



2024:DHC:8136



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

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*Reserved on: 20th September, 2024
Pronounced on: 21st October, 2024*

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CRL. M.C.1797/2020, CRL.M.A. 12592/2020

TANU GUPTA

W/o Nikhil Gupta

R/o DU-16, Pitampura,

Vishakha Enclave, Delhi-110034.

Presently Residing at:

Flat No.259, Canara Apartments,

Sector-13, Rohini,

Delhi-110085.

..... Petitioner

Through: Mr. Neeraj Gupta and Mr. Prateek
Goswami, Advocates.

versus

1. STATE OF NCT OF DELHI

2. NIKHIL GUPTA

S/o Sunil Kumar Gupta

3. SUNIL KUMAR GUPTA

S/o Late Sh. D.C. Gupta

4. MADHU GUPTA

W/o Sunil Kumar Gupta

5. NIDHI GUPTA

D/o Sunil Kumar Gupta

All Residents of :

Flat No.142, Canara Apartments,

Sector-13, Rohini,

Delhi-110085.



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.....Respondents

Through: Mr. Hemant Mehla, APP for the State.
Mr. Anuj Jain and Mr. Jai Gaba,
Advocates, for Respondent No. 2-5.

CORAM:**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T****NEENA BANSAL KRISHNA, J.**

1. A Criminal Misc. (Main) under Section 482/483 Criminal Procedure Code (*hereinafter* 'Cr.P.C.') read with Article 227 of Constitution of India has been filed for setting aside the Order/Judgment dated 20.08.2020 of the learned Sessions Judge and also for setting aside Order dated 21.12.2019 of the learned M.M in Complaint Case No.4455/2017 filed by the petitioner under Domestic Violence Act.

2. Briefly stated, the petitioner Tanu Gupta got married to respondent No.2 Nikhil Gupta on 12.07.2016 and came to reside in the Flat No.259, Canara Apartment, Sec-13, Rohini, and Delhi of which her father B in B law/respondent No.3 is the absolute owner. Soon after the marriage, difference arose between the parties and respondent No.3 to 5 who are the parents-in-law and sister-in-law shifted out of this accommodation to another self-owned property in the same locality. Thereafter, on 19.07.2017 respondent No.2/husband also left the *shared household* and sent the message that he was not coming. All the efforts for reconciliation did not succeed. The petitioner being aggrieved by the alleged cruel and barbaric acts of respondent No.2 to 5, filed a Petitioner under Section 12 of The Protection of Women from Domestic Violence Act (*hereinafter* 'DV Act'), 2005.



3. During the pendency of proceedings, an Application was filed by the petitioner to seek protection of her residence in shared household, which was allowed by learned M.M vide Order dated 21.12.2017 and the respondents were restrained from dispossessing the petitioner from the shared household. On 05.03.2018, the respondent No.2 was directed to pay interim maintenance of Rs.5,000/- per month.
4. The respondent No.3 and 4 instituted a *Civil Suit CS No.1095/2017* against the petitioner and her parents for directing her to vacate the suit premises in order to defeat her right of residence in shared household. An application under Order XII Rule 6 CPC was filed by the respondents seeking a judgment on admissions, but the Application was dismissed by the learned Civil Judge vide Order dated 29.07.2019.
5. Simultaneously, respondent No.3 father-in-law filed an Application for vacation of Order dated 21.12.2017 which the petitioner has claimed to be not maintainable. The Ld. M.M. vide the impugned Order dated 21.12.2019 not only recalled this Order granting interim protection from dispossession to the petitioner, but also withdrew the Order dated 05.03.2018 granting interim maintenance of Rs.5,000/-.
6. Aggrieved by this Order dated 21.12.2019 passed by learned M.M, a Crl. Appeal No.04/2019 was preferred before the learned District & Sessions Judge, who vide detailed Order considered all the contentions raised by the petitioner and dismissed the Appeal on 20.08.2020. The present Crl. M.C. has thus, been filed to challenge the Order dated 20.08.2020 of the learned Sessions Judge.
7. The grounds of Appeal are that the impugned Order has been made in complete disregard to her assertions that the Flat in which she is residing is a



shared household and she cannot be evicted or excluded from her shared household or any part of it by the respondent *save in accordance with the procedure established by law as provided under Section 17(2) of the Act*. The respondents have intentionally not mentioned about the Civil Suit filed by respondent No.3 and 4 seeking possession of the Suit property from the petitioner and also that their Application under Order XII Rule 6 CPC seeking judgment on admissions had been dismissed.

