

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

**CWP No.18009 of 2015 (O&M)**  
Date of decision: **January 25, 2016**

Hamina Kang ...Petitioner

Versus

District Magistrate (U.T.), Chandigarh and others ...Respondents

**Coram: HON'BLE MR.JUSTICE HARINDER SINGH SIDHU**

Present: Dr.P.K.Sekhon, Advocate  
for the petitioner.

Mr.M.L.Saggar, Sr.Advocate with  
Mr.Gaurav Grover, Advocate for  
respondents No.2 and 3.

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**HARINDER SINGH SIDHU, J.**

This petition has been filed praying for directions to quash the order dated 6.8.2015 passed by respondent No.1 under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as the "2007 Act") directing the petitioner to vacate house No.112 , Sector 9-B, Chandigarh within ten days from the passing of this order.

The petitioner is the daughter-in-law of respondents No.2 and 3, being the wife of their son Kanwar Bir Singh Kang. The petitioner was married to Kanwar Bir Singh Kang on 3.5.1992 in accordance with Sikh rites. The marriage was registered on 11.5.1992 with the Registrar of Marriages, UT Chandigarh. After marriage, the petitioner stayed for some time at the matrimonial

home i.e. H.No.112, Sector 9, Chandigarh. Thereafter the petitioner and her husband alongwith respondents No.2 and 3 (who are U.S. Citizens) went to the United States of America. While in the U.S, three daughters were born to the petitioner, namely Amber Kang, (aged about 19 years), Summer Kang (aged about 15 years) and Joon Kang (aged about 15 years). In the year 2005 the husband of the petitioner who was working in a multinational company in the U.S. , got posted in India. Along with him, the petitioner and her three daughters also shifted to India. Since then the petitioner is residing in rear portion of H.No.112, Sector 9, Chandigarh which is a six kanal house. The petitioner claims to have spent considerable amount in furnishing the house.

Respondent No. 2 and 3 who had been residing in U.S.A came to India in November, 2014. It is alleged that due to differences between the petitioner and her husband, respondent no.2 started harassing the petitioner so as to compel her to leave the matrimonial house, regarding which the petitioner filed a complaint to the police on 5.11.2014. After spending some days in Chandigarh, in November 2014, respondent No.2 went back to USA. Respondents No.2 and 3 again came to India in the month of April 2015, where after the harassment and humiliation of the petitioner resumed regarding which she filed complaints Annexure P-4 to P-6.

Apprehending ouster from the matrimonial home, the petitioner filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter to be

referred to as the “2005 Act”) before Judicial Magistrate, Chandigarh on 27.4.2015 against respondents 2 and 3 alleging that after coming to India, they have, in connivance with their son (husband of the petitioner), started harassing and humiliating the petitioner with a view to forcibly dispossess her from her matrimonial home. Learned JMJC, Chandigarh vide order dated 28.4.2015 directed that the petitioner be not dispossessed from H.No.112, Sector 9-B, Chandigarh till the next date. Thereafter, the order has been continued from time to time and status quo regarding possession has been directed to be maintained.

It is alleged that as a counter blast to the aforesaid application filed by the petitioner, respondents No.2 and 3 filed CWP No.9021 of 2015 praying for direction to the police of U.T. Chandigarh to protect their life and liberty at the hands of the petitioner and her mother. During pendency of this writ petition, respondents No.2 and 3 filed an application dated 8.6.2015 under section 21 and 22 of the 2007 Act read with Rule 19 of the Chandigarh Maintenance of Parents and Senior Citizens Rules, 2009 (hereinafter referred to as the “2009 Rules”) for protection of their life and property i.e. the residential H.No.112, Sector 9, Chandigarh at the hands of the petitioner and her mother Smt. Surender Kaur. It was claimed therein that house No.112, Sector 9-B, is wholly owned by respondent No.2. Fifty per cent share in respect of this plot was transferred in his favour on the basis of registered Will dated 23.1.1991 of his late father Shri Ajmer Singh.

The remaining 50 per cent of this house held by Smt. Jagir Kaur (wife of late Ajmer Singh and mother of respondent No.2) was transferred in his favour vide letter dated 9.5.2002 on the basis of court decree dated 24.7.1996. It was stated in the application that Respondents No.2 and 3 were earlier working in USA and decided to shift to H.No.112, Sector 9, Chandigarh in the evening of their life as they were not keeping too well and as domestic help was very expensive in the U.S. Ever since they started residing in the said house, they have been harassed by the petitioner and her mother who has come to stay with her. The petitioner filed false complaints against them on two occasions i.e. 15.4.2015 and 24.4.2015 and even called the police and abused them in the presence of the Police. On 3.5.2015 she forcibly locked some of the rooms on the ground floor blocking their access, besides, false applications were made against the domestic help of respondents so that she may refuse to work for them. The driver of respondents No.2 and 3, Ganga Ram was involved in a false case. They accordingly prayed that the petitioner be prohibited to interfere in their peaceful possession.

It is the case of the petitioner that she had denied all the allegations made against her by the respondents in their application, but without considering the same, the District Magistrate Chandigarh vide the impugned order directed the petitioner to vacate the house No.112, Sector 9-B, Chandigarh within ten days. It is this order, which has been assailed in the instant writ petition.

