

2025:PHHC:011816



**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

COCP No. 956 of 2022 (O&M)

Reserved On: 12.11.2024

Pronounced On: 22.01.2025

Anju Garg

..... Petitioner

Versus

Shashi Bhushan Garg and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Argued By: Petitioner-Anju Garg in person.

Mr. Vishal Aggarwal, Advocate
for respondent Nos. 2 & 3.

HARKESH MANUJA, J.

The petitioner-wife, by way of present petition, seeks initiation of contempt proceedings against the respondents, alleging willful non-compliance of an order dated 11.08.2015 (**Annexure P-1**) passed by learned Chief Judicial Magistrate, Mansa Court in Complaint No. 170, dated 17.09.2010, titled “**Anju Garg Versus Shashi Bhushan Garg**”, whereby an application under Section 12 (i) of Protection of Women from Domestic Violence Act, 2005 (**for short “the Act”**) filed at the instance of petitioner, was allowed and a restraint order was passed *qua* alienation of the shared household, without permission of the Court so as to secure the rights of petitioner in the same. The relevant para-8 & 9 of the aforesaid order dated 11.08.2015 are extracted hereunder:-

“ 8. *Therefore in view of the evidence brought on the record, this court is of the considered opinion that it*

is necessary to pass protection order restraining the respondents from committing any act of Domestic Violence against the petitioners. Respondents are also restrained from alienating the shared house hold without prior permission of the Court so as secure the rights of the applicant in the same.

9. *Keeping in view of the oral as well as documentary evidence led by both the parties, I am of the considered opinion that the applicant has fully proved her case by leading cogent and convincing evidence. Admittedly, applicant is no longer residing in the shared house hold. In evidence, applicant has stated that she is living in her parental house and the respondent being able bodied man is living with his parents and is having sufficient means. Though the clear proof of the income of the respondent has not come on record but now a days even a labourer can easily earns Rs. 8,000/- to Rs. 10,000/- per month. Therefore, taking into consideration social economic condition of the parties, respondent is held liable to provide sum of Rs. 15,000/- per month to the applicant as monetary relief towards maintenance, food, clothes and other basic necessity and for household expenses from the date of application. The applicant is also held entitled to the relief of shared household with the respondents and respondents are directed to allow the applicant to live in their house in the shared household or to make arrangement for the residence on rent and to pay requisite rent therefore.”*

[2] Briefly stating, the present proceedings stem from a matrimonial dispute, wherein respondent No. 1-Shashi Bhushan Garg (deceased), happened to be the husband of petitioner, respondent Nos. 2 & 3 being her father-in-law and mother-in-law respectively, whereas respondent

Nos. 4 & 5, the purchasers of the property in question bearing House No. 3712, Sector 46-C, Chandigarh. As per the case set up by petitioner, the marriage between the petitioner and deceased-respondent No. 1 was solemnized on 09.05.1997 at Mansa (Punjab) and the parties started residing at House No. 3712, Sector 46-C, Chandigarh, which was owned by respondent No. 3-Urmil Garg (mother-in-law of petitioner). Two daughters, namely, Shohrat Garg and Hasrat Garg were born out of the aforementioned wedlock on 11.11.1999 & 10.05.2005 respectively. In the meanwhile during the year 2001, the couple shifted to Ambala (Haryana) in relation to the business; however, in the year 2003, they shifted back to Chandigarh and resided in the aforesaid house. As per the pleadings, somewhere in the year 2008, the petitioner-wife and her husband shifted to separate residence at House No. 3259, Sargodha Housing Society, Sector 50, Chandigarh; however, on 15.04.2008 respondent No. 1-deceased left the company of petitioner-wife, whereas on 16.04.2008, the petitioner left the children to her in-laws house and shifted to parental house at Mansa. It was further pleaded that lot of efforts towards re-conciliation were made, yet the same achieved no fruitful purpose, resulting into filing of complaint / application under Section 12 (i) of the Act on 17.09.2010 at the hands of petitioner-wife against respondent Nos. 1 to 3 alongwith an interim prayer.

[3] Learned Chief Judicial Magistrate, Mansa, vide order dated 31.05.2011 (**Annexure P-4**), awarded interim maintenance @ Rs. 3,000/- per month in favour of the petitioner and she was also allowed to live in the residence in question i.e. House No. 3712, Sector 46-C, Chandigarh. The aforesaid petition was finally decided on 11.08.2015; though an appeal was

preferred at the instance of respondent Nos. 1 to 3, which was later withdrawn, yet the arrears towards maintenance and rent were not cleared.

