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

% **Pronounced on: 15th November, 2021**

\+ **CM(M) 380/2021 & CM APPL.17058/2021 (by the petitioner for grant of ad-interim stay)**

SNEHA AHUJA ..... Petitioner

Through: Mr. J.P. Sengh, Senior Advocate with Mr. Prashant Mehta and Mr. Himanshu Kapoor, Ms. Manisha Mehta and Mr. R.L. Sinha, Advocates

Versus

SATISH CHANDER AHUJA & ANR. .....Respondents

Through: Mr. Prabhjit Jauhar, Advocate.

CORAM:
HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

1. This petition under Article 227 of the Constitution of India has been filed by the petitioner seeking the setting aside of the order dated 19th April, 2021 passed by the learned Additional District Judge (ADJ), South-East District Saket, New Delhi in CS No.792/2017 filed by the respondent No.1 against the petitioner herein.

2. Before coming to the impugned order, a few facts may be set out.

3. The petitioner is the wife of the respondent No.2 and daughter-in-law of the respondent No.1. The respondent No.1 filed a suit being CS No.792/2017 against the petitioner for eviction from Property No.D-077,

New Friends Colony, New Delhi-110025 (hereinafter referred to as the suit premises) wherein an application under Order XII Rule 6 of the Code of Civil Procedure, 1908 ('CPC' for short) filed by the respondent No.1 resulted in the order dated 8th April, 2019 whereby the suit was decreed. Against this decree, a Regular First Appeal (RFA) was filed by the petitioner being RFA No.381/2019. This RFA was disposed of along with several other matters by a Co-ordinate Bench of this court vide judgment dated 18th December, 2019 whereby the decree dated 8th April, 2019 was also set aside and the matter was remanded back to the learned Trial Court for fresh adjudication. The respondent No.2 was also impleaded in the suit pursuant to the directions issued by this court on 18th December, 2019.

4. Being aggrieved by these directions issued by this court, the respondent No.1 preferred an appeal before the Supreme Court being Civil Appeal No.2483/2020 which was dismissed vide judgment dated 15th October, 2020.

5. The impugned order dated 19th April, 2021 has been passed by the learned Trial Court on an application filed by the respondent No.1 under Section 19(1)(f) of the Protection of Women from Domestic Violence Act, 2005 ('DV Act' for short). Prior thereto, vide its order dated 29th January, 2021, the learned Trial Court had held that the respondent No.1 was entitled to file such an application seeking interim relief directing the petitioner to shift to an alternate accommodation on payment of rental amount by the respondents. This order was challenged before this court through CM(M) No.179/2021 which was disposed of vide order dated 2nd

March, 2021 directing the Trial Court to adjudicate the application remaining uninfluenced by any observation made by it in its order dated 29th January, 2021.

6. The learned Trial Court vide the impugned order dated 19th April, 2021 allowed the application of the respondents and issued the following directions:

> *"38. In the light of aforesaid discussion, the present application under Section 19(1)(f) of the D.V. Act filed on behalf of plaintiff is allowed with following directions:*
>
> *(i) The Plaintiff and defendant no.2 shall jointly or severally pay a total sum of Rs.1,60,000 as an advance amount of the two months rental value to the defendant no.1 in her bank account before 10th May, 2021 in order to enable her to take on rent a suitable accommodation for herself.*
>
> *(ii) Ther the plaintiff and defendant no.2 jointly or severally pay next monthly payment of Rs.80,000 within 30 days i.e. by 10th June, 2021 and after that on the succeeding month by tenth day of every month directly into her bank account.*
>
> *(iii) Upon the said payment being commenced, the daughter-in-law (Defendant no.1) shall vacate the suit property within 40 days from the date of first payment or counting from 01.05.2021 whichever is later e.g. if the payment of Rs.1,60,000 is received on 05.05.2021, she will vacate by 15.06.2021 after receiving the next instalment of Rs.80,000 by 10.06.2021.*
>
> *(iv) The advance amount of Rs.1,60,000 shall not be adjusted in next monthly instalment till further orders.*
>
> (v) *This order is subject to final decision of the present suit."*

7. Aggrieved by the impugned order, the present petition has been filed by the defendant No.1 in the suit.

8. Extensive arguments have been advanced by Mr. J.P. Sengh, learned senior counsel on behalf of the petitioner and Mr. Prabhjit Jauhar, learned counsel on behalf of the respondents. The learned counsel have quoted extensively from the judgment dated 18th December, 2019 of the Co-ordinate Bench of this Court and the judgment dated 15th October, 2020 of the Supreme Court to bolster their respective submissions.