In the written statement filed by respondents No.2 and 3, they have denied all the allegations regarding harassment and victimization levelled by the petitioner. Rather, to the contrary they have been the victim of false allegations and complaints made by the petitioner. Giving details of what the respondents have done for the family of the petitioner it is stated that the three daughters of the petitioner were got admitted in Woodstock Residential School Mussoorie, one of the most prestigious schools in India. Respondents No.2 has contributed about 50 lakhs towards their education. Respondents No.2 has also paid more than Rs.12 lakhs to the petitioner and her husband. The eldest daughter of the petitioner Ms. Amber Kang, is presently studying in Foothill College, Palo Alto California, USA. Respondent No.2 has created US Government Approved Fund of 26,161 US dollars to pay for the college fee of all his grand daughters. He has paid the college fee of 1708 US dollars for academic year 2014-15. The allegations that there are differences between the petitioner and her husband have been denied. It has been stated that the petitioner is being provided an amount of Rs.1,32,000 per month by her husband for staying at Chandigarh. It is further stated that the husband of the petitioner is earning about Rs.6.00 lakhs per month and is presently Chief Executive Officer and Managing Director of subsidiary of an American Company incorporated in India namely Trimedix in Bangalore. A large estate 'Shanti Bagh' spreading over an area of eight acres has been purchased at Ranthambhore near Swai

Madhopur, Rajasthan in the name of the petitioner. The two younger grand-daughters of the petitioner stay in the boarding school at Mussorie and stay in the petitioner's estate in Rajasthan during their holidays. The eldest daughter is studying in USA. The petitioner is also running a business alongwith her brother namely Shri Sandeep Singh Khatra in the name of 'Swai Madhopur Eco-Tourism Private Limited, Ranthambhore'. It has been denied that the petitioner has been residing in the rear portion of the house since 2005. It has been asserted that the petitioner and her husband were always welcomed during their visits to Chandigarh by respondents No.2 and 3 in the house owned and possessed by them. It has been stated that all the electricity bills are being paid by respondents no.2 and 3. The house was on monthly rent of Rs.40,000/- which was got vacated by respondent No.2 for their stay during their visits to India. It is alleged that when the petitioner, her mother and husband became aware that respondents No.2 and 3 are intending to permanently reside in the house and they have shifted their household goods from USA to Chandigarh, they started harassing them by making false complaints against them. The answering respondents had brought their households goods in November 2014, thereafter respondent No.2 went to USA to get his dental treatment and returned in March 2015.

It is stated that respondent No.2 is aged about 79 years, is a diabetic, walks with a cane and is suffering from high blood pressure. Respondent No.3 is a doctor by profession, aged about 75

years and is suffering from 'Failed Spine Surgery Syndrome' and is currently under treatment in USA.

Assailing the order of the Ld. District Magistrate, Dr. Puneet Kaur Sekhon, Learned counsel for the petitioner has raised the following substantial arguments:-

1. Jurisdiction under the 2007 Act can be invoked only by "Senior Citizens". Respondents No. 2 and 3 are U.S. Citizens. As they are not "Citizens of India", they are not "senior citizens" within the meaning of the term in Section 2 (h) of the 2007 Act.
2. An order under the provisions of the 2007 Act cannot be passed to render the order passed under the 2005 Act nugatory. The provisions of the 2007 Act cannot be used at cross purposes with the 2005 Act and to annihilate the rights flowing therefrom.
3. Under the 2007 Act and the 2009 Rules eviction order can be sought only against son, daughter or legal heirs and not against the daughter-in-law.
4. There is concealment of material facts/documents in the application filed by respondents No.2 and 3 under the Act which dis-entitles them from seeking any relief. They did not disclose that they were U.S. Citizens, and that had filed CWP No.9021 of 2015 seeking similar relief and also the fact that status quo orders had been earlier passed in favour of the petitioner under Section 12 of the 2005 Act

On the other hand, Sh. Sagar Ld. Senior Counsel for

the respondents has defended the impugned order.

I have heard Ld. Counsel for the parties and perused the record.

The first submission of Ld. Counsel for the petitioner is that the application under Sections 21 and 22 of the 2007 Act filed by respondents 2 and 3, who admittedly are U.S. Citizens is not maintainable. It has been argued that such an application can be filed only by a "Senior Citizen" which term as per its definition in Section 2(h), means a person who is a citizen of India and is of the age of sixty years or above.

In order to appreciate this argument, a reference to the relevant provisions of the 2007 Act and the 2009 Rules is necessary.

The ***Preamble*** to the 2007 Act states that it is an "*An Act to provide for more effective provisions for the maintenance and welfare of parents and senior citizens guaranteed and recognised under the Constitution and for matters connected therewith or incidental thereto*"

As per Section 2(d) "parent" means father or mother, whether biological, adoptive or step father or step mother, as the case may be, whether or not the father or the mother is a senior citizen.

Section 2(h) defines "Senior Citizen" as under:

*"senior citizen" means any person being a citizen of India, who has attained the age of sixty years or above;*

It is clear that there is no requirement for the parent to be a citizen of India. A senior citizen is a person who is a citizen of India and is of the age of sixty years or more.

Since the requirement of being a citizen of India is only a part of the definition of a senior citizen, a father or mother, whatever his or her nationality would be a 'parent'. Thus, a person who is a parent would be entitled to the benefits of the Act which are conferred on parents, irrespective of his or her age or nationality.

