

Court No. - 90

Case :- APPLICATION U/S 482 No. - 40127 of 2023

Applicant :- Jitendra Kumar

Opposite Party :- State Of U.P.And Another

Counsel for Applicant :- Birendra Singh,Mukesh Kumar Tiwari

Counsel for Opposite Party :- G.A.

Hon'ble Dinesh Pathak,J.

1. Heard learned counsel for the applicant and the learned A.G.A.
2. The applicant has invoked the inherent jurisdiction of this Court assailing the order dated 04.08.2023 passed by the Additional Sessions Judge, Court No.2, Bulandshahr in Criminal Appeal No.202 of 2022 (Jitendra Kumar vs. Leena) affirming the order dated 02.09.2023 passed by the Civil Judge (J.D.)/Fast Track Court, Court No.2, Bulandshahr in Misc. Case No.91 of 2021 (Paper no.37-A) moved on behalf of the present applicant (husband) in proceeding under Section 12 of Protection of Women from Domestic Violence Act, 2005 (in brevity D.V. Act).
3. Facts culled out from the record are that respondent no.2 (Wife) has moved an application dated 02.11.2021 under Section 12 of the D.V. Act, showing her residence at District Bulandshahr, in the court of Chief Judicial Magistrate, Bulandshahr. During pendency of the proceeding, applicant (husband) has moved an application dated 24.05.2022 (Paper no.37-A) under Section 27 of D.V. Act read with Order VII Rule 11 C.P.C. questioning the maintainability of the case under Section 12 of D.V. Act for want of jurisdiction of the Court where said application was filed on the ground that she is resident of Delhi. In the said application, respondent no.2 has filed her objection (Paper no.42-A) showing her residence at Bulandshahr. Learned Trial Court has rejected the application, vide

order dated 02.09.2022, considering the temporary residence of respondent no.2 at district Bulandshahr. On appeal being filed, the Appellate Court has dismissed the appeal, vide order dated 04.08.2023, and affirmed the order passed by the trial court, which is under challenge before this Court.

4. Having considered the submissions raised by learned counsel for the applicant and perusal of record, it reveals that in the application dated 02.11.2021 moved on behalf of respondent no.2 (wife) under Section 12 of D.V. Act, she has written her address as Village Kaundu, Post Office Banchawali Kaundu, Thana Chola, Tehsil Sikandrabad, District Bulandshahr. In her objection (Paper No.42-A) to the application (Paper No.37-A), she has reiterated her present address with an averment that presently she is residing with her uncle in parental house of her father's share in village at district Bulandshahr. While rejecting the application moved by the present applicant, learned trial court has observed that father of respondent no.2 was serving in Delhi Development Authority, who basically belongs to district Bulandshahr. At present, after retirement of her father, she is residing with her uncle in parental house of her father's share at Bulandshahr. While deciding the appeal, learned Appellate Court has referred the Adhar Card and photocopy of bank passbook which were filed by respondent no.2 at the appellate stage. It has been observed by learned Appellate Court that initially, she was residing with her father in Delhi, however, at present, she is residing with her uncle in parental house of her father's share at district Bulandshahr. Under Section 27 of the D.V. Act, three conditions are prescribed for ascertaining the jurisdiction of the Court. Under condition no. (a), the "temporary residence" of the applicant is also one of the significant ground for the purposes of filing application under

Section 27 of the D.V. Act before the court competent. Therefore, applying the law as enunciated under Section 27 of the D.V. Act, in the given circumstances of the present case, it cannot be said that the court competent at district Bulandshahr has got no jurisdiction to entertain the application under Section 12 of the D.V. Act moved on behalf of respondent no.2 who has shown her address at district Bulandshahr. In support of her present address (temporary address) she has filed certain documentary evidence and the supporting affidavit. While dismissing the application (Paper No.37-A), learned trial court has relied upon the cases (a) Sharad Kumar Pandey vs. Mamta Pandey reported in 2010 (118) D.R.J. 625; (b) Darshana Kumari vs. Surindra Kumar reported in 1995 (4) SCC 137 and (c) Shyamlal Dwivedi vs. Parimala reported in (2020) 3 SCC 14.

5. In the facts and circumstances of the present case, respondent no.2 (wife) was compelled to take temporary shelter at parental home of her father at district Bulandshahr and she is living in the share of her father along with her uncle, which is evident from the documents filed on her behalf and the supporting affidavit. Therefore, in view of the provisions as enunciated under Section 27 of the D.V. Act, wherein temporary address is as well one of the significant ground to ascertain the jurisdiction of the court concerned, the application moved on behalf of respondent no.2 under Section 12 of the D.V. Act cannot be said to be not maintainable for want of jurisdiction inasmuch as she has successfully shown her temporary address at district Bulandshahr.

6. In this conspectus as above, this Court neither found any abuse of process of Court in the order under challenge rejecting the application (Paper No.37-A) moved on behalf of the applicant nor any justifiable ground for passing an order to secure the ends of

justice. There is no illegality, perversity or infirmity in the order passed by the trial court and affirmed by the appellate court. As such, instant application, being misconceived and devoid on merits, is **dismissed**.

Order Date :- 11.12.2023

VR