IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6029 OF 2016

Poonam Jaidev Shroff ..Petitioner.

Vs

Jaidev Rajnikant Shroff .. Respondent

Mr.Janak Dwarkadas, Senior Advocate a/w Mr. Sanjay Jain a/w Mr.Nishant Sasidharan, Ms Chandana Salgaonkar, Mr.Shahzad M.Pandey i/b L.J.Law, Advocates for Petitioner.

Mr. Darius J. Khambata, Senior Advocate a/w Pradip Chavan, Naira Jeejeebhoy, Komal Joshi, Siddharth Ranade, Harsh B. Buch, Advocates for Respondent.

CORAM : R.G.KETKAR,J.
RESERVED ON : 30/09/2016
PRONOUNCED ON: 24/10/2016

PC:

1. Heard Mr. Janak Dwarkadas, learned Senior Counsel for the petitioner and Mr.Darius Khambhata, learned Senior Counsel for the respondent at length. Leave to delete Article 226 wherever it is mentioned in the Petition is granted. Amendment shall be carried out within one week from today. Rule. M/s. ALMT Legal waives service on behalf of the respondent. In view of the controversy raised in this petition as also at the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 22.4.2016 passed by the learned Judge, Family Court No.7, Mumbai (for short, 'trial Judge') below Exhibit-19 in Petition No.A-2742/2015. By that order, the learned trial Judge allowed the application made by the respondent-husband in terms of prayer clause (a). The petitioner-wife is temporarily restrained by order of injunction from entering into house property situate at 82, Pali Hill, Bandra (West), Mumbai–400 046 (for short, 'suit premises') till final disposal of the Petition. The relevant and material facts giving rise to the filing of this Petition, briefly stated, are as under:

3. In the year 1992, the respondent married to Romilla Shroff. Out of that wedlock, the respondent has one son by name Varun, presently aged about 20 years and one daughter by name Tania presently aged about 19 years. It is the case of the respondent that the petitioner met him in the year 1998. The respondent was residing at 4B, Summer Palace. During the years of courtship from 1998 till 2004, the petitioner would regularly visit and also stay at 4B, Summer Palace. In the year 2003, the respondent obtained divorce from his first wife Romilla Shroff. On 27.11.2004, the petitioner and the respondent got married under

the Special Marriage Act, 1954 and the marriage registered under that Act. On 27.1.2005, the petitioner and respondent solemnized their marriage as per the Hindu Vedic rites in accordance with the provisions of Hindu Marriage Act, 1955. Out of this wedlock, daughter Rudritara was born on 2.5.2007. Since 2008, the petitioner and respondent started residing in the suit premises along with their daughter Rudritara. The respondent's children from his first marriage also reside with the parties whenever they are in India.

4. It is the case of the petitioner that on 6.10.2015 the respondent filed Petition No. A-2742 of 2015 under Section 13(1)(ia) of the Hindu Marriage Act, 1955. He did not inform the petitioner about filing of the said petition even though they were staying together. On 25.11.2015, the petitioner hosted a party at suit premises for the respondent, his school and college friends. On 26.11.2015, the bailiff of the Family Court visited the suit premises for service of divorce petition. On 21.1.2016, the petitioner applied for certified copy of the said petition as it is her grievance that she was not served with the petition. On 22.1.2016, certified copy of the petition without annexures was provided to her. At about 10.40 a.m on 25.3.2016, the respondent returned from Africa by his private Jet. On 26.3.2016

at 5.20 am, the respondent took a flight for going to Punjab and Delhi. On the same day, later on, the petitioner and the respondent attended Sangeet ceremony of daughter of C.O.O. of United Phosphorous Limited (for short 'UPL') at Delhi. The petitioner and the respondent stayed over night in the room of Hotel Leela, Gurgaon.

5. It the case of the petitioner that the respondent flew back to Mumbai on his private Jet after attending the wedding ceremony of COO of UPL. He reached Mumbai at 1.40 am on 28.3.2016. On the same day, the respondent lodged a complaint with Senior Inspector, Khar Police Station against the petitioner falsely alleging that the petitioner conspired with Bangali Baba and drugged the respondent. On the same day, the respondent attended the birthday party of his daughter Tania organized by the petitioner at the suit premises. The respondent's son Varun and most of Tania's close friends were also present. At 8.30 am on 29.3.2016, the respondent, Varun and Tania and two of her friends Mithali Pawar and Orrayawa flew on the private Jet of the respondent to Maldives for a five days vacation. It is the case of the petitioner that after returning from Maldives on 2.4.2016, the respondent attended a meeting at 4.30 pm at his office. On 4.4.2016, F.I.R was registered by the respondent with Khar Police

Station against the petitioner in respect of his bogus, irrational and fanciful allegations of about having been drugged by the petitioner in collusion and connivance with Bangali Baba. Because of this, the petitioner had to leave the suit premises along with her daughter fearing coercive steps from the police authorities on 7.4.2016. The petitioner was served with application Exhibit-19 on 15.4.2016. On 18.4.2016, the petitioner filed an application for anticipatory bail before the Sessions Court, Mumbai.

6. The petitioner's Advocate was given copy of divorce petition along with annexure on 20.4.2016. On the same day, she filed reply to the application filed by the respondent at Exhibit-19. On 21.4.2016 the petitioner filed application under Order VII, Rule 11 of C.P.C. for rejection of the divorce petition. On 21.4.2016, the learned trial Judge kept the matter for arguments. On 22.4.2016, the learned trial Judge pronounced the operative part of the impugned order allowing application Exhibit-19. On 27.4.2016 the petitioner applied for certified copy of the impugned order. The copy of the impugned order was not made available even after 5 days i.e. till 27.4.2016. The petitioner thereafter applied for stay of the impugned order. The learned Judge of the Sessions Court allowed the anticipatory bail

application on 27.4.2016. As certified copy was not made available to the petitioner till 2.5.2016, she filed another application for stay of the impugned order upto 15.6.2016 in view of ensuing summer vacation. However, on the same day, the learned trial Judge rejected the said application. On 3.5.2016, the petitioner received certified copy of the impugned order and the present petition is instituted on 6.6.2016.

7. The matter was heard by this Court on 20.6.2016 and by consent, it was adjourned to 12.7.2016. The petitioner was allowed to remove some of her personal belongings which are urgently required by her for her personal use. It was agreed, without prejudice to the rights of the respective parties, that the petitioner will be allowed to visit the suit premises in dispute on 22.6.2016 at 11 am for a period of 3 hours to enable her to remove her personal belongings as per the list, to be tendered by the petitioner. The matter was adjourned to 12.7.2016.

8. On 21.6.2016, on behalf of the petitioner list was taken on record and was marked 'X 'for identification. Both the Advocates stated that visit of the petitioner in the suit premises in the presence of Ms Jaya Raheja and the list of the articles that would be removed by the petitioner will be prepared and signed by Ms

Jaya Raheja. A copy of the list will be handed over to the respondent and the respondent shall not question the correctness of the list signed by Ms Jaya Raheja. On 23.6.2016 production was sought. The matter was produced on 27.6.2016 and was adjourned to 12.7.2016. Due to paucity of time it was adjourned to 23.8.2016. On 23.8.2016, the matter was listed before K.K.Tated, J who passed 'Not before me' order. In view of the administrative order passed by Honourable Chief Justice, the petitioner moved this court. On 25.8.2016, by consent of the parties it was adjourned to 13.9.2016, high on board.

9. The matter was thereafter circulated for admission on 23.9.2016. On that day, I have heard Mr. Janak Dwarkadas for the petitioner and Mr. Darius Khambata for the respondent. During the course of hearing, it transpired that the parties have filed documents in this petition which were not before the learned trial Judge. In view thereof, I indicated to the learned counsel appearing for the parties that it will not be fair to consider the documents which were not before the learned trial Judge for testing the correctness of the impugned order. I, therefore, suggested that the impugned order can be modified by treating it as ad-interim order with permission to the parties to produce documents which were not on the file of the learned trial

Judge and after considering these documents, the learned trial Judge would pass appropriate orders on the application below Exhibit 19. Mr Dwarkadas acceded to this suggestion. However, Mr. Khambata submitted that this Court will discard the documents filed in this proceedings which were not before the learned trial Judge and proceed to decide this petition only on the basis of the documents which were before the learned trial Judge.

10. In view of the submission of Mr. Khambata, it was decided to hear the Petition excluding the documents filed in this Petition, which were not before the learned trial Judge. Accordingly, after hearing the parties for quite some, the matter was adjourned to 20.9.2016 and thereafter on 28.9.2016. On these dates, elaborate submissions were advanced by the learned counsel for the parties.

11. In support of this petition Mr. Dwarkadas invited my attention to :-

(a) Divorce Petition filed by the respondent;

(b) Application at Exhibit-19 filed by the respondent for injunction;

(c) Complaint dated 28.3.2016 made by the respondent to the Senior Inspector of Police, Khar Police Station;

(d) Statement of respondent recorded on 4.4.2016;

(e) F.I.R. No.169 of 2016 registered on 4.4.2016 under sections 328, 323, 504 read with section 34 Indian Penal Code, 1860 (for short, I.P.C.);

(f) Affidavit in reply dated 20.4.2016 of the petitioner herein opposing the application Exhibit-19.

