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

\# **CNR No. DLHC010515122026**

\+ CRL.M.C. 8053/2026 & CRL.M.A. 33619/2026

SMT. PRIYANKA BHARDWAJ .....Petitioner

Through: Mr. Hitik Malhan and Mr. Nishkarsh Bana, Advocates.

versus

THE STATE (GOVT. NCT OF DELHI) AND ORS .....Respondents

Through: Ms. Kiran Bairwa, APP for State.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% 28.10.2026

1. The Petitioner invokes Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to challenge the order dated 8th September, 2026, passed by the Additional Sessions Judge in Criminal Appeal No. 153/2026. By the impugned order, the Appellate Court modified the residence arrangement directed by the Magistrate on 10th July, 2026. Instead of requiring Respondent Nos. 2 and 3, the Petitioner's parents-in-law, to provide her one room in their residential property, the Appellate Court directed them to pay ₹8,000 per month towards alternate accommodation.

2. The dispute arises from proceedings instituted by the Petitioner under Section 12 of the Protection of Women from Domestic Violence Act, 2005[1]. The Petitioner claims to have resided in the matrimonial home at B-2/511,

[1] ['DV Act']

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Main Vijay Park Road, Mohan Puri, Delhi, following her marriage in 2009, until 2011. During the proceedings, interim maintenance of ₹16,000 per month, subsequently enhanced to ₹20,000, was awarded against her husband. By a further order dated 3rd September, 2021, the husband was directed to pay ₹8,000 per month towards alternate accommodation, in addition to maintenance.

3. The husband subsequently stopped making payments and ceased appearing before the Trial Court. His whereabouts are stated to be unknown. The Petitioner consequently moved an application under Section 25(2) of the DV Act, seeking modification of the earlier orders and permission to reside in the matrimonial home with her minor son. The Magistrate, while declining to transfer the maintenance liability to the parents-in-law, accepted the request for residence and directed them to ensure that their other son vacated one room on the first floor of the property within thirty days. In appeal, this arrangement was replaced with the direction for payment of ₹8,000 per month by the parents-in-law.

4. The Petitioner contends that the Appellate Court failed to give due effect to her statutory right of residence under Sections 17 and 19 of the DV Act. It is submitted that the property constitutes her shared household, irrespective of its ownership, and that sufficient accommodation is available therein. The Petitioner also disputes the description of the property and the occupation of its different floors furnished by her parents-in-law. Her further grievance is that ₹8,000 per month was fixed without assessing the prevailing rental value of comparable accommodation or the residential requirements of herself and her minor son.

5. Sections 17 and 19 of the DV Act must be read together. The former

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recognises the right of a woman in a domestic relationship to reside in the shared household, irrespective of any right, title or beneficial interest therein; the latter provides for orders to secure that right. In ***Satish Chander Ahuja v. Sneha Ahuja***[2], the Supreme Court rejected the restrictive view that a shared household must belong to, or be tenanted by, the husband. Ownership by the parents-in-law is, therefore, not by itself a ground to deny residence. Equally, the right does not confer an indefeasible entitlement to occupy a particular property regardless of the legitimate interests of its other occupants. In ***S. Vanitha v. Deputy Commissioner, Bengaluru Urban District***[3], the Supreme Court emphasised the need to harmonise the protection afforded by the DV Act with the rights of senior citizens. In ***Ravneet Kaur v. Prithpal Singh Dhingra***[4], this Court recognised that, having regard to the strained relationship between the parties and the age of the parents-in-law, the right of residence could appropriately be secured through alternate accommodation under Section 19(1)(f) of the DV Act. These decisions require the competing residential interests to be balanced in the circumstances of each case. Section 19(1)(f) itself recognises this approach by permitting alternate accommodation of the same level as that enjoyed in the shared household, or payment of rent for such accommodation, where circumstances so require.

