

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

+ EX.P. 180/2011 & EA No. 197/2012

Judgment delivered on: 25.4.2012

DR. KAVITA CHAUDHRI Decree Holder
Through Mr. Ravi Gupta, Sr. Advocate
With Mr. Ankur Adv.

versus

MS. EVENEET SINGH & ANR Judgement Debtor
Through Ms. Shobhna Takiyar for respondent 1
Ms. Geeta Luthra, Sr. Advocate with
Mr.Jatin Sehgal for respondent no.2

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR

KAILASH GAMBHIR, J.

1. By this execution petition filed under Order XXI, the decree holder seeks execution of the orders dated 20.12.2010 and 29.4.2011 passed by this Court in CS(OS) No. 505/2010 and CS(OS) No.1307/2010 by issuance of warrants of possession in respect of one room in possession of judgment debtor as shown in red colour in the

site plan forming part of the property bearing No. D-32, South Extension Part-II, New Delhi.

2. Before dealing with the merits of the present petition and the opposition thereto by the judgment debtor No.1, it is necessary to give a brief background which led to the passing of the said two orders. A civil suit i.e. CS(OS) No. 505/2010 was filed by Dr. Kavita Chaudhri to seek a decree of mandatory and permanent injunction against her son, the defendant no.2 herein and defendant No.1, her daughter-in-law directing them to vacate the premises under their occupation forming part of property bearing No. D-32, South Extension Part II, New Delhi and restraining them to enter the said premises or to cause any kind of harassment to the plaintiff. The other suit i.e. CS(OS) No. 1307/2010 was filed by the said daughter-in-law i.e. Ms. Evenet Singh for declaration, maintenance, residence and mandatory injunction under Sections 18 and 23 of the Hindu Adoption and Maintenance Act, 1956 and impleading therein her husband as defendant no.1, and her mother-in-law as defendant no.2. The marriage of defendant no.1 (Prashant Vijay) and defendant no.2 (Evenet Singh) was solemnized in accordance with Hindu rites and ceremonies on 27.4.2009 and after her marriage, Ms. Evenet Singh started residing at her matrimonial home i.e. premises bearing No. D-

32, South Extension Part II, New Delhi. However, within a short span of time, serious differences arose between the parties due to which the defendant no.2 moved out of the said premises and started residing in a rented accommodation i.e. premises bearing no. C-528, 2nd Floor, Defence Colony, New Delhi. The plaintiff who was a heart patient also complained harassment at the hands of her defendant no.1 Evenet Singh and being the owner of the house bearing No. D-32, South Extension Part-II, New Delhi filed the said suit to claim a decree of mandatory and permanent injunction primarily to seek ouster of defendant no.1. The daughter-in-law, on the other hand, had filed a complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005 on 17th March, 2010 besides taking steps to file the said civil suit to claim decree of maintenance under the Hindu Adoption and Maintenance Act and one of the prime reliefs being sought by her is to declare the ground floor of the property bearing No. D-32, South Extension Part II, New Delhi as her sole and exclusive property. Two separate applications were filed by the respective parties in the said two suits and vide order dated 20th December, 2010 both the applications were disposed of by this court giving certain directions. Vide order dated 29th April, 2011 in I.A. No. 1401/2011 filed under Section 151 CPC in CS(OS) No. 1307/2010 the

said order dated 20.12.2010 was further clarified by this Court. The decree holder is now seeking execution of the said two orders passed by this court in the present execution petition.

3) The present execution petition was opposed by the judgment debtor primarily on two grounds; first that the said orders dated 20th December, 2010 and 29th April, 2011 are not in the nature of a decree executable in terms of Order XXI CPC and secondly that her husband has not secured the same level of alternative accommodation for the judgment debtor as is being enjoyed by her in the matrimonial home in terms of Section 19(f) of the Protection of Women from Domestic Violence Act, 2005 and until such an accommodation is made available commensurate to the status of the wife any order passed by this court in the present execution case seeking eviction of the judgment debtor from the premises in question would be in clear violation of the right of the woman granted under the Protection of Women from Domestic Violence Act, 2005.

