

**IN THE COURT OF 4TH ADDL. SESSIONS
(DISTRICT) JUDGE SRINAGAR**

CNR No.	JKSG010003122024
Dt. Of Institution	23.02.2024
Dt. Of Order	24.06.2024
File No.	22/2024/06/appeal

In the case of :- First Appeal

1. Arjuman Majeed W/o Qazi Asif Hussain
2. Qazi Anas Hussain (08 years) S/o Qazi Asif Hussain
3. Qazi Kazhan Hussain (aged 06 years) S/o Qazi Asif Hussain
Through their mother petitioner No.1
All Rs/o Iqbal Colony Sonwar Srinagar

.....(Appellants)

Through :- Adv. Arzaan Ahmad & Associates
Versus

- 1, Qazi Asif Hussain S/o Late Qazi Gh Mohd.
2. Qazi Arshid Hussain S/o Late Qazi Gh. Mohd.
3. Raja Begum W/o Qazi Gh. Mohd.
4. Mst. Tabasum W/o Qazi Arshid Hussain ‘
5. Qazi Ali Mohd. (Deceased) Uncle of Qazi Asif Hussain
All Rs/o Iqbal Colony Sonwar Srinagar

....(Respondents)

Through : Adv. Sajad Mir & Associates

CNR No.	JKSG010003762024
Dt. Of Institution	01.03.2024
Dt. Of Order	24.06.2024
File no.	32/appeal

In the case of :- Second Appeal

- 1, Qazi Asif Hussain S/o Late Qazi Gh Mohd.
2. Qazi Arshid Hussain S/o Late Qazi Gh. Mohd.
3. Raja Begum W/o Qazi Gh. Mohd.
4. Mst. Tabasum W/o Qazi Arshid Hussain ‘
5. Qazi Ali Mohd. (Deceased) Uncle of Qazi Asif Hussain
All Rs/o Iqbal Colony Sonwar Srinagar

.....(Appellants)

Through : Adv. Sajad Mir & Associates
Versus

- 1, Arjuman Majeed W/o Qazi Asif Hussain
2. Qazi Anas Hussain (08 years) S/o Qazi Asif Hussain

3. Qazi Kazhan Hussain (aged 06 years) S/o Qazi Asif Hussain
Through their mother petitioner No.1
All Rs/o Iqbal Colony Sonwar Srinagar(Respondents)
Through : Adv. Arzaan Ahmad & Associates

In the matter of :-

Appeal u/s 29 of Protection of Women from Domestic Violence Act,2005 against the judgment passed by the court of Sub-Registrar/JMIC Sgr. Dated 05.02.2024, in case titled “ Arjuman Majeed & Ors. V/s Qazi Asif Hussain & Ors. And for setting aside the same ..

Coram : *Gowhar Majid Dalal*

JO Code No. : JK00098

ORDER

1. The order will dispose off two appeals filed by both the sides against the same judgment. The one appeal has been filed by the appellants and the 2nd appeal has been filed by the respondents. Earlier the appeal filed by the Qazi Asif Hussain was presented before the Ld. PDJ Srinagar and was transferred it to the Ld.1st ADJ, Srinagar. On the submissions of ld counsels for both sides, the Ld. PDJ Srinagar vide order dated 30.04.2024, transferred the said appeal also to this court.
2. I have perused both the files and the trial court record. I have also heard and considered the submissions of both sides.
3. Before appreciating the rival arguments it is proper and desirable to go through the grounds of the appeal in both respective files.
4. Brief resume of the First Appeal, that has been presented by the petitioners of main case, it is preferred on merits of the judgment passed by the court of Sub Registrar Judicial Magistrate/Trial Court), the judgment passed to the extent of the third relief, in the judgment which has directed the respondent No.1 to arrange rental accommodation to the extent of two rooms, a kitchen and a bathroom in the vicinity of her parental home within one month, needs to be set-aside. The other part of the judgment is wholly accepted, but still needs to be set-aside on the ground that the maintenance amount to the appellant No.1 has been awarded from the date of judgment not when the application was preferred before the trial court, on the basis of position of law, it is clear that the maintenance needs to be given from

the date of institution of the application, as such, the same is to be abided. As such, the appellants are aggrieved with the judgment passed by the Court of Sub Registrar (Judicial Magistrate) Srinagar, dated 05.02.2024 passed in case titled Arjuman Majeed & others V/S Qazi Asif Hussain & others, vide Case No.93/M, CNR No. JKSG030012632019, whereby the appellants herein have been removed from the shared household with the direction to the respondent No.1 to arrange rental accommodation to the extent of two rooms, a kitchen and a bathroom for the appellants in the vicinity of her parental home within one month of the pronouncement of the judgment.

