



"C.R."

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

THURSDAY, THE 4TH DAY OF JULY 2024 / 13TH ASHADHA, 1946

CRL.REV.PET NO. 1039 OF 2023

AGAINST THE JUDGMENT DATED 11.09.2023 IN CRA NO.197 OF
2023 OF THE SESSIONS COURT, THALASSERY ARISING OUT OF THE
ORDER DATED 27.03.2023 IN MC NO.43 OF 2022 OF THE
JUDICIAL MAGISTRATE OF FIRST CLASS, KUTHUPARAMBA

REVISION PETITIONER/RESPONDENT/PETITIONER:

OMANA SOMANADHAN,
AGED 67 YEARS
W/O. SOMANADHAN, OTTUKUNNEL VEEDU,
PERUMBUNNA P.O., PERAVOOR, IRITTY TALUK,
KANNUR, PIN - 670673.

BY ADVS.
GEORGE SEBASTIAN
RAJESH RAJAN

RESPONDENTS/APPELLANTS/RESPONDENTS & STATE:

- 1 DEEPU SOMAN,
AGED 45 YEARS
S/O. SOMAN, EMPLOYED IN GULF, OTTUKUNNEL VEEDU,
PERUMBUNNA P.O., PERAVOOR, IRITTY TALUK KANNUR,
REP. BY DEVI ASHOK, AGED 73 YEARS, W/O. ASHOK,
PENSIONER, RESIDING AT MARAKKAT THARAMMEL
VEEDU, NEAR KANAM SHIVA KSHETHRAM, THALIPARAMBA
P.O., PIN - 670141.
- 2 ASHMITHA.M.T.,
AGED 42 YEARS,
W/O. DEEPU SOMAN, EMPLOYED IN GULF, OTTUKUNNEL
VEEDU, PERUMBUNNA P.O., PERAVOOR, IRITTY TALUK
KANNUR, REP. BY DEVI ASHOK, AGED 73 YEARS, W/O.
ASHOK, PENSIONER, RESIDING AT MARAKKAT
THARAMMEL VEEDU, NEAR KANAM SHIVA KSHETHRAM,
THALIPARAMBA P.O., PIN - 670141.



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3 DEVI ASHOK,
AGED 73 YEARS,
W/O. ASHOK, PENSIONER, RESIDING AT MARAKKAT
THARAMMEL VEEDU, NEAR KANAM SHIVA KSHETHRAM,
THALIPARAMBA P.O., PIN - 670141.

4 STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM, PIN - 682031.

R1 TO R3 BY ADV R SURENDRAN
R4 BY SMT. SHEEBA THOMAS, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
FINAL HEARING ON 25.06.2024, THE COURT ON 04.07.2024
DELIVERED THE FOLLOWING:

**P.G. AJITHKUMAR, J.****"C.R."**

Crl.Revision Petition No.1039 of 2023

Dated this the 4th day of July, 2024**ORDER**

In this revision petition filed under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (Code), the petitioner challenges the judgment in Crl.A.197 of 2023 on the files of the Sessions Court, Thalassery. In the appeal, order of the Judicial Magistrate of the First Class,, Koothuparamba granting a residence order in favour of the petitioner was set aside. However, the respondents No.1 to 3 were directed to provide an alternative accommodation to the petitioner.

2. Heard the learned counsel for the petitioner, the learned counsel for respondents No.1 to 3 and the learned Public Prosecutor.

3. The petitioner filed M.C.No.43 of 2022 invoking the provisions of Section 12 of the PWDV Act with the following contentions:



The petitioner had been residing in the building in question along with her husband and respondent Nos.1 and 2. Her husband expired. She continued her residence there. That building and the property appurtenant thereto were purchased using the sale proceeds obtained by sale of residential property of her husband. On the assurance by respondents No.1 and 2, who are the petitioner's son and daughter-in-law, to protect and maintain the petitioner and her husband, new residential building was purchased in their name. The 3rd respondent is the mother of the 2nd respondent. She now tries to evict the petitioner from that building. Hence, she sought for a residence order.