4) Mr. Ravi Gupta, learned Senior Advocate representing the decree holder submitted that both the said orders dated 20.12.2010 and 29.4.2011 are executable orders. Placing reliance on paras 19, 20 and 21 of the order dated 20.12.2010, counsel submitted that the Court gave a categorical direction to the judgment debtor that she

would be entitled to an amount of Rs. 30,000/- per month towards rent for alternative accommodation and an amount of Rs. 45,000/- towards maintenance. Counsel also submitted that the Court further directed that the judgment debtor was entitled to remain at suit premises only till such an alternative accommodation is made available by her husband and for that purpose, an upper limit of 10 weeks from the date of the said order was laid down by the Court. Referring to the order dated 29th April, 2011, especially paras 7,8 and 9 of the same, counsel submitted that the court in the said order made it explicitly clear that the right of the judgment debtor Evenet Singh to continue in the said premises was for a period of 10 weeks. Counsel further submitted that in the said order the court relegated the parties to the concerned Magistrate dealing with the complaint of the judgment debtor under the Domestic Violence Act. The court also directed that the Metropolitan Magistrate shall consider the option given by Prashant to Evenet in line with the said two orders passed by this Court and then make suitable orders and in the event of the said Court finding the premises proposed by her husband to be appropriate or suitable then the judgment debtor shall be given two weeks time to shift to the same. The Court in the said order further directed that in the event of her failing to do so, it will be open to

defendant no.2 to take appropriate proceedings for the implementation of the order passed by this court. Further inviting attention of this Court to the order dated 8.7.2011, passed by the learned Metropolitan Magistrate, the counsel submitted that in para 6 of the said order the Court clearly found that the judgment debtor had refused to shift to the alternative accommodation at C-528, Second Floor, Defence Colony, New Delhi without any sufficient cause and has also refused to receive an amount of Rs.30,000/- as maintenance in lieu of the alternative accommodation besides that she has not come forward with any other alternative accommodation having rental value of Rs.30,000/- where she can shift. The counsel for the decree holder invited attention of this Court to para 7 of the order dated 8.11.2011 passed by the Hon'ble Division Bench whereby the Division Bench while disposing of the appeal filed by the judgment debtor Evenet Singh, against the order dated 20.12.2010 passed by the learned Single Judge, clearly observed that with the direction given by the learned Single Judge for the payment of Rs.30,000/- towards monthly rent for an alternative accommodation and Rs. 45,000/- per month towards maintenance the judgment debtor Evenet Singh was under legal obligation to vacate the said shared household. Counsel further submitted that the said order of the

Hon'ble Division Bench was again challenged by the judgment debtor before the Hon'ble Supreme Court in the SLP No. 33507-33508/2011 and the same was dismissed by the Hon'ble Supreme Court vide order dated 16.12.2011. Counsel thus stated that the two orders dated 20th December, 2010 and 29th April, 2011 passed by this Court, thus became final and executable against the judgment debtor. The learned senior counsel also argued that both the said orders are executable in terms of Section 36 of the Code of Civil Procedure which clearly envisages that the provisions of the code relating to the execution of the decrees shall, so far as they are applicable, be deemed to apply to the execution of orders also. The learned senior counsel further placed reliance on Order XXI Rule 32 sub Rule 5 CPC in support of his argument that under the said sub rule, the Court can direct execution of decree where a decree for the specific performance of a contract or for an injunction has not been obeyed, in lieu of or in addition to all or any of the processes prescribed for the execution of such a decree. The contention raised by the counsel was that since the Judgment Debtor has disobeyed the said two orders, therefore, this Court can pass necessary orders by directing warrants of possession of the said premises under her occupation. In support of his arguments, learned senior counsel placed reliance on the

judgment of this Court in *Mohd. Naseem vs Chaman Ara Begum & Ors. 71 (1998) DLT 130*.

5) Opposing the present execution petition, Ms. Shobhana Takiar, learned counsel representing the Judgment Debtor submitted that the said two orders passed by this Court are not in the form of any decree or order, which can be executed. Counsel further submitted that from the order dated 20th December, 2010 passed by this Court it is apparent that the Court could clearly figure out the sinister designs of the mother in law plaintiff i.e the decree holder and Prashant, her son to seek ouster of the judgment debtor through stratagem. Counsel further submitted that through both the said orders this Court had relegated the parties to the jurisdiction of Metropolitan Magistrate where the petition filed by the judgment debtor under Section 12 of the Protection of Women from Domestic Violence Act, 2005 was pending consideration. Counsel thus submitted that it was for the Magistrate to decide that the accommodation which was offered by her husband was commensurate to her status or not and conscious of the fact of the jurisdiction of the Magistrate, this Court in both the said orders did not give any direction to the judgment debtor to vacate the said premises in question. Counsel further submitted that the said order dated 20th December, 2010 was challenged by the