5. That the brief recitals of the case are as under:-

- a. That the petitioner under Domestic Violence Act came to be preferred before the court of Sub Registrar (Judicial Magistrate 1st Class) Srinagar on 19.03.2019, on the ground that the appellant No. 1 is legally wedded wife of Respondent No.1 and Nikkah ceremony was solemnized on 15.10.2009 under Muslim personal law, out of said wedlock two issues were begotten i.e. appellants 2 & 3 herein presently put up with appellant No.1 at her maternal home along with her two sons, but the petitioners have continuously been subjected to heinous domestic violence and mental torture, physical as well. It was further reiterated in the domestic violence petition that Since ten years the appellant No.1 has been absolving the cruelty of the respondents - accused persons and ever since has been continuing to do so, but the tolerance level of the appellant No.1 has succumbed because of the fact now her two sons are also subjected to domestic violence and abuse by the respondents and despite repeated efforts to reconcile and to set things right with the respondents, but she miserably failed to make them understand and unfortunately the respondents never understood the meaning of peace, love and compassion and further after all her efforts of amicable settlement and resolving the matters amicably and all misunderstanding which the respondents had but unfortunately to the miseries of the appellant No.1 the respondents never change their inhuman behavior towards the appellants and since out of the wedlock two

issues were born and the time they started doing they were also subjected to immense torture from the respondents in spite the respondent No.1 being the father of appellant No.2 & 3 he never showed that love, care and affection a complete family man would show to the dismay of the appellant No.1, she has been left to the mercy of God and has been deserted

- b. The respondents have been influencing the development of appellant No. 1 with mental abuse and physical abuse and has been cut off from society and has not been given any opportunity or any freedom to develop into a sociable citizen despite the fact she has fulfilled all her duties of a complete family woman and has groomed the issues of respondent No.1 with all love and affection but the respondent No.1 has circumvented all love and affection and has given back all his hatred and cruelty upon the appellant No.1.
- c. The Respondent No.1 has drained the appellants of economic resources because the appellants are wholly and solely dependent upon Respondent No.1 who is a man of resources and has a huge source of income but has been adamant about giving a single penny towards his family for the education of his kids, for maintenance of his wife and also to the extent that the appellants have been left to starvation all. After all, there is no economic support for the appellant No.1 to feed appellant 2 & 3 because the influx of all the economic sources depends upon respondent No.1 who has categorically refused to maintain the family and has completely neglected them and does not attend to his family as a prudent man and a complete man would do.
- d. That the respondent No.1 is inhuman and is proving to be a threat towards his family, as the physical abuse and mental abuse is going to the extent that only last time the appellant No.1 was beaten to pulp by the respondent No.1 accompanied by the other family members who are respondents 2 to 6 and during this wrath upon the appellant No. 1, the minor kids came to the rescue of their mother and tried to save her in their short capabilities but the respondents including the respondent No.1 were completely

berserk and brutal upon the appellants and even did not spare the appellant No.2 & 3 who are minor kids of age 8 & 6 and further the respondents tried to drag the appellant in the Mideast of night out of the home and the home is situated near the B.B. Cantt Sonwar, which is highly volatile area and is unsafe for women during the night, but they did not take mercy upon the appellants and finally the neighbors came to the rescue of the appellants and gave them shelter in their own homes. It is further stated that the appellant No. 2 & 3 are both students of Burn Hall School, which commands great economic support to them, by this time appellant No.1 has been very helplessly begging her parents for the monthly fee and admission fee from her parents and has utilized her monthly savings to support the education of her two kids, but now to the miseries of the appellant No.1 her family is also drained as her family has their responsibilities in maintaining themselves and further cannot assist economically appellant No.1 and her two kids i.e. appellants 2 & 3.

- e. That this Court was pleased to issue notice to the respondents, who caused their presence personally as well as through their counsel. The respondents have resisted the claim of appellants because the present application deserves to be dismissed in limine as prima facie no Act of Domestic Violence has been committed ever by the respondents, evidently clear from the averments made in the application itself. It is manifestly clear that the complainant is filing the present application after long six years of separation from the respondents especially respondent No.1. The matrimonial relation between appellant No.1 and Respondent No.1 ended by a "Deed of Divorce" duly executed by Respondent No.1 right back on the 6th day of November 2013 and duly received and acknowledged by Applicant No.1.
- f. That from the above-stated averments, it is manifestly clear that Divorce between the appellant No.1 and respondent No.1 took place some 6 years back. Divorce is not disputed as there is direct prima facie documentary evidence of the acceptance of the same by appellant No.1 and during these long six years, appellant No.1

has never agitated the issue before any court or forum, neither has reported any act of domestic violence during these six years before the police or any authority, now the appellant No.1 has come before this court with the present petition just to harass, humiliate as well as using the same as weapon on the head of respondents due to which the appellant No.1 is taking revenge

- g. Upon consistent threats after divorce, the non-applicant No.1 was forced to file a civil suit for injunction against appellant No.1 her father, and her mother before the Id. Court of City Munsiff Srinagar, way back in the year 2013, which suit was ultimately decreed in ex-parte vide judgment dated 27.03.2017. However, based on the application for setting aside ex- parte judgment and decree learned court of City Munsiff, Srinagar had set aside the judgment and decree vide its order dated 24.02.2019, and the defendant therein had been given the opportunity to file a written statement, and the present position is that the suit is pending disposal, and the respondents stated that the court lacks jurisdiction to entertain the domestic violence petition as same is time barred, after the gape of six years. During these years she was enjoying herself at her parental home, and when came out she filed the petition, hence petition filed by appellant is liable to be dismissed with the direction not to file any proceedings in the future against the respondents as there is no relation between appellant No.1 and respondent No.1,

6. The appellants has challenged the impugned judgment dated 05.02.2024 on the grounds that:-

- a. The impugned judgment passed by the trial court suffers irregularity and also suffer on a merit to the extent that certain provisions of law have not been appreciated by the trial court in the impugned judgment and the trial court has slept over the proceedings of its own court, as it has slept over the order passed by the 2nd Additional District & Sessions Judge Srinagar, whereby the Ld. Court of 2nd Additional District & Sessions Judge, by virtue of the order dated 28.11.2020 has held that the aggrieved person has the right in the shared

household and interim order of the trial court was upheld to the extent that the aggrieved person has the right in the shared household.

