

SL. No	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGES'S ORDERS
			C482 No.1025 of 2019 <u>Hon'ble Sharad Kumar Sharma, J.</u> Mr. Nalin Saun, learned counsel for the applicant. Mr. V.K. Gemini, learned Deputy Advocate General for the State. Mr. Pankaj Semwal, learned counsel for the private respondent. The applicant is widow of late Mr. Sunil Ijekar, with whom she was married on 15.12.1993, as per the Christian rituals. She used to reside in the premises, which is now the subject matter of the proceedings under Section 12 of the Domestic Violence Act. Out of the matrimony, a son was born, but, on account of the ailment of the husband, who later met with sad demise in 2011, the respondent started forceful interference over the possession of the property, which, according to her she was otherwise entitled to occupy, owing to the fact, that she would be inheriting the share, which would otherwise would have vested with the late husband of the present applicant. As such, no obstruction could have been raised and that too, by way of invoking of the proceedings under Section 12 of the Domestic Violence Act by prohibiting the applicant from peacefully residing over the property, which she

		has inherited from her late husband, which would be apparent from the mutation, which has been made in her favour after the death of her husband, as it would be apparent from the mutation entries made in her favour and placed by the learned counsel for the applicant on record along with the supplementary affidavit, in which it has been observed that, as per the resolution passed by the Nagar Nigam on 22.02.2013, in relation to property no.131(New No.53C), Rajpur Road, Dehradun, the resolution no.15 has been decided accordingly.
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“आज दिनांक 20/02/2013 को सम्पत्ति स० 131 राजपुर रोड 1 के नामान्तरण आपत्ति विषयक पर आवेदक श्रीमती संगीता आईजेकर आपत्ति कर्तागण की तरफ से श्री डगलस आईजेकर मार्गेट आईजेकर श्रीमती सुशीला रानी आदि उपस्थित है दोनों पक्षों को सुना एवं 'पत्रावती' का अवलोकन किया पत्रावली पर संलग्न मृत्यु प्रमाण पत्र , शपथपत्र आदि के आधार पर श्रीमती संगीता आईजेकर का नाम पउरोक्त सम्पत्ति 131 राजपुर रोड 1 स्वामित्व में संयुक्त रूप में अंकित करने की स्वीकृति दी जाती है।”

In accordance with the resolution of the Nagar Nigam, the present applicant was certified to have succeeded the rights to the extent of her late husband and she was determined as to be a co-sharer. But, however, in the proceeding, which was drawn under Section 12 of the Domestic Violence Act, by the present applicant that was decided in her favour by way of Criminal Case No.333 of 2013, “Smt. Sangita Ijkar Vs. Sanjeev Ijkar”, being the proceeding held under Section 18, 19 and 22 of the Domestic Violence Act.

The decision thus taken by the Court of 4th

Additional Chief Judicial Magistrate, Dehradun as rendered on 15.11.2016 whereby the opposite party to the proceedings was restrained to interfere in the possession of the property of the applicant, which she was otherwise entitled to occupy having inherited the same from her late husband, who was a co-sharer of the property. Accordingly, the following direction was issued by the Court of 4th Additional Chief Judicial Magistrate, on 05.11.2016, the relevant part of which is being extracted hereunder:-

“22. धारा 18 घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम 2005 के अंतर्गत विपक्षी को आदेशित किया जाता है कि वह प्रार्थिनी के साथ कभी भी किसी समय, किसी स्थान पर घरेलू हिंसा की घटना कारित ना करे ना ही ऐसी किसी घटना का दुष्प्रेरण करे। धारा 19 घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम, 2005 के अंतर्गत विपक्षी को आदेशित किया जाता है कि वह स्वयं को प्रार्थिनी के मकान सं0.53 सी राजपुर रोड देहरादून के प्रथम भाग से स्वयं को हटाना सुनिश्चित करें तथा प्रार्थिनी को साझी गृहस्थी से उसके भाग में, जिसमें प्रार्थिनी निवास करती है या कर रही थी, उसमें प्रवेश करने से निषेध रहे। विपक्षी को यह आदेशित किया जाता है कि वह प्रार्थिनी को घरेलू हिंसा के कार्यों द्वारा मानसिक व भावनात्मक संकट बाबत प्रतिकर के रूप में 50,000/- (पचास हजार) रुपये आदेश की तिथि से एक माह के भीतर प्रदान करना सुनिश्चित करे।”

This order was put to challenge in appeal by the opposite party to the proceedings under Section 18, 19 and 22 of the Domestic Violence Act. The appeal thus preferred has been allowed by the impugned order dated 06.05.2019 whereby the Appellate Court has reversed the judgment observing thereof that since there is a dispute with regards to inheritance of the property, *inter se* between the co-tenure holders.

		As such, the Court has observed that the parties to the C482 proceedings may get their dispute resolved by resorting to an appropriate civil procedure by getting the property partitioned by a regular civil Court. The Appellate Court was not competent to have issued such a direction, to the parties to get their dispute resolved by a Civil Court, particularly, when its power were confined to exercise the Appellate Jurisdiction, as against the impugned order of 05.11.2016 under an Special Act, by virtue of which, the present applicant was permitted to utilize the property, which she was otherwise occupying, being the daughter-in-law of the family, having inherited the same from her late husband-Sunil Ijkar. The Appellate Court while exercising its power under the provisions of the Domestic Violence Act will not, rather cannot sit in an advisory capacity to direct the parties to get their dispute resolved by filing a suit for partition before the competent Civil Court, because its limit were confined to the judicial scrutiny of impugned order, which were under challenge i.e. 05.11.2016, wherein it was held that the applicant was a co-sharer of the property and she has the right to occupy the same, being the daughter-in-law of the family. The impugned appellate order, in fact, it happens to be in excess to exercise of powers of
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		an Appellate Jurisdiction under the provisions of the Domestic Violence Act. As such, the Appellate Court could not have sat in an advisory capacity for getting the dispute resolved before a competent civil forum. Thus, the impugned Appellate Order dated 06.05.2019 cannot be sustained in the eyes of law. The same is hereby quashed. The order of the trial Court, as rendered on 05.11.2016, is maintained. However, this will be without prejudice to the rights of the parties i.e. if so advised, they can get their dispute resolved by drawing an appropriate proceedings before the competent forum. (Sharad Kumar Sharma, J.) 29.08.2023 Sukhbant
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