husband of the Judgment Debtor i.e. Prashant by filing FAO (OS) 71/2011 but recognizing the right of the judgment debtor in the said property, the said appeal was subsequently withdrawn by him. Counsel further submitted that the alternative accommodation which was offered by the husband of the judgment debtor was in no way commensurate or even near to the level of the accommodation under her occupation and, therefore, the said offer was rightly refused by the judgment debtor. Counsel thus submitted that unless the judgment debtor is provided with an alternative accommodation under Section 19(f) of the Protection of Women from Domestic Violence Act, 2005 the judgment debtor is certainly entitled to occupy the suit premises and she cannot be thrown out of the same till such time alternative accommodation commensurate to her status is made available to her. Counsel further submitted that the case filed by the judgment debtor under the Protection of Women from Domestic Violence Act, 2005 is still pending consideration and pending final decision in the said case, the judgment debtor cannot be thrown out from the suit premises, that too pursuant to the said two orders dated 20.12.2010 and 29.4.2011, which cannot be executed having no force of decree for the purpose of execution. Learned counsel further submitted that the statutory rights granted in favour of the woman

under the Protection of Women from Domestic Violence Act, 2005 are to be construed on the basis of the objects and reasons laid down in the said Act and the right of the Judgment Debtor is fully protected under Section 19(1)(f) of the said Act and unless an accommodation which is equivalent to the status of the accommodation in which she was brought in is not made available, the Judgment Debtor cannot be dispossessed from the said premises. In support of her arguments, counsel for the Judgment Debtor placed reliance on the following judgments: -

1. Pamela Sharda vs Rama Sharda, RFA No. 596/11 dated 23.12.11.
(Delhi High Court)
2. Shumita Didi Sandhu vs Sanjay Singh Sandhu 174 (2010) DLT 79 (DB).
3. Metro Marins & Anr. vs. Bonus Watch Co. (2004) 7 SCC 478.
4. Purshottam Vishandas Raheja vs Shrichand Vishandas Raheja (2011) 6 SCC 73.

6) I have heard learned counsel for the parties at considerable length and given my thoughtful consideration to the pleas raised by them.

7) It is pertinent to mention here that after hearing the arguments of the learned counsel for the parties on 16.2.2012, the matter was reserved for pronouncement of judgment but during the period when the matter was lying reserved, the judgment debtor moved an

application under Section 151 of CPC seeking dismissal of the present execution petition or in the alternative to adjourn the matter sine die till the disposal of the Crl. Misc.(M) No. 691/2011. The said application bearing EA No. 197/2012 moved by the judgment debtor was taken up for hearing on 6.3.2012 and Mr. Ravi Gupta, learned Senior Advocate entered appearance on behalf of the decree holder on advance notice. Counsel for the decree holder did not choose to file reply to this application and submitted that this court had already heard the arguments of both the counsel extensively and the judgment debtor in the present application has merely reagitated the same issues except bringing an additional fact on record, that of filing Crl. Misc.(M)691/2011 to challenge the orders dated 8.7.2011 and 11.11.2011 passed by the learned MM and the learned ASJ. Counsel further submitted that except directing notice in the said criminal miscellaneous petitions, no stay has been granted by court against the said orders dated 8.7.2011 & 11.11.2011. Counsel thus submitted that the present application filed by the judgment debtor is a gross abuse of the process of the court and mere filing of the said criminal petition would not place the judgment debtor in any better or advantageous position.

8) After hearing arguments on the said application, matter was

again reserved for orders. Considering the fact that in the said Crl. Misc.(M)691/2011, no stay has been granted against the orders dated 8.7.2011 & 11.11.2011, therefore there is no change in the circumstances as they were on the date of hearing the arguments, the present application bearing EA No. 197/2012 is devoid of any merit and the same is accordingly dismissed.