12. Mr. Dwarkadas also invited my attention to the provisions of the Protection of Women from Domestic Violence Act, 2005 (for short, 'D.V.Act') and in particular Section 2(a), (f), (p),(q), (s), which define various expressions. He also invited my attention to Sections 17 and 19 of the D.V.Act. Mr. Dwarkadas relied upon following decisions:-

1. Decision of Gujarat High Court in ***Yama Ankit Patel Vs. Ankit Manubhai Patel***[1], and in particulars paragraphs 21 to 24;

2. ***S.R.Batra Vs. Smt Taruna Batra***[2] to contend that the said decision is distinguishable and not applicable in the facts and circumstances of the present case;

3. ***Shammi Nagpal Vs. Sudhir Nagpal***[3], and in particular paragraph 14.2 thereof;

4. Decision in ***Sarika Mahendra Sureka Vs. Mahendra***

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1 **Special Civil Application No.6506 of 2014** decided on 1.8.2014 by Abhilasha Kumari, J.
2 **(2007) 3 SCC 169**
3 **2008(5) Bom.C.R 149**

***Rajkumar Sureka*[4]**, and in particular paragraphs 64,66 to 68.

13. Mr. Dwarkadas submitted that perusal of the Divorce Petition filed by the respondent clearly shows that from 2008 the petitioner and the respondent are residing in the suit premises till 7.4.2016 when the petitioner was compelled to leave the suit premises as F.I.R was lodged by the respondent against her. The petitioner never abandoned the suit premises and he has all the intentions of returning to the suit premises. He submitted that the petitioner along with daughter Rudritara is in settled possession of the suit premises. In the cause title of the Divorce Petition, the address of the petitioner and the respondent is shown as of the suit premises. In paragraph 3 of the Divorce Petition, the respondent has asserted that he stays at the address mentioned in the cause-title, i.e. suit premises, along with their daughter Rudritara and children from his previous marriage, namely, Tania and Varun. The house situate at 82, Pali Hill, is held by a Company known as UPL having one of its office in Mumbai in which the respondent is a Director. The respondent uses the suit premises for the purpose of accommodation by virtue of being Director of the company. Mr Dwarkadas submitted that the UPL Company has not revoked the licence. In other

4 **Appeal from Order No.910 of 2014** decided on 19.9.2016 by Dr.Shalini Phansalkar-Joshi, J.

words, the respondent continues to reside in the suit premises. As the petitioner lives or at any stage has lived in a domestic relationship along with the respondent in the suit premises, it is covered by the definition of “shared household” as per section 2(s) of the D.V.Act.

14. Mr. Dwarkadas submitted that in view of Section 17 which has overriding effect over any other law for the time in force, the petitioner being a woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest therein. The petitioner cannot be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law. The effect of the impugned order is virtually dispossessing the petitioner without following the procedure established by law. By the impugned order, the learned trial Judge has issued temporary injunction restraining the petitioner from entering the suit premises pending hearing and disposal of the divorce petition. The impugned order in effect and in substance is of mandatory nature directing the petitioner to remove herself from the suit premises. He submitted that it is settled position in law that the Court cannot issue mandatory injunction as a matter of course. The principles

governing the grant of mandatory injunction and the grant of temporary injunction are different. While considering the relief of mandatory injunction, the applicant has to establish more than prima facie case, balance of convenience and also irreparable loss and hardship. He submitted that the impugned order is perverse and if allowed to remain in force, will amount to travesty of justice not only to the petitioner but also to her daughter Rudritara. The learned trial Judge failed to consider that Rudritara is residing along with the petitioner and though the injunction order is issued against the petitioner, it has also affected rights of Rudritara as she is virtually prevented from entering the suit premises. The learned trial Judge has failed to consider these aspects.

15. Mr. Dwarkadas invited my attention to paragraph 24 of the impugned order wherein learned trial Judge has referred to **S.R.Batra's case**[2]. He submitted that the learned trial Judge observed that “it is not in dispute that the flat which has been provided by the petitioner (respondent herein) as alternate accommodation i.e 4B Pali Hill, Bandra (E) is their matrimonial house and shared household of the respondent (petitioner herein).

16. Mr. Dwarkadas submitted that in paragraph 25, the learned trial Judge observed that the suit property is alloted by employer of the respondent. It is neither owned nor tenanted property of the respondent and, therefore, did not find any substance in the objection raised by the petitioner herein. He submitted that conjoint reading of paragraphs 24 and 25 of the impugned order shows that the said observation is factually incorrect and contrary to the record. On the contrary perusal of the reply filed by the petitioner herein to application Exh.19 clearly shows that the petitioner has contended that the suit premises is a shared household. The parties were staying in 4B, Pali Hill, Bandra (W) from 2004 to 2008. From 2008 till 7.4.2016 the parties were admittedly residing in the suit premises. He, therefore, submitted that the learned trial Judge proceeded on wrong assumption that it was not disputed that the respondent has provided alternate accommodation,i.e. 4B, Pali Hill, Bandra (W) which is the parties matrimonial house and shared household of the petitioner herein.

17. Mr. Dwarkasdas invited my attention to police complaint lodged by the respondent with Khar Police Station on 28.3.2016 as also his statement recorded on 4.4.2016 and submitted that prima facie at this stage apprehension of the respondent is

baseless. That apart, Varun and Tania, children of the respondent from his first wife are also not residing in the suit premises. The learned trial Judge observed that the respondent has shown his readiness and willingness by issuing letter dated 18.4.2016 for providing as an alternate accommodation of flat situate at 4B , Summer Palace, N.D.Road, Pali Hill, Bandra (W), which is in the same vicinity of Bandra (W) where the respondent is currently residing. The learned trial Judge held that prima facie the respondent has sufficiently proved the case, balance of convenience also lies in his favour and irreparable loss would cause to him if the application is not allowed. He submitted that the learned trial Judge did not record a finding that flat 4B, Summer Palace is a matrimonial home of the parties. He submitted that the findings recorded by the learned trial Judge are perverse and are without considering the provisions of the D.V. Act as also the object of enacting the said Act. For all these reasons, he submitted that the impugned order deserves to be set aside thereby dismissing the application Exh.19 filed by the respondent.

18. On the other hand, Mr. Khambata supported the impugned order. He submitted that during the six years of courtship from 1998 till 2004, the petitioner would regularly visit and also stay at

4B, Summer Palace. The respondent resided at 4B, Summer Palace from1991 to 2008 including after marriage from2004 to 2008. 4B, Summer Palace stands in the personal name of the respondent and, therefore is a matrimonial home.

19. Mr. Khambata has taken me through the text messages dated 4.3.2014, 20.12.2014 as also e-mails. He submitted that SMS dated 4.3.2014 is only one example of the hurtful manner in which the petitioner would address the respondent's children from his previous marriage. He submitted that there are several instances of the petitioner's ill-treatment of respondent's children from his previous marriage which are set out in detail in the divorce petition filed by the respondent. Even before instituting the divorce petition, the petitioner was mistreating and traumatizing not just the respondent but also his children from his previous marriage whose permanent custody is with the respondent.

20. Mr. Khambata submitted that in fact on 31.3.2014 the petitioner attempted to move with Rudritara, then seven years old, to 38 Pali Hill which is a 20000 sq.ft house in which the petitioner has a share and in which her mother resides. The petitioner, however, subsequently returned. He submitted that

between October, 2014 and January, 2015, the parties attempted to discuss their matrimonial issues. The petitioner indicated that she wanted a divorce and when the respondent attempted to reason with her, she began leveling false accusations against with him in a bid to pressurize him into a settlement. He also invited my attention to email dated 3.12.2014 sent by the petitioner to the respondent's father. He submitted that in fact in May 2015 a draft petition for divorce by mutual consent was prepared by Ms Aban Patel at the request of the respondent and the petitioner. This document clearly demonstrates the petitioner's intention to separate and sets out the terms of divorce discussed and agreed between the parties. Mr. Khambata submitted that petitioner is not genuinely interested in continuing with the marriage but she wants better settlement and more money. The petitioner, somehow or the other, wants to re-enter the suit premises solely with a view to harassing the respondent. Mr Khambata has also taken me through the conversations between the parties. Because of the harassment and cruelty both physically and mentally, the respondent was constrained to institute divorce petition on 6.10.2015.

21. Mr. Khambata submitted that the petitioner alleges that she was not aware about the petition till 26.11.2015 despite

living under the same roof as respondent. The petitioner admits that on 26.11.2015 Bailiff attempted to serve the petitioner with a copy of the Divorce Petition. She, however, refused the service and eventually summons was sent through R.P.A.D. and was duly served on 7.12.2015. The petitioner is deliberately delaying hearing of the Divorce Petition. Despite service of the Divorce Petition, the petitioner failed and neglected to appear before the Family Court on 18.1.2016 and 20.2.2016. On 8.3.2016 and 16.4.2016 she filed applications for exemption on the grounds of health and she was advised rest. The said application dated 8.3.2016 was opposed by the respondent's reply dated 28.3.2016 on the ground that the petitioner was partying and travelling and in fact had gone to Geneva on 12.3.2016.

22. Mr. Khambata submitted that on 4.4.2016, F.I.R. No.169 of 2016 was registered by Khar Police Station in pursuance of the complaint lodged by the respondent on 28.3.2016 and the statement recorded on 4.4.2016. On 7.4.2016, the petitioner left the suit premises along with Rudritara to stay a few minutes away at 38, Pali Hill, with her mother. The said premises is owned by the petitioner and this is reflected as per the documents such as passport which was issued on 22.5.2015. This indicates that the petitioner considered 38 Pali Hill to be her own home even

prior to filing of Divorce Petition by the respondent. He submitted that on 10.4.2016, the respondent addressed a letter to the Senior Inspector of Police setting out his apprehension/fear of safety for him and his family and requesting protection from the petitioner. On 16.4.2016, during the course of hearing before the learned trial Judge, the respondent's Advocate stated on instructions that he would provide 4B, Summer Palace as alternative accommodation to the petitioner. On 18.4.2016, the respondent's advocate addressed a letter to the petitioner’s advocate recording offer of alternate accommodation made in the Court on 16.4.2016. The said offer was made in good faith despite the fact that the petitioner is extremely wealthy and has taken up residence at 38, Pali Hill, a 20000 sq.ft. house, 5 minutes away from the suit premises.

