

Bubbi Vs. Surinder Pal and Others

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Court : Punjab and Haryana

Decided On : Mar-12-2014

Appellant : Bubbi

Respondent : Surinder Pal and Others

Judgement :

Crl. Revision No.970 of 2013 -:

1. :- IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH Crl. Revision No.970 of 2013 (O&M) Date of decision: March 12, 2014. Bubbi ... Petitioner v. Surinder Pal and others ... Respondents CORAM: HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON Present: Shri Vijay Lath, Advocate, for the petitioner. Shri R.K. Handa, Advocate for respondents No.1 to 8. Shri Neeraj Yadav, Assistant Advocate General, Punjab. Dr. Bharat Bhushan Parsoon, J.

Aggrieved of the order dated 14.9.2012 (passed by learned Additional Sessions Judge, Shaheed Bhagat Singh Nagar, while deciding appeal of the complainant-wife against order dated 18.4.2012 of the trial court) whereby the husband was directed to pay maintenance of Rs.1,500/- per month and yet another Rs.700/- per month on account of rent to the wife, the revisionist has filed this petition.

2. This order of 18.4.2012 had been passed by the Judicial Magistrate First Class, Shaheed Bhagat Singh Nagar on an application under Section 12 of the Protection

of Women from Domestic Violence Act, 2005 wherein she had sought many reliefs in her favour, including payment of monthly maintenance and payment of a room for her residence in the matrimonial house in village Sajawalpur. By way of modification of the impugned order, she seeks increase in her maintenance amount from Rs.1500/- to Rs.2,000/- p.m. and instead of payment of rent to the tune of Kadyan Vinod Kumar 2014.03.14 10:05 I attest to the accuracy and integrity of this document Chandigarh Crl. Revision No.970 of 2013 -:

2. :- Rs.700/- by the husband, she seeks a room in the matrimonial home for her residence.

3. Referring to definitions of shared house. and domestic relationship. given in sub-section (s) and sub-section (f) respectively of Section 2 of the Act, it is claimed that notwithstanding the fact that the house is owned by her mother-in-law, the wife still has a right to reside in such a house because at one point of time she along with her husband had been living in the said house. It is claimed that even otherwise, payment of Rs.700/- p.m. as rent for hiring an accommodation and of Rs.1500/- as monthly maintenance is merely an apology for payment of rent as also for the maintenance.

4. Counsel for the respondent, on the other hand, has urged that the entire matter has been debated and discussed in detail in judgment dated 18.4.2012 of the trial court, wherein it was found that the husband was not in a position to pay and, thus, the quantum of maintenance and payment of rent was assessed accordingly.

5. While going through the entire order of 18.4.2012 passed by the trial court, it is found that income of the husband has nowhere been assessed even by guess work and thus, there is no material or evidence to form foundation for assessing quantum of maintenance at Rs.1500/- and Rs.700/- on account of rent to be paid per month.

6. It is, thus, clear that the moot issue of quantum of income of the husband so as to determine the amount of maintenance to be paid by the husband, remains unanswered. The real question is as to how much he should part with out of the same for monthly maintenance to the petitioner and as to what extent to

compensate her for payment of rent. This aspect apparently has also neither engaged the attention of the trial nor of the Kadyan Vinod Kumar 2014.03.14 10:05 I attest to the accuracy and integrity of this document Chandigarh Crl. Revision No.970 of 2013 :-

3. :- appellate court. Consequently, both the judgments are seriously flawed as the basic finding regarding quantum of income of the husband and how much he is liable to pay out of the same keeping in view the competing responsibilities of the husband and needs of the petitioner, have not been discussed.

7. Sequelly, setting aside the impugned orders, the matter is remitted to the court of Judicial Magistrate First Class, Shaheed Bhagat Singh Nagar to re-appraise the entire issue keeping in the view the evidence available on record, potentiality of the husband to pay and the needs of the wife, within a period of one month from the date of receipt of a certified copy of this order in accordance with law.

7. Needless to say, the aggrieved party(s) would be at liberty to challenge the findings returned by the learned Judicial Magistrate. However, such appeal, if preferred, would also be decided in accordance with law within two months thereafter. [Dr. Bharat Bhushan Parsoon]. March 12, 2014. Judge kadyan Kadyan Vinod Kumar 2014.03.14 10:05 I attest to the accuracy and integrity of this document Chandigarh

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