9) In the present execution petition, the decree holder has sought execution of two orders dated 20.12.2010 and 29.04.2011 passed by this court. The said two orders were passed by this court while disposing of two separate applications i.e. IA No. 8479/2010 under Order 39 Rule 1 and 2 of CPC filed by the daughter-in-law Evenet in CS(OS) No. 1307/2010, and the IA No.3577/2010 under Order 39 Rule 1 and 2 filed by the mother-in-law Kavita Chaudhari in her suit bearing CS(OS) No. 505/2010. It would be relevant here to reproduce the operative para of the order dated 20.12.2010 as under:

“The documentary evidence and pleadings suggest that Prashant’s monthly outgoings – in respect of the New York property are US\$ 4500/-, which works out to Rs. 2,05,000/-.He is also paying rent to the tune of Rs. 27,000/- per month. With this expenditure, the Court can safely incur that his personal expenses would not be less than about Rs. 40,000/- per month. In these circumstances, to support this kind of lifestyle, Prashant’s average monthly income would not be less than Rs.450,000/- to Rs. 500,000/-. On the other hand, Evenet’s income is about Rs.50,000/- per month; Prashant alleges it to be more. Having regard to his offer to pay Rs. 20,000/- per month towards alternative accommodation, the Court is of opinion that she should be entitled to an amount of Rs. 30,000/- per month towards rent, for alternative accommodation, and an amount of Rs. 45,000/- per month maintenance. In order to facilitate and effectuate this order, the parties are directed to appear before the Court handling the complaint under the Domestic Violence Act, on 4th

January, 2011, which shall oversee that Prashant complies with Section 19(l)(f), within ten weeks from today. Till such alternative accommodation is made available, Evenet would be entitled to continue in the suit premises, and also entitled to receive Rs. 45,000/- per month. The application for maintenance is allowed with effect from the date it was filed; arrears shall be paid within six weeks.

10) The said order dated 20.12.2010 passed by the learned Single Judge was challenged by the daughter-in-law Evenet Singh in FAO(OS) Nos. 71/2011, 72/2011 and 75/2011. The Hon'ble Division Bench of this Court vide order dated 11.2.2011 in the said appeals as an interim measure gave the following directions:

“Earlier in the Order the learned Single Judge has endeavored to distinguish the present case from that in S.R. Batra Vs- Taruna Batra, (2007) 3 SCC 169 wherein the Hon'ble Supreme Court has enunciated the law to be that a wife can claim to continue in residence provided that residence has been taken on rent by her husband, or that residence belongs to a joint family of which the husband is a member. Their Lordships have clarified that there is no absolute right for a daughter-in-law to claim continued residence in a house belonging to her mother in law.

Purely as an interim measure, on an assurance given to the Court by Prashant Chaudhari (husband), Evenet Singh may set up exclusive residence in C-528, 2nd Floor, Defence Colony, New Delhi – 110024. The husband shall ensure payment of rent and in the event this property is not available for any reason the wife shall be entitled to move back into D-32, South Extension, Part-II, Ground Floor, new Delhi – 110049. The interim maintenance fixed by the learned Single Judge of Rs. 45,000/- however, shall remain.”

11) Since the judgment debtor no.1 had failed to vacate the said premises bearing property no. D-32, South Extension-II, New Delhi, an application was moved by Prashant vide IA No. 1401/2011 under Section 151 of CPC to seek clarification of the order dated 20.12.2010

and the learned Single Judge vide order dated 29.4.2011 while clarifying the order dated 20.12.2010 gave the following directions:

“7. This Court has considered the submissions of parties. Whilst there can be no two views on the issue that the Court upheld Evenet’s right to shared household, equally the Court had given due consideration to Kavita’s (i.e. the mother-in-law) cardiac condition, and therefore ,required that Evenet should be given alternative accommodation within the specified time. As an interregnum, the Court had mandated that she would be entitled to Rs.45,000/- per month. The reference to the Court dealing with the complaint under the Domestic Violence Act was purely a facilitating mechanism. If the rights of the parties as spelt-out in the order are understood in this perspective, it is clear that Evenet’s right to continue in the premises was for a period of 10 weeks. Prashant is no doubt under an obligation to offer alternative accommodation – this process was to be monitored by the Court dealing with the complaint under the Domestic Violence Act.

8. This Court is conscious of the further events which took place by way of an order of the Division Bench dated 11.02.2011, when Evenet was given yet another option to move into premises leased by Prashant. Apparently, that option is still open even though she has chosen not to exercise it. Having regard to the overall circumstances, the Court clarifies that the judgment and order necessarily implied that in the event of alternative accommodation being offered “made available” to Evenet before the concerned Court, her right to continue in the premises would cease.