Sections 21 and 22 are the relevant provisions of the Act which fall in Chapter V '**Protection of Life and Property of Senior Citizen.**'

***“21. Measures for publicity, awareness, etc., for welfare of senior citizens.—The State Government shall, take all measures to ensure that—***

*(i) the provisions of this Act are given wide publicity through public media including the television, radio and the print, at regular intervals;*

*(ii) the Central Government and State Government Officers, including the police officers and the members of the judicial service, are given periodic sensitization and awareness training on the issues relating to this Act;*

*(iii) effective co-ordination between the services provided by the concerned Ministries or Departments dealing with law, home affairs, health and welfare, to address the issues relating to the welfare of the senior citizens and periodical review of the same is conducted.*

***22. Authorities who may be specified for implementing the provisions of this Act.—(1) The State Government may, confer such powers and impose***

*such duties on a District Magistrate as may be necessary, to ensure that the provisions of this Act are properly carried out and the District Magistrate may specify the officer, subordinate to him, who shall exercise all or any of the powers, and perform all or any of the duties, so conferred or imposed and the local limits within which such powers or duties shall be carried out by the officer as may be prescribed.*

*(2) The State Government shall prescribe a comprehensive action plan for providing protection of life and property of senior citizens.”*

It is true that the heading of Chapter V and the aforesaid Sections make a mention only of 'senior citizens'. But the 2009 Rules framed thereunder, which have been invoked by respondent 2 and 3 and in terms of which the impugned order has been passed are in relation to both Parents and Senior Citizens. These rules outline the procedure for eviction from property/residential building of Senior Citizen/ Parent. Thus, on its plain language, these Rules can be invoked by a 'Parent', even though he may not be a 'Senior Citizen' as defined in the Act.

The relevant Rules are reproduced below:

***“[3(1) Procedure for eviction from property/residential building of Senior Citizen/Parent.-***

*(i) Complaints received (as per provisions of the Maintenance of Parents and Senior Citizens Act, 2007) regarding life and property of Senior Citizens by different Departments i.e. Social Welfare, Sub Divisional Magistrates, Police Department, NGOs/Social Workers, Helpline for Senior Citizens and District Magistrate himself, shall be forwarded to the District Magistrate,*

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*Union Territory, Chandigarh for further action.*

*(ii) The District Magistrate, Union Territory shall immediately forward such complaints/applications to the concerned Sub-Divisional Magistrates for verification of the title of the property and facts of the case through Revenue Department/ concerned Tehsildars within 15 days from the date of receipt of such complaint/application.*

*(iii) The Sub-Divisional Magistrates shall immediately submit its report to the District Magistrate for final orders within 21 days from the date of receipt of the complaint/application.*

*(iv) If the District Magistrate is of opinion that any son or daughter or legal heir of a senior citizen/parents are in unauthorized occupation of any property as defined in the Maintenance and Welfare of parents and Senior citizens Act, 2007 and that they should be evicted, the District Magistrate-cum-Estate Officer shall issue in the manner hereinafter provided a notice in writing calling upon all persons concerned to show cause as to why an order of eviction should not be issued against them/him/her.*

*(v) The notice Shall-*

*(a) specify the grounds on which the order of eviction is proposed to be made; and*

*(b) require all persons concerned, that is to say, all persons who are, or may be, in occupation of, or claim interest in, the property/premises, to show cause, if any, against the proposed order on or before such date as is specified in the notice, being a date not earlier than ten days from the date of issued thereof.*

*(c) The District Magistrate shall cause the notice to be served by having it affixed on the outer door or at*

*some other conspicuous part of the public premises and in such other manner as may be prescribed, whereupon the notice shall be deemed to have been duly given to all persons concerned.*

**3(2) Eviction Order from property/residential building of Senior Citizen/parents-**

(i) *If, after considering the cause, if any, shown by any person in pursuance to the notice and any evidence he/she may produce in support of the same and after giving him/her a reasonable opportunity of being heard, the District Magistrate is satisfied that the property/premises are in unauthorized occupation, the District Magistrate or other officer duly authorized may make an order of eviction, for reasons to be recorded therein, directing that the property/residential building shall be vacated, on such date as may be specified in the order, by all persons who may be in occupation thereof or any part thereof, and cause a copy of the order to be affixed on the outer door or some other conspicuous part of the public premises;*

(ii) *The District Magistrate may also associate NGOs/Voluntary organizations/social workers working for the welfare of senior citizens for the enforcement of orders.*

**(3) Enforcement of Orders.-**

(i) *If any person refuses or fails to comply with the order of eviction within thirty days from the date of its issue, the District Magistrate or any other officer duly authorized by the District Magistrate in this behalf may evict that person from the premises in question and take possession;*

(ii) *The District Magistrate, U.T. Chandigarh shall have powers to enforce the eviction orders through Police*

*Department.*

*(iii) The District Magistrate, U.T. Chandigarh further handover the property/premises in question to the concerned Senior Citizens/Parents.*

*(iv) The District Magistrate, U.T. Chandigarh shall forward a monthly report of such cases to the Social Welfare Department by 7th of the following month for review of such cases in the State Council for Senior Citizens constituted under the Maintenance and Welfare of Parents and Senior citizens Act, 2007 and Rules of 2009 framed under the said Act under the Chairmanship of Secretary, Social Welfare, Chandigarh Administration.”*

Clearly, an application for protection and eviction by respondents No. 2 and 3, the old and aged parents (79 and 75 years respectively), from their property even though they are not citizens of India, is maintainable.

