

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

Date of Decision: September 30th, 2016

+ **CRL.REV.P. 134/2015**

RENU SHARMA Petitioner

Through: **Mr.Roshan Santhalia, Advocate.**

versus

MC SHARMA Respondent

Through: **Mr.Vikas Tomar and Mr.Saman
Yadav, Advs.**

**CORAM:
HON'BLE MR. JUSTICE P.S.TEJI**

P.S.TEJI, J.

1. The present revision petition has been filed under Sections 397 and 401 of the Code of Criminal Procedure (hereinafter shall be referred as Cr.P.C.) for setting aside the order dated 02.02.2015 passed by the learned Additional Sessions Judge and for restoring the order dated 10.10.2014 passed by the learned Metropolitan Magistrate. Vide order dated 10.10.2014, the learned MM directed the respondent-husband not to dispossess the petitioner-wife out of the matrimonial house No.B-I/102, Milan Vihar Apartments, Patparganj, Delhi under Section 19 of the Prevention of Women from Domestic Violence Act, 2005 (PWDV Act). The learned ASJ reversed the order of the learned MM vide order dated 02.02.2015 and directed the petitioner-wife to vacate the said

house and shift to house no.101, Trilok Apartment, Plot No.85, I.P. Extension, Patparganj, Delhi.

2. The facts in brief are that a complaint under Section 12 of the PWDV Act was filed by the petitioner-wife against her husband/respondent and others. During the pendency of the said complaint, an application under Section 19(1)(a) & (d) and 20(1)(d) read with Section 23(1) of the PWDV Act for restraining the respondents from dispossessing the petitioner-wife from house no.B-I/102, Milan Vihar Apartments, Patparganj, Delhi was moved. The said application was allowed by the learned MM vide order dated 10.10.2014 directing the respondents not to dispossess the petitioner from the said house. The respondent-husband challenged the said restrain order by filing an appeal. The appellate Court vide order dated 02.02.2015 directed the petitioner-wife to shift to house i.e. 101, Trilok Apartment, Plot No.85, I.P. Extension, Patparganj, Delhi. The respondent-husband was directed to make payment of Rs.50,000/- towards shifting of house and also to pay a sum of Rs.5,000/- per month to the petitioner-wife till the final disposal of the case. Feeling aggrieved by the order passed by the appellate Court, the present revision petition has been preferred by the petitioner-wife.

3. Arguments advanced by the learned counsel for the parties were heard.

4. Argument advanced by the counsel for the petitioner is that the house in Milan Apartment where she is residing is her matrimonial house and she is residing there since 2006 along with

minor daughter. It will be difficult for her to shift her residence. It was further argued that provision of alternative accommodation is the last remedy, whereas in the present case the petitioner is residing in her matrimonial house. The judgments relied upon by the appellate Court are not applicable. The petitioner always requested her husband to come and stay with her. The husband is fit and fine and the updated documents regarding his suffering from Hepatitis C or bladder cancer have not been placed on record. The petitioner is suffering from problem in her knee and it will be difficult for her to shift to a house which is on the 2nd or 3rd floor.

5. Per contra, argument advanced by the counsel for the respondent-husband is that he is suffering from incurable Hepatitis C and bladder cancer and he is facing great difficulty in the house where he is residing which is situated on the 2nd and 3rd floor. The alternative accommodation offered to the petitioner-wife is having 1100 sq. ft. which is a duplex house comprising 3 bed rooms, drawing-dining, kitchen, 2 toilets, store room and balconies. The distance between the two houses is also not too far from each other. It was further argued that there is no fault in the order passed by the appellate Court.

6. After going through the rival contentions, this Court has observed that the respondent-husband is suffering from Hepatitis C and bladder cancer. The fact regarding suffering of respondent-husband from said ailments has not been denied by the petitioner-wife. The only objection taken by her is that the updated documents regarding illness of the respondent-husband were not

placed on record to show his present status. Such an objection is a vague objection. When it is an admitted fact that the respondent-husband is suffering from said ailments, a sympathetic view is to be taken towards him.

7. It is apparent from the record that the alternative accommodation proposed by the respondent-husband is not too far from the house where the petitioner-wife is presently residing. It is an admitted fact that the house in which the petitioner-wife is presently residing is 1250 sq. ft. and the alternative accommodation proposed is about 1100 sq. ft. Keeping in view the medical condition of the respondent-husband, the appellate Court directed the petitioner-wife to shift to the alternative accommodation. But keeping in view the change of size of house, the appellate Court has directed the respondent-husband to pay a sum of Rs.5,000/- per month to the petitioner-wife to mitigate the said hardship. This Court does not find any fault in the same.

8. The present revision petition has been filed assailing the judgment passed by the Court below. After going through the record and the submissions made by the parties, this Court is of the considered opinion that there is no apparent illegality or infirmity in the judgment/order passed by the Court below. This Court is not sitting in appeal and is dealing with the revision petition. It is a settled law that while exercising the revisional jurisdiction, the Court cannot re-appreciate the evidence.

9. In view of the above mentioned facts and circumstances, this Court does not find any irregularity, illegality or impropriety in the

judgment/order passed by the learned Additional Sessions Judge.
Consequently, the present revision petition is dismissed.
Application, if any, is also disposed of.

(P.S.TEJI)
JUDGE

SEPTEMBER 30, 2016
dd

