

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **RSA 42/2016**

Reserved on: 15.03.2016

Date of decision: 23.03.2016

ANUKRITI DUBEY

..... Appellant

Through: Ms.Indira Unninayar, Ms.Nina
Bhalla & Mr.Narayan Krishan,
Advocates.

versus

PARTHA KANSABANIK AND ANR

..... Respondents

Through: Mr.Manish Vashisht &
Mr.Amit Kumar Thakur,
Advocates for Respondent
No.1.
Mr.Rajeev Sharma, Proxy for
Mr.Ajay Dabas, Advocate for
Respondent No.2.

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR ,J.

1. Heard the counsel for the parties.
2. The present second appeal arises out of judgment and order dated 30.01.2016 passed by the Additional District Judge-2, South West District, Dwarka Courts, Delhi in RCA No.34/2015 whereby the judgment and decree of the Trial Court dated 30.09.2015 in CS(OS) No.133/2015, allowing the suit of the respondent No.1 under Order 12 Rule 6 of the CPC, thereby entitling respondent No.1 to recover

possession of the suit property from the appellant, was affirmed and upheld by the Appellate Court.

3. The respondent No.1 filed a suit bearing CS(OS) No.133/2015 for a decree of possession and eviction in his favour and against the appellant/defendant No.2 and respondent No.2 (husband of the appellant) in respect of suit property No.F-71, DG(S) Apartments, Plot No.6, Sector 22, Dwarka, New Delhi as well as for mesne profits. The case of the respondent No.1/plaintiff before the Trial Court was that he is the landlord and absolute owner of the property referred to above (hereinafter called the suit property), where husband of the appellant was inducted as a tenant on a monthly rental of Rs.15,500/-. A tripartite agreement was executed with respect to the suit property for a period of 11 months, commencing from 15.03.2014, which agreement/lease expired on 15.02.2015. The respondent No.1/plaintiff, after the expiry of the lease deed, expressed his unwillingness to continue the tenancy of the husband of the appellant and wanted them (appellant and respondent No.2) to vacate the suit property. Despite repeated requests and a legal notice dated 07.05.2015 to the husband of the appellant, a copy of which was sent to the appellant as well, the suit property was not vacated. Instead, the appellant sent a notice to respondent No.1/plaintiff intimating him that the suit property would not be vacated because of matrimonial dispute between the appellant and her husband. A request also was made to continue the tenancy. The aforesaid notice was replied by the respondent no.1/plaintiff in the negative.

4. Hence the aforesaid suit for eviction, possession and recovery of mesne profits and damages.

5. The husband of the appellant who was original defendant No.1 in the suit, filed his written statement stating that the possession of the suit property could not be handed over to the plaintiff as it was in sole possession of the appellant (defendant no.2) since September, 2014. It was also averred that all the dues till 14th of March, 2015, as agreed upon between the plaintiff and him vide email dated 10.02.2015 was paid. The plaintiff himself had given one month time to the respondent No.2/defendant No.1 for vacating the property.

6. The appellant (defendant No.2 in the original suit) contested the suit on the ground that she was a wife in distress who had been deserted by her husband/defendant No.1, who had left the shared tenanted household i.e. suit property for which a complaint dated 14.09.2014 was made to the SHO, Sector 23 Dwarka police station. It was also stated by the appellant in her written statement that several civil and criminal litigations were pending between her and her husband, including a complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005, which is pending adjudication before the Dwarka District Courts. In the aforesaid proceeding, the relief sought by the appellant/defendant No.2 for restraining her husband from dispossessing her till she moved into the jointly owned flat in Greater Noida and/or direction to her husband to pay rent and other dues till she was able to shift and remove her belongings to her jointly owned flat at Noida and for protection of her belongings till then, was rejected on the ground that it was for the

landlord, in the event of the expiration of the lease of agreement, to consent for a fresh lease or agreement for continuing with the tenancy. The Domestic Violence Court expressed its inability and unwillingness to grant such interim relief as against a landlord who was not a party in the aforesaid proceeding under the Domestic Violence Act.

7. On the basis of the pleadings, the Trial Court vide judgment dated 30.09.2015, decreed the suit under Order 12 Rule 6 of the CPC holding that the appellant/defendant No.2 who was the main contestant, admitted the existence of landlord-tenant relationship as also of the expiration/termination of the tenancy.

8. The Trial Court took note of the fact that for a landlord to maintain a suit for possession, what was required to be proved was: (i) the relationship of landlord and tenant between the parties; (ii) termination of tenancy by lapse of time or a notice under Section 106 of the Transfer of Property Act and (iii) the suit property ought not to have been governed by the provision of Delhi Rent Control Act, 1958. Taking the pleadings of the parties which amounted to an admission of the tenancy at the rate of Rs.15,500 per month, which expired and the unwillingness of the respondent No.1/plaintiff to continue or extend the tenancy, the suit was decreed under Order 12 Rule 6 CPC.