The respondents are not natives of U.S. They were Indian Citizens by birth. They have had their education from India, getting the Engineering and MBBS degree respectively from Punjab Engineering College, Chandigarh and Government Medical College Amritsar. Respondent No. 2 served the Indian Army for ten years from 1959 to 1969 and went to USA after getting discharge from the Army. It is thereafter that they acquired U.S. Citizenship. Having retired from their jobs, they now want to settle in India. They are presently registered as 'Overseas Citizens of India'. They cannot be denied the benefit of the 2007 Act.

It is noteworthy that there is no challenge to the 2009

Rules which are in harmony with the objective and purpose of the 2007 Act which is to provide a simple, inexpensive and speedy remedy for maintenance and welfare of parents and the elderly and for protection of their life and property. This is reflected in the 'Statement of Objects and Reasons' of the Act which is reproduced below:

***“Statement of Objects and Reasons:***

*Traditional norms and values of the Indian society laid stress on providing care for the elderly. However, due to withering of the joint family system, a large number of elderly are not being looked after by their family. Consequently, many older persons, particularly widowed women are now forced to spend their twilight years all alone and are exposed to emotional neglect and to lack of physical and financial support. This clearly reveals that ageing has become a major social challenge and there is a need to give more attention to the care and protection for the older persons. Though the parents can claim maintenance under the Code of Criminal Procedure, 1973, the procedure is both time-consuming as well as expensive. Hence, there is a need to have simple, inexpensive and speedy provisions to claim maintenance for parents.*

*2. The Bill proposes to cast an obligation on the persons who inherit the property of their aged relatives to maintain such aged relatives and also proposes to make provisions for setting-up old-age homes for providing maintenance to the indigent older persons.*

*The Bill further proposes to provide better medical facilities to the senior citizens and provisions for protection of their life and property.*

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3. *The Bill, therefore, proposes to provide for:-*

- (a) appropriate mechanism to be set up to provide need-based maintenance to the parents and senior citizens;*
- (b) providing better medical facilities to senior citizens;*
- (c) for institutionalisation of a suitable mechanism for protection of life and property of older persons;*
- (d) setting up of oldage homes in every district.*

4. *The Bill seeks to achieve the above objectives.”*

Keeping in view the aforesaid objectives, it is inconceivable that the Parliament could have intended to deny the benefits of Chapter V of the Act to the aged parents, merely because they were not Citizens of India. Anyway, as already stated above, a plain reading of the 2009 Rules does not support such a contention.

Ld. Counsel has next argued that in terms of Rule 3(1) of the 2009 Rules, eviction can be ordered only against the son, daughter or legal heirs and not against a daughter-in-law. In this context reference has been made to Rule 3(1)(iv) which is as under:

*“If the District Magistrate is of opinion that any son or daughter or legal heir of a senior citizen/parents are in unauthorized occupation of any property as defined in the Maintenance and Welfare of parents and Senior citizens Act, 2007 and that they should be evicted, the District Magistrate-cum-Estate Officer shall issue in the manner hereinafter provided a notice in writing calling upon all persons concerned to show cause as to why an order of eviction should not be issued against them/him/her.”*

The argument is that as only son, daughter or legal heir of the parent/ senior citizen is mentioned herein, hence eviction order can be passed only against any of them and against no other.

This argument of the Ld. Counsel is also without merit as would be clear from a consideration of Rules 3(1), 3(2) and 3(3) which outline the procedure for eviction and which have already been reproduced above.

No doubt, the first part of Rule 3(1)(iv), which relates to the opinion of the District Magistrate about the property being in unauthorized occupation, makes a mention only of son or daughter or legal heir of a senior citizen/ parent, but from this alone it cannot be concluded that eviction orders can be ordered only against son, daughter or legal heir. The other provisions of these Rules clearly militate against such a conclusion.

First, the latter part of Rule 3(1)(iv) itself, which is in relation to issuance of show cause notice is not limited to son, daughter or legal heir, but requires issuance of such notice to *“all persons concerned to show cause why an order of eviction should not be issued against them/him/her”*.

Similarly, as per Rule(3)(1) (v)(b) such notice shall *“require all persons concerned, that is to say, all persons who are or may be, in occupation of, or claim interest in, the property/ premises”* to show cause against the notice.

In Rule 3(2) (i) the Eviction order from the property/ residential building of Senior Citizen/ Parent may be passed *“directing that the property/ residential building shall be vacated, on such date as may be specified in the order, by all persons who may be in occupation thereof or any part thereof.”*

Rule 3(3)(i) which deals with enforcement of eviction orders, again is that *'if any person refused or fails to comply with the order of eviction'*, then the District Magistrate or any person on his behalf *'may evict that person from the premises in question and take possession'*

Clearly, in terms of the above provisions, the eviction order can be passed against any person who is in unauthorized occupation of the property of the Senior Citizen/ Parent. The first part of Rule 3 (1)(iv) which mentions only son or daughter or legal heir cannot control the above referred specific provisions and limit their operation and effect.