[4] Through the present petition, it came to be pleaded that though respondent Nos. 1 to 3 were restrained from alienating the shared household, i.e. House No. 3712, Sector 46-C, Chandigarh, yet the same was sold jointly in favour of respondent Nos. 4 & 5, namely, Mohan Verma and Pooja Verma on 28.02.2019 and the said fact came to the knowledge of petitioner in July 2020; thus, prayer was made for initiation of contempt proceedings against respondent Nos. 1 to 3 as well as purchasers i.e. respondent Nos. 4 & 5.

[5] Notice was issued only *qua* respondent No. 1-Shashi Bhushan Garg, vide order dated 25.05.2022; however, during pendency of the petition, he died unfortunately. As such, this Court on 02.11.2022 issued notices upon respondent Nos. 2 & 3.

[6] In response, written statement came to be filed on behalf of respondent Nos. 2 & 3, while raising objection about the present contempt petition being barred by limitation. By referring to the memo of parties to the impugned order dated 11.08.2015 (Annexure P-1), it was also pleaded that respondent Nos. 2 & 3 were never depicted therein and their names were included in the array of parties only in April 2022 and that too, on an application made at the instance of petitioner without even serving any notice upon respondent Nos. 2 & 3 and thus, any alienation made by them on 28.02.2019 did not amount to willful violation of the order / decision dated 11.08.2015 (Annexure P-1).

Furthermore, it was also explained that the property in question was alienated merely for the purpose of incurring expenditure for the education of two grand-daughters, namely, Shohrat Garg and Hasrat Garg, as there was no one else to support the family after the unfortunate demise of their son-Shashi Bhushan Garg (respondent No. 1), who happened to be the husband of petitioner and father of those two.

[7] Petitioner appearing in person, vehemently submitted that the wrong committed by the respondents in the present case was a continuous cause and thus, the petition was within limitation and respondent Nos. 2 & 3, who were originally impleaded as party in the petition before the trial Court having willfully violated the order dated 11.08.2015 were liable to be proceeded against.

[8] On the other hand, learned counsel for respondent Nos. 2 & 3 raised serious objections about the maintainability of present contempt petition, while submitting that the same was barred by limitation in terms of Section 20 of the Contempt of Courts Act, 1971, which required the initiation of proceedings within one year of the alleged violation. He also pointed out that the property in question was alienated on 28.02.2019, whereas the present petition came to be filed in April 2022, though in the legal notice dated 05.11.2020 (Annexure P-11 / Page 102) issued on behalf of petitioner, it was pleaded that the factum of alienation of the property in question came to her (petitioner) notice in the month of July 2020 and thus, the present contempt proceedings were wholly barred by limitation being filed beyond one year of the date of knowledge of the alleged violation regarding alienation of the property in question.

[9] Having heard the petitioner as well as learned counsel for respondent Nos. 2 & 3, the prayer made in the present petition cannot be entertained being barred by limitation.

[10] A perusal of the record shows that admittedly vide order dated 11.08.2015 (Annexure P-1) passed by the Court of Chief Judicial Magistrate, Mansa, the respondents were directed not to alienate the property in question, i.e. House No. 3712, Sector 46-C, Chandigarh, besides directing them to allow the petitioner to live in the said house or to make arrangement for her residence on rent and to pay the requisite rent in this regard, however, the subject property was alienated by respondent No. 3 (Urmil Garg) in favour of respondent Nos. 4 & 5. Although, the factum of aforesaid sale deed dated 28.02.2019 came to the knowledge of petitioner in July 2020 as per her legal notice regarding contempt which was served upon respondent No. 3-Urmil Garg (mother-in-law) on 05.11.2020 (Annexure P-11), whereas, the present petition was filed only in April 2022, i.e. after a period of more than one year of the alleged violation. In such circumstances, in the humble opinion of this Court, the present petition cannot be entertained in terms of Section 20 of the Contempt of Courts Act, 1971, which reads as under:-

“ 20. *Limitation for actions for contempt –*

No court shall initiate any proceedings of contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed.”

[11] Furthermore, reliance in this regard can also be made upon the decision rendered by the Hon’ble Supreme Court in case “**S. Tirupathi Rao** **Versus M. Lingamaiah and Others**” reported as ***2024 AIR Supreme Court***

3738; the relevant para-53 thereof is extracted hereunder:-

“ 53. Reverting to the point of limitation, even in case of a petition disclosing facts constituting contempt, which is civil in nature, the petitioner cannot choose a time convenient to him to approach the Court. The statute refers to a specific time limit of one year from the date of alleged contempt for proceedings to be initiated; meaning thereby, as laid down in Pallav Sheth (supra), that the action should be brought within a year, and not beyond, irrespective of when the proceedings to punish for contempt are actually initiated by the high court.”