- b. For that the law envisaged in the Domestic Violence Act clearly mandates that the right to the appellant in the shared household is absolute and needs to be given to aggrieved person it would be in the interest of law to jot down the law in this regard under the Act; i.e. Section 17 of the Protection of Women from Domestic Violence Act
- c. That there is absolutely no discretion upon a Magistrate under the Act to come up with anything new in the shape of rental accommodation, but the order for shared household ought to have been passed by the trial court when the aggrieved person has been enjoying the right in the shared household since the institution of the application preferred before the trial court under Section 12 of the Act and while dealing with the application under Section 23 the trial court had given the protection to the aggrieved person for continuously since 19.03.2019 and also it is pertinent to mention here that the appellant No.1 has been living in the shared household even before that from the date of her marriage.
- d. That the impugned judgment passed by the trial court has not passed the relief of shared household with judicial mind and has not appreciated the law of the land. The trial court has also erred in passing the judgment impugned to the extent that it has not given to the effect to the judgment from the date of application but has given it force from the day of passing of impugned judgment. The benefit of the same must be given to the aggrieved person whereby the maintenance of the aggrieved person needs to be accounted from the day of institution of application.
- e. That the trial court has side eyed the facts and pleadings as the respondent and aggrieved person No.1 have been continuously cohabiting as husband and wife even when the litigation was going on.

- f. For that it is imperative to appreciate by virtue of this appeal that two important aspects other than the shared household have not been dealt with properly in accordance with the law laid down, as such, the trial court has grossly erred in passing the impugned judgment,
- g. For that in para 107 of the judgment impugned passed by the trial court the court addresses the consideration vis-à-vis the payment of compensation to the appellants for subjecting them to domestic violence, but it is aptly clear that the consideration itself is devoid and has not been properly assessed by the trial court and is suffering grave irregularity, the trial court has wrongly mentioned that the witnesses have not established the ground for compensation but that is not the position of law if at all the acts of violence are committed against the aggrieved person in such a case the respondent is under an obligation to compensate the aggrieved person, the same fact has not been appreciated by the trial court in its true color.
- h. That the appellant does not seek any interference through the medium of this appeal in the relief which is given as maintenance to the aggrieved persons amounting to Rs.26,000/- to the aggrieved persons but the impugned judgment to this effect needs to be given effect from the date of application, hence on this count the judgment to that extent is liable to be set-aside.
- i. That it is also clear from the pleadings and the trial court has not appreciated the fact that the aggrieved person No.1 has been contributory to the building of the shared household as also the same needs to be appreciated by the trial court as there happens to be right of the aggrieved person in the shared household by virtue of investing in the shared household and contributing through money which has been completely ignored and has not been appreciated by the trial court.
- j. That the trial court has exceeded its discretion, arbitrarily, capriciously, perversely and has ignored basic principles of law for regulations grant of relief, as such, on this count the impugned judgment is liable to be set-aside by this court.

- k. That the impugned judgment is bad in law and against the well settled principles of justice and so far as the court below has miserably failed to appreciate the law and facts in its right perspective and the learned trial court has resultantly come to a wrong conclusion as such the order sought to be impugned deserves to be set aside. Lastly it is prayed that court may be pleased to accept the instant appeal and set-aside the impugned judgment passed by the Court of Sub Registrar (Judicial Magistrate) Srinagar, dated 05.02.2024 passed in case titled Arjuman Majeed & others V/S Qazi Asif Hussain & others,. The appellants be granted a right in the shared household as mandated by the Act itself and also the respondents be restrained from causing any sort of interference in the right of the appellants in the shared household.
7. Brief resume of the Second Appeal filed by the respondent of main case is that the respondents filed an application u/s 12 of D.V Act, before the court of Ld.CJM Srinagar and same got transferred to the court of Ld. Sub-Registrar Sgr, wherein the respondent filed false and frivolous petition against the appellants. That the respondent No.1 is legally wedded wife of petitioner No.1 and their Nikkah ceremony was solemnized on 15.10.2009 in accordance with Shariah. The respondent has concealed the material facts from the court as the relation between the respondent No.1 and petitioner No.1 came an end by virtue of Divorce deed executed by petitioner No.1 on 06.11.2013 and duly received and acknowledged by the respondent No.1. The respondents are filing the domestic violence petition after long six years of separation which is not maintainable. That vide order dated 05.09.2019 disposed of the interim application and held the paternity of petitioner No.2 & 3 is not disputed by the respondent. The Ld. Trial court has granted maintenance in favour of petitioner No.2 & 3 Rs.5000/- each and as for as petitioner No.1 is concerned grant of maintenance is deferred till the disposal of main application. The appellant No.1 has left the house way back, before filing of the domestic violence before the trial court. The appellant No.1 comply all the directions passed by the trial court by virtue of order dated 05.09.20.19 and after hearing

