

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

+ I.A. 7684/2004 and CS (OS) 1068/2004

Reserved on : 29th February, 2008

Date of decision : 17th March, 2008

Shri Vidyanidhi Dalmia

.... Plaintiff

Through : Ms. Malavika Rajkotia with
Mr. Krishenudu, Mr. Ashish Verma,
& Ms. Jyoti Srivastav, Advocates

:: Versus ::

Smt. Nilanjana Dalmia,

..... Defendant

Through: Mr. V.P. Narula, Sr.
Advocate,

With Mr. Gautam Narula, Advocate

CORAM:

Mr. Justice S. Ravindra Bhat

1. Whether reporters of local papers may be allowed to see the judgment? .Yes
2. To be referred to the Reporter or not? .Yes
3. Whether the judgment should be reported in the Digest? . Yes

Mr. Justice S. Ravindra Bhat:

1. In this application, the defendant seeks rejection of the plaint, under Order 7, Rule 11, Code of Civil Procedure, 1908 (hereafter “CPC”) on various grounds, such as the plaint not disclosing a cause of action, the suit being barred and so on.

2. The plaintiff has, in the suit, seeks the following reliefs:

a) Pass a decree of permanent injunction restraining the Defendant from entering into or attempting to enter into or approach within 100 metres of the plaintiff's residence at F-1, Anand Niketan, New Delhi and from speaking to or approaching the Plaintiff's staff in any manner whatsoever;

b) Pass a decree of permanent injunction restraining the Defendant from speaking with or addressing any written communication to the personnel associated with the Plaintiff's companies including Directors on any issue not relating to the respective companies;

c) Pass a decree of permanent injunction restraining the Defendant from talking, threatening, addressing communications to the personnel associated with the Plaintiff's companies including the Directors on any issues relating to day to day affairs and operation of the respective companies;

d) Pass a decree of permanent injunction restraining the Defendant from addressing any communication to the Plaintiff's family members, relatives, friends, acquaintances or associates which are abusive to the Plaintiff and which cast aspersions on his character and which intrude and invade or tend to intrude or invade the Plaintiff's privacy or attempting to approach them and/or communicate with them for such purposes.

e) Pass a decree of permanent injunction restraining the Defendant from addressing any communication to the Plaintiff's family members, relatives, friends, acquaintances or associates which are abusive to the Plaintiff and which, in regard to the Plaintiff, intrude, invade upon and impose on their privacy, cast aspersions on their character and/or are derogatory to or defamatory to their reputation, prestige, esteem and standing in society or attempting to approach them and/or communicate with them for such purposes.

f) Pass a decree of permanent injunction restraining the Defendant from attempting to enter, attend and/or disrupt any social/private gathering hosted by the Plaintiff in a public or private place;

g) Restrain the Defendant, her servants, agents from in any manner interfering with or transferring, alienating and creating any third party interest or encumbering in any manner whatsoever Plaintiff's immovable and movable properties set out in paragraph 12 (q) above and

h) Pass such further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case. ”

3. The plaint, rather prolix, avers about the marriage of the plaintiff with the defendant, on 10-5-1978, according to Hindu rites; the birth of their two children- a daughter on 27-4-1984, and a son, on 12-2-1990. The plaintiff claims to have abided by his legal relationship with the defendant as a husband. He however alleges that the defendant has indulged in acts of cruelty which led to his leaving the matrimonial home, at 27 Akbar Road, New Delhi, and taking separate residence at F-1, Anand Niketan, New Delhi, on rent, after brief spells as a paying guest. He alleges to have stayed within the marriage relationship despite acts of cruelty by the defendant.

4. According to the plaint averments, the defendant has a tendency to keep control of all relationships and things, which resulted in her controlling his affairs and desiring that he acts according to her wishes.