4. Respondents No.1 to 3 filed an objection controverting the claims in the petition. The relationship was not disputed and the right of residence of the petitioner was not specifically denied. Respondent Nos.1 to 3 maintain that continuance of the petitioner in the shared household is against the interest of respondent Nos.1 and 2. Respondent Nos.1 and 2 are now in Qatar. The 1st respondent owes money



to several persons on account of the collapse of his business and the Supreme Judicial Council, State of Qatar ordered the 1st respondent to pay various amounts to his creditors. Owing to that there is travel ban for him. The shared household along with 92.05 cents of property was purchased by respondent Nos.1 and 2 using their own money. For that purchase they availed a loan of Rs.30 lakhs. Now, the said loan amount has become overdue and the bank has been taking steps for the attachment of the property. 30 cents of property was already sold for clearing debts owed by the 1st respondent's father. Unless the shared household and remaining property is sold, the 1st respondent would not be able to clear his debts and get the travel ban lifted. The petitioner has two daughters, who have ability to maintain her. It is at the instigation of her daughters, the petitioner has filed this petition. She filed a similar petition before the Maintenance Tribunal, Thalassery. A settlement was arrived at and accordingly the Tribunal ordered as per Ext.R7 to provide an alternative accommodation to the petitioner. Since there is



such a settlement and consequent order the petitioner is obliged to act in accordance with that order. The building for alternative accommodation has already been availed. The 1st respondent is prepared to pay the rent and amount required for the maintenance of the petitioner. Accordingly the petitioner sought to dismiss the petition.

5. After recording evidence, which consists of oral testimonies of PW1 and RWs.1 to 3 and Exts.P1, P2, R1 to R7, C1 and X1 to X3, the learned Magistrate granted an order of residence. Respondents No.1 to 3 were directed not to disturb petitioner's possession of the shared house in any manner. Alienation of the shared house was also prohibited.

6. The appellate court did not concur with the views taken by the learned Magistrate. The appellate court after considering the law laid down in **Vanitha S. v. Deputy Commissioner, Bengaluru Urban District [2020 (6) KHC 749]** took the view that the provisions of Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and the Protection of Women from Domestic Violence Act, 2005, shall,



so far as possible, be interpreted harmoniously. The learned Sessions Judge considered the evidence brought on record in detail. It was observed that if respondent Nos.1 and 2 are not able to sell the house and the property appurtenant thereto and clear the debt, there is every possibility for the Federal Bank taking over and selling the same. It was accordingly held that respondent Nos.1 and 2 are liable to be permitted to sell the house and property, and to direct respondent Nos.1 and 2 to provide an alternative accommodation to the petitioner. The order in Ext.R7 of the Maintenance Tribunal in that regard was held to be workable and the order of the learned Magistrate was liable to be set aside.

7. The learned counsel for the petitioner would submit that when a shared household is available, the appellate court ought not have opted for an alternative accommodation. It is submitted that such an order is against the principle laid down by the Apex Court in **Prabha Tyagi v. Kamlesh Devi [(2020) 8 SCC 90]**. True, the Maintenance Tribunal ordered as per Ext.R7 to provide an alternative accommodation to the



petitioner. The settlement, based on which Ext.R7 order was passed, is vitiated by coercion exerted by respondent Nos.1 and 2. In Spite of such an order, the Sessions Court could not abdicate from exercising its jurisdiction under Section 19 of the PWDV Act. An alternative accommodation can be ordered to be provided only in a case where the shared household is not available and submission of the learned counsel for the petitioner in this regard is that Section 19(1)(f) of the PWDV Act cannot be invoked in cases where the preceding clauses therein are workable.