both the sides in final arguments the Ld. Trial court passed a judgment dated 05.02.2024. The appellants are aggrieved of the said judgment and challenges the same on following grounds: that the trial court totally ignored the well settled law that resort to this act can be taken when there is urgent requirement of wife to be maintained and provided residence.. The respondent No.1 is a divorcee, living in the forcible occupation in the house of petitioner No.3. The trial court has totally ignored the divorce deed submitted by the appellant No.1. The trial court has also failed to appreciate the fact that the respondent No.1 had way back approached the police for ornaments and other things, wherein a compromise deed was formulated in which Rs.1 lac in cash and Rs.70000/- for ornaments separately was given to the respondent No.1 in full and final settlement. The trial court has not appreciated the evidence led by the respondent , wherein not a single witness of the respondents whispered a single word about the domestic violence incident. The trial court while deciding the domestic violence petition has totally ignored the income of the appellant No.,1 and directed him to pay maintenance of Rs26,000/- towards the respondents and the trial court totally ignored that the appellant No.1 is a Salesman of medicine and is earning monthly income of Rs.20000/-. The impugned judgment passed by the Ld. Trial court is perverse on law and fact cannot sustain the test of law. Lastly it is prayed that order dated 05.02.2024 passed by the Ld. Sub-Registrar be set aside.

8. Before appreciating the grounds, it is proper to go through the petition filed by the petitioners before the trial court.
9. Brief resume of the petition is that petitioner No. 1 is legally wedded wife of Respondent No. 1 and the Nikah ceremony was solemnized on 15.10.2009 under Muslim personal law, out of said wedlock two issues were begotten i.e. petitioner No 2 and 3 herein presently put up with petitioner No. 1 at her maternal home along with her two sons, but the petitioners have continuously been subjected to heinous domestic violence and mental torture, physical as well. Since ten years the petitioner No. 1 has been absolving the cruelty of the respondents - accused persons and ever since has been continuing to do so, but the tolerance level of the petitioner No.1 has succumbed because of the fact

now her two sons are also subjected to domestic violence and abuse by the respondents and despite repeated efforts to reconcile and to set things right with the respondents, but she miserably failed to make them understand and unfortunately the respondents never understood the meaning of peace, love and compassion and further after all her efforts of amicable settlement and resolving the matters amicably and all misunderstanding which the respondents had but unfortunately to the miseries of the petitioner No.1. The respondents never change their inhuman behavior towards the petitioners and since out of the wedlock two issues were born and the time they started doing they were also subjected to immense torture from the respondents in spite the respondent No.1 being the father of petitioner No.2 & 3 he never showed that love, care and affection a complete family man would show to the dismay of the petitioner No.1, she has been left to the mercy of God and has been deserted. That petitioner No. 1 has served all the purposes of a good wife and has served behind her duties in serving to the best of her abilities to the parents of the respondent accused and her husband as well, but she has been rewarded with all malicious and nefarious and ill intentions and has been rewarded with brute force, cruelty, and agony upon her overall personality and her person in particular. The respondents have been influencing the development of petitioner No. 1 with mental abuse and physical abuse and has been cut off from society and has not been given any opportunity or any freedom to develop into a sociable citizen despite the fact she has fulfilled all her duties of a complete family woman and has groomed the issues of respondent No. 1 with all love and affection but the respondent No. 1 has circumvented all love and affection and has given back all his hatred and cruelty upon the petitioner No. 1. The acts of domestic violence have been continuing ever since a long time, but petitioner No.1 being very humble and a good wife has been absolving all the pressures and acts of violence upon her mentally as well as physically, but the situations have never got better but instead have worsened and the respondents have increased the level of domestic violence, and the petitioners have been altogether harassed to the hill and now they lack interest in the society because of the mental

agony and physical torture that has been done against the persons. The Respondent No.1 has drained the petitioners of economic resources because the petitioners are wholly and solely dependent upon Respondent No.1 who is a man of resources and has a huge source of income but has been adamant about giving a single penny towards his family for the education of his kids, for maintenance of his wife and also to the extent that the petitioners have been left to starvation all. After all, there is no economic support for the petitioner No.1 to feed petitioners 2 & 3 because the influx of all the economic sources depends upon respondent No.1 who has categorically refused to maintain the family and has completely neglected them and does not attend to his family as a prudent man and a complete man would do. That the respondent No.1 is inhuman and is proving to be a threat towards his family, as the physical abuse and mental abuse is going to the extent that only last time the petitioner No.1 was beaten to pulp by the respondent No.1 accompanied by the other family members who are respondents 2 to 6 and during this wrath upon the petitioner No. 1, the minor kids came to the rescue of their mother and tried to save her in their short capabilities but the respondents including the respondent No.1 were completely berserk and brutal upon the petitioners and even did not spare the petitioner No.2 & 3 who are minor kids of age 8 & 6 and further the respondents tried to drag the petitioners in the Mideast of night out of the home and the home is situated near the B.B. Cantt Sonawar, which is highly volatile area and is unsafe for women during the night, but they did not take mercy upon the petitioners and finally the neighbors came to the rescue of the petitioners and gave them shelter in their own homes. That the Petitioner No.1 has been maintaining her two kids from the money of her parents and has been asking her parents for money because the educational career of the petitioners is at stake and she does not want that to be hampered in any way, as such, they should not suffer because of economic deprivations and she is begging to her parents for money and in this time it is important to mention here that even the parents of the petitioner No. 1 have completely drained out of economical sources in maintaining the family of their daughter. The Petitioner No.1 reposes all faith in the