9. Mr. J.P. Sengh, learned senior counsel for the petitioner has submitted that the learned Trial Court had completely misdirected itself in its understanding of the directions of the High Court as well as the Supreme Court. According to the learned senior counsel, the Supreme Court had underlined the need for determining the question, whether the premises constituted "*shared household*", and was of the view that evidence was required to determine this question. Thus, the learned Trial Court could not have, in this summary manner, directed the eviction of the petitioner from the suit premises, where she had been residing for about twenty years.

10. The learned senior counsel submitted that the petitioner and the respondent No.2 were married in the year 1995, and she had come into and had started living on the first floor of the suit premises since then. However, in the year 2004, the respondent No.2 shifted to the ground floor with his parents, though an attempt was made to pretend that he had shifted elsewhere. Further, it was submitted that the respondent No.2 filed a divorce petition in 2014. Thereafter, an effort had been made to

somehow throw the petitioner out of her matrimonial home. It was submitted that the petitioner had pleaded in her written statement that the suit premises had been purchased with funds from the joint family business and therefore, was not the self acquired property of the respondent No.1. This question had to be decided only after evidence had been brought on record. However, even if the suit premises belonged to the respondent No.1, nevertheless, since it was a shared household, the petitioner could not be evicted without proper adjudication of facts.

11. The learned senior counsel further argued that an application under Section 19 of the DV Act could be filed only by the "*aggrieved person*", to seek an alternate residence and it was in that context that the High Court had observed that the learned Trial Court would be empowered to consider the question for grant of an alternate residence to the petitioner. It was not as if the High Court had issued directions to the respondents to move such an application and made it binding on the learned Trial Court to pass eviction orders subject to provision of alternate accommodation. Such an understanding of the directions by the learned Trial Court was erroneous.

12. It was further submitted by the learned senior counsel for the petitioner that the learned Trial Court ought to have abided by the caution of the High Court that the orders granting alternate accommodation could not be rendered "meaningless". However, without considering the fact that the respondent No.2/husband had not paid the maintenance which was in arrears and for which execution had to be filed and that the respondent No.2/husband had also applied to the court to modify the

order as he claimed he was unable to pay the electricity charges, it accepted the offer of the respondents to pay the rent for alternate accommodation. Moreover, in the time of Covid-19, the learned Trial Court had directed the petitioner to herself search out an alternate accommodation and vacate the suit premises. Such an order was against the spirit of the directions of the High Court. Therefore, the impugned order was liable to be set aside.

13. It was also submitted by the learned senior counsel for the petitioner that since the Supreme Court had come to the view that the decision in ***S.R. Batra Vs. Taruna Batra*** (2007) 3 SCC 169 was not correct, the directions issued by the High Court being based on ***Vinay Verma Vs. Kanika Pasricha*** 2019 SCC OnLine Del 11530, itself following ***S.R. Batra*** (supra), stood modified by the directions issued by the Supreme Court, particularly to the effect that the question of a shared household was a matter of evidence and trial. Therefore, the learned Trial Court in the instant case could not have allowed an application moved by the respondents and directed the petitioner to shift out of the suit premises. It was further submitted that the Supreme Court in ***S. Vanitha Vs. Deputy Commissioner, Bengaluru Urban District*** 2020 SCC OnLine SC 1023 had held that even where there was a non-obstante clause such as in the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 ('Senior Citizens Act, 2007' for short), wherever the question of '*shared household*' arose, that question had to be considered first. In the light of all these submissions, the learned senior counsel urged that the impugned order was liable to be set aside.

14. Mr. Prabhjit Jauhar, learned counsel appearing on behalf of the respondents submitted that the petition itself was not maintainable and that this Court could not sit in appeal over the decision of the learned Trial Court. According to the learned counsel, the decision of the High Court had been affirmed by the Supreme Court, particularly in para 83 of the judgment of the Supreme Court and it would be against judicial discipline to look into the issue again. The decision of the Supreme Court being *inter partes* had decided the question finally and the parties were governed by the principles of *res judicata* and could not re-agitate the issue of the right of the respondents to offer alternate accommodation to the petitioner. It was submitted that the High Court had specifically granted such a right to the respondents to move an application offering alternate accommodation which was to be considered by the learned Trial Court. Therefore, the learned Trial Court was not wrong in allowing the respondents to move that application and then direct the petitioner to shift out of the suit premises. The learned counsel submitted that the Supreme Court upheld the directions issued by the High Court, specifically observing that it balanced the rights of both parties. There was no question of any merger as the appeal filed by the respondents had been dismissed. The petitioner on the other hand had not challenged the High Court order. The learned counsel further submitted that the petitioner could claim a right for a roof over her head but could not claim a proprietary right and that too in respect of a particular premises. All that the petitioner wanted was to squat over the suit premises which had been built in 1983 with no modern amenities.