There is advertence to an incident of 15/16-5-1996 when she took exception to his visiting her cousin and having dinner with her, at Mumbai. Similarly, the defendant's dislike and maltreatment of Ms. Leonara Coster, his elderly childhood governess, has been alleged. The plaintiff also refers to some incident which allegedly occurred in 1978 when his college friend called upon him, which led to hysterical behavior by the defendant. Other acts of cruelty, against Ms. Coster, in 1984 after a sojourn by the couple in the USA, have been referred to. It is alleged that the defendant started to mention about her problems with the plaintiff, to her daughter, when she was about 3-4 years old. The care and attention given to Ms. Coster in 1990, when she suffered a heart attack, was allegedly objected to and resented by the defendant, who insisted that she should return to Patna. The plaintiff also avers about two further such incidents in 1996-2000 when Ms. Leonara Coster suffered heart attacks. Another act of cruelty alleged is of the year 2000 when the defendant objected to the plaintiff going to take care of Ms. Audrey Ann's husband; the said Ms. Ann is Ms. Coster's niece. On that occasion, the defendant allegedly hurled obscenities at the plaintiff.

5. The plaintiff refers to e-mails by the defendant to her brother in January and February, 1999 accusing the former of adulterous relationships,

and her discomfort or problems with women; the defendant also allegedly admitted that she had been foolish. The plaintiff alludes to his friend and classmate, Ms. Fiona Roche's visit in 1990; this was not liked by the defendant, who suspected the plaintiff's affair with the lady; this was despite the plaintiff's entreaties that she was a guest. The plaintiff makes general allegations about abnormal and cruel behavior by the defendant during 1990-1993; her giving more attention to the son after his birth and neglecting the daughter, and so on. The couple visited Dubai for a vacation in 1995, which was allegedly a disaster. Later that year, they visited the defendant's brother at New York; there too the defendant started controlling and limiting the plaintiff's interaction with her family, rebuking him openly in front of her brother and escalating the tension between the parties.

6. The plaintiff alleges that during the period 1993-95, the plaintiff had health problems, some serious, but the defendant never cared to look after him or accompany him to a doctor. The defendant even refused to accompany him when he underwent colonoscopy on 4th February, 1993; likewise, she refused to be with him, when he underwent an eye check up in 1994. The defendant allegedly forbade the plaintiff from visiting her house,

when her mother died on April, 1996, which shocked and deeply hurt him. All these led the plaintiff to remove himself from the bedroom and into the study room, downstairs, in their house; this virtually ended their conjugal relationship for all practical purposes. The plaintiff also alleges that the defendant did not allow their children to spend time with him. She accused him of having extra-marital relationships with various people, including members of their family. The plaintiff also avers that the defendant never lost an opportunity to humiliate him. She also allegedly told him that it would be better that he moved out of the matrimonial home; in June 2001, she allegedly accused him of having sexual problems. Later that year, the defendant allegedly accused the plaintiff for not grieving her niece's death.

7. Apart from the above incidents, the plaintiff alleges that the defendant maligned and defamed his reputation and self esteem by telling many people, including family members, friends etc that he was a loser, a bad businessman an adulterer and unfaithful wife beater. She however wrote some e-mails in 1999 admitting some of her mistakes and assuring him not to repeat them. The defendant is allegedly only a director in the plaintiff's companies; yet she tries to assert herself in their functioning. The plaintiff, after leaving the matrimonial home, has been paying Rs.25,000/-

every month to the defendant, towards expenses; Rs. 21,000/- for herself, Rs.3000/- for the college going daughter, and Rs. 1000/- for the son. The plaintiff also avers that he has several assets, including shares and investments in companies; besides, he is non-executive director in some companies. The defendant has repeatedly, through several acts, sought to elicit information about him; besides she has written emails to business associates which are offensive. The suit also contains allegations about letters written by the defendant to the plaintiff's friends and acquaintances, containing objectionable references, which allegedly distressed such friends and their relatives. The plaintiff alleges that the defendant falsely accused him of abandoning her, to his friends, and falsely alleging that he threatened to withdraw financial support, which is contrary to facts. He also alleges that the defendant accused him of moving from woman to woman and squandering away reserves on purchase of cars, holidays and visits to five star pubs and restaurants for women. The plaintiff alleges that the defendant has threatened to take legal action to seek partition. He mentions that the e-mails of the defendant assert that his business investments are from family funds, which are untrue; he has listed out his personal assets in para 12 (q), asserting that they are self acquired properties.

