

**HIGH COURT OF DELHI****Bench: Justice Suresh Kumar Kait and Justice Neena Bansal Krishna****Date of Decision: January 25, 2024**

Mat.App.(F.C.) 80/2023 &amp; Cm Appl.14336/2023

**Sonia Khurana ...Appellant****Versus****Pradeep Khurana ...Respondents****Legislation:**

Section 19 of the Family Courts Act, 1984

Sections 2, 17 and 19 read with Section 26 of the Protection of Women from Domestic Violence Act, 2005

Section 9, 13 (1)(ia) and (ib), 24 of the Hindu Marriage Act, 1955

Section 125 of the Criminal Procedure Code

**Subject:** Family law appeal involving a dispute over the right of residence under the DV Act following a marriage breakdown.**Headnotes:**

Marriage and Domestic Violence – Dispute Over Shared Household – Appellant-wife's claim for residence right rejected by Family Court – Appeal against Family Court's decision – Marriage between appellant-wife and respondent-husband solemnized on 29.08.1999 – Appellant-wife claimed right of residence under the DV Act, which was dismissed by Family Court. [Para 1-2, 17]

Domestic Violence Act, 2005 – Right of Residence – Appellant's claim for residence in the property considered as shared household – Respondent-husband's objection to the claim – High Court's analysis of 'shared household' under DV Act – Appellant's residence rights in property belonging to respondent's brother examined. [Para 8-9, 24-28]

Maintenance and Child Support – Respondent-husband's financial obligations – Appellant-wife's claim for maintenance and child support – Court's observation on respondent's payment of Rs. 75,000/- per month for maintenance and education of children and appellant. [Para 12, 29-30]

High Court's Decision – Appeal dismissed by High Court – High Court's agreement with Family Court's decision – No error found in Family Court's judgement – Appellant's failure to establish the disputed property as a shared household – Maintenance provided by respondent considered sufficient. [Para 31-32]

**Referred Cases:**

Prabha Tyagi vs. Kamlesh Devi, Criminal Appeal No. 511/2022 decided on 12.05.2022 by the Supreme Court.

Representing Advocates:

Ajay Kumar for the petitioner  
Vijay Kumar for the respondents

## **JUDGMENT**

### **SURESH KUMAR KAIT, J**

1. The present appeal is preferred by the appellant-wife under Section 19 of the Family Courts Act, 1984 against the judgment and Order dated 28.02.2023 passed by the learned Family Court, Delhi in HMA No.114/2018 whereby appellant's application under **Section 17 and 19 read with Section 26 of the Protection of Women from Domestic Violence Act, 2005** (hereinafter referred to as „DV Act“) seeking right of residence, has been rejected.
2. The *brief facts* of the present case are that the marriage between the appellant-wife and respondent-husband was solemnised on 29.08.1999 as per Hindu rites and ceremonies. From this marriage, two children, i.e. one daughter and one son, were born on 18.11.2004 and 13.07.2010, respectively.
3. The *appellant/wife* has pleaded that after her marriage with the respondent on 30.08.1999, she has been staying at House No.51/17, East Punjabi Bagh, Delhi in domestic relationship with respondent-husband, his parents and other relatives.
4. The appellant has alleged that since the huge demands of dowry made by respondent and his parents were not fulfilled, she was subjected to various kinds of cruelties. In order to save their matrimonial relationship, the parties shifted to rented accommodation at Kirti Nagar in February, 2008, despite which the atrocities of the respondent, his parents and other relatives continued unabated. The appellant had claimed that in furtherance of systematic planning, the respondent removed himself from the House No. 51/17, East Punjabi Bagh, Delhi to defeat her claim to right of residence therein.
5. According to appellant, in November, 2009, she became pregnant for the second time and on 13.07.2010, parties were blessed with a son. After her discharge from the hospital on 17.07.2010, the respondent took the appellant with the minor son to her parental home and dropped them there on the pretext that she would be provided better care at her parents' house. Since