9. In the light of the above clarification, the parties are relegated to the concerned Magistrate – Ms. Priya Mahindra, learned MM (Saket), who is dealing with the Complaint No.98/1. The said Court shall consider the option furnished by Prashant to Evenet in line with this Court’s order, and make suitable orders as to whether Evenet accepts the same or not. In the event of the Court’s determination of any premises to be appropriate or suitable, Evenet shall be given reasonable time of two weeks to shift to the same. In the event of her failing to do so, it is open to the Defendant No. 2 to take appropriate proceedings for the implementation of the order of Court. The parties are directed to be present before the concerned Magistrate on 02.05.2011.”

12) As would be seen from the said order dated 29.4.2011, both the parties were relegated to the concerned Magistrate who was dealing with the complaint no. 98/1 filed by the daughter-in-law and acting on the said directions, the learned M.M. vide order dated 8.7.2011 passed the following directions :

“Considering the above narrated circumstances, I am of the opinion that petitioner herein has rejected to shift to the alternative accommodation at C-528, Second Floor, Defence Colony, New Delhi without any sufficient cause and objections filed by the petitioner are devoid of any merit. The petitioner has also refused to receive an amount of Rs.30,000/- as maintenance in lieu of alternative accommodation which the respondent has agreed to pay. Petitioner has also not come forward with any other alternative accommodation having rental value of Rs.30,000/- where the petitioner can shift.”

13) After the above said order dated 8.7.11 was passed by the learned M.M. the learned Division Bench of this court vide order dated 8th November, 2011 also disposed of the FAO (OS) Nos. 71/2011 and 72/2011 preferred by the daughter-in-law Evenet Singh, whereunder challenge was made to the order dated 20.12.2010 passed by the learned Single Judge. The operative paras of the said order of the Hon’ble Division Bench are reproduced as under:

“7. It is no doubt true that the appellant has a right under clause (a) of sub-section 1 of Section 19 of the Act, but clause (f) thereof cannot be lost sight of, and indeed the learned Single Judge has relied thereon. The learned Single Judge has also relied upon Section 26 of the Act, holding said provision to be a concurrent jurisdiction. It has been directed that monthly rent @ Rs.30,000/- should be paid to the

appellant towards alternative accommodation and Rs. 45,000/- per month towards maintenance. The appellant has thus come under a legal obligation to vacate the shared household.

8. The respondents have unequivocally stated that they shall comply with the obligation placed upon their shoulders by the learned Single Judge, but the appellant continues to urge that her right to continue to live in the shared household is infeasible.

9. Upon the presumption that the ground floor of House No.D-32 South Extension Part-II, New Delhi is the shared residence of the appellant, notwithstanding the same being the absolute property of appellant's mother-in-law, we concur with the view taken by the learned Single Judge inasmuch as vide clause (f) of sub-section 1 of Section 19 of the Act, in lieu of the shared accommodation, a Court can direct the opposite party to secure same level of alternative accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require. Further, vide Section 26 of the Act, reliefs available under Sections 18 to 22 may be granted by any Civil Court.

.....
13. In the instant case the circumstance to take recourse to clause (f) of sub-section 1 of Section 19 of the Act would be the extreme ill health of the mother-in-law of the appellant; medical documents pertaining to whom would show that she suffers from "tachycardia" with heart muscles functioning at about 20%. The constant strife with the newly married daughter-in-law in her house would certainly have an adverse effect on the mother-in-law. Besides, the husband of the appellant is currently in Hyderabad and not at Delhi.

14. It is apparent that clause (f) of sub-section 1 of Section 19 of the Act is intended to strike a balance between the rights of a daughter-in-law and her in-laws, if a claim to a shared residence by the daughter-in-law pertains to a building in which the matrimonial home was set up belongs to her mother-in-law or father-in-law.

15. Taking on record the undertaking by the respondents i.e. the husband and the mother-in-law of the appellant, both being jointly and severally liable to pay monthly rent @ Rs.30,000/- to the appellant and additionally to pay maintenance @ Rs.45,000/- per month, the appeal is dismissed but without any order as to costs."

