

2022 LiveLaw (Del) 224

IN THE HIGH COURT OF DELHI AT NEW DELHI
CORAM: HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

8th March, 2022

OM PRAKASH GUPTA & ANR. *Versus* ANJANI GUPTA & ANR.

Protection of Women from Domestic Violence Act, 2005 – Wife opposing husband's plea for restitution of conjugal rights does not affect her right of residence.

CRL.M.C. 5188/2013, CRL.M.A. 18680/2013, CRL.M.A. 2588/2014, CRL.M.A. 13863/2015, CRL.M.A. 13028/2016, CRL.M.A. 14219/2016, CRL.M.A. 15076/2016, CRL.M.A. 3921/2018, CRL.M.A. 31742/2019, CRL.M.A. 10828/2021 & CRL.M.A. 15072/2021

Petitioners Through: Mr. Anurag Jain, Advocate.

Respondents Through: Mr. Arvind Varma, Sr. Advocate with Mr. Abhishek Chhabra, Advocate for R-1 along with R-1 in person Mr. Raghuvinder Varma, APP for R-2/State

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The present petition has been filed under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973, (hereinafter “Cr.P.C.”) against Order dated 5th December, 2013 passed by learned Additional Sessions Judge-02/Special Judge (NDPS) (hereinafter “ASJ”), East, Karkardooma Courts, Delhi, in Criminal Appeal No. 104/13 titled „Om Prakash Gupta vs Anjani Gupta” whereby learned ASJ was pleased to confirm the residence Orders dated 1 st November, 2013, in favour of Respondent No.1.

FACTUAL MATRIX

2. Marriage between the Respondent No.1 (hereinafter “Respondent”) and the son of the Petitioners, Mr. Alok Gupta, was solemnized on 30th January, 1990 according to Hindu rites and rituals and Petitioner No. 1 (since deceased) and Petitioner No. 2 (hereinafter “Petitioner”) are the mother-in-law and father-in-law, respectively, of the Respondent. Petitioner No. 1 has been represented by her Legal Representatives, Mr. Alok Gupta as Petitioner No. 2(a), Mr. Anurag Gupta as Petitioner No. 2 (b) and Ms. Sarika Gupta as Petitioner No. 2 (c).

3. The relationship between the Respondent and her in-laws was cordial in the beginning, however, it started to deteriorate with time. The Respondent left her matrimonial home on 16 th September, 2011. Consequently, more than 50 cases, both civil and criminal, were filed by the parties against each other. One of these cases were initiated by the Respondent under the Protection of Women from Domestic Violence Act, 2005, (hereinafter “DV Act”) and during the proceedings the Respondent claimed right to residence in the property bearing no. A-41, Swasthya Vihar, Delhi-110092.

4. The DV Act matter, registered as No. V-275/12, was heard by the learned

Metropolitan Magistrate, Mahila Court, East District, Karkardooma Courts, New Delhi, and the learned Metropolitan Magistrate passed the Order dated 1st November, 2013, wherein it was observed that the husband of the Petitioner is the 50 percent owner of the co-owned house, bearing no. A-41, Swasthiya Vihar, Delhi- 110092, the Respondent was residing on the first floor of the said matrimonial home till the day she was dispossessed from the house, that is on 16th September, 2011 and that there was a prima facie case that the husband of the Respondent was having an illicit affair. The learned Metropolitan Magistrate held that, in view of the above facts, the Respondent herein was entitled to the right of residence in the first floor of the abovementioned property.

5. Aggrieved by the said Order, the Petitioner filed Criminal Appeal No. 104/13 on, summarily, the following grounds:

- The property was in exclusive possession of the petitioners against one of whom the respondent had levelled charges of sexual assault.
- The respondent had a right to live with her husband as a wife, however, by allowing her to live at Swasthya Vihar while her husband is living at Indirapuram, the Trial Court did not take care of the fact that parties may eventually get separated because of the order of right to residence.
- The wife's right of residence is co-existence with the husband and she cannot claim a right of residence at a place where her husband is not residing.
- The respondent contested the petition under Section 9 of the Hindu Marriage Act, 1955, and lived away from the son of petitioner for 1½ year; she, therefore, should not have been allowed to live in the house where her husband was not residing.
- The respondent levelled allegations of sexual assault against father-in-law and allowing her to live in the said house would give an opportunity to her to keep filing frivolous cases.
- The respondent is guilty of adultery and on this ground case of divorce had been filed against her.
- There is only one entrance, one electricity connection and one water connection in the house and two parties having strained relations cannot live under such circumstances.