6. The question, therefore, is whether the Appellate Court erred in substituting a direction to pay rent for the Magistrate's order requiring a room to be made available in the property. The husband's subsequent disappearance and cessation of payments furnished a basis for reconsidering

[2] (2021) 1 SCC 414
[3] (2021) 15 SCC 730

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the earlier residence arrangement under Section 25(2). As explained in ***S. Vijikumari v. Mowneshwarachari C.***[5]**,** modification under that provision must rest on a change in circumstances occurring after the earlier order. The Magistrate was, therefore, justified in examining the Petitioner's renewed request for residence. That did not, however, make her accommodation in the matrimonial home the inevitable consequence. Even proceeding on the footing that the premises constitute a shared household, the appropriate form of relief required consideration of the Petitioner's needs and those of her minor son, the accommodation actually available, and the effect of the proposed arrangement on the existing occupants.

7. The Petitioner has admittedly been residing separately for several years. Her previous residence in the property remains relevant and is not extinguished by the passage of time, as explained in ***Prabha Tyagi v. Kamlesh Devi***[6]. Nevertheless, the direction of the Magistrate was not one protecting her existing occupation. It required the parents-in-law to secure a room by making their other son, who resides on the first floor with his wife and children, vacate part of the accommodation occupied by that family. No specific finding was recorded that an independent room was vacant or could be made available without affecting the existing occupants. The practical consequences of that direction were therefore material to the exercise of discretion.

8. The Petitioner disputes the description of the property, the floors occupied by her parents-in-law and the availability of separate entrances. On the material before this Court, however, these disputes do not establish that a

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[4] RFA 832/2018, decided on 24th February, 2022
[5] 2024 INSC 732

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suitable portion is available for her occupation. This is not to suggest that vacancy is a condition for enforcing the right of residence, or that the possibility of further discord is, by itself, sufficient to deny it. Nor can the Petitioner's recourse to legal remedies be a ground to exclude her from the shared household. The question is whether, in the circumstances, residence in the premises should be directed in preference to alternate accommodation. The existing occupation of the property, the parties' prolonged separation and their strained relations bear upon that choice. They could, therefore, be considered in determining how her right of residence should be secured.

9. The Appellate Court addressed the Petitioner's need for accommodation by directing the parents-in-law to pay monthly rent. Although they had expressed willingness to arrange rented premises, the Court left the choice of accommodation to the Petitioner rather than requiring her to accept premises selected by them. The direction thus preserves her freedom to choose where she and her minor son will reside. Payment of rent for alternate accommodation is a form of residence relief expressly recognised by Section 19(1)(f) of the DV Act. In the circumstances discussed above, the decision to grant relief in that form, rather than direct occupation of a room in the property, cannot be faulted merely because the Petitioner prefers the latter. Whether the amount awarded is adequate to secure accommodation of the level contemplated by the provision is a separate question, considered hereinafter.

10. As regards the amount of ₹8,000 per month, the figure was not fixed without any antecedent basis. It corresponds to the amount awarded towards alternate accommodation under the earlier judicial order dated 3rd

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[6] (2022) 8 SCC 90

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September, 2021, which the husband had initially complied with. That said, the earlier determination does not necessarily establish the adequacy of the same amount in the present circumstances. Section 19(1)(f) contemplates accommodation of the level enjoyed in the shared household. The Petitioner has not placed sufficient contemporaneous rental material to establish that the amount presently directed is incapable of securing such accommodation.

11. The husband's continued absence, the allegations concerning his financial transactions and the arrears of maintenance do not warrant a different conclusion on the form of residence relief. The Petitioner's remedies for enforcing the subsisting orders and recovering amounts lawfully due from him remain unaffected. Nothing in this order shall be construed as an adjudication of those allegations or as prejudicing her rights in the appropriate proceedings.

12. The Appellate Court's arrangement balances the Petitioner's right of residence with the residential interests of the other occupants. No ground for interference under Section 528 of the BNSS is made out. The direction to pay monthly rent remains enforceable, without prejudice to the Petitioner's right to seek modification under Section 25(2) of the DV Act upon a demonstrated change in circumstances.

13. Accordingly, the petition is dismissed, along with any pending applications. The impugned order dated 8th September, 2026, is upheld, subject to the clarification in paragraph 10 above.

SANJEEV NARULA, J

OCTOBER 28, 2026
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