14) A separate petition under Section 11 and 12 of the Contempt of

Court Act was also preferred by Prashant, husband of Evenet Singh in Cont.Case(C) 201/2011 to seek initiation of contempt proceedings against his wife for violating the orders dated 20.12.2010 and 11.2.2011 but the said contempt case was withdrawn by Prashant.

15) Coming back to the meat of the case at hand wherein this court is to examine as to whether the said two orders dated 20.12.2010 and 29.4.2011 passed by the learned Single Judge are in the nature of decree and can be enforced against the judgment debtor or not. Section 36 of the Code of Civil Procedure, 1908 makes it abundantly clear that the provisions of Order XXI are equally applicable with all force to the execution of an order. Section 2(14) of the Code defines an 'order' to be the formal expression of any order of a civil court which is not a decree. A combined reading of Section 36 with Section 2(14) would make it clear that unless in an order there is a formal expression of decision of a civil court, the same will not become executable. Under Order XXI Rule 32 any decree passed by the civil court for specific performance for restitution of conjugal rights or for injunction can be enforced in the manner provided therein. Section 36 was enacted on the statute book to clarify the provisions relating to the execution of a decree or order. The underlying principle of this provision is that every court has inherent

power to have its order carried out, as otherwise, the orders would be a mere farce. The word execution means enforcement of decrees or orders by process of court so as to enable the decree holder to reap fruits of the judgment or orders passed by the court in his favour therefore , it cannot be said that the word execution is relevant only so far as the execution of the decree is concerned . Vide order dated 20.12.2010 a detailed order was passed by this court while disposing of the applications filed by the parties in the said two suits i.e. CS(OS) No. 505/2010 and CS(OS) No. 1307/2010 and the order dated 29.4.2011 is in continuation of the said order dated 20.12.2010 being a clarification in nature. The court in the said order has given detailed reasons after placing reliance on various judgments passed by the Hon'ble Apex Court and other High Courts and also referred to the relevant provisions of the Domestic Violence Act and therefore both the said orders clearly fall within the definition of Section 2(14) of the Code of Civil Procedure and therefore it cannot be said that they are not executable or enforceable in nature as argued by the counsel for the judgment debtor. Therefore, the first objection raised by the counsel for the judgment debtor lacks merit and is therefore rejected .

16) The other objection raised by the counsel for the judgment

debtor is that Ms. Evenet Singh is entitled to a residential accommodation which is commensurate with the status and life style to which she was used to in the matrimonial home in terms of Section 19(1) (f) of the Domestic Violence Act and till such time such an accommodation is made available to her, she is entitled to continue to live in the said premises and cannot be thrown out therefrom.

17) It is a settled legal position that the executing court cannot go behind the decree or order which has come before it for execution. In the order dated 20.12.2010, the court after having gone into the financial status of both the parties came to the conclusion that the wife is entitled to an amount of Rs.30,000/- p.m. towards rent for alternative accommodation and an amount of Rs. 45,000/- towards maintenance. After taking this view the court directed the parties to appear before the court of Metropolitan Magistrate where the complaint of the wife under the Domestic Violence Act was pending consideration, but with the clear mandate to the court of M.M. to facilitate and effectuate the said order. The court also directed that the court of M.M. shall oversee that Prashant complies with Section 19 (f) of the Domestic Violence Act within a period of 10 weeks from the date of the said order. The court also directed that till such alternative accommodation is made available, Evenet would

continue to reside in the said premises. As is referred above, the said order dated 20.12.2010 was challenged by Evenet Singh in FAO(OS) Nos. 71/2011, 72/2011 and 75/2011 and vide interim order dated 11.2.2011, the Hon'ble Division Bench gave directions to Evenet Singh to set up exclusive residence in C-528, 2nd Floor, Defence Colony, New Delhi along with her husband. The Hon'ble Division Bench, however also directed that in the event of the said property not being available for any reason then in that case Evenet shall be entitled to move back to D-32, South Extn., Part-I, New Delhi. In the clarification order dated 29.4.2011 the court clearly held that Evenet has right to continue in the South Extension residence for a period of 10 weeks and Prashant was put under an obligation to offer an alternative accommodation. When the said order was passed by the learned Single Judge the order dated 11.2.2011 passed by the learned Division Bench was also before this court as would be manifest from para 8 of the said order dated 29.4.2011. In the operative para of the said order this court again relegated the parties to the concerned court of Metropolitan Magistrate dealing with the domestic violence complaint of the wife. This court directed the court of M.M. to consider the option, if any, furnished by Prashant to his wife Evenet in line with the Court's direction to make suitable