6. The learned Appellate Court considered the facts and circumstances before it and while passing the Order dated 5th December, 2013, upheld the Order passed by learned Metropolitan Magistrate dated 1 st November, 2013 of residential right passed in favour of the Respondent observing that the Respondent had been living in the said premises since her marriage and her husband was the 50 per cent share holder to the house which gave her the right to continue to live there, in light of the judgment of **SR Batra vs Tarun Batra (2007) 3 SCC 169**. However, with respect to the observations of the learned Trial Court with respect to the adultery in question, learned Appellate Court observed that as such the ground which weighed in the mind of the

learned Trial Court at the time of passing the interim order thus, did not seem prima facie a valid ground.

7. The Petitioner has impugned the Order of the Appellate Court dated 5th December, 2013 before this Court in the instant Petition.

8. On 11th December, 2013, the Petitioners obtained ex-parte ad interim stay from a co-ordinate bench of this Court, with respect to the right of residence passed in favour of the Respondent, which was extended on the various subsequent dates.

SUBMISSIONS

9. Learned counsel appearing on behalf of the Petitioner submitted that the learned Appellate Court while passing the Order dated 5th December, 2013 failed to address various issues raised by the Petitioner before it. It is submitted that the Appellate Court wrongly upheld the Order of the learned Trial Court dated 1st November, 2013, whereby the right of residence was granted to the Respondent herein.

10. It is submitted that the Respondent left her matrimonial home, on her own accord and did not return thereafter. However, she filed for the right to residence with respect to the property bearing no. A-41, Swasthya Vihar, Delhi-110092, during the DV Act proceedings. The said premises were in the name of the wife (since deceased) and son of the Petitioner and the Respondent has no reason to claim the right in the said property. It is submitted that husband of the Respondent attempted to join her several times and after continuous refusal by the Respondent he filed for restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955 and the Respondent contested the petition and sought its dismissal, which was a testament to her reluctance to live with her husband, yet before the learned Metropolitan Magistrate she prayed for the relief of right of residence.

11. It is submitted that the Appellate Court did not appreciate the fact that on one hand the Respondent levied allegations of sexual assault against the Petitioner, who is a senior citizen, and on the other hand she filed for right to live in the premises where he had been residing. The Petitioners were in the exclusive possession of the premises where their son, husband of the Respondent, was not even a resident. The husband of the Respondent had been living at Indirapuram, Ghaziabad, Uttar Pradesh, which is the matrimonial home of the Respondent, away from his parents, and instead of claiming the right to live with her husband at his premises in Indirapuram, the Respondent claimed the right with respect to the premises where the husband was not even residing but was a 50 per cent share holder.

12. It is submitted that on several occasions the Petitioners have offered options of alternative accommodation to the Respondent, however, neither of these offers had ever been accepted by the Respondent. The offers extended to the Respondent were in consonance with the guidelines laid down in ***Jaidev Rajnikant Shroff vs. Poonam Jaidev Shroff, (2022) 1 SCC 683***, wherein the Hon^{ble} Supreme Court noted that while offering a similar alternative accommodation the word “similar” may not be interpreted as identical but has to be construed as providing the same degree of luxury

and comfort.

13. Furthermore, it is submitted that the Respondent made frivolous and baseless allegations of adultery against the son of the Petitioner and had failed to establish the same before the learned Appellate Court and the finding of the learned Trial Court regarding prima facie existence of an illicit relationship of the son of the Petitioner with one Mona Thakur, was also, rightly set aside by the Appellate Court. The photographs adduced before the Court below did not, in any manner, establish the existence of an illicit relationship between the son of the Petitioner and the woman and in fact the Respondent was also present at the trip where the said photos were taken. It is submitted that, on the contrary, it was the Respondent who was in an extramarital relation with other persons and was caught red handed by her husband.

14. It is submitted by the learned counsel for the Petitioner that while granting a relief under Section 12 of the DV Act there exists a precondition of receipt of report from protection officer or service provider before passing of any residence orders, however, in the instant matter no such officer was appointed and powers under Section 12 could not have been invoked while granting the residence order.

15. The Respondent had filed several false cases against the Petitioner and his family members and the right of residence granted to her would enable her to levy more such allegations and accusations upon the Petitioner and disrupt his life entirely. It is therefore, prayed the Order of the learned Appellate Court dated 5th December, 2013, be set aside for the reason of it being passed in a mechanical manner being bereft of facts.

16. Per Contra, Mr. Arvind Varma, learned senior counsel appearing on behalf of the Respondent No.1, vehemently opposed the instant petition and submitted that there is no error in the observation of the learned Appellate Court in upholding the Order of the learned Trial Court.

17. It is submitted that the premises in question, that is, property bearing no. A-41, Swasthya Vihar, Delhi-110092, is the matrimonial home of the Respondent and she has been rightfully entitled to residence in the said property by the learned Metropolitan Magistrate. The right to residence of the Respondent arises out of the 50 per cent ownership of her husband in the said premises.

18. It is submitted that the husband of the Respondent was having an affair with another woman from his office and when the Respondent came to know about this and objected to the relationship, she was thrown out of the said matrimonial house where she had been living for more than 20 years.