8. The respondent No.3 father-in-law had moved an Application seeking permission to sell the property which has been erroneously entertained by the learned M.M under PWDV Act despite the fact that the Application of father-in-law was not maintainable under the Act, as he is not an *aggrieved person* who can seek any succour under this Act. It is only the woman who is an *aggrieved person* and entitled to seek relief under the Act. Such forum shopping by respondent No.3, is neither appreciable nor should have been entertained.

9. The petitioner has further asserted that respondent No.2 to 5 have several properties in their name, despite which respondent No.3 moved the Application before the learned M.M with the sole objective of throwing the petitioner out of her *shared household* so as to traverse her statutory right of residence in shared household. It was also not appreciable that because of her efforts, she was able to get a job on temporary basis at Accenture Solutions Private Limited. Moreover, she had been diagnosed with Tuberculosis which according to her, was because of mental trauma caused to her due to the illegal acts of respondent No.2 to 5. Reliance has been placed on Hiral P. Harsora and Ors. vs. Kusum Narottamdas Harsora and Ors. MANU/SC/1269/2016 and Sarika Mahendra Sureka vs. Mahendra and



Ors. MANU/MH/1852/2016 in her support. She has asserted that the impugned Order is not sustainable under the law and is liable to be set aside.

10. The *respondents in their detailed reply* have asserted that the petitioner only has a right of residence in the capacity of permissive possession. She has admitted in her Petition that she along with her respondent No.2 had been allowed to live in the suit Flat and does not have any independent right to continue to live without the specific consent and permission of respondent No.3. The respondent No.3 does not want her to continue to live in the premises any more, being the lawful and legal owner. He has admittedly filed a Civil Suit for seeking possession. Merely because the Application under Order XII Rule 6 CPC has been dismissed, does not imply that his suit has been dismissed or that he does not have a right to claim the suit premises. Reliance has been placed on Ambika Jain and Ors. vs. Ram Prakash Sharma and Ors. 266 (2020) DLT 18, wherein it was directed that the husband must be joined as a party in such Suits and before any Order is made against the wife, the husband must be directed to make arrangement for alternate accommodation or make payment of rent. The right of alternate accommodation must not be rendered meaningless and the shelter must be secured to the appellant during the subsistence of matrimonial relationship. The Trial Court shall, before passing a decree of possession on the sole premise of the ownership of the property, must ensure that the subsisting rights of a daughter-in-law under D.V Act are secured and she is provided an alternate accommodation in terms of Section 19(1)(f) of the D.V. Act. Moreover, a balance of interest of the daughter-in-law and the respondents, must be maintained.

11. Reliance has also been placed on Satish Chander Ahuja vs. Sneha



Ahuja SLP No.1048/2020 decided on 15.10.2020, wherein it was held that while the daughter-in-law/accused person has a right of residence, but she may be evicted from the *shared household* only in accordance with law.

12. Learned Sessions Judge has been placed reliance on S.R. Batra & Anr. Vs. Taruna Batra Civil Appeal No.5837 of 2006 but it has been overruled in regard to interpretation of “shared household”, by Satish Chander Ahuja vs. Sneha Ahuja.

13. It is thus, submitted that respondent No.3 is an absolute owner of the property and has initiated civil proceedings to seek possession in accordance with law, which is also provided for under the D.V. Act. The impugned Order of the learned District Judge does not suffer from any infirmity since there is no indefeasible right to continue to reside in the shared household but Section 19(1)(f) itself provides that an alternate accommodation of similar nature may be provided or rent thereof may be provided. The present Petition is, therefore, liable to be dismissed.

14. **Submissions heard and record perused.**

15. Admittedly, the Petitioner got married to respondent No.2 on 12.07.2016 and after her marriage came to live in the suit premises along with her husband, parents-in-law and sister-in-law i.e. respondent No.2 to 5. Over a period of time, differences arose and respondent No.3 to 5 shifted to another Flat in the same locality owned by the mother-in-law, on 14.07.2017. Five days hence, respondent No.2 also left the shared household. Since then the petitioner has been living in the suit premises.