23. Mr. Khambata submitted that on 22.6.2016 in pursuance of the order dated 20.6.2016, the petitioner was permitted to visit the suit premises from 11 am for 3 hours to collect her personal belongings. Instead of removing her belongings as per the order passed by this Court, the petitioner created a ruckus, levelled false accusation and threatened to file police complaint on one pretext or other. She also instructed daughter Rudritara to take photographs. He submitted that the conduct of the petitioner has

been recorded by the respondent on phone as well as CCTV camera outside the suit premises.

24. During the course of hearing, Mr. Khambata has also tendered letter dated 30.9.2016 placing on record offer of one of the four properties on leave and licence basis to the petitioner and daughter Rudritara to reside pending of disposal of Divorce Petition. He submitted that this offer is strictly without prejudice to the rights and contentions of the respondent.

25. Mr.Khambata strenuously contended that the suit premises is not "a shared household". He heavily relied upon decision of the Apex Court in the case of **S.R.Batra**[2], and in particular paragraphs 22 to 26 and 29. In particular, in paragraph 29, the Apex Court has categorically held that :

> "a shared household" would only mean -
>
> (1) the house belonging to the husband; or
>
> (2) the house taken on rent by the husband; or
>
> (3) the house which belongs to the joint family of which husband is a member.

He submitted that in paragraph 3 of the Divorce Petition, respondent specifically asserted that house situate at 82, Pali Hill (suit premises) is held by the Company known as UPL having been one of its offices in Mumbai in which the respondent is a Director. Respondent uses this house for the purpose of accommodation by virtue of being a Director of the Company. He submitted that though the petitioner herein filed a lengthy reply to application exhibit-19, she has not dealt with the assertions made in paragraph 3 of the Divorce Petition. In other words, he submitted that the petitioner has accepted the contentions raised by the respondent in paragraph 3 of the Divorce Petition.

26. He submitted that the suit premises does not fall in any of the categories and the learned trial Judge has rightly held that the suit premises is not a shared household. The Apex Court has construed Section 2(s) in paragraph 29 and has held that 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 the husband is a member. He submitted that the suit premises does not belong to the respondent. It is also not taken on rent by the respondent. The suit premises also does not belong to joint family of which the respondent is a member.

27. Mr. Khambata submitted that the petitioner has no right to reside in a particular property. She cannot claim any right in a property which is not a shared household. In fact, 4B, Summer

Palace, is a shared household and the respondent has offered the said premises to the petitioner before the learned trial Judge and even today, he is also ready to offer the said premises to the petitioner.

28. Mr. Khambata relied upon:

(i) decision of Delhi High Court in the case of ***Shumita Didi Sandhu Vs. Sanjay Singh Sandhu***[5], and in paragraphs 45 to 48.

In paragraph 46, the Division Bench referred to the decision of the Apex Court in **S.R. Batra**[2]*.* In paragraph 47, the Division Bench referred to Sections 17 and 19 of the D.V.Act. In paragraph 48, the Division Bench dealt with submissions advanced on behalf of the appellant based on decisions of the learned Single Judges of Kerala High Court and Madras High Court in the cases of *S. Prabhakaran Vs. State of Kerala***,** *2009 (2) RCR (Civil) 883* and *P. Babu Venkatesh Kandayammal and Padmavathi Vs. Rani CRL***,** *(2008) 9 SCC 34.* The Division Bench observed that right of residence does not translate into a right to reside in a particular house, more so because her husband does not have any right, tittle or interest in the said house. Mr Khambata submitted that the respondent has no right,title and interest in the suit premises

5 **174 (2010) DLT 79 (DB)**

and, therefore, cannot be considered as a shared household as contemplated by Section 2(s) of the Act. On the contrary, 4B, Summer Palace is a shared household as it belongs to the respondent.

(ii) **S. R. Batra**[2] and in particular paragraphs 22 to 29 thereof;

(iii) ***Anju Bala Vs. Meera Saxena***[6], and in particular paragraphs 1, 3 and 4 thereof wherein the learned Single Judge of Delhi High Court extensively quoted decision of the Division Bench in **Shumita Didi Sandhu**[5].

29. He submitted that the decision of the Apex Court in **S.R. Batra**[2] cannot be said to be per incurium. He relied upon following decisions:

(a) ***State of Bihar Vs Kalika Kuer***[7], and in particular paragraph 10;

(b) ***Centric Board of Dawoodi Bohra Community Vs State of Maharashtra***[8], and in particular paragraph 7 thereof;

(c) ***South Central Railway Employees Cooperative Credit Society Employees Union Vs. B. Yashodabai***[9];

40. Mr. Khambata submitted that the decision of Gujarat High

6 **2014 SCC Online Delhi 2658**
7 **(2003) 5 SCC 448**
8 **(2005) 2 SCC 673**
9 **(2015) 2 SCC 727**

Court in the case of **Yama Ankit Patel**[1] is not applicable to the facts of the present case. In that case in paragraph 27, the learned Single Judge of Gujarat High Court observed that the effect of the impugned order would be to tear apart and sever the relationship of marriage even before the passing of a decree of divorce though there may be a glimmer of hope for reconciliation in future. In the present case, there is no such hope for reconciliation in future. In paragraph 28, the learned Single Judge noted that admittedly till that date, not a single case of complaint was lodged by the petitioner against the respondent therein. A mere apprehension which has not translated into reality, can hardly be a ground for passing an order so drastic in nature as the impugned order. In the present case, in pursuance of the complaint dated 28.3.2016 made by the respondent and on the basis of the statement recorded on 4.4.2016, the F.I.R. Is registered against the petitioner on 4.4.2016. He submitted that on facts the decision of Yama Ankit Patel is not applicable to the present case.

41. He submitted that the decision in the case of Shammi Nagpal relied by the petitioner rather supports the contention of the respondent herein. In paragraph 20, the learned Single Judge referred to the decision of **S.R. Batra**[2] and observed that the

Apex Court after considering all the relevant provisions has observed that wife is only entitled to claim right to residence in a shared household and a shared household would only mean the house belonging to or taken on rent by husband or the house which belongs to joint family of which husband is a member. It was thereafter observed that as in the present case if the premises is held to be a shared household that will undoubtedly lead to chaos and no company would be able to provide residential accommodation to its employees and if they do, they would not be able to take possession of such houses. The provisions of D.V.Act has and can have no application to a third party. The provisions of the D.V.Act would apply only as between husband and the plaintiff. In that case also, the premises in question was purchased by PIEM Hotels Limited. Defendant no.1 was Director of PIEM. Defendant no.1 was appointed as IT Adviser of Indian Hotels Co. Ltd (defendant no.2). PIEM granted licence of the suit premises to defendant no.2 by entering into leave and licence agreement. He submitted that the decision in **Shammi Nagpal's case**[3] supports the respondent's case.

42. Mr. Khambata further submitted that the decision of this Court in **Sarika Mahendra Sureka**[4] is also not applicable to the present case. In that case, the marriage was solemnized in the

year 1991. Since the date of marriage the parties were jointly residing along with respondent no.2, mother-in-law, and other family members as members of joint family. The appellant was found in occupation of the suit premises as her matrimonial home since last 25 years. He submitted that by order dated 4.7.2011, the Family Court allowed the appellant's application for interim injunction restraining respondent no.1, her husband, ousting her from the possession of of the suit flat without following due process of law which is not the present case here. The learned single Judge came to the conclusion that facts in the decision of the Apex Court in **S.R. Batra's case**[2] are distinguishable and are not applicable to the facts of the present case. He, therefore, submitted that the decision in **Sarika Mahendra Sureka's case**[4] is not applicable. In any case, the learned Single Judge in **Shammi Nagpal**[3] and **Sarika Sureka**[4] have followed the decision of **S.R.Batra's case**[2] which has construed Section 2(s) of D.V.Act. Mr. Khambata submitted that ratio laid down in the decision is binding on this Court. He submitted that D.V.Act is a Central Legislation. The various High Courts have interpreted the provisions of D.V.Act and have held that “shared household' means the house / property falling in either of the three categories, namely- (1) the house belonging to ; or (2) taken on rent by the husband; or (3) the house which belongs to the joint family of which husband is a member. Though these decisions are of different High Courts, they have persuasive value.

