

\$~

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

% *Judgment reserved on : 09.10.2014.*

Judgment delivered on : 15.10.2014

+ CRL.REV.P. 403/2013 & CrI. M.A.No.10713/2013

KHUSHWANT KAUR & ANR. Petitioners

Through Petitioners with their counsel
Ms. Kajal Chandra, Adv.

versus

GAGANDEEP Respondent

Through Respondent with her counsel
Mr. Sumit K. Khatri, Adv.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 This revision petition is directed against the impugned order dated 30.05.2013 which has endorsed the findings returned by the Magistrate wherein the respondent/complainant was permitted to keep her istridhan articles in a portion of the house which was in her physical possession.

2 Record discloses that the complainant Gagandeep was married to Sarvjeet Singh (son of the petitioners) on 14.11.2010 at Delhi. They

stayed together at the residential address No 11/8, Ground Floor, Gali No.142, Old Gobind Pura Extension, New Delhi from the time of their marriage up to October, 2011. The contention of the petitioners is that on 29.10.2011, they had disowned their son and a public notice to this effect had also been given. On 01.11.2011, their son Sarvjeet Singh along with the complainant shifted to a nearby rented accommodation. On 02.11.2011, the complainant accompanied by the police forcibly entered the house after breaking open the locks. The petitioners being senior citizens are aggrieved by the acts of the complainant; submission being that it is the obligation of their son i.e. the husband of the complainant to look after his wife and the present property where the complainant is forcibly residing being owned by petitioner No. 2 (Daljeet Singh), the complainant cannot forcibly continue to stay in the said property. The petitioners to vent their grievance had also filed suit for permanent and mandatory injunction i.e. CS (OS) No.248/2011 titled 'Daljeet Singh Vs. Gagandeep Sidhu and Another'. This was on 26.11.2011. The complainant was also aggrieved. She filed a petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005 against her husband and the present petitioners on 22.12.2011.

In this petition, she has prayed for continuation of residence in the property which she alleges was in her physical occupation; she has also prayed for other interim reliefs including the relief of maintenance. A complaint under Sections 406/498-A/34 of the IPC was also filed by the complainant in the CAW Cell, Nanak Pura pursuant to which FIR no.122/2012 was registered.

3 On 27.01.2012, in the proceedings under the Protection of Women from Domestic Violence Act, the learned Magistrate had noted the contention of the complainant that she is in the family way; her relief that she be not dispossessed from the shared household without following the due process of law was accepted as both the petitioners (then present) were agreeable to this proposition. The in-laws of the complainant (petitioners No. 1 & 2) were accordingly restrained from dispossessing the complainant from the aforementioned property without following the due process of law. This order was passed admittedly with the consent of the present petitioners as is evident from the order. On 10.05.2013, the learned Magistrate extended the order dated 27.01.2012 restraining the petitioners from dispossessing the complainant from the property in question till further orders. The Court had noted that it is

only after the evidence that it could be decided whether it is a shared household or not as admittedly after the marriage, the husband of the complainant had taken the complainant to the aforesaid property. The Court had also noted that the petitioners had filed a suit for possession against the complainant which was pending which is CS (OS) No.248/2011 (noted supra). The Magistrate vide order dated 10.05.2013 had accordingly permitted the complainant to keep her istridhan articles (which had been returned to her in bail proceedings) in the property in question.

4 This order was impugned before the Sessions Court. The Sessions Court had noted the contentions and counter contentions raised by the learned counsels for the parties as also the submission of the learned counsel for the petitioners who had placed reliance upon a judgment of the Apex Court reported as 136 (2007) DLT 1 (SC) S.R. Batra & Anr Vs. Taruna Batra to substantiate the submission that where the property was owned by the father-in-law of the victim, the victim had no right to continue to reside in the said property. The Sessions Judge had also noted the counter contention that a civil suit for permanent injunction qua this issue had been filed by the father-in-law and which was pending

decision. The Court had also noted the concession granted by the petitioners on 27.01.2012 that they would not dispossess the complainant from the shared household without following the due process of law which order stood reiterated on 10.05.2013. The Sessions Judge in this factual background had held that since the suit for possession is pending inter-se the parties and in case the petitioners succeed in that suit, the respondent would be liable to remove all her good but till then her possessory right in the portion of the property in which she was living was maintained.

5 On behalf of the petitioners, arguments have been addressed in detail. Learned counsel for the petitioners has vehemently relied upon the proposition laid down by the Supreme Court in the judgment of S.R. Batra (Supra). Reliance has also been placed upon the judgments reported as 168 (2010) DLT 521 Sardar Malkiat Singh Vs. Kanwaljit Kaur & Ors, 2008 (106) DRJ 623 Neetu Mittal Vs. Kanta Mittal & Others, 202 (2013) DLT 548 Kavita Chaudhri Vs. Evneet Singh and Anr., 174 (2010) DLT 79 (DB) Sumita Didi Sandhu Vs. Sanjay Singh Sandhu & Others, 2013 (135) DRJ 307 Barun Kumar Nahar Vs. Parul Nahar & Anr and Savitri Devi Vs. Manjoj Kumar and Anr. CS(OS)

No.910/2011 decided on 18.09.2013 to canvas her proposition that where the property is admittedly owned by the father-in-law and the son has set up a separate residence (submission being that son had shifted out of the matrimonial home on 01.11.2011 and a rent agreement to this effect has also been placed on record), the daughter-in-law (the complainant) has no vested right to continue to retain the property.