orders and in the event of the Court finding it appropriate or suitable then to give Evenet a reasonable time to shift to the same. The court further made it explicitly clear that in the event of her failing to do so it would be open to the defendant no.2, the decree holder herein to take appropriate proceedings for the implementation of the order passed by this court. It is pursuant to the said directions given by this court, the Court of Metropolitan Magistrate vide order dated 8.7.2011 came to the conclusion that the complainant Evenet Singh has refused to shift to the alternative accommodation without any sufficient cause and at the same time she also refused to receive the amount of Rs.30,000/- in lieu of the alternative accommodation. After the said order was passed by the learned Magistrate the Hon'ble Division Bench vide order dated 8.11.2011 also upheld the view taken by the learned Single Judge, after taking into consideration the ill health of the mother-in-law Kavita Chaudhari and after striking a balance between the rights of a daughter-in-law and her in-laws to give a purposeful meaning to clause (f) (1) of Section 19 of the Act. The said order of the Hon'ble Division Bench was challenged by the daughter-in-law before the Hon'ble Supreme Court in SLP but without success. Although the said order dated 8.7.2011 passed by the learned Metropolitan

Magistrate has also been challenged by the daughter-in-law in a criminal petition but the said order passed by the learned M.M. has not been stayed by the court seized with the said criminal petition. In dealing with the present execution petition, the executing court is not supposed to rewrite a fresh judgment on the right of the Evenet Singh under the Domestic Violence Act as the Hon'ble Division Bench and this court while dealing with the said two applications in the said two suits have extensively dealt with the judgment passed by the learned Apex Court in the case of *S.R.Batra Vs.Taruna Batra (2007) 3 SCC 169* and also the judgment passed by the Hon'ble Division Bench in *Sumita Didi Sandhu Vs. Sanjay Singer Sandhu 171(2010) DLT 79(DB)* to take a view that the wife would be entitled to claim a right to residence in shared household and such a shared household would only mean the house belonging to or taken on rent by the husband or the house which belongs to the joint family of which husband is the member. The property which neither belongs to the husband nor is taken on rent by him, nor is it a joint family property in which the husband is a member, cannot be regarded as a "shared household". Clearly, the property which exclusively belongs to the father-in-law or the mother-in-law or to both of them in which the husband has no right, title or interest, cannot be called a "shared household". The

Hon'ble Division Bench in *Sumita Didi (Supra)* also observed that the right of residence which a wife undoubtedly has does not mean her right to reside in a particular property although such a right in terms of Section 17 of The Protection of Women from Domestic Violence Act is a right to reside in a commensurate property.

18) At omega, this court would like to observe that with a view to mitigate the oppression and inequality suffered by the fairer sex in this country from times immemorial; various woman friendly laws have been enacted so as to empower the women. It is a bitter truth that where on one hand these progressive laws have led to amelioration and advancement of the cause of the woman in this country, at the same time on the other hand these liberalized statutes have been flagrantly misused. The right of the woman to her matrimonial home is one such right which has been brought on the statute book to protect the woman from being left in lurch at the hands of the in laws. However one cannot or may I say should not shy away from the hard hitting reality that it is not always the daughter in law who is berated but at times the in laws who are at the receiving end of the daughter in law's cantankerousness. It should not be for a moment consigned to oblivion that the parents in law have every right to live in peace in their own property and the right to property vested

in them cannot be snatched away and used as a tool to harass them. In the facts of the case at hand, it is not in dispute before this court that the said property bearing no. D-32, South Extension, New Delhi is the property owned by the mother-in-law which property was bequeathed in her favour by her father and therefore the said property cannot be treated as a joint family property. The daughter-in-law has no right to stay in the said property and with the exit of her husband from the same the judgment debtor has also lost the right to the said premises as well.

19) In the light of the above discussion, this court finds merit in the present petition and the same is hereby allowed. Be issued warrants of possession in respect of one room in possession of judgment debtor as shown in red colour in the site plan forming part of the property bearing No. D-32, South Extension Part-II, New Delhi to the decree holder, on the decree holder taking steps within a period of one week from the date of this order .

KAILASH GAMBHIR, J

April 25, 2012