

**IN THE COURT OF SH. RAKESH KUMAR: ACMM: NEW DELHI**

Ashma

Vs.

Afsar Etc.

CC No.311/8

Date of institution :28.07.2008

15.10.2008

**ORDER**

Present: Parties with their respective counsels.

The applicant Smt. Ashma W/o Afsar has launched the present proceedings U/s 12 read with Section 17, 18, 19, 20 & 22 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as Act) against the respondents namely Afsar (her husband), Imran (brother-in-law), Khused and Nizam (the maternal uncles of her husband) with the following prayers:-

- (i).that the respondents may be directed to secure same level of alternate accommodation for the complainant as enjoyed by her in the shared house hold or to pay rent for the same;
- (ii).a protection order may be passed u/s 18 of the Act in favour of the applicant and against the respondents;
- (iii).monetary relief u/s 20 of the Act may be granted in favour of the applicant and against the respondents;
- (iv).compensation to the tune of Rs.3,00,000/- for damages including mental torture etc. order U/s 22 of the Act may be passed in favour of the applicant and against the respondents.

According to applicant the marriage/nikah of the applicant with respondent no.1 was solemnized about 24/25 years back at parental resident of the applicant at New Delhi according to Muslim rites and customs. In the marriage the handsome dowry was given to the respondent. After marriage the applicant joined the matrimonial home at Jafrabad. The marriage was duly consummated and three children were born out of this wed lock. Soon after the marriage, the father of applicant and the applicant were scolded

by the relatives of the respondent on the pretext of insufficient dowry, particularly for not bringing the scooter. The applicant was also being beaten by them but she kept on tolerating the same with the hope that one day the good sense will prevail upon the respondents. She was being beaten with danda. Parents of applicant later on paid Rs.25,000/-, Rs.15,000/- and Rs.7,000/- to respondent no.1, so that the life of the applicant could change but they were not satisfied as their demand was raised to the tune of Rs.50,000/-. Their greed became so grave that the maternal uncles of respondent no.1 incited him to put kerosene oil on the body of applicant and they even tried to put fire but the applicant somehow managed to save herself by saying that she would bring the money. Ultimately, the applicant was kicked out of her matrimonial home in the year 1997 and her entire articles including the jewellery were retained by them. Subsequently, the applicant came to know that the respondent no.1 got married with some one and living with her without the consent of applicant. The applicant was left with no alternative but to file a complaint at CAW Cell upon which FIR no.503/99 U/s 498A/406/34 IPC was registered at PS Ambedkar Nagar. The children of applicant were brought up by her without having any resources and not even education could be provided to the children. The respondent no.1 is earning handsomely. His income is more than Rs.25,000/- per month. He is having a very big and luxurious house. The applicant is now seeking protection, residence, possession of her stridhan, jewelry and clothes etc. she is also praying for the award of compensation in her favour. The application is supported by the affidavit of the applicant. Alongwith the application, the applicant has also filed an application u/s23 of the Act for grant of interim relief to the tune of Rs.6,000/- per month.

The respondents contested the application by filing the reply in which it is claimed that the present application is totally based on wrong facts. Even to the knowledge of the applicant herself she is not residing in Delhi, rather she is residing in Kasba Baxer Village Sambhawali District Ghaziabad U.P. The applicant has intentionally concealed this fact that she herself deserted the respondent no.1 on 14.01.1995.

respondent no.3 & 4 are not the resident of Delhi. As per the allegations of the applicant herself the alleged act of domestic violence occurred in 1997 and during the period prior to 1997 and that the present act came into force in the year 2005 and the act has not retrospective effect and hence this application is not maintainable. It is further submitted that the applicant herself willfully left the company of respondent no.1 on 14.01.1995 with her brother Sh. Mohd. Farooq on the pretext that she was going to meet her parents at her native place. While going to her native place she took away all her gold and silver jewellery and other valuable in a trunk alongwith two sons namely Mohd. Parvez and Mohd. Javed. The respondent no.1 made repeated efforts for bringing the applicant back to her matrimonial home but she remained adamant and did not join the company of respondent no.1. Even notices were issued in this regard but they also brought no fruitful result. It is denied that the the marriage/nikah took place in Delhi, rather it solemnized at Kasba Buxer, P.S. Buxer, Village Sambhabli, District Ghaziabad U.P. It is specifically stated that respondents never harassed to the applicant. Spending of amount of Rs.2.5 lacs to Rs.3.00 lacs by the father of the applicant in the marriage/nikah is also denied. The respondent no.1 is doing the work of Kabari and he is hardly earning Rs.3,000/- per month. On the other hand the applicant is residing in Baxer Ghaziabad and she is earning Rs.5,000/- per month from selling the Buffalo milk. Both the sons of the applicant are also earning handsomely. The respondent no.1 does not have any house in Delhi. He is living in one room accommodation with his son (from second marriage) in his mother's house. Since the applicant herself deserted the company of respondent no.1 and she was never subjected to any injury, metal torture and imotional distress, so she is also not entitled for any relief of compensation.

The applicant did not file any rejoinder to the reply of the respondents.

I have gone through the contents of the application and also the reply filed by the respondents. I have also heard the Ld. Counsels for the parties.

It is an admitted fact that the applicant is not residing with the respondents at her matrimonial house after leaving the same in the year 1997, rather she has been

residing with her parents since more than a decade. It is also not denied that after leaving the company of respondent no.1, the application never came back. All the allegations of domestic violence and harassment etc. pertain to the period prior to the year 1997 i.e. much before the present Act came into force i.e. the year 2005. The Act also not does not have retrospective effect. It is also not denied that the applicant as well as her both the sons are the earning hands. As such in my considered opinion, the application is devoid of merits and accordingly the same is hereby dismissed.

With this, the petition stands disposed off.

File be consigned to Record Room.

Announced in the open Court  
today i.e 15<sup>th</sup> October, 2008.

**(RAKESH KUMAR)**  
**Addl. Chief Metropolitan Magistrate**  
**New Delhi**