judicial system of the country and wants redressal of her grievances and stoppage through this petition of the acts of domestic violence against her and knows on the face of it that the law is going to take its course and bring the guilty to justice by passing relevant orders against the respondents so that she could breathe easily and this court resort the financial assistance which she is required of. Despite all reconciliatory methods by petitioner No.1 and her family members, the behaviour of the respondents has worsened day by day which has taken a toll upon petitioner No.1 and the two issues that have been much bellowed to petitioner No.1, her sense of respect by this behaviour of respondents has been effected and completely tormented by the respondents. That the cause of humanity has been defeated because the petitioners have been stalled because of a lack of resources for their living life, as such, the condition of the petitioners is so bad that the education of petitioners 2 & 3 is suffering to Himalayan proportions and the ability of the petitioner No.1 to groom the innocent petitioners 2 & 3 and herself is in utmost duress and badest of conditions because of the negligence shown by respondent No.1. That petitioner No.1 has been miserably living at her maternal home and time and again she has been brutality attacked by the other family members especially her own husband so that she could be dragged out of home, which she has built out of her money which her parents had given her to support her life and develop good property, but very brazenly the husband of the petitioner No.1 accepted the money from the in-laws and upon that money the respondent No.1 built that home to which the petitioner No. 1 is a part and parcel of making that house into a home and for this loveliest of all behaviors she has been rewarded with utmost tyranny and hatred and it has gone to that extent that she has thrown away from her own which she has built with all labor and eyes full of dreams which every women in the society does and wants to build her own home and the petitioner No.1 through every means has developed her home but the respondents, and respondents are trying to snatch this dream from the petitioner No.1. The malicious orchestration of respondent No. 1 is such that behind the back of petitioner No.1, the respondent No.1 moved to the court to seek a 'decree' against the

petitioner No.1 seeking petitioner No.1 to be restrained from being in the house of the respondent No. 1 but the petitioner No.1 was running in ex-parte in the same suit and lately she came to know at the time of execution of the decree that some suit has been filed behind her back and she availed the Court and wherein the agony of the petitioner No. 1 was understood by the court and decree was set-aside with a note that the ex-parte initiated against the petitioner No.1 was bad in the eye of law as the material facts and procedure in serving the notices had been concealed from the petitioner No.1 by the respondent No.1. That on these grounds the decree was set aside and execution was not allowed, This shows the behavior of respondent No.1 and malice of respondent No.1 towards petitioner No. 1 and now she stands helpless and stands upon the mercy of her creator and approaches this court to look into the matter as to how deliberately and systematically respondent No.1 is trying to harass petitioner No. 1 physically as well as mentally, but despite that fact the respondent No.1 continuously has been sharing the bed with the petitioner No.1 knowing the fact that he has gone for a civil suit against the petitioner No.1 but he has not stopped his conjugal rights with the petitioner No. 1 and has continued to do so. The Petitioner No. 2 & 3 are both students of Burn Hall School, which commands great economic support to them By this time Petitioner No.1 has been very helplessly begging her parents for the monthly fee and admission fee from her parents and has utilized her monthly savings to support the education of her two kids, but now to the miseries of the petitioner No.1 her family is also drained as her family has their responsibilities in maintaining themselves and further cannot assist economically petitioner No.1 and her two kids i.e. petitioners 2 & 3. That the petitioner No. 1, while she got married to respondent No. 1, came along with a lot of expensive items/ goods, gold ornaments which respondent No.1 took hostage and kept in his custody upon asking and insisting respondent No.1 categorically refused to return the items to petitioner No.1 and a complete breakup of such items is given in the table below. That complete breakup of the monthly maintenance of two kids of petitioner No.1 along with all expenses that are going to be incurred upon petitioners 2 & 3 and petitioner No. 1 is given in the

table. The Respondent No.1 is a man of resources and has a very great influence in society as well; respondent No.1 is a businessman who has an income of more than Rs.1.00 lac per month and he is the owner of a medical Agency as the Super stockiest situated at Sonwar, Srinagar, and also deals with the real estate business from which he is commanding great money, but is adamant in paying his own family and is not deliberately maintaining the family i.e. petitioners and on this account, the petitioners seek the redressal of this court; on the other hand, the petitioner No.1 is having no source of income to maintain herself as well as the children's i.e. petitioners 2 & 3 and petitioners have been left in high and dry by respondent No.1 and respondent had not provided any sort of relief either monetarily or in kind till date resulting in starvation of petitioners. That petitioner No.1 needs a huge amount to sustain herself as well as her issues i.e. petitioners No.2 & 3 have incurred a huge amount for their maintenance, and are suffering a lot of problems due to the attitude, and behavior of respondent No. 1. The petitioner No. 1 is incurring a huge amount on her maintenance as well as her issues. . That on number of occasions the mediators tried their level best to reconcile the matter; petitioner No.1 and her relatives tried their level best themselves and through arbitrators to prevail upon the respondents especially respondent No.1 to give up his stubborn attitude and not to give ear to provocation by his other family members but all in vain..