8. The plaintiff avers that he did not issue instructions to his staff members to prevent the defendant's entry into business premises; she as his wife can assert her legal relationship. The demands of that relationship are being met by him to the best of his abilities; however she cannot assert the same relationship as regards business interests and their management. She, it is alleged, is misusing her relationship as wife to harass and intimidate him, maligning his reputation and business interests, which cannot be permitted.

9. On the basis of the above averments, the plaintiff seeks permanent injunction restraining the defendant from invading his privacy, defaming him and/or maligning his reputation.

10. The defendant applicant seeks rejection of the plaint; she alleges that the cause of action paragraph of the plaint itself shows that admittedly the parties are husband and wife. Therefore there cannot be any occasion for the plaintiff to allege that the defendant has attempted to invade his privacy. It is further submitted that under the Specific Relief Act, 1963, the reliefs of the nature sought for in the suit cannot be granted as there is a specific bar regarding maintainability of a suit of such nature. It is alleged that the suit therefore is liable to be dismissed.

11. It is averred that there is no cause of action is disclosed in the plaint which are the basis for claiming the reliefs. It is submitted that the plaintiff is guilty of not coming before the Court with clean hands as he has suppressed and concealed material facts from the Court; he has also taken recourse to total falsehood in the plaint for claiming ad-interim injunctive reliefs. It is also submitted that the case, based upon falsehood is liable to be nipped at the bud by exercising jurisdiction under order 7 Rule 11 CPC, as injunctive reliefs under the Specific Relief Act are discretionary. The reliefs cannot be claimed as a matter of right; therefore, the onus is on the plaintiff to prove that he has approached the Court for equitable and discretionary relief, by showing equity and also that he has no ulterior and oblique motive in instituting the suit.

12. It is submitted that an *ex-facie* reading of the plaint itself would reveal that the filing of the suit, besides inflicting mental cruelty upon the defendant, has the ulterior and oblique motive to abuse the process of the court by seeking injunctive relief in order to intimidate and/or pressurize the defendant to agree to the plaintiff's larger design to prevent her from availing the remedies available to her in law. The defendant alleges that the

court should refuse discretionary relief if the suit has been filed as an intimidatory tactic on the face of the record.

13. Mr. Y.P. Narula, learned senior counsel for the applicant defendant, in addition to urging the pleas taken in the application for rejecting the plaint, submitted that the suit is barred because it is, in effect seeking judicial separation on the one hand, and the injunction sought, if granted, would amount to preventing the defendant from availing statutory remedies. These were impermissible. Counsel submitted that so far as the first aspect was concerned, the Hindu Marriage Act, 1955 (hereafter "HMA") being a special enactment dealing with marriage and divorce, bound the parties to matrimony. If one party to a marriage had grievances he or she had to seek remedies under that statute and no other. *Inter se* disputes, between parties to a matrimonial relationship, in all respects, are governed by statute law; the parties are bound to assert their rights in the relationship and also avail the remedies within the framework of that statute. The jurisdiction of civil courts is barred, as is the necessary implication of Section 4 of the said Act.

14. Counsel submitted that the content of the reliefs sought by the plaintiff was upon the same grounds he would have to establish for securing

a decree for judicial separation; indeed if the injunctions were to be granted, the court would be mandating in effect a judicial separation, without complying with the requirements of the HMA. The suit is therefore barred. It was also submitted that a vital component of a subsisting marriage is conjugal relationship, which cannot be disturbed by anyone, including the court, through an injunction. The law provided that such conjugal relationship could be limited through judicial separation, or extinguished, through a decree of divorce. Absent these two situations, the right of spouses to their conjugal relations, which extended to visiting each other, could not be subject matter of an injunction suit. It was also submitted that the decree sought for was impliedly barred, because it would be preventing the defendant from asserting her statutory right to seek restitution of conjugal rights.