43. Mr. Khambata further submitted that though by any standard the impugned order cannot be termed as a perverse order. He submitted that in paragraph 21, the learned trial judge considered the arguments advanced on behalf of the petitioner that the suit property is a matrimonial house, i.e. a shared household of the petitioner and that she has right to have property and right to reside in the suit premises. In paragraph 22, the learned trial Judge considered the submissions advanced on behalf of the respondent that the suit premises is not a matrimonial house of the respondent. It is allotted to the respondent by his employer. The suit premises is not owned by the respondent. It is temporary accommodation given on the basis of allotment to the respondent. In paragraph 24, the learned trial Judge specifically recorded that “it is not in dispute that the flat which has been provided by the petitioner (respondent herein) as an alternate accommodation i.e. 4B, Pali Hill, is their matrimonial house and is a shared household of the petitioner herein. In paragraph 25, the learned trial Judge noted that the suit premises is a house property allotted by his

employer. It is neither owned nor tenanted property of the respondent. In paragraph 26, the learned trial Judge has considered the police complaint lodged by the respondent on 28.3.2016 alleging that the petitioner has drugged the respondent in conspiracy with Bangali Baba and forced him to consume food. Prima facie, the learned trial Judge held that the apprehension of the respondent that if the petitioner is allowed to enter into the house where the respondent is residing along with his children born from his first wife, it would likely to cause irreparable loss and damage to him. The learned trial Judge further held that if the application is allowed, no prejudice or harm is caused to the petitioner as the respondent has already shown his willingness and has also issued letter showing his readiness to provide 4B, Summer Palace. He submitted that the said findings are based on material on record and it cannot be construed as perverse findings. In support of this submission he relied upon following decisions:

a. ***Estralla Rubber Vs. Dass Estate (P) Ltd.***[10], and in particular paragraph 6;

b. ***Ouseph Mathai Vs. M.Abdul Khadir***[11], and in particular paragraph 4;

10 **(2001) 8 SCC 97**
11 **(2002) 1 SCC 319**

c. ***Sameer Suresh Gupta Vs. Rahul Kumar Agarwal***[12], and in particular paragraph 6 thereof;

44. Mr. Khambata submitted that the conduct of the petitioner also dis-entitles her from seeking any relief under Article 227 of the Constitution of India. He, therefore, submitted that the petition is liable to be dismissed.

45. In the rejoinder, Mr. Dwarkadas submitted that petitioner is not contending that the decision of the Apex Court in **S.R.Batra's case**[2] is per incuriam. Petitioner contends that the said decision is not applicable to the facts of the present case. He further submitted that in the case of **Sarika Mahendra Sureka**[4], the learned Single Judge of this Court has considered various decisions including **S.R.Batra's case**[2] as also (a) Dorab Cawasji Warden Vs. Coomi Sorab Warden and others, *(1990) 2 SCC 117* and (b) Mrs. Preeti Satija Vs. Mrs. Raj Kumari & anr, *2014 (1) Crimes 571*. The learned Single Judge also considered the provisions of D.V. Act as also statement of objects and reasons of the D.V. Act. He submitted that the ratio of that judgment is in paragraphs 66 and 67.

12 **(2013) 9 SCC 374**

46. Mr. Dwarkadas submitted that the decisions in **Shumita Didi Sandhu**[5] and **Anju Bala**[6] relied by Mr. Khambata are not applicable to the facts of the present case. Mr. Dwarkadas submitted that the petitioner has filed reply only to application at exhibit-19 and reserved right to file a detailed reply to the Divorce Petition. The said fact is evident from paragraph 1 of the reply dated 21.04.2016. In other words, he submitted that the submission of Mr. Khambata that the statement made in paragraph 3 of the Divorce Petition is not controverted by the respondent is not correct. He, therefore, submitted that impugned order deserves to be set aside thereby dismissing application exhibit-19.

47. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. In my opinion, the following questions arise for my determination:

(i) Whether house property situate at 82, Pali Hill, Bandra (West), Mumbai 400 006 i.e. suit property is a 'shared household' as contemplated by Section 2(s) of the D.V. Act?

(ii) Whether the respondent has made out a case in the application exhibit-19 for grant of relief in terms of prayer clause (a)?

(iii) Whether the impugned order is perverse and is a travesty of justice as also leads to miscarriage of justice requiring this Court to interfere in its exercise of powers under Article 227 of the Constitution of India?

48. As the discussion in respect of these questions is overlapping, the same are dealt with together. Before I consider these question and the submissions advanced by the learned Counsel appearing for the parties in that regard, it is necessary to consider the provisions of the D.V. Act. Preamble of the D.V. Act lays down that the said Act is to provide for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto. Statement of objects and reasons reads thus,

> “Statement of Objects and Reasons.-Domestic violence is undoubtedly a human right issue and serious deterrent to development. The Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action (1995) have acknowledged this. The United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) in its General Recommendation No. XII (1989) has recommended that State parties should act to protect women against violence of any kind especially that occurring within the family.
>
> 2. The phenomenon of domestic violence is widely prevalent but has remained largely invisible in the public domain. Presently, where a woman is subjected to cruelty by her husband or his relatives, it is an offence under Section 498-A of the Indian Penal Code. The civil law does not however address this phenomenon in its entirety.

3. It is, therefore, proposed to enact a law keeping in view the rights guaranteed under Articles 14, 15 and 21 of the Constitution to provide for a remedy under the civil law which is intended to protect the women from being victims of domestic violence and to prevent the occurrence of domestic violence in the society.

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.

5. The Bill seeks to achieve the above objects. The notes on clauses explain the various provisions contained in the Bill.

(emphasis supplied)"

49. Clauses (a), (b), (f), (g), (p), (q) and (s) of Section 2 define the expressions "aggrieved person", "child", "domestic relationship", "domestic violence", "residence order", "respondent" and "shared household" respectively. These provisions read thus:

"2. Definitions.- In this Act, unless the context otherwise requires,-

(a) "aggrieved person" means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent;

(b) "child" means any person below the age of eighteen years and includes any adopted, step or foster child;

(f) "domestic relationship" means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family;

(g) "domestic violence" has the same meaning as assigned to it in section 3;

(p) "residence order" means an order granted in terms of sub-section (1) of section 19;

(q) "respondent" means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act:

Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner.

> (s) "shared household" **means a household where the person aggrieved lives or at any stage has lived in a domestic relationship** either singly or along with the respondent and **includes** such a household whether **owned** or **tenanted** either **jointly by the aggrieved** person and **the respondent**, or **owned** or **tenanted by either of them** in respect of which either the aggrieved person or the respondent or both jointly or singly have **any right, title,** interest or equity and **includes** such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household.
>
> (emphasis supplied)”

50. Section 3 defines the expression “domestic violence” and lays down that for the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it among others includes economic abuse. Explanation I(iv)(c) lays down that for the purposes of this Section, economic abuse includes prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household. Explanation II lays down that for the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes "domestic violence" under this section, the overall facts and circumstances of the case shall be taken into consideration. The said provision reads thus,

> “3. Definition of domestic violence- For the purposes of

this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it -

(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and **economic abuse**; or

(b) …

(c) …

(d) …

Explanation I.--For the **purposes of this section**,--

(i) …
(ii) …
(iii) …
(iv) “economic abuse” includes-
(a) …
(b) …
(c) **prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household**.

Explanation II. - **For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes "domestic violence" under this section, the overall facts and circumstances of the case shall be taken into consideration**.

(emphasis supplied)”

51. Section 17 deals with right of every woman to reside in a shared household and reads thus,

“17. Right to reside in a shared household- (1) Notwithstanding anything contained in any other law for the time being in force, **every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same**.

(2) **The aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the**

procedure established by law.”

52. Section 19 enables the Magistrate to pass a residence order while disposing of an application under Section 12(1) of the Act. Section 19(1)(a) and sub-section (2) read thus,

> “19. Residence orders.- (1) While disposing of an application under sub-section (1) of section 12, the Magistrate may, on being satisfied that **domestic violence** has taken place, pass a residence order -
>
> (a) **restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;**
>
> (b) to (f) …
>
> (2) The Magistrate may impose any additional conditions or pass any other direction which he may deem reasonably necessary to protect or to provide for the safety of the aggrieved person or any child of such aggrieved person.
>
> *(emphasis supplied)*”

53. Section 26(1) lays down that any relief available under Sections 18, 19, 20, 21 and 22 may also be sought in any legal proceeding, before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act. Section 36 lays down that the provisions of this Act shall be in addition to, and not in derogation of the provisions of any other law, for the time being in force.

54. In the present case, vires of provisions of the D.V.Act is not called in question. In other words, the Court has to proceed on the footing that the provisions of the D.V.Act are intra vires. In the case of ***Punjab Land Development & Reclamation Corpn. Ltd. Vs. Presiding Officer, Labour Court***[13], the Constitution Bench of the Apex Court referred to the decision of *Sussex Peerage case*, (1844) 11 Cl & Fin 85. Tindal, C.J. observed that “the only rule of construction of Acts of Parliament, is that they should be construed according to the intent of the Parliament which passed the Act. If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do, in such case, best declare the intention of the law giver.". The Apex Court also referred to decision of *B. N. Mutto Vs. T. K. Nandi*, (1979) 1 SCC 361, wherein it was observed thus,

> "The Court has to determine the intention as expressed by the words used. If the words of a statute are themselves precise and unambiguous then no more can be necessary then to expound those words in their ordinary and natural sense. The words themselves alone do in such a case best declare the intention of the lawgiver."