15. It was further submitted that the concept of '*shared household*' would be relevant only where the woman was an aggrieved person under the DV Act, having been subjected to domestic violence. According to the learned counsel, it was for determination of this question, as to whether the petitioner had been subjected to domestic violence, that the case had been remanded back to the learned Trial Court for recording of evidence. Once the petitioner failed to discharge that burden and was unable to prove that she was being subjected to domestic violence, her claim to shared household or a right of residence under the DV Act would fail. Thus, the issue to be determined by the learned Trial Court was with regard to the subjection of the petitioner to domestic violence and not the question, whether the premises formed a '*shared household'*.

16. It was further submitted that the presence of the petitioner on the first floor of the suit premises caused great distress to the respondent No.1 and his wife, as they were being threatened and abused by the petitioner in their old age. It was also submitted that the wife of the respondent No.1 had also filed a police complaint against the petitioner but since the petitioner had withdrawn the case against the brother-in-law, the mother-in-law also withdrew her complaint against the petitioner. The learned counsel submitted that even in the presence of the Police, the petitioner had slapped her brother-in-law. Furthermore, she not only filed a case in her own capacity against the respondent No.2/husband under the DV Act but also instituted a case under the DV Act on behalf of the elder daughter of the petitioner and respondent No.2/husband who was presently studying in United Kingdom (UK). In that petition, the

petitioner had claimed 1/9th share on behalf of the elder daughter in the Karol Bagh property. Thus, she was continually harassing the respondents.

17. With regard to the maintenance, the learned counsel submitted that the order for arrears had been passed in January, 2021 and the entire arrears had been paid. Rs.80,000/- was fixed by the learned Trial Court for enabling the petitioner to take on rent a 2 BHK flat, after assessing the extent of area presently in possession of the petitioner. Admittedly, she had only two rooms on the first floor but now she had expanded her demands which were rightly rejected by the learned Trial Court. Thus, the learned counsel submitted that the learned Trial Court had acted within the parameters of the directions issued by the High Court and it was not available to the petitioner to re-agitate concluded matters.

18. In rejoinder, Mr. J.P. Sengh, learned senior counsel submitted that the petitioner was not asking for residence in a particular property but was asserting her right to remain in her shared household. It was submitted that it would be improper to say that a daughter-in-law is squatting in the suit premises to which she was brought after marriage. Further, it was pointed out that in CM(M) 179/2021 filed by the petitioner against the order dated 29th January, 2021, the Co-ordinate Bench of this Court had held that there was no automatic eviction as per para 56(iii) of the judgment dated 18th December, 2019 and thus the argument of the learned counsel for the respondents was misplaced. Furthermore, the judgment of the High Court was a common judgment in five other matters and therefore orders had to be seen as applicable to each of the

cases on their own facts. It was submitted that the respondents had a thriving business and despite the respondent No.2/husband being a 1/3rd partner in a Rs.100 crores business and the property having been purchased by the grandfather out of the said business funds, the petitioner was being denied her rights. The High Court had itself observed that an order of alternate accommodation must be a meaningful one but the same was lacking in the impugned order. As such, the impugned order was liable to be set aside.

19. At the outset, it has to be kept in mind that this Court is concerned only with the impugned order dated 19th April, 2021, so far as to see, whether it is without error or perversity, not considering irrelevant factors while ignoring relevant factors. As has been held in ***India Pipe Fitting Co. Vs. Fakruddin M.A. Baker*** (1977) 4 SCC 587, the powers under Article 227 of the Constitution of India are not the same as those of an Appellate Court. What concerns this Court is, whether the decision of the learned Trial Court was or was not appropriate.