15. Ms. Malvika Rajkotia, learned counsel for the plaintiff, on the other hand, submitted that the suit disclosed a triable cause of action. The plaintiff was not disputing the marital relationship, or seeking to disturb its integrity. Indeed, he expressly averred that the marriage between the parties was subsisting and he had no intention of changing it. Yet, the behavior of the defendant was unwarranted, and the plaintiff was justified in asserting his

right to privacy within the marital relationship. Counsel submitted that advertence to acts of cruelty by the defendant did not automatically lead to the inference that such acts constituted alleged “cruelty” under the HMA; the plaintiff had no intention of seeking any remedy under that statute.

16. Ms. Rajkotia relied upon the judgment of the Bombay High Court, reported as *Abdur Rahim –vs- Padma* AIR 1982 Bom 341 and the decision of the Court of Appeal in *Nanda –vs- Nanda* 1967 (3) All ER. 401.

17. In *Abdur Rahim* (supra), a Division Bench decision of the Bombay High Court, dealt with the right to residence of a wife in the matrimonial home. The marriage between the parties there was subsisting, yet broken down beyond repairs. The husband filed a suit for injunction, restraining the wife from entering the matrimonial house. The Court held that an injunction subject to certain terms and conditions could be granted. The parties, due to their strained relationship could not be forced to live together. The court noted that flat was big enough to allow them to live separately. The High Court set apart separate portions for the parties, for living separately and restrained the wife from entering the portion in occupation of the husband. The husband was an eminent surgeon; the court held that he could have peace of mind to enable him to discharge his duties, efficiently. The husband was also directed to pay maintenance to the wife. *Nanda* on the other hand, is a decision by the Court of Appeals,

where the parties had married each other in India. The wife had succeeded in securing a decree for restitution of conjugal rights and sought to enter the husband's new home, where he was staying with another woman. The husband's claim for injunction on the ground of the wife's trespass was upheld. The court held that the order for restitution could not be enforced.

18. Before a discussion on the merits of the application, it would be necessary to recapitulate some of the provisions of law, cited on behalf of the parties. Section 4 of the HMA reads as follows:

“4. OVERRIDING EFFECT OF ACT.

Save as otherwise expressly provided in this Act,-

(a) any text rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;

(b) any other law in force immediately before the commencement of this Act shall cease to have effect in so far as it is inconsistent with any of the provisions contained in this Act.”

“9. RESTITUTION OF CONJUGAL RIGHTS.

When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply, by petition to the district court, for restitution of conjugal rights and the court, on being satisfied of the truth of the statements made in such petition and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.

Explanation.-Where a question arises whether there has been reasonable excuse for withdrawal from the society, the burden of proving reasonable excuse shall be on the person who has withdrawn from the society.”

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“10. JUDICIAL SEPARATION.

(1) Either party to a marriage, whether solemnized before or after the commencement of this Act, may present a petition praying for a decree for judicial separation on any of the grounds specified in sub-section (1) of section 13, and in the case of a wife also on any of the grounds specified in sub-section (2) thereof, as grounds on which a petition for divorce might have been presented.

(2) Where a decree for judicial separation has been passed, it shall no longer be obligatory for the petitioner to cohabit with the respondent, but the court may, on the application by petition of either party and on being satisfied of the truth of the statements made in such petition, rescind the decree if it considers it just and reasonable to do so.”

19. The grounds for divorce – which are also grounds for seeking judicial separation, include adultery; treatment of one spouse with cruelty after marriage or that the offending spouse has has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition. It would be necessary therefore, to decide whether the acts of cruelty complained of here are of the same magnitude and intensity required to be proved by an aggrieved spouse, or whether the aggrieved spouse can seek relief outside of the HMA. This is necessary, because only if this court holds that such exclusive jurisdiction vests in courts under the HMA can it be held that the present suit is barred.