6 The counter submissions made by the learned counsel for the respondent as also his reliance upon a Division Bench of this Court reported as 207 (2014) DLT 78 (DB) Preeti Satija Vs. Raj Kumari and Anr. have also been noted.

7 This Court is sitting as a revisional Court. Until and unless there is a patent illegality or a perversity in the order which has been impugned, this Court may not interfere. Admittedly CS (OS) No.248/2011 titled 'Daljeet Singh Vs. Gagandeep Sidhu and Another' for permanent/mandatory injunction and possession has been filed by petitioner No. 2 (father-in-law) against his daughter-in-law (the complainant). No interim relief has been granted to the petitioner in that suit. That suit is pending trial.

8 The Supreme Court in S.R. Batra (supra) had noted that the Court

cannot interfere with the findings of fact under Articles 226 or 227 of the Constitution; in that case a positive fact finding had been returned that Taruna Batra was not residing in the premises in question. In the instant case, the fact findings are otherwise. It has been admitted in all the proceedings that the complainant was living in the suit property; she had never left it; submission of the petitioners that an accommodation had been taken by their son on rent on 01.11.2011 and the complainant had also shifted to that residence is negated by the communication addressed by Sarvjeet Singh (son of the petitioners) to the SHO Police Station Jagat Puri dated 02.11.2011 wherein he had informed him that on 01.11.2011 he had taken on rent an accommodation and this information about his having taken this accommodation had been given on telephone to his wife; meaning thereby that the wife/complainant was not privy to this agreement. The submission of the petitioners that the complainant had broken open the locks on 02.11.2011 and had forcibly re-entered the house is further negated by the fact that there is no police report or proceeding to that effect of 02.11.2011.

9 In the judgment of S.R. Batra (Supra), the Supreme Court had in fact while interpreting Section 17 of the Domestic Violence Act noted as
Crl. Rev.P. No.403/2013

under:-

“29. As regards Section 17(1) of the Act, in our opinion the wife is only entitled to claim a right to residence in a shared household, and a shared household would only mean the 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. The property in question in the present case neither belongs to Amit Batra nor was it taken on rent by him nor is it a joint family property of which the husband Amit Batra is a member. It is the exclusive property of Appellant 2, mother of Amit Batra. Hence, it cannot be called a ‘shared household.’”

10 The finding of the Sessions Judge in the impugned order was as follows:-

“Though shared house hold has been defined authoritatively, the facts of each case are to be considered on their own merit. The appellants in the present case admit that respondent has the possession of a specified portion of the house by virtue of statement given by appellant no.1 in the Court. She also admits that she has taken recourse to the law to get the respondent evicted from the said house. Ld. Trial Court has merely recognized this right of the respondent and has not declared any right in favour of the respondent. The order of Ld. Trial Court does not suggest that any finding regarding the house being a shared household has been given at this stage. However, since prima facie, the respondent showed to the court that she has legal possessory rights in the property, which was also admitted by the appellants, the Trial Court gave effect to this admitted right of the respondent, which order cannot be said erroneous in the eyes of law. Order of Ld. Trial Court does not say that the house is a shared household as defined under Section 2(s) of D.V.Act and therefore, she has granted permission to the respondent in the house. She, has merely given effect to the order of Ld. Civil Court, which has recognized

the right of the respondent in the property till her legal dispossession from the said house. Needless to say that since the Ld. Trial Court has not passed any residence order in favour of the respondent, the effect of the present order passed by the court shall be only for the time till respondent continues to be in the possession of the house and the moment appellant obtains a decree from the Civil Court, the impugned order shall cease to have effect and the respondent shall be liable to remove her articles from the house.”

11 It is not as if the Sessions Judge has returned a finding that the portion of the property in occupation of the complainant was a part of the shared household. The matter was under trial. The Court had also noted that a civil suit (CS (OS) 248/2011) qua this issue is pending. This order in fact only recognized the right of the complainant to stay in the property till her legal dispossession from the house which was the subject matter of CS (OS) No.248/2011 is decided. This Court also notes that Sarvjeet Singh, the husband of the complainant had also appeared in the present proceedings. He submitted that the property which he had earlier taken on lease on 01.11.2011 has since been surrendered. He has now shifted to another accommodation vide a fresh lease deed dated 24.02.2013 which has also been surrendered. He had thereafter taken a third accommodation on rent which was vide lease deed dated 03.02.2014. The submission of the learned counsel for the

CrI. Rev.P. No.403/2013 Page 9 of 10

complainant that her husband has no permanent or semi permanent place to stay and the complainant also having a minor child (born out of the wedlock) aged about 5-6 years will be left on the road in case she is directed to be dispossessed at this stage is another circumstance which cannot be overlooked. It is also not as if the impugned order has given a final judgment in favour of the complainant. The matter is in trial. It is only after evidence that it can be decided as to whether the occupation of the complainant in the property in question was in terms of a 'shared household' or not.

12 The impugned order in this background does not appear to be perverse. The judgment has been passed on sound and fair discretionary principles. It does not call for any interference.

13 Revision petition is without any merit. Dismissed.

INDERMEET KAUR, J

OCTOBER 15, 2014

A