16. She filed the complaint in CAW Cell and also filed the present Petition under D.V. Act to seek maintenance and also protection of her right to residence. She was granted maintenance of Rs.5,000/- per month vide



Order dated 05.03.2018, but in the impugned Order dated 21.10.2019 while noting the submissions of the petitioner herself that she had got an employment since 2019 @ Rs.40,000/- per month, the Order of interim maintenance was recalled.

17. The only dispute which thus remains is about the *shared household*, in which the permissive possession was protected by the Ld. M.M. but subsequently vacated by the Ld. M.M. vide Order dated 21.12.2019 and upheld by Ld. Sessions Judge vide Order dated 20.08.2020

18. To understand the contours of the grievance of the Petitioner, reference be made to Section 19 which reads as under :

“Section 19 Residence orders

(1) While disposing of an application under sub-section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order

(a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;

(b) directing the respondent to remove himself from the shared household;

(c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;

(d) restraining the respondent from alienating or disposing off the shared household or encumbering the same;

(e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or

(f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as



enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require:

Provided that no order under clause (b) shall be passed against any person who is a woman.

(2) *The Magistrate may impose any additional conditions or pass any other direction which he may deem reasonably necessary to protect or to provide for the safety of the aggrieved person or any child of such aggrieved person.*

(3).....

(6) *While making an order under sub-section (1), the Magistrate may impose on the respondent obligations relating to the discharge of rent and other payments, having regard to the financial needs and resources of the parties.*

(7)...

(8)....

19. Section 2(s) of the DV Act defines “*shared household*” to mean the house where a woman comes to reside after her marriage irrespective of who has the ownership of that property. Undeniably, she came to reside in this house along with all the family members after her marriage and thus, it is her *shared household*. Even though admittedly the property is owned by respondent No.3 the father-in-law, that still does not take away the status of the suit property from being the *shared household*.

20. The next question which requires consideration is whether she has an absolute right to continue to reside in this house. In the case of Satish Chander Ahuja (Supra), the Apex Court observed that the Senior Citizens in the evening of their life are also entitled to live peacefully and not haunted by marital discord between their son and daughter-in-law. While granting relief both in Application under Section 12 or in any civil proceedings, the



Court has to draw a balance between the rights of both the parties.

21. While Section 19 of the DV Act recognizes the right of a daughter-in-law to continue to live in the *shared household*, it is subject to two conditions; *firstly* she cannot be dispossessed except in accordance with law and *secondly*, she may be provided with an alternate accommodation or the rent for such alternate accommodation.

22. From the bare reading of this Section along with the judgment referred above, it is evident that no absolute right of residence can be claimed by the petitioner. She herself is an educated woman who has done her MBA and is employed with Accenture Solutions Private Limited. It is not a case where she is helpless or there is any endeavour to leave her on the road by taking away the roof from her head. The learned M.M while maintaining a balance between the rights of the petitioner and the respondents and also being cognizant of the fact that the property is owned by the father-in-law who cannot be made to suffer in his hey days, has directed that alternate Flat in the same colony on rent may be made available to the petitioner and the compliance Report had been sought. The relevant part of the Order reads as under:

“As per the law laid down in S.R. Batra vs. Tarun Batra, 2007 (2) SCC 169, the property in question cannot be called as shared household as it is admittedly owned by the respondent no. 2. However, keeping in view the fact that the complainant had been residing there, respondent no. 1 is directed to make suitable arrangement for residence of the complainant in any alternate accommodation and pay its rent regularly, if the same is a rented accommodation. Respondent no. 1 is directed to file a compliance report to this effect and only thereafter respondent no. 2 will be permitted to sell the aforementioned house. Thus, order



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dated 21.12.2017 stands vacated subject to aforementioned condition.”

23. The argument that the petitioner is being subject to harassment as the Respondent No.3 has filed a Civil suit as well to claim possession, is not tenable as S.19 of DV Act itself provides that due process of law may be followed to seek eviction. The concern of the legislature that the woman be not thrown out of the house and be left on the road, has also been addressed by directing the husband/ respondent No.2 to provide suitable alternate accommodation on rent in the same locality.

24. There is no infirmity in the Order of the learned M.M which has been rightly upheld by the learned District & Sessions Judge. The present petition has no merit which is hereby dismissed along with application, if any.

**(NEENA BANSAL KRISHNA)
JUDGE**

OCTOBER 21, 2024
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