This Court in **Balbir Kaur Vs. Presiding Officer-cum-SDM** (CWP No.15477 of 2014 decided on June 29, 2015) after an analysis of various provisions of the 2007 Act held that the exercise of the right under Section 22 regarding protection of right of life or property of a Senior citizen has been conferred irrespective of the fact whether the person who threatens the life or property is related to the senior citizen or not. An application under Sections 21 and 22 against the daughter-in-law was held to be maintainable.

Ld. Counsel for the petitioner next argued that impugned order of eviction is unsustainable in view of the rights of the petitioner to residence etc. in terms of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the "2005 Act".)

In this context, Ld. Counsel referred to the fact that

before the filing of the application by respondents No. 2 and 3 under the 2007 Act, the petitioner had already filed an application under Section 12 of the 2005 Act and was granted an order for stay of dispossession from the premises claiming that to be her matrimonial home since 2005.

She has placed strong reliance on a decision of this Court in **Major Harmohinder Singh Vs. State of Punjab and others 2014(5) RCR 693** to contend that the provisions of the 2007 Act cannot be used to annihilate the rights conferred under the 2005 Act.

Mr. Sagar, Ld. Senior Counsel for the respondents has argued that the house in question is the separate property of the respondent No. 2, half share whereof devolved to him by the Will of his father Late Sh. Ajmer Singh dated 21.11.1991 and the other half was transferred in his name on 9.5.2002 in terms of Court decree dated 24.7.1996. He states that neither the husband of the petitioner (son of respondents No. 2 and 3) nor the petitioner have any right, title or interest in this property. He relies on the decisions of the Hon'ble Supreme Court in **S.R. Batra v. Taruna Batra, (2007) 3 SCC 169** and **Vimlaben Ajitbhai Patel v. Vatslaben Ashokbhai Patel, (2008) 4 SCC 649** to contend that the right of residence of a daughter-in-law claimed in terms of Sections 17 and 19 of the 2005 Act does not extend to a house belonging to the father-in-law or mother-in-law, in which the husband has no right, title or interest. He has further placed reliance on a decision of a Division Bench of

this Court in **CWP No.25407 of 2015** titled "**Gurpreet Singh vs. State of Punjab and others**" decided on 1.12.2015, to contend that a son and his family is a mere licensee living in the property owned by his father on the basis of concession. The license stands terminated, the moment the licensor conveys a notice of termination of the license. Once a senior citizen makes a complaint to the District Magistrate against his son to vacate the premises, on which he is a licensee, such summary procedure will enure to the benefit of the senior citizen.

As against this Ld. Counsel for the petitioner has placed reliance on the decisions of the Delhi High Court in **Navneet Arora vs. Surender Kaur and others, 2014 LawSuit (Del) 3411** and **Preeti Satija Vs. Raj Kumari and another 2014(2) RCR (Civil) 8** to contend that if a couple lives as member of joint family in domestic relationship with relatives of the husband in a premises owned by such relatives, it would enable the wife to claim the right of residence as it would fall within the meaning of 'shared household' under Section 2(s) of the 2007 Act, irrespective of the fact whether the wife or her husband has any right, title or interest in the shared household.

In the light of these pleas, the question that squarely arises for consideration is whether the impugned order is sustainable in view of the rights claimed by the petitioner under the 2005 Act?

The fact that respondent No.2 is the owner of the house

is not disputed. Ld. Counsel for the petitioner only states that the house is Joint Hindu Family property and the petitioner along with her three daughters has filed a civil suit for declaration to the effect that they being members of the Joint Hindu Family are owners in possession to the extent of their shares in all the Joint Family property including House No. 112, Sector 9-B, Chandigarh. The said suit is pending.

It is well settled that the apparent state of affairs shall be taken as real state of affairs. It is not for an owner of the property to establish that it is his self-acquired property. The onus would be on the one, who pleads otherwise. [**Vimlaben Ajitbhai Patel v. Vatslaben Ashokbhai Patel, (2008) 4 SCC 649.**]

Further, the existence of a joint family does not lead to the presumption that property held by any member of the family is joint, and the burden rests upon anyone asserting that any item of property was joint to establish the fact. [**Shrinivas Krishnarao Kango v. Narayan Devji Kango AIR 1954 SC 379, Appasaheb Peerappa Chamdgade v. Devendra Peerappa Chamdgade, (2007) 1 SCC 521.**]

On the aforesaid principle, for the purposes of these proceedings, the house in question has to be treated to be the separate property of respondent No. 2 and it cannot be considered to be Joint Family property in which the husband of the petitioner or the petitioner has any right, share or interest.

Now, the question is, whether in this background does

the petitioner have any right to residence in the house in question in terms of the 2005 Act ?

The term shared household is defined in the 2005 Act, as under:

**“Section 2. Definitions**

*(s) “shared household” means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with 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 which 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;”*

The Hon'ble Supreme Court in **S.R. Batra v. Taruna Batra, (2007) 3 SCC 169**, held that the wife could claim the right of residence in terms of Section 17(1) of the Act, only 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. It was held that the house which was the exclusive property of the mother-in-law could not be said to be a 'shared household' entitling the daughter-in-law to claim a right of residence therein. The Hon'ble Court negated the contention on behalf of the daughter-in-law that as per the definition, 'shared household' would include a

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household where the aggrieved person lives or at any stage had lived in a domestic relationship. It was observed that if such submission is accepted it would lead to chaos, because in that event every place where the husband and wife had resided would be a shared household. The Hon'ble Court also observed that the definition of 'shared household' in Section 2(s) appears to be the result of clumsy drafting and that it had given it a sensible interpretation.