20. Section 4 enacts, in a sense, the overriding nature of the Act. Its provisions are to prevail, notwithstanding any other custom, usage, or provision to the contrary. In the decision reported as *Smt. Rohini Kumari –vs- Narendra Singh* AIR 1972 SC 459 it was held that though the HMA's preamble describes it as one to codify the marriage laws of Hindus, and in such cases, the object essentially is that on any matter specifically dealt with, it should be sought for in the codified enactment alone when any question arises relating to that matter. Ordinarily the court is not at liberty to look to any other law. Yet, HMA not only amends but also codifies the law of marriage and it makes fundamental and material changes in the prior law. The court held that Section 4 of the Act gives overriding effect to provisions of HMA. Therefore, unless in any other enactment there is a provision which abrogates or amends those of the HMA, or repeals it expressly or by necessary implication, the provisions of the Act alone will be applicable to matters dealt with or covered by the same. The court noticed that Sections 9 and 10 of the Act provide for restitution of conjugal rights and judicial separation. Section 10 deals with judicial separation and once a decree for judicial separation has been granted a decree for dissolution of marriage can be passed under Section 13(1-A) provided there is no resumption of cohabitation between the parties to the marriage for a period of two years or upwards after the passing of the decree for judicial separation. Section 13 gives several grounds for dissolution of marriage by a decree of divorce and one of the grounds is

the one contained in sub-section (1-A) of that section.

21. Under Section 9 of the CPC, the civil courts have jurisdiction to try and decide all civil causes, except those excluded. The courts in India, have dealt with different nuances of this issue, over the last six decades. Far back, in *Secretary of State v. Mask & Co.* (AIR 1940 PC 105) the question was considered in connection with Sea Customs Act (1878). It was held that:

"It is settled law that the exclusion of the jurisdiction of the civil courts is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied.

The Constitution Bench in *Dhulabhai v. State of M. P.* (AIR 1969 SC 78) said that:

"Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.

Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted and whether remedies normally associated with actions on civil courts are prescribed by the said statute or not."

Much later, in connection with the Industrial Disputes Act, in *Premier Automobiles Ltd. v. Kamlekar Shantaram Wadke* (1976) 1 SCC 496 it

was pointed out by the Supreme Court that the civil court will have no jurisdiction to try and adjudicate upon an industrial dispute, if it concerns enforcement of right or liability created under that Act. This line of reasoning was affirmed in *Bata Shoe Co. Ltd. v. City of Jabalpur Corpn* (1977) 2 SCC 472 and *Munshi Ram v. Municipal Committee, Chheharta* (1979) 3 SCC 83.

22. In *Raja Ram Kumar Bhargava v. Union of India* (1988) 1 SCC 681 the Supreme Court held that:

"[W]herever a right, not pre-existing in common law, is created by a statute and that statute itself provided a machinery for the enforcement of the right, both the right and the remedy having been created uno flatu and a finality is intended to the result of the statutory proceedings, then, even in the absence of an exclusionary provision the civil court's jurisdiction is impliedly barred.."

All these were again reiterated in by a three judge bench of the Supreme Court, in *Rajasthan SRTC v. Krishna Kant* ((1995) 5 SCC 75.

23. What can be deduced from the above discussion is that where special rights, not existing previously, are created by a statute, which provides a machinery for their enforcement, then, even in the absence of express exclusion, the civil court's jurisdiction over those matters is barred. Though the plaintiff here has framed the relief in such terms as to be seemingly different from the remedies available under HMA, a closer scrutiny of the plaint averments would show that in reality they are all factual assertions of cruelty, or unacceptable behavior which

constitute grounds for seeking judicial separation or divorce. If granted after a trial, they would be deemed binding- at least *in personem, inter parties*. The plaintiff husband would then have no difficulty claiming the relief of his choice under the HMA, as the defendant would be bound by principles of *res judicata* as well as issue estoppel on the factual aspects. Surely this circumlocutory manner of getting round the provisions of the HMA, with its regime of special rights, special obligations on spouses, and special responsibility on the courts constituted under it, was never envisioned. Parliamentary intention, while enacting HMA was to codify whatever were existing rights, and create new ones, with the objective of enforcing them through a special mechanism. The entire bundle of mutual rights and obligations relating to marriage, treatment of marital discord and offences, and the remedies, was to be dealt with under the Act. So viewed, there is no basis for the assertion of the plaintiff that he has a special zone of privacy, outside of the Act, which can form the basis of the reliefs claimed here.

