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

% ***Date of Decision: 06th May, 2026***

+ CRL.M.C. 4982/2023, CRL.M.A. 18955/2023, CRL.M.A. 18956/2023, CRL.M.A. 16394/2024 & CRL.M.A. 649/2025

NIHARIKA GHOSH @ NIHARIKA KUNDUPetitioner

Through: Mr. Vivek Sood, Senior Advocate
with Mr. O.P. Gulabani, Mr. Pankhuri
Jain and Ms. Sanskriti Tiwari,
Advocates along with
petitioner-in-person

versus

SHANKAR GHOSH & ANR.Respondents

Through: Ms. Inkle Roy Baroah, Advocate for
R-1 & R-2

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. The point raised in the present petition is a very short one.
2. Petitioner herein had filed a complaint under Section 12 *Protection of Women from Domestic Violence Act, 2005* and during the pendency of the aforesaid petition, she filed an application for recalling of one earlier order dated 25.11.2021 *qua* repair of the portion occupied by her and to provide her with alternative accommodation in the same shared household.
3. Prayer of the aforesaid application reads as under: -

“In view of the above said facts and considering the totality of the circumstances it is most respectfully prayed that this Hon'ble Court, may kindly be pleased to

(i) Recall the order dated 25.11.2021 qua the repairs of the portion in use and occupation of the aggrieved;



(ii) Direct the respondent no. 1 to provide alternative accommodation of similar in size and amenities in the same shared household;
(iii) Any other or further order/s in favour of the aggrieved may also be passed in the interest of justice.”

4. According to petitioner, the portion in which she was residing was, almost, inhabitable but according to her, there was another portion in the shared household which was lying unoccupied and, therefore, she prayed that she should be shifted to such alternate accommodation, *albeit*, situated in the same shared household.

5. According to respondent, there was no other portion in the shared household.

6. Fact remains that learned Trial Court, while deciding the application, did not give any specific observation with respect to the aforesaid fact – whether there is any alternate accommodation in the shared household or not, and after taking note of the rival contentions, learned Trial Court thought it appropriate that complainant be provided an alternate accommodation at some other place outside her shared household. Relevant portion of the aforesaid order reads as under: -

“It is interesting that respondent is ready to put complainant in alternate accommodation at some other place, however, complainant is not ready to vacate her shared household. In fact, this seems to be real bone of contention between the parties. The objective of providing right to residence to the wife under DV Act was that she should not be left homeless by an action of the husband. In a situation like this and also considering the long history of acrimony and dispute between the parties on the same issue, I find it appropriate that complainant should be provided an alternate accommodation at some other place outside of her shared household. This is more so, as complainant is also pleading that respondent commits violence upon her and also restricts water supply to her of the property. When complainant will be put to the alternate accommodation outside of her shared household, all these issues will come to rest for once and all. I cannot pursue myself to agree with the complainant that she should be put in the other portion available on the



first floor of the property as the same is already in occupancy of the tenants.

In the case of Ajay Kumar Jain Vs. Baljeet Kaur Jain 160 (2009) DLT 401 (DB), Hon'ble High Court of Delhi also observed that 'a wife cannot have right to live in a particular property and the same cannot become a clog on the property denying the right of the husband to deal with the property when he is willing to provide an alternate accommodation to her. It was also held that wife cannot insist on residing in the same property when husband offered to provide a suitable alternative arrangement for her'.

In view of the observations and judicial pronouncement as discussed above, this court is of the view that the offer given by respondent to put complainant in alternate accommodation outside of her shared household seems to be quiet just and reasonable. Respondent is hereby directed to find a suitable accommodation in the same locality as that of his house for residence of his wife within four weeks. Or otherwise, complainant is at liberty to find suitable accommodation for herself on her own and respondent would give her Rs. 10,000/- per month towards rent in lieu of alternate accommodation as per the prevailing market rate. Respondent will pay at least three months rent in advance to complainant.

*Application is disposed off accordingly.
Put up for further proceedings on 08.09.2023.
Copy of this order be given as dasti."*

7. Feeling aggrieved by the aforesaid order, an appeal was filed by the petitioner under Section 29 of *Protection of Women from Domestic Violence Act, 2005* and even such appeal has been dismissed by the learned Sessions Court on 04.07.2023.
8. Such orders are under challenge.
9. The sole contention coming from the side of the petitioner is to the effect that learned Trial Court has given a relief, which was never sought for.
10. Prayer clause has already been extracted above.
11. It is quite obvious that petitioner was, merely, interested in having an "alternate accommodation within the shared household".
12. If there was no alternate accommodation within the shared household,



the application could have been dismissed, where the learned Trial Court has, indirectly, asked her to leave her shared household which she never prayed or wished.

13. Unfortunately, the learned Trial Court missed the aforesaid important aspect of the case and has directed provision for suitable accommodation outside the shared household.

14. Learned counsel for respondent, during course of the arguments, submitted that though respondent did not have any alternate accommodation within the shared household but she, in all fairness, admitted that there is no specific observation in this regard in the impugned order.

15. In view of the above, since there is apparent illegality in the impugned orders as learned Trial Court has gone beyond the scope of the application and has given her relief which she never wanted and prayed, the impugned orders dated 08.06.2023 and 04.07.2023 are hereby set aside and learned Trial Court is requested to re-consider the aforesaid application, after giving due opportunity of hearing to both the sides.

16. Present petition is accordingly disposed of in aforesaid terms.

17. It is, however, clarified that this Court has not given any observation with respect to the merits of the abovesaid application and learned Trial Court would be at liberty to decide the same, without being influenced or prejudiced by any observation appearing hereinabove.

18. Pending applications also stand disposed of in aforesaid terms.

(MANOJ JAIN)
JUDGE

MAY 6, 2026/dr/sy