The pertinent observations of the Hon'ble Court are as under:

**“24.** *Learned counsel for the respondent Smt. Taruna Batra stated that the definition of shared household includes a household where the person aggrieved lives or at any stage had lived in a domestic relationship. He contended that since admittedly the respondent had lived in the property in question in the past, hence the said property is her shared household.*

**25.** *We cannot agree with this submission.*

**26.** *If the aforesaid submission is accepted, then it will mean that wherever the husband and wife lived together in the past that property becomes a shared household. It is quite possible that the husband and wife may have lived together in dozens of places e.g. with the husband's father, husband's paternal grandparents, his maternal parents, uncles, aunts, brothers, sisters, nephews, nieces, etc. If the interpretation canvassed by the learned counsel for the respondent is accepted, all these houses of the husband's relatives will be shared households and the wife can well insist in living in all these houses of her husband's relatives merely because she had stayed with her husband for some time in those houses in the past. Such a view would lead to chaos and would be absurd.*

**27.** *It is well settled that any interpretation which leads to absurdity should not be accepted.*

**28.** *Learned counsel for the respondent Smt. Taruna Batra has relied upon Section 19(1)(f) of the Act and claimed that she should be given an alternative accommodation. In our opinion, the claim for alternative*

*accommodation can only be made against the husband and not against the husband's (sic) in-laws or other relatives.*

**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".*

**30.** *No doubt, the definition of "shared household" in Section 2(s) of the Act is not very happily worded, and appears to be the result of clumsy drafting, but we have to give it an interpretation which is sensible and which does not lead to chaos in society."*

This decision has been reiterated by the Hon'ble

Supreme Court in **Vimlaben Ajitbhai Patel v. Vatslaben Ashokbhai Patel, (2008) 4 SCC 649.** In this case, the Hon'ble Supreme Court adverted to the legal position that in terms of Sections 18 and 19 the Hindu Adoption and Maintenance Act, 1956, liability in regard to maintenance of wife is upon her husband and only on his death does it become the liability of the father-in-law. In the context of the 2005 Act, it was observed that it provided a higher right in favour of wife, which extends to the joint properties in which the husband has a share. It was held that an order of maintenance against the husband can be executed only against the husband and his properties but not against the property of her mother-in-law.

The relevant observations in this context are as under:

**"27.** *The Domestic Violence Act provides for a higher right in favour of a wife. She not only acquires a right to be maintained but also thereunder acquires a right of*

*residence. The right of residence is a higher right. The said right as per the legislation extends to joint properties in which the husband has a share.*

**28.** *Interpreting the provisions of the Domestic Violence Act this Court in S.R. Batra v. Taruna Batra held that even a wife could not claim a right of residence in the property belonging to her mother-in-law, stating: (SCC p. 173, paras 17-19)*

*“17. There is no such law in India like the British Matrimonial Homes Act, 1967, and in any case, the rights which may be available under any law can only be as against the husband and not against the father-in-law or mother-in-law.*

*18. Here, the house in question belongs to the mother-in-law of Smt Taruna Batra and it does not belong to her husband Amit Batra. Hence, Smt Taruna Batra cannot claim any right to live in the said house.*

*19. Appellant 2, the mother-in-law of Smt Taruna Batra has stated that she had taken a loan for acquiring the house and it is not a joint family property. We see no reason to disbelieve this statement.”*

Following these decisions, different High Courts have ruled that a residence belonging to the mother-in-law or father-in-law would not be a 'shared household' within the meaning of Section 2(s) of the 2005 Act and that a daughter-in-law would have no right of residence therein in terms of Section 17(1) of the 2005 Act. Following cases may be usefully referred to : **Ekta Arora vs. Ajay Arora and another, 2015 AIR (Delhi) 180, V.P.Anuradha vs. S.Sugantha alias Suganthi and others, 2015(4) RCR (Criminal) 631 and A.R.Hashir and others vs. Shima and others, 2015(5) RCR (Civil) 35.**

The Delhi High Court in two decisions which were relied upon by the Ld. Counsel for the petitioner has distinguished the aforementioned decisions of the Hon'ble Supreme in the matter of

the restricted meaning given to 'shared household' as not including a property wherein the husband does not have any right, title or interest. In **Navneet Arora's** case (supra), the decision of the Hon'ble Supreme Court in **S. R. Batra's** case was explained as having been rendered in the fact situation obtaining therein where Taruna Batra (the aggrieved daughter-in-law) and her husband Amit Batra had been residing on the first floor, whereas the mother-in-law, (the owner of the house in question) along with her husband were residing on the ground floor. The Court held that they were not residing as members of a 'shared household' as understood in the legalistic sense as the residence and kitchen were separate. It was concluded that **S.R. Batra's** case is only an authority for the proposition that under the 2005 Act, a wife is precluded from claiming the right of residence in a premises, not owned by the husband, where she has lived with her husband separately, but not as a member of the 'joint family' along with the relatives of the husband who own the premises. But if the couple live with the relatives of the husband as members of 'joint family' along with the relatives of the husband in premises owned by such relatives of the husband, then such residence would fall within the meaning of 'shared household' giving the wife the right of residence therein irrespective of the fact whether her husband has any right, title or interest therein. It was explained that living as 'joint family' meant living under one roof and having a common kitchen.