24. Another aspect which cannot be lost sight of is the stark reality that if the injunctive relief claimed here is granted, it would practically amount to decreeing judicial separation of the parties, without the observance of requisite standards mandated by law.

25. The second aspect of the matter is the right of spouses to conjugal relationship, within a subsisting marriage. For this reason,

Parliament has enacted Section 9, which enables a spouse to seek restitution of conjugal rights. In *Smt Saroj Rani –vs- Sudarshan Kumar* 1984 (4) SCC 90 the Supreme Court spelt out this right as follows:

“In the Dictionary of English Law, 1959 Edn. at page 453, Earl Jowitt defines 'conjugal rights' thus :

‘The right which husband and wife have to each other's society and marital intercourse. The suit for restitution of conjugal rights is a matrimonial suit, cognisable in the Divorce Court, which is brought whenever either the husband or the wife lives separate from the other without any sufficient reason, in which case the court will decree restitution of conjugal rights (Matrimonial Causes Act, 1950, Section 15), but will not enforce it by attachment, substituting however for attachment, if the wife be the petitioner, an order for periodical payments by the husband to the wife (Section 22).’

Conjugal rights cannot be enforced by the act of either party, and a husband cannot seize and detain his wife by force (R. V. Jackson). ((1891) 1 QB 671 : 60 LJ QB 346 : 64 LT 679 : 39 WR 407 (CA)).

14. In India it may be borne in mind that conjugal rights i.e. right of the husband or the wife to the society of the other spouse is not merely creature of the statute. Such a right is inherent in the very institution of marriage itself. See in this connection Mulla's Hindu Law - Fifteenth Edn., p. 567, para 443. There are sufficient safeguards in Section 9 to prevent it from being a tyranny. The importance of the concept of conjugal rights can be viewed in the light of Law Commission - Seventy-first Report on the Hindu Marriage Act, 1955 - "Irretrievable Breakdown of Marriage as a Ground of Divorce", Para 6.5 where it is stated thus :

“Moreover, the essence of marriage is a sharing of common life, a sharing of all the happiness that life has to offer and all the misery that has to be faced in life, an experience of the joy that comes from enjoying, in common, things of the matter and of the spirit and from showering love and affection on one's offspring. Living together is a symbol of such sharing in all its aspects. Living apart is a symbol indicating the negation of such sharing. It is indicative of a disruption of the essence of marriage - "breakdown" - and if it continues for a

fairly long period, it would indicate destruction of the essence of marriage - "irretrievable breakdown".

15. Section 9 is only a codification of pre-existing law...."

(emphasis supplied)

26. A somewhat similar reasoning was found echo in the Australian High Court's decision in, in *The Queen -vs- L* 1991 (174) CLR 379. The High Court held that the matrimonial relationship presupposes such rights:

" Far from relegating a wife to the position of a sexual chattel, the status of wife created by marriage confers on a wife a right (to adopt the language of the Scottish decree) to live with her husband, to have him listen and talk to her, to be cherished, to be entertained at bed and board and treated with respect. These are not rights which can be enforced by decree but they are rights attached to the status of husband and wife. To jurists in the ecclesiastical courts, the attachment of these rights to the status of a wife distinguished the institution of marriage from the state of concubinage "which degrades [a woman] as the object of loose desire and mere sensual gratification . Marriage is an institution which casts upon a husband an obligation to respect a wife's personal integrity and dignity; it does not give the husband a power to violate her personal integrity and destroy her dignity. It would be impossible to preserve, much less to foster, the institution of marriage as an exclusive union of man and wife for life if it were otherwise."