20. The learned Single Judge of this Court had in para-No.56 of the judgment dated 18th December, 2019, while holding that it was not looking into the question of "*shared household*" since the matter was pending before the Magistrate, passed the following directions:

> *"56. In these circumstances, the impugned judgments cannot be sustained and are accordingly set aside. The matters are remanded back to the trial Court for fresh adjudication in accordance with the directions given hereinbelow:*
>
> *(i) At the first instance, in all cases where the respondent's son/the appellant' husband has not been impleaded, the trial*

Court shall direct his impleadment by invoking its suo motu powers under Order I Rule 10 CPC.

(ii) The trial Court will then consider whether the appellant had made any unambiguous admission about the respondent's ownership rights in respect of the suit premises; if she has and her only defence to being dispossessed therefrom is her right of residence under the DV Act, then the trial Court shall, before passing a decree of possession on the sole premise of ownership rights, ensure that in view of the subsisting rights of the appellant under the DV Act, she is provided with an alternate accommodation as per Section 19(1)(f) of the DV Act, which will continue to be provided to her till the subsistence of her matrimonial relationship.

(iii) In cases where the appellant specifically disputes the exclusive ownership rights of the respondents over the suit premises notwithstanding the title documents in their favour, the trial Court, while granting her an opportunity to lead evidence in support of her claim, will be entitled to pass interim orders on applications moved by the respondents, directing the appellant to vacate the suit premises subject to the provision of a suitable alternate accommodation to her under Section 19(1)(f) of the DV Act, which direction would also be subject to the final outcome of the suit.

(iv) While determining as to whether the appellant's husband or the in-laws bears the responsibility of providing such alternate accommodation to the appellant, if any, the trial Court may be guided by paragraph 46 of the decision in ***Vinay Verma*** *(supra).*

(v) The trial Court shall ensure that adequate safeguards are put in place to ensure that the direction for alternate accommodation is not rendered meaningless and that a shelter is duly secured for the appellant, during the subsistence of her matrimonial relationship.

(vi) This exercise of directing the appellant to vacate the suit premises by granting her alternate accommodation will be

completed expeditiously and not later than 6 months from today."

21. The Supreme Court in its judgement dated 15th October, 2020 concluded that since under Section 26 of the DV Act, Civil Courts could also consider the issuance of various directions under Section 19 of the DV Act, the question of "*shared household*", if raised before it, would have to be considered by the Civil Courts as well. It observed that the impleadment of the husband as a respondent was to be in the discretion of the Trial Court as per the facts and circumstances of each case. It was also observed that the orders of the Magistrate would have to be taken into consideration by the Civil Court while considering eviction of the daughter-in-law from the shared household. The Supreme Court also held that the directions issued vide judgment dated 18th December, 2019 adequately balanced out the mutual rights of the parties.

22. The learned Trial Court at the first instance had asked for an application to be moved by the present respondents under Section 19(1)(f) of the DV Act. This was challenged by the petitioner in CM(M) No.179/2021 which was disposed of by the Co-ordinate Bench of this Court vide order dated 2nd March, 2021 rejecting the contention of the counsel for the petitioner that the Supreme Court barred the maintainability of an application offering alternate accommodation to the petitioner. At the same time, it was clarified that such an application could not be allowed as a matter of routine and had to be considered by the learned Trial Court on the facts and circumstances of each case and that the mere offer of an alternate accommodation was not the

determining factor for allowing such an application. It further directed the learned Trial Court in the instant case to adjudicate on the application remaining uninfluenced by any of the observations that it had made in its order dated 29th January, 2021.

23. With this preliminary note, we may come to the impugned order. On a perusal of the impugned order dated 19th April, 2021, the following may be taken note of:-

(i) That with reference to the arguments of the learned counsel for the petitioner before the learned Trial Court that the issues raised by both the parties were to be decided on the basis of evidence led by them and that the application under Section 19(1)(f) of the DV Act was not maintainable, following the order dated 2nd March, 2021 in CM(M) No.179/2021 of this Court, it felt bound to follow the observations made therein to decide the issue afresh.

(ii) That in the opinion of the learned Trial Court, the observations of the Supreme Court in Civil Appeal No.2483/2020 related to evidence and pleading with reference to the right of residence of the petitioner and not a right of the respondents to offer an alternate accommodation on rent.

(iii) That it was further of the opinion that these observations were on the aspect of passing of a judgment on admission under Order XII Rule 6 of the CPC and on the interpretation of the judgment of ***S.R. Batra*** (supra) and not in the context

of considering the right of the parties under Section 19(1)(f) of the DV Act.