10.In objections, it is submitted by the respondents that application deserves to be dismissed in limine as prima facie no Act of Domestic Violence has been committed ever by the respondents, evidently clear from the averments made in the application itself. It is manifestly clear that the complainant is filing the present application after long six years of separation from the respondents especially respondent No.1. 31. That the matrimonial relation between Applicant No.1 and Respondent No.1 ended by a "Deed of Divorce" duly executed by Respondent No.1 right back on the 6th day of November 2013 and duly received and acknowledged by Applicant No.1. 32. Divorce is not disputed as there is direct prima facie documentary evidence of the acceptance of the same by Applicant No.1 and during these long six years, Applicant

No.1 has never agitated the issue before any court or forum, neither has reported any act of domestic violence during these six years before the police or any authority, now the applicant No.1 has come before this court with the present petition just to harass, humiliate as well as using the same as weapon on the head of respondents due to which the applicant No. 1 is taking revenge. The applicant No.1 has illegally and forcibly taken over the possession of the house of respondent No.3 who happens to be the mother of respondent No.1. Applicant No.1 has acted like a goon who has not attacked the respondents several times including with the aid and advice of applicant No.1's brother namely Zubair Majeed, who proclaims himself to be vice-president of Bharati Janta Party and has remained the ex-cop who has joined the political party for threatening, harassing and intimidating the people including the respondents herein. Needles to make mention of the fact that no sooner divorce was pronounced upon applicant No.1; immediately approached the Intizamia Committee Jamia Masjid, Sonwar, with a written application, wherein she pleaded that instead of taking applicant No.1 back from the delivery of the kid, the non-applicant No.1 sent a divorce to applicant No.1, as such, same is an admission on part of applicant No.1 which clearly shows that the applicant No.1 is living with her parental home from the date of divorce and has not shared any relationship whatsoever since then with the non-applicant No.1, however, of late, the applicant No. 1 along with the kids of non-applicant No.1 has stormed into the house of respondent No. 3 with the aid and support of all the goons including so-called 'Bajrang Brigade' who came with swords, lathies, and other things and upon approaching the concerned police nothing was done for the fact that the non-applicant No.1 was given life threats to withdraw the complaint and under that threat, he has chosen to withdraw the complaint. It may not be lost sight of that applicant No.1 had way back approached the police for ornaments and other things wherein a compromise deed was formulated in which Rs.1.00 lac in cash & Rs.70,000/- for ornaments separately was given to the applicant No.1 in full and final settlement so the question of asking the same in the present complaint is not warranted. Upon consistent threats after divorce, the non-applicant

No.1 was forced to file a civil suit for injunction against applicant No.1 her father, and her mother before the Hon'ble Court of City Munsiff Srinagar, way back in the year 2013, which suit was ultimately decreed in ex-parte vide judgment dated 27.03.2017. However based on the application for setting aside ex- parte judgment and decree learned court of City Munsiff, Srinagar had set aside the judgment and decree vide its order dated 24.02.2019, and the defendant therein had been given the opportunity to file a written statement, and the present position is that the suit is pending disposal. That non-applicant No.1 has been paying the fee and other expenses of his kids for a long and the applicant No.1 of her own without the consent of non-applicant No.1 is changing the school of the kids to her own forcing the non-applicant No.1 to succumb unto her unwarranted dictates, That the application is vehemently denied, as applicant No.1 is living with her family members after pronouncing divorce by non-applicant No.1, and she acknowledges the same, now after six years she came before this court with the present petition just to pressure the respondents and receive a handsome amount from the respondents especially respondent No.1 otherwise she is not entitled to any relief, However, the present litigation is nothing but to pressure the non-applicant No.1 to give a handsome ransom to her on the strength of the litigation/false and frivolous complaint. The petitioner has come before this court with unclean hands and has suppressed the material facts while filing the present application, She has approached this court with the application under the J&K Domestic Violence Act sword/weapon just to build pressure on the respondents without having any relation. The petitioner/complainant has filed the present application with the sole motive and aim of harassing, humiliating and threatening the respondents without having any valid reason or justification. The income of respondent No.1 shown by the petitioner is too exaggerated, as the fact of the matter is that respondent No.1 is a small businessman in medicines and is earning a monthly income of Rs.15,000/-.

11. After hearing both sides the Id trial Magistrate passed the impugned judgment in the petition, the operative portion of impugned judgment dt 05.02.2024 is stated here-in-below;-

“ After giving thoughtful consideration to the facts and circumstances mentioned supra, as such, keeping an eye on all the relevant facts and circumstances of the case mentioned supra, a case of Domestic Violence has been made out by petitioner No. 1 and accordingly petitioners are entitled to the reliefs as under:

- i) Respondents/Non-Applicants shall not commit, or aid, or abet any kind of Domestic Violence against the petitioner/aggrieved person.*
- ii) Respondent no. 1 is hereby directed to pay maintenance of Rs. 10,000/- (Ten Thousand Rupees) to petitioner no. 1, Rs. 8,000/- (Eight Thousand Rupees) to petitioner no. 2, and Rs. 8,000/- (Eight Thousand Rupees) to petitioner no. 3 i.e. in total Rs. 26,000/- (Twenty-Six Thousand Rupees) per month from the date of passing of this judgment. The maintenance amount awarded shall be enhanced @ 5% after every two successive calendar years. Any arrears pertaining to the interim application in the petition, which remained unsatisfied during the course of proceedings, shall be liquidated within a period of one (01) month from the date of pronouncement of this judgment.*
- iii) Respondent no. 1 is further directed to arrange rental accommodation to the extent of two Rooms, a Kitchen and a Bathroom for the petitioners in the vicinity of her parental home within one month of the pronouncement of this judgment.”*

12. I have heard the Ld. Counsel for the parties and perused the contents of the appeals along with impugned order 05.02.2024 and other relevant material annexed with the file minutely.

13. Perusal of the record reveals that the basic petition has been filed before the trial court on 19.03.2021 and interim order has been passed on 05.09.2019, wherein Rs.5,000/- each has been granted as interim maintenance to the petitioner No.2 & 3, whereas the interim maintenance regarding the petitioner No.1 was deferred. The main file has been finally disposed of by way of impugned order/ Judgment on 05.02.2024.