[12] Moreover, no merits can be found in the submissions made on behalf of petitioner that the alienation dated 28.02.2019 (Annexure P-10) amounted to continuous wrong as through the sale deed dated 28.02.2019, the violation / wrong, if any, stood committed there and then and thus cannot be said to be a recurring or continuous cause to come to the rescue of petitioner. Reference in this regard can be made to the decision in case of **S. Tirupathi Rao (supra)** wherein the term “continuous wrong” has even been dealt with to mean that if as an effect of wrong committed, the injury caused has continued, the same cannot be sufficient to constitute it a continuous wrong and the wrong would amount to be of continuous nature only if the breach of duty has not ceased and it continues to subsist. Relevant paragraph-77 from the aforementioned decision is extracted hereunder:-

“ 77. The decision of this Court in Balkrishna Savalram Pujari (supra) was endorsed by this Court in M. Siddiq (Ram Janmabhumi Temple-5 J.) v. Suresh Das⁵² wherein, while concluding that the ouster of shebaitship was a single incident and did not constitute a continuing wrong, this Court further observed as follows:

*“343. The submission of *** is based on the principle of continuing wrong as a defence to the plea of limitation. In assessing the submission, a distinction must be made between the source of a legal injury and the effect of the injury. The source of a legal injury is founded in a breach of an obligation. A continuing wrong arises where there is an obligation imposed by law, agreement or otherwise to continue to act or to desist from acting in a particular manner. The breach of such an obligation extends beyond a single completed act or omission. The breach is of a continuing nature, giving rise to a legal injury which assumes the nature of a continuing wrong. For a continuing wrong to arise, there must in the first place be a wrong which is actionable because in the absence of a wrong, there can be no continuing wrong. It is when there is a wrong that a further line of enquiry of whether there is a continuing wrong would arise. Without a wrong there cannot be a continuing wrong. A wrong postulates a breach of an obligation imposed on an individual, where positive or negative, to act or desist from acting in a particular manner. The obligation on one individual finds a corresponding reflection of a right which inheres in another. A continuing wrong postulates a breach of a continuing duty or a breach of an obligation which is of a continuing nature.*

Hence, in evaluating whether there is a continuing wrong within the meaning of Section 23, the mere fact that the effect of the injury caused has continued, is not sufficient to constitute it as a continuing wrong. For instance, when the wrong is complete as a result of the act or omission which is complained of, no continuing wrong arises even though the effect or damage that is sustained may enure in the future. What makes a wrong, a wrong of

a continuing nature is the breach of a duty which has not ceased but which continues to subsist. The breach of such a duty creates a continuing wrong and hence a defence to a plea of limitation.

(emphasis ours)”

Also, it may be pointed out here that in the array of parties to the final order dated 11.08.2015 (Annexure P-1), respondent Nos. 2 & 3 were never reflected therein and their names came to be included in the memo of parties / title of the order dated 11.08.2015 only in July 2022, i.e. much after the alienation made on 28.02.2019 and that too, on an application made by the petitioner which came to be decided by the trial Court without issuance of any notice to respondent Nos. 2 & 3.

[13] Furthermore, it has come on record that upon alienation of House No. 3712, Sector 46 – C, Chandigarh, respondent No. 3, purchased Flat No. 801, Royal Estate–II, Tower no. 6, Zirakpur Peer Moshalla, District, SAS Nagar. Besides, filing the present contempt proceedings, the petitioner also preferred an execution petition before the Court of Chief Judicial Magistrate, Mansa for recovery of arrears of maintenance as well as rent, in terms of order dated 11.08.2015 and in the alternative for issuance of warrant of residence in the aforementioned flat while referring it as the share household. The said execution application is stated to be still pending. As such, without going into the merits of the present petition any further, respondent Nos. 2 & 3, in the given situation, thus cannot be said to have done any willful disobedience of the decision dated 11.08.2015 (Annexure P-1) passed by the learned Chief Judicial Magistrate, Mansa.

[14] Accordingly, in view of the discussion made hereinabove, this Court finds that the present petition being barred by limitation, thus, no ground to entertain the prayer made in the present petition is made out, the same is hereby **dismissed**.

[15] Rule stands discharged.

[16] Pending miscellaneous application(s), if any, shall also stand disposed off.

January 22, 2025
'dk kamra'

(HARKESH MANUJA)
JUDGE

Whether Speaking/reasoned	Yes
Whether Reportable	Yes