55. In *Thompson Vs. Goold & Co.*, 1910 AC 409, it was stated "it is a wrong thing to read into an Act of Parliament words which

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13 **(1990) 3 SCC 682**

are not there, and in the absence of clear necessity it is a wrong thing to do so." "The cardinal rule of construction of statute is to read statutes literally, that is, by giving to the words their ordinary, natural and grammatical meaning." In paragraphs 63 to 65, it was observed thus,

> 63. To interpret an Act of Parliament is to give effect to its intention. Lord Simon in Ealing L.B.C. v. Race Relations Board, [1972] AC 342 (360) said:
>
> "The Court sometimes asks itself what the draftsman must have intended. This is reasonable enough: the draftsman knows what is the intention of the legislative initiator (nowadays almost always an organ of the executive); he know what canons of construction the courts will apply; and he will express himself in such a way as accordingly to give effect to the legislative intention. Parliament, of course, in enacting legislation assumes responsibility for the language of the draftsman. But the reality is that only a minority of legislators will attend the debates on the legislation. Failing special interest in the subject-matter of the legislation, what will demand their attention will be something on the face of proposed legislation which alerts them to a questionable matter. Accordingly, such canons of construction as that words in a non-technical statute will primarily be interpreted according to their ordinary meaning ..... "
>
> 64. According to Lord Simon looking into the legislative history or' the preparatory works may sometimes be useful but may often lead to abuse and waste, as "an individual legislator may indicate his assent on an assumption that the legislation means so-and-so and the courts may have no way of knowing how far his assumption is shared by his colleagues, even those present." "In the absence of such material it is said, the courts have five principal avenues of approach to the ascertainment of the legislative intention: (1) examination of the social background, as specifically proved if not within common knowledge, in order to identify the social or juristic defect which is likely subject of remedy; (2) a conspectus of the entire relevant body of the law for the same purpose; (3) particular regard to the long title of the statute to be interpreted (and where available, the preamble), in which the general legislative objectives will be stated; (4) scrutiny of the actual words to be interpreted,

> in the light of the established canons of interpretation; and (5) examination of the other provisions of the statute in question (or of other statutes in pari materia) for the illumination which they 148 throw on the particular words which are the subject of interpretation.
>
> 65. The Heydon's Rule requires that the court will look at the Act to see what was its purpose and what mischief in the earlier law it was designed to prevent. Four things are to be considered: (i) What was the law before the making of the Act? (ii) What was the mischief and defect for which the earlier law did not provide? (iii) What remedy the Parliament had resolved to cure? (iv) What is the true reason for the remedy? The Court shall make such construction as shall suppress the mischief and advance the remedy. Where the statute has been passed to remedy a weakness in the law, it is to be interpreted in such a way as well to bring about that remedy.

30. In paragraph 70, reference was made to what Lord Denning says in his Discipline of Law at page 12, which is to the following effect:

> "Whenever a statute comes up for consideration it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity. The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsman of Acts of Parliament have often been unfairly criticised. A judge, believing himself to be lettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it, and of the mischief which it was passed to remedy, and then he must supplement the writ- ten word so as to give 'force and life'

to the intention of the legislature."

31. Perusal of the definition of 'shared household' in Section 2(s) shows that it employs the words “means” and “includes”. In ***P. Kasilingam Vs. P.S.G.College of Technology***[14], the Apex Court referred to decision of *Dilworth Vs. Commissioner of Stamps*, 1899 AC 99 and *Mahalakshmi Oil Mills Vs. State of A.P.*, (1989) 1 SCC 164 and observed that the words “means and includes” indicate “an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions”.

32. Applying the tests laid down in the above decisions, I will consider the submissions advanced by the learned Counsel for the parties. Mr. Khambata heavily relied upon the decision of the Apex Court in the case of **S.R.Batra**[2] to contend that the Apex Court has interpreted Section 2(s) of the D.V.Act and in paragraph 29 has held that a shared household must be falling in any of the following categories:

(1) the house belonging to the husband; or
(2) the house taken on rent by the husband; or
(3) the house which belongs to the joint family of which husband is a member.

14 **1995 Supp (2) SCC 348**

33. He submitted that as the suit premises does not fall in any of the categories, the learned trial Judge has rightly held that the suit premises is not a shared household. In order to appreciate this submission, it is necessary to minutely analyse the decision of the Apex Court in the case of **S.R.Batra**[2].

(i) marriage between respondent Taruna Batra and Amit Batra, son of appellants was solemnized on 14.04.2000;

(ii) after the marriage, respondent Taruna started living with her husband Amit in the house of appellant No.2 on the second floor of house at B-135, Ashok Vihar, Phase-I, Delhi;

(iii) It was not disputed that the said house belonged to the appellant No.2, mother-in-law of respondent Taruna and not Amit Batra;

(iv) It appears that disputes / differences arose between Taruna and Amit within 3 years of marriage. Amit Batra had instituted Divorce Petition against Taruna and it was alleged that as a counter blast to the Divorce Petition, Taruna filed FIR under Sections 406/498-A/506 and 34 Indian Penal Code, 1860 and got her father-in-law, mother-in-law, her husband and married sister-in-law arrested by the police. They were granted bail only after 3 days. It was admitted position that respondent Taruna had shifted to her parents residence because of the dispute with her husband;

(v) Taruna alleged that later on when she tried to enter house of appellant No.2, she found the main entrance locked. She, therefore, instituted Suit No.87 of 2003 for mandatory injunction enabling her to enter the house. Appellants contended that before any order passed by the trial Court on the Suit filed by Taruna, along with her parents, she forcibly broke open the locks of the house belonging to appellant No.2. Appellants alleged that they have been terrorized by daughter-in-law and for some time they had to stay in their office;

(vi) Appellants contended that their son Amit Batra, husband of respondent Taruna had shifted to his own flat at Mohan Nagar, Ghaziabad before the above litigation between the parties had started;

(vii) By order dated 04.03.2003, the learned trial Judge decided both the applications for temporary injunction filed in that Suit. The learned trial Judge held that respondent was in possession of the second floor of the property and accordingly, granted temporary injunction restraining the appellants from interfering with her possession;

(viii) Aggrieved by that decision, appellants preferred Appeal before the learned Senior Civil Judge, Delhi. **By order dated 17.09.2004, the learned Judge held that respondent**

Taruna was not residing in the second floor. He also held that Amit Batra was not living in the suit property and the matrimonial home could not be said to be a place where only wife was residing. He also held that Taruna had no right to the properties other than that of her husband. He allowed the appeal and dismissed the temporary injunction application. Aggrieved by that decision, respondent instituted Writ Petition under Article 227 of the Constitution of India, which was disposed of by the learned Single Judge of the Delhi High Court;

(emphasis supplied)

(ix) The learned Single Judge held that the second floor of the property in question was the matrimonial home of the respondent Taruna. He further held that even if Amit Batra shifted to Gaziabad, that would not make Ghaziabad, matrimonial home of respondent Taruna. It was further held that mere change of the residence by the husband would not shift the matrimonial home from Ashok Vihar, particularly when he had filed a divorce petition against the respondent. The learned Single Judge held that respondent Taruna was entitled to continue to reside in the second floor as that was her matrimonial home;

(x) In paragraph 14, the Apex Court referred to the decision in *B.R.Mehta Vs. Atma Devi*, (1987) 4 SCC 183 and in paragraph 15, observations from paragraph 6 of that report were extracted. In that case, appellant – B. R. Mehta was inducted as a tenant by one R. N. Kurra, deceased husband of respondent No.1 and father of respondents No.2 to 8 in respect of ground floor of premises No.2/14, Kalkaji Extension, New Delhi. On 20.07.1977, the landlord filed eviction petition against the appellant on the ground of bonafide requirement. On or about 25.09.1978, the appellant's wife Smt. Santosh Raj was allotted Flat No. 93, Sadiq Nagar, i.e., a government quarter due to her employment as a teacher in the Government Girls Higher Secondary School No. III, Kalkaji, New Delhi. On 17.03.1986, respondent No.1 filed Petition in the Court of the Rent Controller, Delhi on the ground that wife of the appellant had been allotted a residential quarter from the Directorate of Education, Delhi on 25.09.1978, and therefore, appellant came within the mischief of Section 14(1)(h) of the Delhi Rent Control Act, 1958. The learned Additional Rent Controller was of the view that no evidence is necessary and the matter can be decided on admitted facts. The eviction decree was passed as the tenant had acquired vacant possession of residence. Appellant went in appeal before the Tribunal. The Tribunal dismissed the appeal. The appellant approached the

High Court in the Second Appeal. High Court summarily dismissed the appeal.

The question that fell for consideration before the Apex Court was whether under Section 14(1)(h) of the Delhi Rent Control Act, 1958, an allotment of a house to a wife who is a government employee in all circumstances, dis-entitled the tenant to retain the tenanted premises. In paragraph 6 of the report, the submission advanced on behalf of the respondent landlord that the flat in question allotted to the wife of the tenant could not by any stretch of imagination be considered to be a matrimonial home was recorded. The reference was thereafter made to the Matrimonial Homes Act, 1967 enacted in England as also reference was made to Halsbury's Laws of England, Fourth Edition, Vol. 22 page 650. It is in that context, the Apex court observed that the premises in question, which the wife occupied was indisputably not matrimonial home. It was nobody's case. The husband would not, therefore, have any statutory or legal right against the Government to use and enjoy the allotted premises to the wife of the tenant because of her job. Looked at from any point of view, the tenant cannot be made to lose his tenancy because of wife acquiring possession of a flat or allotment of a flat because of her official duties over which the husband has no right or domain or occupation.

Thus, the said judgment was in the context of acquisition of government quarter by the wife of the tenant and the submission was advanced as to whether that constituted matrimonial home or not. In paragraph 6, while dealing with the law in England, it was observed that whether one spouse is entitled to occupy the dwelling house by virtue of any estate or interest or contract or by virtue of any enactment giving him or her the right to remain in occupation, and the other spouse is not so entitled, then the spouse not so entitled has the certain rights, known as "rights of occupation", that is to say, if in occupation, a right not to be evicted or excluded from the dwelling house or any part of it by the .other spouse except with the leave of the court given by an order if not in occupation, a right with the leave of the court so given to enter into and occupy the dwelling house. But such rights are not granted in India though it may be that with change of situation and complex problems arising it is high time to give the wife or the spouse a right of occupation in a truly matrimonial home, in case of marriage breaking up or in case of strained relationship between the husband and the wife. The Apex Court thereafter proceeded to observe that for the purpose of deciding the case much assistance cannot be derived from the principle adumbrated in paragraph 1047 of Halsbury's Laws of England.