14. Perusal of record reveals that during the course of trial the petitioner has produced herself as witness and he has produced PW No.2 father

namely Abdul Majeed and PW 3 Brother namely Zubair Ahmad as witnessed in the case. Whereas the respondent's have produced RW 1 himself and RW 2 Shakeel Ah. Kak (employer of respondent), RW 3 Qazi Arshid (brother of respondent) and RW 4 Shakeel Malik (Neighbor) as witnesses in the case.

15. Perusal of both the appeals reveals that in the appeal No.1 appellant is aggrieved against the order of rentals and it has been stated that the shared house has been declined to them by way of directing the respondent to provide rental accommodation to the appellants. She has prayed for the shared house in the main petition and has prayed from dispossession and alienation of property. The grounds taken in this regard are briefly that the said order is in -violation of the order passed by Ld.2nd ADJ Srinagar in the appeal disposed of on 28.11.2020, secondly the petitioners are enjoying the possession over the shared house right from the institution of case and even before the institution of case. Thirdly appellant No.1 has invested in the shared house and by depriving her right of shared house will amount to dispossess her by violating their valuable rights. The other grounds which they have thrown challenge upon the impugned judgment is regarding possession which has been prayed is not being granted in favour of petitioner despite there is enough material on file against the respondent. The another ground of challenge over judgment is that the maintenance to the petitioners have been given effect from the date of order which is against the mandate of law and the provision. The trial court was supposed to give the effect to the maintenance from the date of presentation of the application. The date of effect of order is deeply violated the rights of the petitioners.

16. In 2nd appeal respondent has thrown challenge upon the impugned judgment mainly on the ground that petitioner No.1 has been divorced on 06.11.2023 and it has been duly received by her. The trial court has ignored the fact of divorce and has not considered the divorce deed which is on file. After divorce the petitioners have approached the Intizamia Committee and divorce has been acknowledged by the petitioner No.1 before the Intizamia Committee and in this regard the witnesses have deposed before the court, this aspect has not been

touched by the trial court. Second ground in the judgment is that there is civil suit pending before the Ld. City Musniff Srinagar and in this regard judgment has been passed against the petitioners in 2017 and the judgment has been set-aside by the trial court after the petitioner sought setting aside of the judgment on 24.02.2019. The impact of the civil court judgment has not been considered by the trial court. Thirdly that the petition was time bared as the petitioner has left the company of the appellant in 2013 and has approached the court after six years with ulterior motives only to drain him financially. There was a final settlement between the parties and he has paid Rs.1,70000/- to the petitioner and this fact also has been ignored by the trial court. Fourthly the court in the appeal is that the trial court has not considered the income of the respondent. The award has been passed disproportionately to his income and in this regard impugned judgment is not maintainable. One more ground is that the petition under D.V Act before the trial court was filed only to pressurize, humiliate the appellant.

17. Perusal of the petition reveals that the petition has been filed on 19.03.2019 that in para No.2 & 15 the petitioner has admitted that she is residing in the parental home. Ld. Counsel for the respondent of the 1st appeal contended that trial court has ignored this pleading while disposing off the petition as he has admitted that at the time of presentation of petition, she was residing in her parental home and is not entitled to shared house accommodation nor entitled for rentals.

18. The Ld. Counsel for the appellant contended that by denying the shared house accommodation to the appellant amounts to throwing her out from shared house on the road side. She is lady and cannot be kept away along-with two minor kids. The provision with regard to the granting of shared house accommodation is envisaged under provision of Sec.19 of D.V Act.

19. Section 19 of The Protection of Women from Domestic Violence Act, 2005 deals with residence orders.:

Residence Order: When disposing of an application under sub-section (1) of section 12, the Magistrate may pass a residence order if satisfied that domestic violence has taken place. The residence order can include the following provisions:

- a. Restraining the respondent from dispossessing or disturbing the possession of the aggrieved person from the **shared household**, regardless of whether the respondent has a legal or equitable interest in the shared household.
- b. Directing the respondent to remove themselves from the shared household.
- c. Restraining the respondent or their relatives from entering any portion of the shared household where the aggrieved person resides.
- d. Restraining the respondent from alienating or disposing of the shared household.
- e. Restraining the respondent from renouncing their rights in the shared household without the leave of the Magistrate.
- f. Directing the respondent to secure the 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 necessary.

It is important to reproduce the section 17 of D.V Act which is to be read with section 19 :-

Section 17 right to reside in the shared household “(1) notwithstanding anything contained in any other law for the time being in force, every women in 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.

(II) The aggrieved person shall not be evicted or excluded from the shared household or any part of it ,save in accordance with the procedure established by law.”

20. In view of the said provision the order is bad in law because of the fact she has prayed for said relief and she is putting up in the shared house right from the date of institution even after the marriage. Even for a short period she has remained away from the house does not mean she is disentitled from the shared house accommodation. The respondent No.2 & 3 are sons of appellant residing with respondent No.1, If the shared house is denied it will amount to deprive the minor and their mother to have a proper shelter. It is not only accommodation but the care and protection of the parents is also to be taken into consideration.