Thus, conjugal relationship, and the right to reside with and be treated with dignity by the spouse, form significant and meaningful content of marriage. Injunction by a civil court, on establishment of what constitute marital offences under the HMA, would rob one spouse of these rights and what is more, effectively deny the right to move the

court under Section 9 of the HMA. By civil court's decree, the statutory remedy of restitution of conjugal rights would be extinguished. This would be subversive of public interest. Therefore, the reliefs sought cannot be granted by the civil court, and are barred.

27. The last aspect is whether the plaintiff's claim for injunction against a spouse in a surviving matrimonial relationship has any basis in law. Two decisions, one Indian and the other, of the English Court of Appeals were cited on his behalf. As regards the decision in *Abdur Rahim* (supra), strictly, the ratio of that decision is inapposite here, since the parties there were not married under the Hindu Marriage Act. More significantly, the parties agreed to live in the same premises, but in different, though specifically earmarked portions. The judgment was more or less consensual. Therefore, the right claimed here did not arise for consideration. As regards *Nanda*, in view of the special nature of rights created under the HMA, and the findings on that aspect, the decision would not be apposite.

28. Public policy considerations in India also appear to weigh against the plaintiff's claim for privacy against his wife. The Protection of Women from Domestic Violence Act, 2005 ("the Domestic Violence Act") by Section 17 enacts the right of a woman, to reside in a shared household. It creates a statutory right in favour of "*every woman in a domestic relationship*", an expression, given the wide meaning assigned to "domestic relationship" by Section 2(f), including not only the wife

or a female blood relative, but also a female friend who has shared, even for a short period, the same residence with the husband or male respondent. The aggrieved spouse or woman can apply to be restored the shared residence. Contrary to the rights asserted by the plaintiff, this recent enactment has clothed only wives and women in domestic relationships the right to remedies of the kind sought here; domestic violence has, in this context, been defined expansively to comprehend physical violence, verbal abuse, economic deprivation and so on.

29. There is also another noticeable trend, of protecting a spouse, notably the wife, in a relationship in conflict, pending litigation to resolve the relationship. This is found in *Silverstone v Silverstone* [1953] 1 WLR 513; it involved matrimonial proceedings in which the wife filed a petition for judicial separation. The matrimonial home belonged to the husband. The wife applied for an injunction preventing the husband from residing in the matrimonial home pending the trial of the petition. The court held that the wife had a right to remain in the matrimonial home pending the resolution of the petition and that the court had the power to protect that right in order to ensure that pressure was not put upon her to abandon her petition.

30. Likewise, *Price V Schultz* [2008] SASC 34 (decided on 19th February 2008) a recent decision of the South Australian Supreme Court, was a case where the appellant was owner of the property, living in a domestic relationship with the respondent. The relationship

soured and parties sought relief under the Domestic Partners Property Act, 1996. The trial court had enjoined the appellant from entering upon or residing at premises owned by him pending litigation. The injunction was upheld during pendency of the litigation. The court held that respondent had lived in the house for approximately 13 years, was suffering from poor health had limited means to move elsewhere. On the other hand, the appellant had substantial financial means. The foundation of the court's reasoning was to the power of the court to grant an interlocutory injunction to restrain harassment designed to deter a party from pursuing a legal remedy.

31. Having regard to the above legal position in India, as well as decisions from courts in other countries, there is no valid legal basis for the claims for injunction sought by the plaintiff. He cannot therefore assert an actionable cause in the civil court; whatever be his remedies under the HMA. Taking all the plaint averments as a whole, the court is satisfied that the suit is barred in law and therefore, the plaint deserves to be rejected.

32. This is a clear example of what one may term as "bogus" and vexatious litigation which is so endemic to our legal system. The plaintiff, possessed of considerable means, has been able to engage in this litigation, and waste precious court time which could have been better utilized. In the circumstances, this is a fit case where exemplary costs should be awarded.

33. The application, IA 7684/2004 is accordingly allowed. For the reasons mentioned above, the plaintiff shall bear costs, quantified at Rs. 50,000/- to be paid to the defendant within four weeks. The plaint is therefore rejected. CS (OS) No1068/2004 is therefore disposed of in such terms.

DATED: 17th March, 2008.

S. RAVINDRA BHAT, J