(xi) In paragraph 16 of **S.R.Batra's case**[2], the Apex Court held that the observation in paragraph 6 is merely an expression of hope and it does not lay down any law. It is only the Legislature which can create a law and not the Court. The courts do not legislate, and whatever may be the personal view of a Judge, he cannot create or amend the law, and must maintain judicial restraint.

(xii) In paragraph 18, it was held that the house in question belonged to appellant No.2, mother-in-law of respondent Taruna and it did not belong to her husband Amit Batra. Respondent Taruna, therefore, cannot claim any right to live in the said house. Appellant No.2 had stated that she had taken a loan for acquiring the house and it is not a joint family property. The Apex Court did not find any reason to disbelieve the said statement.

(xiii) In paragraph 21, the Apex Court noted that the learned Senior Civil Judge held that respondent Taruna was not residing in the premises in question was a finding of fact which cannot be interfered with either under Article 226 or Article 227 of the Constitution of India. The Apex Court, therefore, held that respondent Taruna cannot claim any injunction restraining the appellants from dispossessing her from the property in question as she was not in possession at all of the said property and consequently, the question of dispossession does not arise;

(xiv) In paragraphs 22 and 23, the Apex Court reproduced

Sections 2(s), 17 and 19(1) of the D.V. Act. In paragraph 24, the Apex Court considered the submission advanced on behalf of the respondent Taruna that the definition of 'shared household' includes a household where the person aggrieved lives or at any stage has lived in a domestic relationship. Respondent's Advocate contended that since admittedly respondent had lived in the property in question in the past, the said property is her shared household;

(xv) In paragraph 25, Apex Court observed that it did not agree with this submission;

(xvi) In paragraphs 26, 27 and 29, Apex Court observed thus,

> “26. If the aforesaid submission is accepted, then it will mean that wherever the husband and wife lived together in the past that property becomes a shared household. It is quite possible that the husband and wife may have lived together in dozens of places e.g. with the husband's father, husband's paternal grand parents, his maternal parents, uncles, aunts, brothers, sisters, nephews, nieces etc. If the interpretation canvassed by the learned counsel for the respondent is accepted, all these houses of the husband's relatives will be shared households and the wife can well insist in living in the all these houses of her husband's relatives merely because she had stayed with her husband for some time in those houses in the past. Such a view would lead to chaos and would be absurd.
>
> 27. It is well settled that any interpretation which leads to absurdity should not be accepted.

> 29. As regards Section 17(1) of the Act, in our opinion the wife is only entitled to claim a right to residence in a shared household, and 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 the husband is a member. The property in question in the present case neither belongs to Amit Batra nor was it taken on rent by him nor is it a joint family property of which the husband Amit Batra is a member. It is the exclusive property of appellant No. 2, mother of Amit Batra. Hence it cannot be called a `shared household'."

34. Coming to the facts of the present case, perusal of the cause title of the Divorce Petition shows that address of both, petitioner and respondent is of the suit premises. In paragraph 3, respondent asserted that when he is in India, he stays in the suit premises **along with their daughter Rudritara and his children from previous marriage, namely, Tania and Varun (whenever they are in Mumbai)**. The suit premises is held by UPL, having one of its offices in Mumbai in which the respondent is a Director. Respondent uses the suit premises for the purpose of accommodation by virtue of being a Director of the Company. In paragraph 10, respondent asserted that **the petitioner herein was made aware that both Tania and Varun, then aged 7 years and 9 years respectively, would live with him at the suit pemises along with the petitioner herein since**

their permanent custody was handed over to the respondent. Respondent alleged that on account of petitioner's conduct and harassment inflicted upon them by the petitioner as set out in the Divorce Petition, both of them were compelled to stay away from home since 2013 and 2008 respectively. In paragraph 13, **respondent alleged that Varun and Tania are forced to stay away from home (suit premises) due to the harassment and visit their home only during vacations for a short period.** In paragraph 18, **respondent alleged that during the short stay of Varun and Tania, during the vacations, petitioner ill-treats them. Whenever Tania and Varun are at home (suit premises), the petitioner tells the servant to harass them by deliberately not serving food to them.**

35. It is also not in dispute between the parties that petitioner and respondent stayed in 4B, Pali Hill, Bandra (East) between 2004 and 2008. From 2008 onwards, petitioner and respondent were staying in the suit premises till 07.04.2016. Perusal of paragraph 6 of the application exhibit-19 shows that respondent alleged that Khar Police Station had detained Bengali Baba in relation to the complaint lodged by him. On or about the same time, petitioner left the suit premises along with Rudritara on

07.04.2016 to an unknown location. He learnt that petitioner is not available. Thus, from the perusal of the Divorce Petition as also application at exhibit-19 and even as per the case of the respondent, it is come on record that they were staying together from 2008 to 07.04.2016 in the suit premises. It has already come on record that respondent has lodged a complaint with Khar Police Station on 28.03.2016. His statement was recorded on 04.04.2016 and on that basis, F.I.R.No.169 of 2016 was registered by Khar Police Station under Sections 323, 328, 504 and 34 I.P.C. It is only because of registration of FIR, petitioner left the suit premises along with her daughter. Prima facie, at this stage, it does not appear that the petitioner herein has abandoned the suit premises permanently with the intention of not returning to the suit premises. Prima facie, at this stage, because of the registration of the FIR, petitioner was constrained to leave the suit premises along with her daughter. On 10.04.2016, respondent addressed a letter to the Senior Inspector of Police attached to Khar Police Station. He referred to filing of written complaint by him on 28.03.2016 as also registration of F.I.R.No.169 of 2016 on 04.04.2016. It is further stated therein that he learnt that police officers arrested Bengali Baba who disclosed the name of the petitioner and others involved in the case. He also learnt that police officers wanted to serve notice and record the statement of respondent. Since 07.04.2016, petitioner along with minor daughter Rudritara left the suit premises. He tried to contact her but she is not approachable. Petitioner disappeared from the suit premises and learnt that she is refusing to cooperate in the investigation. He, therefore, requested to locate the petitioner and minor daughter who left the suit premises without intimation to him and not approachable. He is concerned and worried about them specifically because of the prevailing situation. He also apprehended that petitioner at any moment forcibly enter into the suit premises and likely to physically harm him and his children as she has done earlier. He, therefore, requested to provide appropriate police protection for which he is ready and willing to bear the costs. He also requested to find the whereabouts of the petitioner and the minor daughter and provide him appropriate protection and / or necessary direction to the petitioner of not to assault him and his children. It has also come on record that the petitioner instituted Anticipatory Bail Application No.707 of 2016 on 18.04.2016 under Section 438 of the Code of Criminal Procedure, 1973.

36. By order dated 27.04.2016, the learned Additional Sessions Judge allowed the anticipatory bail application subject to

imposing conditions. Perusal of that order shows that respondent herein opposed the anticipatory bail application as is evident from paragraphs 13 to 15 of the order. Perusal of paragraph 18 of the order dated 27.04.2016 passed by the learned Additional Sessions Judge in that application shows that the learned Sessions Judge considered the incident of 25.03.2016 as also lodging of complaint dated 28.03.2016. After perusing the written complaint dated 28.03.2016, the learned Sessions Judge observed that there was no mention of any date of incident of offering of the juice. It was alleged that respondent's sleep pattern and behaviour was affected and was also disoriented and his sleep pattern also changed and he had to sleep upto 12 hours some time since last week. The learned Sessions Judge further observed that on consideration of the entire written complaint, which is referred in the FIR, there is no whisper of incident dated 25.03.2016 and more specifically offering of the juice by the petitioner. In paragraph 21, the learned Sessions Judge noted that even after the incidence of 25.03.2016, parties have travelled together and attended parties which was not denied from the side of the informant (respondent herein) during the arguments.

37. It is also material to note that respondent has instituted

Divorce Petition on 06.10.2015. On 25.11.2015, petitioner hosted a party at the suit premises for the respondent, his school and college friends. At about 10.40 a.m. on 25.03.2016, respondent returned from Africa by his private jet. On 26.03.2016 at 5.20 a.m., he took a flight for going to Punjab and Delhi. On the same day, later on, petitioner and respondent attended Sangeet Ceremony of daughter of C.O.O. of UPL. Petitioner and respondent stayed overnight in the room of Hotel Leela, Gurgaon. It is the case of the petitioner that respondent flew back to Mumbai after attending wedding ceremony of daughter of C.O.O. of UPL. Respondent reached Mumbai at 1.40 a.m. on 28.03.2016. Perusal of the complaint dated 28.03.2016 shows that respondent alleged that he has been assaulted a few times by the petitioner which he brought to the notice of the Competent Law Authority. Off-let his sleep pattern and his behaviour has been affected and also disoriented. His sleep pattern has also changed and he tends to sleep upto 12 hours some times, since last week. Respondent further alleged that petitioner has been in touch with a Baba and he suspects that said Baba may be trying to drug him with some drugs which could impact his abilities. This systematic drugging can cause danger to his life.