- then, she along with her children has been staying at her parental home. She further alleged that despite various efforts made by her and her parents, the respondent never took them back to her matrimonial home and she is living at the mercy of her parents with them.
6. The appellant has asserted that in the year 2018, the son of parties has been diagnosed with Disability III Reading (Dyslexia), written Expression (Dysgraphia) and Arithmetic (Dyscalculia), mild level of deficits in the areas of social communication along with some indicative features of ASD (Autism Spectrum Disorder) and Attention Deficit Hyperactivity Disorder. For such comorbid diagnosis, intensive therapies are required which he has been receiving from Orkids (Multidisciplinary Clinic), Kalkaji. Presently, the son of parties is studying in G.D. Goenka School.
  7. The appellant has alleged that earlier, respondent used to pay school fee of the children; however, he stopped doing so in the year 2012. It was further alleged that the respondent first deliberately removed her from the matrimonial home and took her to rented accommodation at Kirti Nagar to deprive her of his company and thereafter on birth of their son, respondent left the appellant with both the children to her parental home, thereby depriving her of her matrimonial relationship.
  8. The respondent in the year 2014, preferred a petition seeking *Divorce under Section 13 (1)(ia) and (ib) of the Hindu Marriage Act, 1955* (hereinafter referred to as „HMA“). The appellant in the Divorce proceedings, moved an application under **Sections 17 and 19 read with Section 26 of the DV Act** seeking a direction to reside in the property situated at Punjabi Bagh Extension claiming it to be their shared household. The appellant also sought a direction to be provided with all the amenities and facilities in the shared household, for herself and her children. The appellant asserted that the respondent-husband had admitted in his Divorce petition that the parties had lived together in the matrimonial home at Punjabi Bagh since the year 1999 and also that the elder daughter of the parties was born in the said matrimonial home.
  9. The appellant, therefore, in her Application under Sections 17 and 19 read with Section 26 of the D.V. Act, 2005 claimed the right of residence in House No. 4/12, Punjabi Bagh Extension, New Delhi, it being her shared household.
  10. **In his reply** to the aforesaid application, the respondent-husband has averred that the provisions of DV Act have been enshrined to protect aggrieved women whereas the appellant-wife has deliberately deserted him and is living with her parents since the year 2010. He submitted that the appellant-wife does not fall within the ambit of „*aggrieved person*“ as defined under the DV Act. The respondent also averred that the provisions of Section 17, 19 and

- 26 of the DV Act do not attract a case against him as the application was preferred in a petition seeking dissolution of marriage and on this count alone, was liable to be dismissed.
11. The respondent-husband denied the allegations made by the appellant and stated that the appellant-wife was never tortured by him or his family members nor any demands of dowry were ever made. The respondent denied that on 12.07.2010, he had got the appellant admitted in Kukreja Hospital where she gave birth to their son. He further submitted that he was called only once by the appellant when she was admitted to the hospital and her mother asked him to pay the entire medical bills and get her discharged. He stated that he had gone out of hospital for some work on the asking of mother of the appellant and when he returned to the hospital, he saw that appellant had already left with her parents.
  12. The respondent husband stated that he had been paying Rs.75,000/- towards maintenance of respondent and their children from 28.02.2018. The respondent also asserted that the appellant had deserted him and was living with her parents and despite his best efforts, she refused to join his company due to which he had filed the Divorce Petition on the ground of cruelty and desertion. The respondent asserted that it was the appellant who forced him to leave the matrimonial home and live in a rented accommodation, separately from his parents and family and since then, he has been living away from his family.
  13. The respondent-husband also asserted that in the year 2016, his father was unwell who later expired in the year 2017 and during this period, for a short while, he lived at his brother's place in 4/12 Punjabi Bagh Extension. After his father's death, his mother became mentally unstable and got unwell and he had to take care of his mother, therefore, he sometimes lived with his mother, however, he always used to return to his rented accommodation at Kirti Nagar till the year 2018.
  14. The respondent-husband asserted that due to financial instability in the year 2019 on account of Covid-19 pandemic, he had no choice but to stay with his brother and thereafter, he was forced to change his rented accommodation looking for a lower rate of rent. The respondent-husband denied that he has deserted his children or his wife. He also denied that the residence at Punjabi Bagh Extension was a shared household for appellantwife and his minor children. He empathetically submitted that the rented accommodation where he had been staying since the year 2008 is the matrimonial home of the

parties and hence, the appellant cannot be permitted to claim the Punjabi Bagh property as a shared household property, within the ambit of Section 19 of the Act.

