

IN THE COURT OF SHRI SANDEEP YADAV
ADDL. SESSIONS JUDGE-02 : SOUTH EAST DISTRICT
SAKET COURT : NEW DELHI

Criminal Appeal No. 17/17

Smt. Rekha

W/o late Sh. Sonu

D/o. Sh. Prasadi Lal

Presently R/o. D-190, Dakshinpuri

New Delhi-62

.... Appellant

Versus

1. Sh. Raju (Jeth),

S/o. Late Sh. Kanhaiya

2. Sh. Kailash (Jeth)

S/o late Sh. Kanhaiya

3. Smt. Neetu (Jethani)

W/o. Sh. Raju

4. Smt. Kailashi (Jethani)

W/o Sh. Kailash

5. Smt. Motia (Mother-in-law)

W/o late Sh. Kailash

Also at: R/o D-3, Block No.18,

Sultan Puri, Rohini,

Sector 20, Delhi.

... Respondents

Date of Institution : 07.01.2017

Date of Arguments : **27.08.2019**
Date of Judgment : **27.08.2019**

JUDGMENT

1. This appeal filed U/s. 29 of Protection of Women from Domestic Violence Act 2005 (in short “the Act”) is directed against the order dated 07.12.2016 passed by Ld.MM-02(Mahila Court), South District, Saket Courts, Delhi whereunder the application of the appellant U/s. 23 (2) of the Act was dismissed.

2. I have heard Mr. Vishal Singh, Ld. Legal Aid Counsel or the appellant and Mr.Divakar Chaudhary, Ld. Counsel for respondents and perused the trial court record.

3. The appellant Rekha filed a complaint U/s. 12, 17, 18, 19 & 22 of the Act against respondent No.1 Raju (brother in law), respondent No.2 Kailash (brother-in-law), respondent No.3 Neetu (sister-in-law), respondent No.4 Kailashi (sister-in-law) and respondent No.5 Motia (mother-in-law) (*respondents No. 3 & 4 were not summoned*). It was averred in the complaint that appellant was married with Sonu on 13.03.2013 at Delhi and out of this wedlock a child was born. After the marriage, the appellant lived with her husband at her matrimonial home i.e. D-3, Block 18, Sultan Puri, Sector 20, Rohini, Delhi. The appellant alleged that she was subjected to domestic violence by the respondent. The husband of the appellant died on 02.07.2014 and appellant suspected

that her husband has been murdered by the respondents. The appellant also filed an application U/s. 23 (2) of the Act praying that the respondents be directed to allow the appellant to live in matrimonial house in shared household bearing no. D-3, Block 18, Sultan Puri, Sector 20, Rohini, Delhi till the final disposal of the complaint.

4. This application was dismissed by the trial court mainly on the premise that if any order of residence is passed at this stage it would certainly amount to deciding the case without merit as the appellant is seeking the same relief in the complaint as well as in the application U/s. 23(2) of the Act.

5. Sh. Vishal Singh, Ld. Legal aid counsel for appellant, referred to various documents to highlight that House No. D-3, Block 18, Sultan Puri, Sector 20, Rohini, Delhi is the shared household of the appellant and appellant has a right to reside therein. Mr. Vishal Singh referred to the written statement filed by the respondent wherein certain admissions are stated to have been made by the respondent as regards the shared household.

6. Mr. Divakar Chaudhary, counsel for respondent submitted that appellant never resided in the matrimonial home. Mr. Divakar Chaudhary, further submitted that house No. D-3, Block 18, Sultan Puri, Sector 20, Rohini, Delhi is just 18 sq. yards in area and the appellant cannot be accommodated in the said house. This is an absurd argument as

the appellant resided in the same accommodation alongwith her husband after her marriage.

7. A perusal of para 8 of the written statement filed by the respondent before the trial court would show that respondents have nowhere denied that appellant resided in her shared household bearing House No. D-3, Block 18, Sultan Puri, Sector 20, Rohini, Delhi. The shared household has been defined U/s. 2(s) of the Act as under:-

“Shared household” means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or alongwith the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household with may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household.”

8. It is not in dispute that husband of the appellant died within 16 months of her marriage. The appellant is stated to be presently residing with her minor child in her parents house. In view of the admission made

by the respondents in para 8 of the written statement, it is prima-facie concluded that house bearing No. D-3, Block 18, Sultan Puri, Sector 20, Rohini, Delhi is the shared household of the appellant and the appellant has a right to reside therein with her child.

9. The reasoning given by the trial court while dismissing the application U/s. 23 (2) of the Act is neither convincing nor legally sustainable. There is nothing wrong if the residence order is made applicable till the disposal of the complaint. Thus, in exceptional circumstances an interim order can be passed even if the prayer in the application for interim relief is similar to the main relief. A sensitive and humanistic approach is required while adjudicating the statutory rights of vulnerable section of society. The appellant before the court is a helpless lady whose husband died shortly after her marriage in suspicious circumstances. Infact, appellant suspects that her husband was murdered by the respondents. After the death of her husband, appellant is living with her child in her parents house as her in-laws(respondents) are not allowing her to live in her matrimonial home. Any inconvenience which the respondents may face on account of an order being passed U/s.23 (2) of the Act is not the concern of the court. Law shall come to the aid of vulnerable female litigant, who has been thrown out of her matrimonial home by her inlaws after the death of her husband. Appellant alongwith her child cannot be left at the mercy of her parents for her residential requirement.

10. The Protection of Women from Domestic Violence Act is a social welfare legislature enacted for more effective protection of a right of women who are victim of violence of any kind occurring within the family.

11. Accordingly, the impugned order dated 07.12.2016 is set aside and respondent No. 1 Raju, respondent No.2 Kailash and respondent No.5 Motia are directed to allow the appellant Rekha to reside in the shared house hold property bearing No. D-3, Block 18, Sultan Puri, Sector 20, Rohini, Delhi till disposal of the complaint. However, this order shall be subject to the final outcome of the complaint after the trial.

12. SHO PS Aman Vihar is directed to render all possible assistance to the appellant for implementing this order and to provide protection to the appellant. In case the appellant faces any difficulty in implementation of this order, she can approach the trial court for appropriate relief, and if so approached, the trial court shall issue necessary directions to the SHO PS Aman Vihar.

13. Copy of this order be sent to the SHO PS Aman Vihar as well as DCP Rohini for compliance.

14. The court appreciates the assistance rendered by Mr. Vishal Singh Ld. Legal Aid Counsel on the Panel of Delhi Legal and Services Authority, South East District, Delhi. He took keen interest in the matter

and came up with vital and material contentions during the arguments.

Trial court record be sent back with copy of this judgment.

File be consigned to **Record Room**.

Announced in open Court.

(Sandeep Yadav)
ASJ-02/South East District
Saket Courts/New Delhi/27.08.2019