19. The Petitioners not only threw out the Respondent from her matrimonial house but there also subsisted a real threat that the Petitioners would restrain her to enter in the house in future as well, owing to which the learned Metropolitan Magistrate passed the Order granting the right to live at the matrimonial home at the said premises.

20. Learned counsel appearing on behalf of the Respondent submitted that thereafter, on account of cruelty and mental torture the Respondent filed for the case under the

DV Act, whereby, the learned Metropolitan Magistrate was pleased to pass the Order dated 1st November, 2013, and the said Order of residence has not yet been challenged by the husband of the Respondent and as such the parents-in-laws of the Respondent do not have a *locus standi* to challenge the findings of the learned Metropolitan Magistrate passed against the husband.

21. The Respondent is rightfully entitled to live at the premises in question in light of the fact that it is a co-owned property of her husband and the alternative accommodation offered to the Respondent, including the property bearing No. 601, Tower-4, Orange County, Ahinsa Khand-1, Indirapuram, Ghaziabad, Uttar Pradesh were not equivalent to the matrimonial home. It is submitted that the offers of alternative accommodation etc., made by the Petitioners have not been *bona fide* and has been offered after 8 years of the Respondent leaving her matrimonial house.

22. In view of the above facts, it is submitted that the instant petition is liable to be dismissed since there is no substantial reason to impugn the judgment of the learned Metropolitan Magistrate.

FINDINGS AND ANALYSIS

23. Heard learned counsel for the parties and perused the record. I have perused the impugned Order dated 5th December, 2013.

24. The existence of the strained relationship between the Petitioner and the Respondent has been well established by the fact that there are more than about 60 criminal and civil cases pending between the parties. The Respondent approached the learned Metropolitan Magistrate under the DV Act wherein she also filed an interim application seeking the relief of right of residence. The learned Metropolitan Magistrate, although did not adjudicate upon the allegations under the DV Act, it satisfied itself on the question of the right of the Respondent to live at her matrimonial home.

25. The Respondent alleged that her husband had been living in adultery with another woman and produced several letters, photographs, and instances where they both travelled and stayed together. It was also stated that after the discovery of the adulterous relationship she was removed from the matrimonial home. For the purposes of granting the interim relief of right to residence the abovementioned statements as well as documents annexed were found sufficient to substantiate the grant the relief in favour of the Respondent. The Appellate Court although did not appreciate the argument of adultery against the husband of the Respondent, however, the same could not have had an overbearing on the ground appreciated by the learned Metropolitan Magistrate at the preliminary stage while granting the interim relief.

26. The Respondent had been living at the premises in question, that is, A-41, Swasthya Vihar, Delhi-110092, since she got married to the son of the Petitioner. It is, also, undisputed that the said house is co-owned by the husband of the Respondent and the judgment of **SR Batra** (Supra) provides the necessary protection

to a wife to live at the house entitling her to claim a right to residence in a shared household, which would mean a house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member. Hence, the observation of the learned Metropolitan Magistrate was in consonance with the findings of the Hon^{ble} Supreme Court as well as the fact that the Respondent had an emotional attachment to the house given that she had lived there for over 20 years of her married life and even the Appellate Court was right in upholding the same while passing the impugned Order.

27. Further, this Court does not find any force in the argument of the Petitioner that since the Respondent did not wish to live with her husband and refused to join him she could not have claimed a right to residence in her matrimonial home. The right of residence under the DV Act is exclusive to and isolated from any right that may arise under Section 9 of the Hindu Marriage Act, 1955 and thereby, the learned Appellate Court's observation in this regard has also been correctly made.

CONCLUSION

28. The Appellate Court rightly appreciated that the Respondent has a right to live at her husband's co-owned property, that there was a real apprehension that the Petitioners would have removed the Respondent from the house and that the fact of likelihood of filing of cases against the Petitioners could not have affected the Respondent's right to live at her matrimonial house and, therefore, there is no ground to interfere with the Order dated 5th December, 2013 passed by learned Additional Sessions Judge-02/Special Judge (NDPS) (hereinafter "ASJ"), East, Karkardooma Courts, Delhi, in Criminal Appeal No. 104/13.

29. Keeping in view the arguments advanced, facts and circumstances before the Court, findings of the learned Metropolitan Magistrate as well as the observations made by the Appellate Court, this Court does not find any error in the Order dated 1st November, 2013, whereby the right of residence was granted in favour of the Respondent, as well as in the Order dated 5th December, 2013 upholding the Order dated 1st November, 2013.

30. Accordingly, the instant petition against Order dated 5th December, 2013 passed by learned Additional Sessions Judge-02/Special Judge (NDPS), East, Karkardooma Courts, Delhi, in Criminal Appeal No. 104/13 is dismissed.

31. Pending applications also stand disposed of.

32. The judgment be uploaded on the website forthwith.