15. The respondent-husband also submitted that after death of appellant's father, she had received 1/3<sup>rd</sup> share in his property and this fact has been concealed from the Court and thereby the appellant cannot claim to be a person in destitution looking for a shared household.
16. The learned trial Court vide impugned judgment dated 28.02.2023 held as under:

*"4.10 In the instant case, as per admission by respondent herself made in para no.7 of the application, **respondent has been living separately from petitioner since 17.07.2010.** She along with the minor children has been staying at her parental house since then. **Thus, she has not been in domestic relationship with the petitioner since 17.07.2010.** Admittedly, respondent has neither filed any complaint u/s 12 of The PWDV Act against the petitioner before the court of Magistrate nor she has lodged any complaint for offence u/s 498A/406 IPC against petitioner or his family members. It is the petitioner, who has filed the petition for divorce against respondent for seeking dissolution of marriage by a decree of divorce on the ground of cruelty and desertion as provided u/s 13(1) (ia) & (ib) of The Hindu Marriage Act, -1955. **In the given facts and circumstances of the case, respondent cannot be said to be an aggrieved person in the present proceedings.***

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*4.12 A bare reading of the aforesaid provision contained in section 26 of PWDV Act show that the relief sought in other suit or legal proceeding before a civil or criminal court will be **in addition to and along with other reliefs** that may be sought by the aggrieved person available to her under-sections 18, 19,20,21 and 22 of The PWDV Act. Admittedly, respondent has not sought any relief under the said sections under The PWDV Act before the court of learned M.M. **She has prayed for grant of right of residence to her and the children in the shared household i.e. house bearing no. 4/12, Punjabi Bagh Extension, New Delhi. Reply to the application filed by petitioner shows that he is not residing at the said address. He only resided at said address only for a brief period from 2016 till the Covid period.** The Rent Agreement filed by petitioner along with reply to the application shows that he is residing in a rented accommodation i.e. Second Floor of property bearing no. I-89, Kirti Nagar, New Delhi at a monthly rent of Rs.18,000/-. In terms of order dated 28.02.2018, petitioner is already paying Rs.75,000/- per month for maintenance of respondent and minor children. **Since, petitioner is neither residing at H. No.4/12, Punjabi Bagh***

***Extension, New Delhi nor the said property belongs to him, therefore, respondent cannot be granted right of residence in the said property.”***

17. Aggrieved against the dismissal of her application vide aforesaid Order, the present appeal has been preferred by the appellant-wife.
18. The submissions advanced by learned counsel for the parties were heard at length and the impugned judgment as well as material placed before the learned Family Court have been carefully perused.
19. At the outset, an objection has been taken that the parties are residing separately since 2010 and after so many years, the appellant cannot maintain the present application under DV Act in the absence of there being any Domestic violence.
20. This aspect has been clarified by the Apex Court in the recent Judgement in the case of ***Prabha Tyagi vs. Kamlesh Devi***, Criminal Appeal No. 511/2022 decided on 12.05.2022 by the Supreme Court, wherein it has been observed that sub-section (1) of Section 17 provides that every woman in a domestic relationship is entitled to reside in a shared household. Section 17 is, therefore, not premised on the woman being an aggrieved person in the sense of having been subjected to the domestic violence. Therefore, the law does not require that only a woman who is subjected to domestic violence is entitled to right of a shared residence. It is a right available to every woman who is in a domestic relationship.
21. This preliminary objection taken by the Respondent is therefore, not tenable.
22. Upon perusal, this Court finds that the appellant, neither before this Court nor before the learned Family Court, has anywhere stated that she had filed any application under Section 9 of the Hindu Marriage Act, 1955 seeking Restitution of Conjugal Rights against the respondent-husband or any Petition under the provisions of Protection of Women from Domestic Violence Act, 2005 against respondent-husband or his family members. Also, appellant has not averred whether she had filed any application under Section 24 of the Hindu Marriage Act, 1955 or Section 125 Cr.P.C. seeking maintenance from respondent-husband, even though respondent-husband has been paying interim maintenance @Rs.75,000/- per month to the children in terms of Order dated 28.02.2018.
23. The respondent-husband, who is living separately from appellant-wife since the year 2010, preferred a petition seeking divorce from appellant in the year 2014, wherein she has filed application u/s 17 and 19 r/w Section 26 of The D.V. Act seeking right to residence.