38. In the statement recorded on 04.04.2016, respondent

comes out with the case that petitioner offered orange juice to him and after consuming orange juice, he started feeling giddiness and sleepy. From that date till today (04.04.2016), there is a change in his health condition and he feels uneasiness. He is sure that petitioner with the help of Bengali Baba is trying to cause harm to his life by administering poisonous substance. Prima facie, the story made up in the complaint dated 28.03.2016 is difficult to digest. It is not the case of the respondent in the complaint that either petitioner herein or Bengali Baba has administered any drug to him. All that he says is that he suspects that Baba may be trying to drug him with some drugs. Apart from the fact that the said complaint dated 28.03.2016 is prima facie bereft of any particulars, the alleged sleep pattern and behaviour is prima facie not because of the drug allegedly administered to him either by the petitioner or by Bengali Baba but because of his journey and hectic schedule, referred hereinabove. Prima facie, the letter dated 10.04.2016 was addressed by the respondent with a view to ensuring that petitioner does not apply for anticipatory bail as in pursuance of this letter, she would be arrested.

39. As noted earlier, it is not in dispute that petitioner along with her daughter was residing in the suit premises along with

the respondent from 2008 to 07.04.2016. During the course of hearing of this petition, I enquired from Mr. Khambata as to whether the petitioner can be said to be in settled possession of the suit premises. Mr. Khambata submitted that at least after 07.04.2016, petitioner is not in settled possession of the suit premises. Perusal of the impugned order shows that the learned trial Judge has not considered whether petitioner is in settled possession of the suit premises or not. In paragraphs 24 and 25, the learned trial Judge considered the decision in **S.R.Batra's case**[2] and held that the suit premises is not the shared household. Mr. Khambata relied upon paragraphs 22 to 26 and 29. Mr. Khambata submitted that in paragraph 29, the Apex Court held that 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 to which the husband is a member. In other words, a shared household would only mean - (a) house belonging to the husband; or (b) house taken on rent by the husband; or (c) house which belongs to the joint family of which husband is a member. I have already discussed in extenso the decision in **S.R.Batra's case**[2]. In the context of the facts obtaining in that case, the Apex Court made observations in paragraph 29, extracted hereinabove. If contention of Mr. Khambata that shared household means only 3 categories (a), (b) and (c), referred hereinabove, in that case, it would amount to re-writing Section 2(s). Section 2(s) defines the expression “shared household” to mean -

(a) a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent;

(b) and includes such a household whether owned either jointly by the aggrieved person and the respondent, or owned by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity;

(c) and includes such a household whether tenanted either jointly by the aggrieved person and the respondent, or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity;

(d) and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household.

40. If the contention of Mr. Khambata is accepted, the definition of 'shared household' in Section 2(s) would be as under:

“ 'Shared Household' means a a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household.”

41. In other words, the following words will stand wiped out from the definition of the expression “shared household”.. viz.

“a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent.”

42. In **S.R.Batra's case**[2], in paragraph 16, the Apex Court observed that it is only the Legislature which can create a law and not the Court. The Court do not legislate and whatever may be the personal view of a Judge, he cannot create or amend the law and must maintain judicial restraint. In my opinion, the facts obtaining in the case of **S.R.Batra**[2] are totally different from the facts obtaining in the present case. I have already held that the

petitioner was in a settled possession of the suit premises right from 2008 till 07.04.2016 and the circumstances in which she was impelled to leave the suit premises. In my opinion, the suit premises is a shared household in view of the first part of Section 2(s), namely “a household where the **person aggrieved lives or at any stage has lived in a domestic relationship** either singly or along with the respondent”. Here, the words employed in Section 2(s) are also required to be carefully analyzed. As noted earlier, Section 2(a) defines the expression “aggrieved person” to mean “**any woman who is, or has been, in a domestic relationship with the respondent** and who alleges to have been subjected to any act of domestic violence by the respondent”. The expression “domestic relationship” is defined under Section 2(f) to mean “a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity (relating to or denoting people descended from the same ancestor), marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family”. Petitioner and respondent herein fit in the first category of definition of 'shared household' under Section 2(s) of the D.V.Act.

43. It is also material to note that while issuing injunction, the

learned trial Judge overlooked the fact that daughter of the parties, Rudratara, is residing with the petitioner. Section 2(b) defines the expression “child” to mean any person below the age of 18 years and includes any adopted, step or foster child. Admittedly, Rudritara is below the age of 18 years. The effect of the impugned order adversely affects the rights of Rudritara. This aspect is considered by the learned Single Judge of Gujarat High Court in the case of **Yama Ankit Patel**[1], and in particular paragraph 24 wherein the learned Single Judge considered Sections 2(s) and 17 of the D.V.Act and observed that the impugned order has effect of not only restraining the petitioner therein from entering or living in the matrimonial house but also deprives the two minor daughters of their right to reside in their father's house, for no fault of their own. The impugned order is an order of injunction not only against the petitioner but in effect, two minor daughters as well. The same reasons apply with equal force to the facts of the present case.

44. Section 2(g) defines the expression “domestic violence” as having the same meaning as assigned to it in Section 3. Section 3 is already extracted earlier. Perusal of Section 3 shows that “domestic violence” includes “economic abuse”. Explanation I (iv) lays down that economic abuse includes among others

[clause (c)] - prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household. In my opinion, the learned trial Judge also failed to consider definition of 'domestic violence' contained in Section 3 of the D.V.Act.

45. Section 17 of the D.V. Act deals with right of every woman to reside in a shared household and lays down that notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same and the aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law. Section 19(1)(a) and (2) read with Section 26(1) clearly shows that Family Court is empowered to pass appropriate residence order restraining the respondent from disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household. Section 36 lays down that the provisions of the D.V.Act shall be in addition to and not in derogation of the

provisions of any other law for the time being in force. The effect of the impugned order is overlooking provisions of Sections 17, 19 and 26 of the D.V. Act.

46. In paragraph 26 of the impugned order, the learned trial Judge has referred to the police complaint dated 28.03.2016 and registration of F.I.R. and observed that there is substance in the apprehension raised by the respondent and at this stage, prima facie, it is the apprehension of the respondent if the petitioner herein is allowed to enter the house wherein respondent is currently residing along with his children born from his first wife, it would likely to cause irreparable loss and damage to the respondent. Prima facie, this finding is also contrary to the material on record. I have already discussed in detail the fact that petitioner and respondent were staying together even after filing of the Divorce Petition by the respondent on 06.10.2015. They were travelling together. They were partying together and were participating in social functions. That apart, it has come on record that Varun and Tania, children of the respondent from previous marriage are staying abroad and come to the suit premises for short duration during vacations. I have already dealt with the written complaint dated 28.03.2016 made by the respondent. In my opinion, the findings recorded by the learned

trial Judge in paragraph 26 are perverse and are contrary to the material on record. There is no material on record for arriving at any finding recorded in paragraph 26 of the impugned order.

47. Mr. Khambata relied upon the decision of Delhi High Court in the case of **Shumita Didi Sandhu**[5], and in particular paragraphs 40, 41 and 45 to contend that "shared household" means a household falling in either of the three categories, referred hereinabove. The said decision was followed by the learned Single Judge in the case of **Anju Bala**[6]. The decision of Division Bench in **Shumita Didi Sandhu**[5] was considered by the other Division Bench of Delhi High Court in ***Preeti Satija Vs. Raj Kumari and another***[15]. The Division Bench also referred to the decision in **S.R.Batra's case**[2] as also provisions of the D.V.Act. The Division Bench observed in paragraph 21 that it would be contrary to the scheme and object of the D.V.Act as also unambiguous text of Section 2(s) to restrict the application of D.V. Act to only such cases where the husband alone owns some property or has a share in it. In other words, Division Bench held that Section 2(s) cannot be interpreted to mean shared household falling in three categories only as contended by Mr. Khambata. The decision in **Preeti Satija's case**[15] was rendered

15 **207 (2014) Delhi Law Times 78 (DB)**

on 15.01.2014. It appears that the said decision of the Division Bench was not brought to the notice of the learned Single Judge in **Anju Bala's case**[6], which was decided on 17.04.2014. I respectfully agree with the view expressed by the Division Bench of Delhi High Court in the case of **Preeti Satija**[15]. I am unable to accept submission of Mr. Khambata. The said submission overlooks first part of the definition of a shared household in Section 2(s) of the D.V.Act.

48. Mr. Dwarkadas submitted that it is not the case of the petitioner that decision in **S.R.Batra's case**[2] is per incuriam. In view thereof, it is not necessary to deal with judgments in - (i) **State of Bihar**[7]; (ii) **South Central Railway Employees Cooperative Credit Society Employees Union**[9], and (iii) **Centric Board of Dawoodi Bohra Community**[8] relied by Mr. Khambata, which deal with the aspect of per incuriam.

49. Mr. Khambata relied upon decisions of -

(a) Sameer Suresh Gupta[12];

(b) Estralla Rubber[10]; and

(c) Ouseph Mathai[11] to contend that no case is made out for invocation of powers under Article 227 of the Constitution of India. He submitted that by any standard, impugned order cannot be termed as a perverse order. He submitted that in paragraph 24, the learned trial Judge specifically recorded that it is not in dispute that the flat which has been provided by the respondent as an alternate accommodation i.e. Summer Palace, Pali Hill is their matrimonial house or a shared household of the petitioner herein. For the reasons recorded herein, I have held that the suit premises is a 'shared household' and the learned trial Judge relying upon the decision in **S.R.Batra's case**[2] held otherwise. In the case of ***Surya Dev Rai Vs. Ram Chander Rai***[16], the Apex Court has dealt with powers of High Court under Articles 226 and 227 of the Constitution of India. It is also held that the power of superintendence so conferred on the High Court is administrative as well as judicial, and is capable of being invoked at the instance of any person aggrieved or may even be exercised suo motu. **The paramount consideration behind vesting such wide power of superintendence in the High Court is paving the path of justice and removing any obstacles therein.** The power under Article 227 is wider than the one conferred on the High Court by Article 226 in the sense that the power of superintendence is not subject to those technicalities of procedure or traditional fetters which are to be found in certiorari jurisdiction. In exercise of supervisory

16 **(2003) 6 SCC 675**

jurisdiction the High Court may not only quash or set aside the impugned proceedings, judgment or order but it may also make such directions as the facts and circumstances of the case may warrant, may be by way of guiding the inferior court or tribunal as to the manner in which it would now proceed further or afresh as commended to or guided by the High Court. Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When the subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have **or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned**. The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly **and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion**.