In **Preeti Satija's case** (supra), also the decisions in

**S.R. Batra** and **Vimalben Ajitbhai Patel**, were held to have been rendered in a different context and it was observed that these decisions did not decide the question that despite the definition of 'shared household' enabling a wife the right of residence in premises not owned by the husband, she could not claim to live there.

It needs to be noted that in both these cases Special Leave Petitions have been filed which are pending. (*Civil Appeal No.9723 of 2014 and SLP (Civil) CC No.SC-14416/2015*).

Having thoughtfully considered the matter, I find it difficult to agree with the view of the Delhi High Court that the observations of the Hon'ble Supreme Court regarding 'shared household' have to be read as being limited to the fact situation obtaining in those cases. The Hon'ble Supreme Court in **S.R. Batra's** case took note of the definition of 'shared household' in Section 2(s) and the rights under Section 17 and 19 of the 2005 Act and negated the contention of the wife that a 'shared household' would include a household where the person aggrieved lives or had lived at any stage in a 'domestic relationship'. It held that such an interpretation besides being absurd would lead to chaos. It also concluded that the definition of 'shared household' was not happily worded and that it had given it a sensible interpretation.

Thus, it is difficult to agree that in **S.R. Batra's** case the Hon'ble Supreme Court has not interpreted the term 'shared household' and that the decision cannot be relied on in a different

fact situation. More so, when the observations were cited with approval by the Hon'ble Supreme Court in the subsequent case of ***Vimlaben Ajitbhai Patel (supra)***

In this context it will be useful to refer to a decision of the Division Bench of the Kerela High Court in ***A.R.Hashir's case (supra)***. The Division Bench over-ruled the decision of the Learned Single Judge, which while distinguishing ***S.R.Batra's case*** had held that if a woman along with her husband had stayed in a particular house either belonging to her mother-in-law or father-in-law after her marriage and if the marriage was arranged by the parents, it could be treated as a 'shared household' giving the wife a right to residence. The Division Bench observed that when the Supreme Court has laid down the principles based on interpretation of the definition of the Statute, High Court is not entitled to tinker with that interpretation and deviate from the dictum laid down by the Supreme Court.

I am in agreement with the aforesaid view.

Accordingly, it is to be held that the house in question which is owned by respondent No. 2 (father-in-law of the petitioner ) is not a "shared household" in which the petitioner has any right of residence which can be enforced under the 2005 Act.

This being the position, no question of the 2007 Act being used at cross purposes with the 2005 Act arises in this case.

Thus, the judgment in ***Harmohinder Singh's case*** is not relevant. In that case ejection of the divorced wife and sons was

being sought by the husband under the 2007 Act regarding which he had also filed a suit. It is settled that even a divorced wife is to be protected against her husband by a provision for maintenance which includes a right of residence. Such a right could undeniably be enforced under the 2005 Act. It was in this context that the Hon'ble Court observed that the 2007 Act cannot be used at cross purposes with and to annihilate the rights available under the 2005 Act. Such is not the position in the present case, where no right of the petitioner under the 2005 Act is being sought to be nullified by the 2007 Act.

Similarly, the judgment in **Natasha Sood vs Chandigarh Administration 2015 (4) PLR 521**, is distinguishable. In that case, there was no pleading or evidence that the house in question belonged to the father-in-law or mother-in-law. It was held that as the question as to whether the house in question is a 'shared household' or not, was yet to be determined, hence the order for ejection passed under the 2007 Act was quashed. In the present case it has already been concluded that the house in question is not 'shared household' qua the petitioner.

On the issue of non-disclosure, in my view, the fact that respondents No. 2 and 3 in their application have not made a specific mention regarding them having filed CWP No. 9021 of 2015 seeking relief of protection and the order dated 27.4.2015 passed by the JMIC on the application of the petitioner under the 2005 Act directing respondents No. 2 and 3 not to dispossess the petitioner

from the house, cannot be a ground to reject their application. These facts were highlighted by the petitioner in her reply to the application and have been noticed by the Ld. District Magistrate in the impugned order. Hence it cannot be concluded that the impugned order has been procured by fraud by the respondents.

Apart from the legal position, the facts of this case need to be noted. It is not disputed that the husband of the petitioner is employed as Chief Executive Officer-cum-Managing Director of subsidiary of an American Company. The respondents claim that he is earning about Rs.6 lacs per month, though the petitioner claims that she is not aware of the correct figure of salary of her husband, as she is not having good relations with him. However, it has not been disputed that the petitioner is being provided an amount of Rs.1,32,000/- by her husband for her stay at Chandigarh. The petitioner is also in possession of a large estate 'Shanti Bagh' spreading over an area of eight acres at Ranthombore near Swai Madhopur (Rajasthan), which the respondents claim has been purchased for the petitioner by her husband, but as per the petitioner the said estate is a part of her 'Istridhan' as she asserts that the money to purchase the same was provided by her parents. It is also not denied that the petitioner is running a Company by the name of 'Swai Madhopur Eco Tourism Pvt. Ltd. Ranthambore' along with her brother, though the petitioner claims it is not doing good business.