8. The learned counsel for respondents No.1 to 3 would submit that those respondents do not have any reservation in allowing the petitioner to continue in the shared household. But, in the circumstances of this case, continuance of the petitioner in the shared household will soon become impossible. That apart, unless the said house and property are sold and funds are raised, the 1st respondent will end up in jail abroad, for not being able to satisfy the orders of the Supreme Judicial Council, Qatar. It was after taking into



account those facts, a compromise was arrived at in the proceedings before the Maintenance Tribunal. The compromise was at the intervention of the officials attached to the office of that Tribunal and there is no scope for an allegation that it is tainted. It was accordingly submitted that Ext.R7 order is legal, just and appropriate; besides being essential to save the 1st respondent from incarceration.

9. In **Prabha Tyagi** (supra) the Apex Court explained the extent of right of an aggrieved woman to have the right of residence under Section 17 of the PWDV Act. It was held that sub-section (1) of Section 17, which begins with a non-obstante clause states that 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. Sub- Section (2) states that an 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.



10. The said proposition certainly elucidates and explains the right of an aggrieved person not to be evicted or excluded from the shared household, except as per the procedure established by law. The Apex Court did not contemplate or enumerate the situations where an alternative accommodation can be ordered. When clause (f) of Sub-section (1) of Section 19 of the PWDV Act contemplates an alternative to the previous clauses, it cannot be said that clause (f) can be invoked only in a case where a shared household is not available. Depending upon the facts and circumstances of the case, the court can certainly decide whether protecting the right of the aggrieved person to reside in the shared household or providing her an alternative accommodation will meet the ends of justice.

11. No doubt, the provisions in the PWDV Act are benevolent and intending to protect the interest of aggrieved persons. That does not mean that while granting an order under the PWDV Act, the right and interest of the respondents do not require consideration at all. If an order of residence



would result in total negation and annihilation of the rights of the respondents and an alternative arrangement would reasonably protect the right of residence and interest of both parties, the court shall lean in favour of such an alternative arrangement.

12. The learned counsel for the petitioner in the above context submitted that the bank did not attach the building and the property in question yet and therefore the contentions of respondent Nos.1 to 3 cannot be countenanced. From Ext.X2 statement, it is evident that the loan availed by the respondents is overdue. Much time has elapsed even after production of Ext.X2 in court. When it is obvious that the amount of loan remains overdue, the action by the bank for recovery of the same is imminent. Similar is in the case of the amount allegedly due to various creditors from the 1st respondent in Oman. There is not much reason to disbelieve the version of RW1 in that regard.

13. It is submitted by the learned counsel for the petitioner that in order to clear the debt, sale of the property,



excluding the building is enough. The said contention also appears not sound for, the whole property appears to be under mortgage. The appellate court after taking into account all the aforesaid aspects held that it was just and appropriate to order respondent Nos.1 and 2 to provide alternative accommodation and to vacate the residence order. That is a view not giving primacy to Ext.R7 order. It is only that the order contained in Ext.R7, which was rendered in terms of the compromise entered into between the parties, is operational. From Ext.C1 commission report it is seen that a building abutting public road was availed on rent. Although it is small in size compared with the shared household, it has all the necessary facilities. Therefore providing such an alternative accommodation cannot be prejudicial to the interest of the petitioner.

14. It is certainly a concern that the rent of the building and maintenance of the petitioner are paid in time. The provision for maintenance is there in Ext.R7. By ensuring that the rent for the alternative accommodation could be paid



without any default, the directions in the judgment of the appellate court are liable, in the circumstances of this case, to be affirmed. Having due regard to all the circumstances emerging from the materials on record, including Ext.C1, respondent Nos.1 to 3 can be directed to make a deposit of an amount of Rs.3 lakhs in a bank in the name of the petitioner from which the monthly rent can be depleted. The petitioner shall be liable to make similar deposits when the said deposit amount is about to be exhausted. With that modification, the judgment of the Sessions Court in Crl.Appeal No.197 of 2023 is confirmed.

This Crl.R.P. is disposed of accordingly.

Sd/-

P.G. AJITHKUMAR, JUDGE

dkr