50. Applying the tests laid down by the Apex Court in the case of **Surya Dev Rai**[16], I am more than satisfied that this is a fit case for invocation of powers under Article 227 of the Constitution of India.

51. Mr. Khambata submitted that the decision of the learned Single Judge of this Court in the case of **Shammi Nagpal**[3] supports the contention of the respondent herein. In paragraph 20, the learned Single Judge referred to the decision of **S.R.Batra's case**[2]. In that case, plaintiff took out notice of motion in a Suit instituted under Section 6 of the Specific Relief Act, 1963 alleging forcible dispossession from the suit premises between 14.03.2008 and 17.03.2008 when she was out of India. In paragraph 2.5, the learned Single Judge noted that on 14.03.2008, defendant No.2 (Indian Hotels Company Limited) addressed a termination letter of the service occupancy agreement to the defendant No. 1. In that context, the learned Single Judge observed in paragraph 14.3 that even if it is accepted that the suit premises was a matrimonial home of the plaintiff, it is ceased to be so on termination of the occupancy agreement and therefore, plaintiff would not be entitled to claim any right in it. If such view is not taken the entire system of companies offering premises to employees will break down. The companies will have to fight litigation to secure possession of such premises till the last member in the family of such employee is evicted.

52. Mr. Khambata relied upon paragraph 20 of that decision

where after referring to the decision in **S.R.Batra's case**[2], the learned Single Judge observed that if the premises as in the present case, is held to be a shared household that will undoubtedly, lead to chaos and no company would ever be able to provide residential accommodation to its employees and if they do, they would not be able to take back possession of such houses. As noted earlier, it was in the context of the fact that on 14.03.2008, defendant No.2 therein had terminated the service occupancy agreement with defendant No.1. In paragraph 14.2, the learned Single Judge observed thus,

> "14.2 In my opinion, even the home, such as one in the present case, could also be treated as a matrimonial home so long as the employee either continues to be in possession of such home or is entitled to retain possession thereof till termination of his service or till retirement or resignation or death or termination of service occupancy agreement. The moment his right to retain possession gets extinguished such employee is under an obligation to return the said property to the company and in such eventuality the home ceases to be the matrimonial home. In the present case, the suit premises is admittedly not of defendant no. 1's ownership and he was in possession thereof right from inception as a licensee either of Piem or of defendant no. 2. Although the plaintiff has contended that the leave and licence agreement was not renewed after it had expired on 31.7.2007 and that defendant no. 2 has absolutely no right, title or interest in and to the suit premises, in reply defendant no. 2, on affidavit, has clearly stated the leave and licence agreement has been renewed and defendant no. 2 continues to be the licensee of Piem and no dispute or lis exists between Piem and defendant no. 2 with regard to his possession. At this stage, I do not find any reason to disbelieve the statement made on affidavit."

53. In view thereof, it cannot be said that the decision in

Shammi Nagpal's case[3] (*supra*) supports the contention of the respondent herein. In fact, paragraph 14.2 extracted hereinabove supports the contention of the petitioner as in the present case, it is not brought on record that U.P.L. has revoked the licence in favour of the respondent. Respondent in fact in the capacity of the Director of U.P.L. continues to reside it the suit premises even till date.

54. Mr. Khambata submitted that the decision of the learned Single Judge of this Court in **Sarika Mahendra Sureka**[4] is not applicable to the present case. In that case, on facts, it was found that the wife was in occupation of the premises in dispute therein as her matrimonial home since last 2 years. In the present case, I have already held that the petitioner was in settled possession of the suit premises from 2008 till 07.04.2016 when she was impelled to leave the suit premises. It cannot be said that the petitioner has abandoned the suit premises permanently with an intention of not returning. In fact, perusal of that decision shows that the learned Single Judge has considered statement of objects and reasons of the D.V.Act and decision of the Apex Court in the case of **S.R.Batra**[2]. In paragraph 64 of **Sarika Mahendra Sureka**[4], it was observed that the concept of ownership of title practically has nothing to do when one

considers the definition of “shared household”. In paragraphs 66 and 67, the learned Single Judge considered various decisions as also Sections 2(q), 2(s) and Sections 12, 17 and 19 of the D.V. Act. In paragraph 67, the learned Single Judge observed that the very object of enactment of D.V.Act is to protect the right of married woman in the “shared household” irrespective of to whom such house belongs and when the very concept of her right of residence being linked to title or ownership of the house being alien and kept away from the scheme of the Act, as due to the very absence of right, title or interest in the matrimonial home, she was thrown out therefrom, to import again the very same concept of title and ownership is defeating the very object of the Act, setting at naught the legislative efforts and most importantly depriving the woman of her human rights, which are given statutory recognition under D.V. Act.

55. Perusal of application exhibit-19 shows that applicant claimed injunction on the basis of the – (a) alleged administration of food which has affected and disoriented his sleep pattern and behaviour and (b) apprehension of his

safety as the petitioner is likely to cause irreparable damage to him, if she is allowed to enter the suit premises. Petitioner has assaulted the respondent in the past. Prima facie, there is no evidence to support this contention and I have already held that the learned trial Judge has recorded findings in paragraph 26, which are not supported by the material on record. That apart, it has come on record that Varun and Tania, children of the respondent from previous marriage are staying abroad and come to the suit premises for short duration during vacations. Thus, perusal of the application exhibit-19 shows that it is bereft of any particulars and is not supported by any material. The learned trial Judge failed to appreciate that the effect of allowing application is issuing mandatory injunction restraining the wife from entering the suit premises. In the case of **Dorab Cawasji Warden** *(supra)*, the Apex Court has laid down the guidelines in the matter of granting of interim mandatory injunction. In paragraphs 16 and 17, it was observed thus,

> “16. The relief of interlocutory mandatory injunction is thus granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have

> been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm, courts have evolved certain guidelines. Generally stated these guidelines are:
>
> 1. The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction.
>
> 2. It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.
>
> 3. The balance of convenience is in favour of the one seeking such relief.
>
> 17. Being essentially an equitable relief the grant or refusal of an interlocutory mandatory injunction shall ultimately rest in the sound judicial discretion of the court to be exercised in the light of the facts and circumstances in each case. Though the above guidelines are neither exhaustive nor complete or absolute rules, and there may be exceptional circumstances needing action, applying them as prerequisite for the grant or refusal of such injunctions would be a sound exercise of a judicial discretion".

56. Applying the tests laid down by the Apex Court in the case of **Dorab Cawasji Warden** *(supra)* and after considering the application exhibit-19, it has to be held that respondent has miserably failed to make out a case for interim order. In my opinion, the impugned order is perverse and leads to miscarriage of justice. It also amounts to travesty of justice. Questions No.(i) to (iii) are answered accordingly.

57. That brings me to the offers made by the respondent before the Family Court and this Court. On 16.04.2016, during the course of hearing before the Family Court, respondent offered 4B, Summer Palace. On 18.04.2016, respondent's Advocate addressed a letter to the petitioner's Advocate recording the offer of alternate accommodation. During the course of hearing before this Court, on 30.09.2016, respondent tendered letter placing on record four properties on leave and licence basis to the petitioner. In my opinion, the offer made by the respondent proceeds on the footing that the suit premises is not a shared household. The offer made by the respondent is a conditional offer. I have already held that the suit premises is a shared household and that the petitioner has a right to reside therein. It will be open to the respondent to file application before the Family Court placing on record the offer of alternate accommodation subject to his accepting that the suit premises is a shared household. In that event, it will be open to the petitioner to consider such offer.

58. In the light of the aforesaid discussions, the impugned order cannot be sustained and as such, is liable to be set aside. Accordingly, impugned order is set aside and the application at exhibit-19 is dismissed. Rule is made absolute accordingly. In the circumstances of the case, there shall be no order as to costs.

59. It is made clear that the observations made herein and the findings recorded are prima facie and tentative and are made only for the purpose of deciding application exhibit-19. The Investigating Officer shall carry out investigation uninfluenced by the observations made herein. The Criminal Court seized of the complaint made by the respondent shall also decide the case on the basis of the evidence on record and in accordance with law, uninfluenced by the observations made herein. Similarly, the Family Court seized of the Divorce Petition shall decide the same on the basis of the evidence on record and in accordance with law and uninfluenced by the observations made in this order.

60. At this stage, Mr. Khambata applies for stay of this order for a period of 6 weeks from today. He assures that respondent will not apply for further extension of time. Mr. Dwarkadas opposes this application.

61. In view of the fact that the petitioner is not residing in the suit premises after 07.04.2016, and as the respondent intends to challenge this order before the Apex Court, in my opinion, ends of justice will be served by staying this order for a period of 4 weeks from today with specific understanding that no application for further extension of time shall be made and entertained by this Court. Order accordingly.

(R. G. KETKAR, J.)