21. Further I am fortified by the judgment of apex court in case titled PRABHA TYAGI V/S KAMLESH DEVI (CRIMINAL APPEAL NO 511 OF 2022 12TH MAY 2022) 2022 LIVE LAW(SC) 474. The relevant para 25 of **judgement**
Para 25 while section 19 deals with a multitude of the directions or orders which may be passed against the respondent viz-a-viz the shared household in favour of a aggrieved person, section 17 confirms a right on every women in domestic relationship to reside in the share household irrespective of whether she has any right , title or beneficial interest in the same. This right to reside in a shared household which is confirmed on every women in a domestic relationship is vital and significant right. It is an affirmation of the right of every women in a domestic relationship to reside in a shared household. Sub section 2 of section 17 protects an aggrieved person from being evicted or excluded from the shared household or part of it by the respondent save in accordance with the procedure established by law. The distinction between sub section 1 and sub-section 2 of section 17 is also to be noted . While sub-section 2 deals with an aggrieved person which is defined section 2A of Domestic Violence Act in context of domestic Violence, sub section 1 of section 17 is a right confirmed on every women in domestic relationship irrespective of whether she is an aggrieved or not . In other words every women

domestic relationship has a right to reside in the shared house hold even in the absence of any act of domestic violence by the respondent.”

From section 17 in sub clause 2 it is the language of the legislation which is to be interpreted and the word used is shall and the meaning perse reflects that the aggrieved shall not be evicted shall not evicted or excluded” .

22. So in view of the above said facts the order with regard to rental accommodation instead of share house will amount to dispossession of the petitioners from the shared house, which will be great prejudicial to the petitioners. However if the petitioners will be allowed to stay in the shared house accommodation, it will not cause great prejudicial to the appellants. Therefore the aggrieved person has right to live in shared house, as she has lived with the non-applicant at any point of time after marriage. She has given birth to two issues, meaning thereby lived there for a considerable time after marriage. The denial of shared house amounts to dispossession of the petitioners from the shared house. The petitioner is residing in the shared house and in this regard trial court has granted interim order on 19.03.2019 and made it absolute vide order dt 05.09.2019. The said order has been upheld by appellate court(2nd Additional sessions judge Srinagar) on 28.11.2020.

23. With regard to the maintenance it is beaten law that maintenance should be granted from the date of presentation and not from the date of order. As the respondent was paying the maintenance towards the petitioner No.2 & 3 from the date of application till the passing of the order and it can be presumed that maintenance has been granted to them from the date of presentation of petition. So there is no infirmity in the order regarding grant of maintenance to the petitioners 2 and 3, as they were receiving the maintenance from the date of presentation of petition. However with regard to petitioner No.1 the award has been granted from the date of order but the trial court has failed to specify the reasons why it has not been granted from the date of presentation of application. The rationale of granting maintenance from the date of application finds its roots in the object of enacting maintenance legislations, so as to enable the wife to overcome the financial crunch which occurs on separation from the husband. The object of maintenance laws is to prevent and protect a deserted wife from destitution and vagrancy. To give the order of maintenance effect from the date of order amounts to deprive the petitioner no 1 from the

maintenance, owing to the time taken for disposal of application, which has taken five years of time. The order should have been given effect from the date of presentation in the interest of justice and fair play, in view of spirit and scope of the act. The trial court order is silent, why the order has been given effect from the date of order and not from the date of presentation of application. The order is without reasoning in this regard. So in view of these fact there is infirmity in the impugned judgment with regard to effect of date, for the granting of maintenance in favour of petitioner No.1. So the order to this extend needs modification as the petitioner No.1 is entitled to maintenance from the date of presentation of application.

24. With regard to the grounds in the appeal by the appellant in 2nd appeal the divorce has not been appreciated by the trial court. The divorce has been only pleaded but the divorce has not been proved. Further there is civil suit pending regarding the same. The respondent of main case has not produced the scribe of divorce deed and the witnesses to the divorce deed as witnesses in the case, to prove the factum of divorce. It is not clear how the divorce deed has been communicated to the appellant No.1, if it is through Registered post, the registered receipts has not been submitted nor in this regard witnesses has been produced. Assuming for arguments sake, she is divorcee, still she can file petition under D.V Act.

25. With regard to time barred petition, there is detailed order passed by trial court and the grounds that the trial court has not appreciated this fact is not borne out from the record.

26. With regard to the income of the non-applicant, it is nowhere mentioned by the non-applicant, what is his monthly income. One witness namely RW Showkat Kak has stated that he was his employer but the other witnesses RW2 & RW4 have stated that he is running a business as well he is a Medical Representative. There is no documentary proof filed by the non-applicant with regard to his amount of income, where it can be gathered that the award of maintenance is disproportionate. A person who is married having two sons, the presumption is that he is man of substance and is liable to pay maintenance to the petitioners. Accordingly 2nd Appeal is disallowed.

iv) The direction in the First appeal that *Respondent no. 1 is further directed to arrange rental accommodation to the extent of two Rooms, a Kitchen and a Bathroom for the petitioners in the vicinity of her parental home within one month of the pronouncement of this judgment.*” Is modified with the direction that the petitioners shall stay in the shared house, which has been granted to them by the court order.

27. Secondly with regard to maintenance of petitioner No.1, it will be given effect from the date of presentation of application and not from the date of order.

28. The order be communicated to trial court and the record of the trial court be sent back to the trial court forthwith. The order dated 23.02.2024 passed by this court in appeal no. 6 stands vacated forthwith. Both the appeals are accordingly disposed of and be consigned to records after its due compilation .

Announced

24.06.2024

4th Addl. Distt. (Sessions) Judge
Srinagar