(iv) That since the Supreme Court had upheld the directions of the High Court in para No.56 of RFA No.381/2019 contained in the judgment dated 18th December, 2019, the Trial Court was bound by the said directions.

(v) That the predicaments of the senior citizens must be kept foremost in the mind as otherwise the purpose of the filing of the suit would get defeated.

Being so guided, the learned Trial Court allowed the application of the respondents, calculating the area in the occupation of the petitioner and the rent that would be payable to enable her to take a similar accommodation and further granted 40 days time from the date of first payment viz. 15th June, 2021 to vacate the premises. Thus, these aspects need to be considered to arrive at a conclusion on the reasonableness of the impugned order.

24. The Supreme Court had considered the right of residence under the DV Act which includes the right of alternate residence and held that the right of residence would depend on evidence being led on there being a shared household and domestic violence, which were to be pleaded and proved by way of evidence. The right to residence is closely connected to the aspect of '*shared household'* and it is where situations were such that made it impossible for continued residence in a shared household, that the question of alternate residence would arise. The right to seek alternate residence thus flows from the right to a residence. Technically, it is the

aggrieved person who can file an application including under Section 19(1)(f) of the DV Act. However, this Court had in the judgment dated 18th December, 2019 permitted the husband and in-laws to move an application under Section 19(1)(f) of the DV Act even before the Civil Court where their suit was pending.

25. This Court is therefore, of the view that reading the judgment of the Supreme Court narrowly and compartmentalizing reliefs, the relief sought into a right of residence and the other to a right to provide alternate residence as opined by the learned Trial Court, would be flawed. If this reasoning was to be accepted, then once the "right" of the parents-in-law/husband to "provide" an alternate residence fructified in an order directing the petitioner to shift to that residence without reference to evidence that she was entitled to lead, she would be precluded straightaway from establishing her case of joint ownership and shared household, which is not what this court and the Supreme Court has held. The alternate residence is to be considered as an interim arrangement subject to final orders in the suit, which final orders would be founded on evidence in respect of the existence of domestic violence, shared household and joint family ownership.

26. The learned Trial Court has missed the point that the Supreme Court held that the High Court as other Civil Courts, when faced with the claim of shared household or joint ownership as raised by a daughter-in-law against her husband and in-laws, had to consider the issue of the existence of a "*shared household*" which would have a significant impact on her right to continue residing in the same premises. To say, therefore,

that the observations of the Supreme Court were limited to the interpretation of the judgment in ***S.R. Batra*** (supra) and had no bearing on the question of the rights of the parties under Section 19(1)(f) of the DV Act is a completely erroneous understanding of the judgment.

27. The learned Trial Court seems to have misdirected itself even while following the directions of the High Court encapsulated in para 56 thereof. The learned Trial Court read only sub-paras (iii) & (vi) of para 56 to assume that these were binding directions to the Trial Courts that in all cases, while allowing defendants before them being the wives/daughters-in-law, an opportunity to prove their defence of joint ownership (as also shared household now, in view of the judgment of the Supreme Court) to without exception, within six months, pass "orders of eviction" against them after "calling" for applications in this regard.

28. This was neither the intent nor the purpose of the said directions. As noticed, under the DV Act, it is the "aggrieved person" who can move the court for relief including residence. This court by issuing directions in para 56(iii) allowed the in-laws or the husband to move applications and also empowered the courts to allow such applications, directing the provision of suitable alternate accommodation to the defendant/daughter-in-law/wife. However, it was also clarified that when such an application was moved and was being considered by the learned Trial Court, care was to be taken to dispose the same expeditiously within six months. The disposal cannot mean only an order of eviction.

29. Unfortunately, while the learned Trial Court felt "bound" to follow the directions in para 56, it has completely ignored the caution issued in

para 56(v) which is reproduced below for ready reference:

> *"56. ....*
>
> *(i) ...*
>
> *(ii) ....*
>
> *(iii) ....*
>
> *(iv) ....*
>
> *(v) The trial Court shall ensure that adequate safeguards are put in place to ensure that the direction for alternate accommodation is not rendered meaningless and that a shelter is duly secured for the appellant, during the subsistence of her matrimonial relationship.*
>
> *(vi)...."*
>
> (***emphasis added***)