The respondents in their written statement have annexed

news reports showing the participation of the petitioner in a trade fair at Pragati Maidan, where, she was a part of group of four women selected by the Chandigarh Administration to exhibit their handicrafts at the Chandigarh Pavilion. The petitioner herself in her complaint dated 5.11.2014 (Annexure P-3) had referred to her being chosen by the Director of Industries Department, Chandigarh to represent Chandigarh in International Trade Fair, Pragati Maidan, New Delhi from 14.11.2014 to 17.11.2014.

Respondents No.2 and 3 have placed on record details of the amount spent by respondent No.2 towards providing education to their three grand-daughters (daughters of the petitioner) which amount is substantial and appears to cater to their entire educational expenses.

Respondent No.2 is aged about 79 years and he is stated to be a diabetic, walks with a cane and is suffering from High Blood Pressure. Respondent No.3 is a doctor by profession and is aged about 75 years and is stated to be suffering from a spinal disease 'Failed spine surgery syndrome'. They have spent about 40 years of their lives working and toiling in the United States and contributing to their family, having provided the best of education to their son (husband of the petitioner) and even at this advanced age, are providing for the education of their grand-daughters. Now, when they have decided to permanently settle in Chandigarh in the house which is exclusively owned by respondent No.2, instead of a warm and comfortable stay which they would have expected and eminently

deserved, they have met with stiff resistance at the hands of the petitioner who has gone to the extent of locking various rooms and blocking the access of the respondents to various parts of the house, as evidence whereof they have annexed photographs with the petitioner standing alongside the carpenter. The claim of the petitioner that this has been done at the instance of the respondents does not appear to be credible.

Despite the projection by the petitioner to be a harassed daughter-in-law, the facts appear to speak otherwise. The timings of her complaints to the police, unerringly coincide with the decision of the respondents No.2 and 3 to permanently settle in Chandigarh. At no time prior thereto, did she make any complaint against them. It is only when their intention to permanently settle in Chandigarh became known that the complaints started.

During the course of many hearings of this petition, I had repeatedly made attempts to persuade the parties to arrive at an amicable settlement. This is an illustrious and well known family and it was expected that the matters would be sorted out. But that was not to be.

Ld. Counsel for the petitioner submitted that the petitioner should be permitted to stay in the rear portion of the house where she has been staying since 2005. This would not cause any disturbance to the respondents. But this was not acceptable to the respondents. Respondents No.2 and 3 very clearly stated that the presence of the petitioner in the house would disturb their peace

and, at least for the time being, keeping in view her conduct in levelling false allegations and making police complaints, such an arrangement would not be conducive. In the facts and circumstances of this case this stand of the respondents does not appear to be unfounded.

I had put it to the Ld. Counsel for the respondents if they would be willing to meet the expenses of the petitioner staying at some alternative place. The respondents readily agreed. They gave a list of three places which they could take on rent for the petitioner (which would cost about Rs.25,000 p.m.) and also stated that they were willing to give the rent for one year in advance.

This was not acceptable to the petitioner who has filed an affidavit pointing out that the location is neither suitable nor secure nor in any way comparable with the present place of stay. Thus, there has been no agreement on any point.

The facts disclose that the petitioner is not helpless. She has sufficient means of her own, besides the provision being made by her husband. The husband of the petitioner is employed at Bangalore. It is always open to the petitioner to claim her rights against him.

In view of the aforesaid factual and legal position, this petition is disposed of with the following directions:

- (i) The petitioner is directed to vacate House No. 112, Sector 9-B, Chandigarh within one month from today.

***For Subsequent orders see LPA-291-2016***

(ii) Respondents No.2 and 3, would be held bound to their offer to pay a sum of Rs. 25,000/- per month to the petitioner for one year.

(iii) It would be open to the petitioner to seek any appropriate relief as may be permissible in law against her husband.

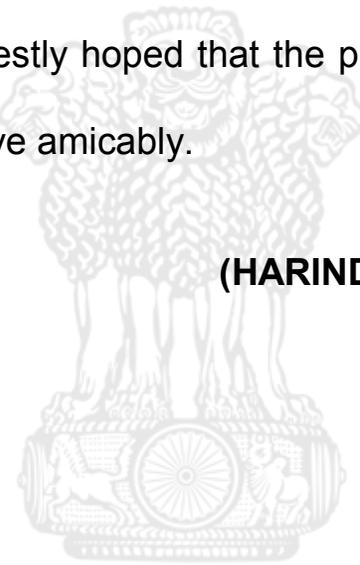
It is clarified that the observations and findings in this case are limited to these proceedings only.

It is earnestly hoped that the parties would soon resolve their differences to live amicably.

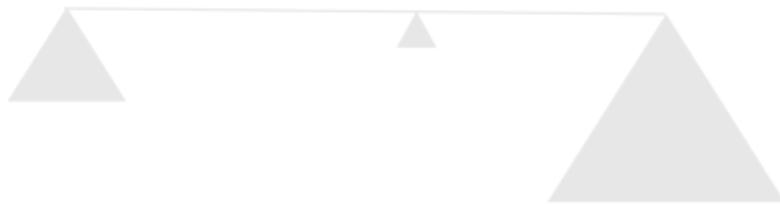
**January 25, 2015**

**(HARINDER SINGH SIDHU)  
JUDGE**

gjan



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**For Subsequent orders see LPA-291-2016**