the pending application under Section 12 of DV Act preferably within one month, the petitioner had placed on record a copy of the order before the learned Magistrate. However, vide order dated 02.03.2022, learned Magistrate had observed that since learned Principal District & Sessions Judge vide order dated 31.07.2021 had made payment of cost of Rs.25,000/- by the petitioner as a condition precedent for him to participate in proceedings, it was not possible for the learned Magistrate to proceed any further in absence of compliance of such order by the petitioner herein.

17. It is also crucial to note that as per records, the petitioner had thereafter preferred a Crl.M.A.6755/2022, in Crl.Rev.P. 432/2021 which had been disposed of on 17.12.2021, and the order dated 13.05.2022 reveals that the relief sought by the petitioner therein is as under:

“2. This is an application under Section 482 Cr.P.C. for the order and direction to implement Hon'ble High Court of Delhi order dated 17.12.2021 directing to first decide the main application filed under Protection of Women from Domestic Violence Act, 2005 dated 15.01.2015 with date of separation February-2014 admitted on complainant affidavit dated 09.04.2015 without Domestic Incident Report and in negation of Family Court settlement order 2811.2017 and Family Court settlement order dated 12.12.2017 duly acted upon without adjudicating learned Metropolitan Magistrate order dated 27.04.2018 under



Section 12 of DV Act over three years and decide on or before thirty days.”

18. Therefore, the relief which had been sought by the petitioner before a Co-ordinate Bench in Crl.M.A.6755/2022 is completely identical to the reliefs sought in the two other pending applications in this petition which are CRL.M.A. 8174/2022 and CRL.M.A. 9534/2023. Also to be taken note of, the application filed by the petitioner which is listed before the Co-ordinate Bench was filed by the petitioner prior to the filing of applications bearing number CRL.M.A. 8174/2022 and CRL.M.A. 9534/2023 before this Court.

19. Thus, where an application seeking identical reliefs in the same case is already pending for adjudication before the Co-ordinate Bench, this Court does not deem it appropriate to pass any other on applications i.e. *CRL.M.A. 8174/2022* and *CRL.M.A. 9534/2023* pending in this petition.

20. In view of foregoing discussion, the present petition alongwith all pending applications stand dismissed.

21. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

NOVEMBER 3, 2023/ns