30. What the learned Trial Court has done is totally at variance with this direction. But before proceeding further we may consider two other aspects. Finding the facts of both the cases similar and in view of the fact that this court had in ***Vinay Verma's*** case directed the father-in-law and husband of the petitioner to provide an alternate accommodation and had fixed a rent payable month by month into her bank account, the learned Trial Court also has issued an order of eviction against the petitioner while granting rent to be paid by her husband and father-in-law. However, it is considered apposite to reproduce the guidelines issued by the Co-ordinate Bench of this Court in ***Vinay Verma's*** case:

> *"58. However, later decisions of various High Courts have, while giving divergent opinions on the concept of 'shared household', followed one uniform pattern in order to protect the daughter-in-law and to provide for a dignified roof/shelter for her. The question then arises as to whether the obligation of providing the shelter or roof is upon the in-laws or upon the*

husband of the daughter-in-law i.e., the son. Some broad guidelines as set out below, can be followed by Courts in order to strike a balance between the PSC Act and the DV Act:

> *1. The court/tribunal has to first ascertain the nature of the relationship between the parties and the son's/daughter's family.*
>
> *2. If the case involves eviction of a daughter in law, the court has to also ascertain whether the daughter-in-law was living as part of a joint family.*
>
> *3. If the relationship is acrimonious, then the parents ought to be permitted to seek eviction of the son/daughter-in-law or daughter/son-in-law from their premises. In such circumstances, the obligation of the husband to maintain the wife would continue in terms of the principles under the DV Act.*
>
> *4. If the relationship between the parents and the son are peaceful or if the parents are seen colluding with their son, then, an obligation to maintain and to provide for the shelter for the daughter-in-law would remain both upon the in-laws and the husband especially if they were living as part of a joint family. In such a situation, while parents would be entitled to seek eviction of the daughter-in-law from their property, an alternative reasonable accommodation would have to be provided to her.*
>
> *5. In case the son or his family is ill-treating the parents then the parents would be entitled to seek unconditional eviction from their property so that they can live a peaceful life and also put the property to use for their generating income and for their own expenses for daily living.*
>
> *6. If the son has abandoned both the parents and his own wife/children, then if the son's family was living as part of a joint family prior to the breakdown of relationships, the parents would be entitled to seek possession from their daughter-in-law, however, for a reasonable period they would have to provide some shelter to the daughter-in-law*

during which time she is able to seek her remedies against her husband."

Significantly, it is for the learned Trial Court to determine the nature of relationship between the parties and to permit eviction, if the relationship was acrimonious. The learned Trial Court was also to ascertain, whether the daughter-in-law was residing in a joint family. This was to be during the subsistence of the matrimonial life. But the learned Trial Court has not dealt with these aspects at all as it felt bound to call for the application from the respondents and issue an eviction order forthwith. Important facts have been overlooked.

Secondly, the judgment of the Supreme Court in ***S. Vanitha*** (supra) needs to be taken into account while balancing the rights of the daughter-in-law and the senior citizens. In that case, a daughter-in-law was directed by the Tribunal to be evicted as her in-laws were senior citizens and the order of eviction had actually been obtained under the Senior Citizens Act, 2007. Interestingly, the Supreme Court referred to its judgment in the SLP filed by the respondent No.1 herein, as well as the intent and purpose of both the enactments namely the Senior Citizens Act, 2007 and the DV Act to hold as below:

"37. In this case, both pieces of legislation are intended to deal with salutary aspects of public welfare and interest. The PWDV Act 2005 was intended to deal with the problems of domestic violence which, as the Statements of Objects and Reasons sets out, "is widely prevalent but has remained largely invisible in the public domain". The Statements of Objects and Reasons indicates that while Section 498A of the Penal Code, 1860

created a penal offence out of a woman's subjection to cruelty by her husband or relative, the civil law did not address its phenomenon in its entirety. Hence, consistent with the provisions of Articles 14, 15 and 21 of the Constitution, Parliament enacted a legislation which would "provide for a remedy under the civil law which is intended to protect the woman from being victims of domestic violence and to prevent the occurrence of domestic violence in the society". The ambit of the Bill has been explained thus:

"4. The Bill, inter alia, seeks to provide for the following:—

(i) It covers those women who are or have been in a relationship with the abuser where both parties have lived together in a shared household and are related by consanguinity, marriage or through a relationship in the nature of marriage or adoption. In addition, relationships with family members living together as a joint family are also included. Even those women who are sisters, widows, mothers, single women, or living with the abuser are entitled to legal protection under the proposed legislation. However, whereas the Bill enables the wife or the female living in a relationship in the nature of marriage to file a complaint under the proposed enactment against any relative of the husband or the male partner, it does not enable any female relative of the husband or the male partner to file a complaint against the wife or the female partner.