24. What is „shared household“ has been defined in Section 2(s) of the DV Act, which reads as under:-

*“(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.”*

25. The provisions of Section 17 and 19 of the Act reads as under:-

*“17. (1) **Notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same.***

*(2) The aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the*

*procedure established by law. \*\*\**

*19. (1) While disposing of an application under subsection (1) of Section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order—*

*(a) restraining the respondents from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;*

*(b) directing the respondent to remove himself from the shared household;*

*(c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;*

*(d) restraining the respondent from alienating or disposing of the shared household or encumbering the same;*

*(e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or*

*(f) **directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require:***

*Provided that no order under clause (b) shall be passed against any person who is a woman.”*

26. The afore-noted provisions make it abundantly clear that in order to show „*shared household*“ the parties have to show the place where they have lived together in the past, which in the present case was first in No. 51/17, East Punjabi Bagh and thereafter in Kirti Nagar, the rental accommodation.

The appellant has accused that the respondent deliberately shifted her to the Kirti Nagar tenanted accommodation, whereas the respondent has asserted that he had shifted there in order to save their married life.

27. Admittedly, the matrimonial home to which the appellant had come after her marriage was House No. 51/17, East Punjabi Bagh, Delhi, which was owned by the parents of the respondent and thereafter, admittedly they had been residing in the rented accommodation at Kirti Nagar, Delhi.

28. However, the appellant is claiming a right of shared residence in House No. 4/12, Punjabi Bagh Extension, Delhi which is the house of the brother of the respondent which had been purchased by him *vide* Sale Deed dated 18.03.2010. Therefore, the said property was purchased two years after the parties shifted to the Kirti Nagar rental accommodation in February, 2008. There is no averment whatsoever in the entire pleading or in any application that the house of the brother of the respondent is a “shared household”. In the absence of there being any averment of her having ever lived in that No. 4/12 Punjabi Bagh Extension, the appellant cannot claim “Right to residence” in the said house.

29. It is also pertinent to refer to Section 19(f) which provides that where the circumstances require, the respondent may be directed to secure same level of alternate accommodation as enjoyed by her in her shared household or provide the monetary compensation for the same, to the aggrieved person. The respondent has submitted that on the demise of the father of the appellant, the appellant has become entitled to 1/3<sup>rd</sup> share in the house of her father where she is presently residing. It is also not denied that a sum of Rs. 75,000/- per month is being given by the respondent to the appellant for the maintenance and education of herself and the children, pursuant to the Order dated 28.02.2018.

30. It is relevant to observe that appellant has not preferred any proceedings under the DV Act nor filed any complaint under any provisions of law alleging cruelty or dowry demand by respondent or his family members also not claimed Restitution of Conjugal Rights. We appreciate that even in the absence of any complaint, a wife can claim „*shared household*“ but at the same time applicability of the aforesaid provisions of law have to be made in the light of facts and circumstances of each case. In the present case, even if appellant’s plea that she was subjected to cruelty by the respondent-



husband is accepted, still she did not invoke provisions of Section 19(f) of the DV Act which provides for alternative accommodation or payment of rent thereof.

31. We may sum up by observing that the appellant has not been able to establish that the House No. 4/12, Punjabi Bagh Extension, Delhi was ever a shared household. Moreover, the circumstances as discussed above, show that the appellant is getting maintenance which may be able to account for her expenses for the house and also she has an alternate residence in so much as she is residing in her parental home in which the respondent has asserted that the appellant has 1/3<sup>rd</sup> share after the demise of her father. Moreover, Section 26 (2) of the DV Act also provide her liberty to initiate any legal proceedings before any criminal or civil law.
32. In view of above, we are of the considered opinion, there is no error in the impugned order dated 29.02.2023 calling for interference by this Court. The present Appeal is accordingly, dismissed without expressing any opinion on the merits of the case pending adjudication *inter se* the parties.

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