(ii) It defines the expression "domestic violence" to include actual abuse or threat or abuse that is physical, sexual, verbal, emotional or economic. Harassment by way of unlawful dowry demands to the woman or her relatives would also be covered under this definition.

(iii) It provides for the rights of women to secure housing. It also provides for the right of a woman to reside in her matrimonial home or shared household, whether or not she has any title or rights in such home or household. This right is secured by a residence order, which is passed by the Magistrate.

(iv) It empowers the Magistrate to pass protection orders in favour of the aggrieved person to prevent the respondent from aiding or committing an act of domestic violence or any other specified act, entering a workplace or any other place frequented by the aggrieved person, attempting to communicate with her, isolating any assets used by both the parties and causing violence to the aggrieved person, her relatives or others who provide her assistance from the domestic violence.

(v) It provides for appointment of Protection Officers and registration of non-governmental organisations as service providers for providing assistance to the aggrieved person with respect to her medical examination, obtaining legal aid, safe shelter, etc."

38. The above extract indicates that a significant object of the legislation is to provide for and recognize the rights of women to secure housing and to recognize the right of a woman to reside in a matrimonial home or a shared household, whether or not she has any title or right in the shared household. Allowing the Senior Citizens Act 2007 to have an overriding force and effect in all situations, irrespective of competing entitlements of a woman to a right in a shared household within the meaning of the PWDV Act 2005, would defeat the object and purpose which the Parliament sought to achieve in enacting the

> *latter legislation. The law protecting the interest of senior citizens is intended to ensure that they are not left destitute, or at the mercy of their children or relatives. Equally, the purpose of the PWDV Act 2005 cannot be ignored by a sleight of statutory interpretation. Both sets of legislations have to be harmoniously construed. Hence the right of a woman to secure a residence order in respect of a shared household cannot be defeated by the simple expedient of securing an order of eviction by adopting the summary procedure under the Senior Citizens Act 2007."* ***(emphasis added)***

The Supreme Court has gone to the extent of holding that even the powers of the Special Tribunal constituted under the Senior Citizens Act, 2007 to grant remedies of maintenance as envisaged under Section 2(b) of the Senior Citizens Act, 2007, do not result in obviating competing remedies under the DV Act. Therefore, in the event of a composite dispute where the suit premises is a site of contestation between the two groups protected by the law, appropriately moulded reliefs qua both the sides ought to be granted. Section 3 of the Senior Citizens Act, 2007 cannot be deployed to override and nullify other protections in law particularly that of a women's "right to a shared household" under Section 17 of the DV Act. In other words, the fact situation had to be assessed at least on a *prima facie* evaluation before directing the eviction of the daughter-in-law from what she describes is her '*shared household'*. It bears repetition that the Supreme Court has held that what constitutes a shared household is a matter of evidence.

31. In the present case, it has been stated before this Court that in the suit, an interim order had been passed restraining the petitioner from

approaching the respondents, as both were residing in separate floors of the suit premises namely, the respondents on the ground floor and the petitioner on the first floor. It is not the respondents' case that thereafter, there has been any violation of the said order. FIRs which had been filed against each other though, seem to have been withdrawn. The learned counsel for the respondents had argued that the petitioner had slapped her brother-in-law in the presence of the Police. However, the circumstances in which such an incident may have happened has not been explained. At this juncture, it is not even the case of the respondents that the petitioner has been entering the residence of the respondents or physically assaulting them. Availing of legal remedies can hardly be described as harassment. Thus, even as per the requirement of ***Vinay Verma's (supra)*** case, the learned Trial Court has not come to a cogent conclusion that the relationship was acrimonious. The learned Trial Court has also overlooked the interim injunction still in force against the petitioner which she has clearly not violated so far.

32. The Supreme Court has opined that, whether a premises constitutes a shared household, is to be determined on evidence. The learned Trial Court has not given thought to this question of shared household even perfunctorily. It has taken the view that there is no proprietary right of a daughter-in-law to stay in a particular premises to enforce her right of residence under the DV Act. While this may be true, the obligation on the learned Trial Court to weigh all circumstances before directing eviction of the daughter-in-law being an onerous one has not been duly discharged. An important fact which seems to have been overlooked by

the learned Trial Court is that the petitioner had begun to reside on the first floor of the suit premises upon her marriage on 4th March, 1995, whereafter two children were born from the wedlock and who too were brought up in the same premises. It is only now, because of matrimonial disputes leading to the respondent No.2/husband instituting divorce proceedings against the petitioner in 2014, that an effort is being made to evict the petitioner alone, from the first floor. The petitioner's elder daughter is studying in United Kingdom whereas the younger daughter is not being evicted from the premises in question. When clearly, the petitioner is not interfering with the life of the respondents, this targeted eviction being sought, should have weighed in the mind of the learned Trial Court.

33. However, the starkest fact that stands out from the impugned judgment is the total insensitivity of the learned Trial Court in issuing the impugned directions. It cannot be overlooked that the impugned order was passed on 19th April, 2021 when Delhi was at the peak of the second wave of Covid-19. The hospitals were overflowing with patients and no family had remained untouched by the mayhem caused by the Covid-19 pandemic. Yet, it left the petitioner to search for herself and take some premises on rent.

34. The rent was fixed at Rs.80,000/- per month and directions were issued for payment of two months' rent by 10th May, 2021 and Rs.80,000/- by 10th June, 2021 and thereafter by the 10th day of every succeeding month directly to the bank account of the petitioner. The petitioner was directed to vacate the premises by 15th June, 2021. Despite

the caution issued by this court in the orders dated 18th December, 2019 that the order of alternate accommodation should not be a meaningless exercise, that is precisely what the learned Trial Court has ended up doing.

35. Admittedly, the respondents have been in arrears of payment of maintenance. Though the learned counsel for the respondents submitted that it was only on 1st March, 2021 that the respondent No.2/husband had been directed to pay up the arrears, that is not the complete truth. Orders for payment of Rs.1,00,000/- per month and payment of all arrears within six months in six equal installments had been passed on 14th January, 2021. While six months time was granted to pay the arrears, the record bears out the fact that the said maintenance was not paid ever upon the directions of the Division Bench of this court dated 1st March, 2021. After this Court had directed on 25th May, 2021, that the advance rent paid may be adjusted towards maintenance, it appears that all the arrears have been paid. It is also relevant to note that the petitioner was compelled to file execution petition for the payment of maintenance. The petitioner also had to file an application in October, 2020 seeking payment of electricity charges as the respondent No.2/husband had refused to pay the electricity charges which reflects his reluctance to discharge his legal obligations of taking care of the expenses of the petitioner. In this factual background, without ensuring that the directions issued for payment of future rent would be complied with without fail, the learned Trial Court asked the petitioner to vacate the premises by 15th June, 2021.

36. No doubt the powers under Article 227 of the Constitution of India

cannot be exercised as if the court is an Appellate Court. However, when the learned Trial Court overlooks significant facts and considers irrelevant facts, this Court in its supervisory jurisdiction would interfere with a decision of a Trial Court, especially in the event the orders appear to be perverse and unreasonable.

37. In the present case, the learned Trial Court seems to have been particularly keen to pass an eviction order against the petitioner without proper application of mind to all the circumstances that could justify such an order of eviction.

38. In light of the special circumstances in the present case that: (a) since marriage, the petitioner has been in occupation of the first floor; (b) the premises in her occupation was separate from the premises in occupation of the respondents; (c) the subsistence of an injunction order in this very suit, restraining the petitioner from disturbing the possession of the respondents of the ground floor; (d) the fact that this order has not been violated by the petitioner; (e) the petitioner being pushed to file Execution Petitions to obtain the maintenance awarded to her; (f) the application moved by the petitioner for payment of the electricity charges in respect of the first floor of the premises where the petitioner is residing and the claim of the respondent No.2 that he did not have the means to do so; (g) the uncertainty, in these circumstances of the respondents meeting their obligation of paying rent regularly, and (h) finally, the prevailing circumstances of the pandemic when such an order was passed, all reflect the perversity and unreasonableness of the impugned order. The directions issued to the petitioner to shift out to a rented accommodation

were most unwarranted.

39. Though it was argued before this Court by the learned counsel for the respondents that now that there was no pandemic like situation in Delhi and therefore the petitioner could shift to some other premises, in view of the other circumstances as enumerated above, this Court does not find any force in this submission.

40. The petition is accordingly allowed and the impugned order is set aside. The pending application also stands disposed of. No order as to costs.

41. The judgment be uploaded on the website forthwith.

(ASHA MENON)
JUDGE

NOVEMBER 15, 2021
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