9. The appellant challenged the aforesaid judgment and decree of the Trial Court vide RCA No.34/2015 on the ground that the suit of eviction and possession was misused, solely for the purposes of ousting the appellant/defendant No.2 from the suit property which was the matrimonial home/shared household and thus she was divested of

her Constitutional as well as statutory right of residence and shelter. The stand of the appellant before the Trial Court was that he was entitled to any one of the reliefs under Sections 19 to 21 of the Domestic Violence Act and such relief could be sought by her before any court as per Section 26(1) of the Domestic Violence Act. The appellant raised the issue that under Section 26(2) of the Domestic Violence Act, the relief sought by her to continue in the tenanted household ought to have been granted in addition to or along with any other relief.

10. The appellant further contented that Section 26 (3) of the D.V. Act makes it very clear that the reliefs could be granted before any other civil or criminal courts. The Section is not restrictive but is wide enough not to limit the application of the same where “aggrieved person” and “respondent” are parties but includes any proceeding affecting either of them.

11. The Trial Court, according to the appellant, wrongly interpreted the relief sought by her as one seeking to continue the tenancy. She never sought such relief but had only prayed for her being given temporary protection, respite and relief by way of directing her husband to make payment of rent and arrears till she was granted a residence right/alternate residence.

12. The case of the appellant is that both the courts below did not take into account the law laid down by the Supreme Court in ***B.P.Achala Anand vs. S.Appi Reddy and Anr., 2005(3) SCC 313*** which mandated that a Hindu wife is entitled to be maintained by her

husband under the same roof and such rights of maintenance could not be defeated by taking it away through any other mechanism of law.

13. The sum and substance of the arguments of the appellant is: (a) the inherent statutory right to residence to a wife under the D.V. Act cannot be defeated by her husband by not contesting the suit for eviction by the landlord; (b) what cannot be done directly in law cannot be indirectly through other laws.

14. The appellant has also challenged the judgments of the courts below on the ground that provisions under Order 12 Rule 6 of the CPC could not have been invoked for passing a preliminary decree without going into the question whether the tenancy was terminated unlawfully, collusively and purposely for ousting her from the shared household and that the tenancy continued through the continued possession of the wife. The appellant, therefore, urges that the tenancy though had expired on 15.02.2015 but it continued with the consent of respondent No.1. Respondent No.1 (landlord), even though knew about the disturbed matrimonial relationship between the appellant and respondent No.2, he lodged the suit, perhaps with the approval of respondent No.2 who merely wanted to defeat the provisions of law through the agency of the landlord.

15. The first Appellate Court vide judgment and order dated 30.01.2006 held that the statutory right of the appellant of residence under Section 17 of the Domestic Violence Act or of maintenance under Section 18 of the Hindu Adoption and Maintenance Act, 1956 were not enforceable against a third person i.e a landlord. The Trial

Court judgment and decree therefore, was upheld by the first Appellate Court.

16. In order to appreciate the contentions of the appellant it would be necessary to refer to certain definitions and provisions of The Protection of Women from Domestic Violence Act, 2005 (hereinafter called the Domestic Violence Act, 2005).

17. “Domestic relationship” has been defined under clause (f) of Section 2 of the Act which reads as hereunder:-

(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;

18. Sub Clause (s) of Section 2 of the D.V. Act defines a “shared household”:-

(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.”

19. From the definition of domestic relationship and shared household referred to above, it is apparent that domestic relationship would not exist between persons who are not related by consanguinity, marriage or through a relationship in a nature of marriage, adoption or are not family members living together as a joint family. Thus, a landlord is completely out of the scheme of the Act, not being in domestic relationship with a person who along with her husband is or was a tenant in his house.

20. A tenanted premises may come under the definition of “shared household” under Clause (s) of Section 2 of the D.V Act if such premises have been used by the aggrieved person and the respondent even if and irrespective of whether the respondent or the aggrieved person has any right, title or interest in the aforesaid premises. This definition, though, is inclusive of tenanted premises, but is limited to the period during which the tenancy subsists. The definition of “shared household” is surely with respect to a joint family property or a tenanted premises which are occupied by the aggrieved person and the respondent in a domestic relationship. A landlord does not have any domestic relationship even during the subsistence of a tenancy and, therefore, he is outside the realm of the D.V. Act. After the expiration of the tenancy, thus, the premises of the respondent which may have been used or is being used by the aggrieved person and the respondent would not come under the category of a shared household. Under the Domestic Violence Act an aggrieved person has a right to reside in a

shared household, whether or not the aggrieved person has any right, title or beneficial interest in the same. Section 17 of the Act reads as hereunder:-

“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.”

21. Sub clause 2 of the Act makes it very clear that the aggrieved person would 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.

22. The “respondent” also has been defined under the Act (refer to sub clause (q) of Section 2) which means any adult male person who has, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under the Act. The proviso to the sub Clause (q) further specifies that an aggrieved wife or a 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.

23. The right of the appellant, thus under Section 17 of the Act would not be enforced against the respondent No.1, who cannot be

called a respondent in the first instance, a respondent in a domestic relationship in the second instance; his premises which were let out for a specified period to the respondent No.1 along with her husband in a shared household after the expiry of the lease agreement and proposed eviction is only in accordance with the procedure established by law i.e by filing a suit for eviction before the competent Court. Similarly, the residence orders which could be obtained by an aggrieved wife under Section 19 of the Act also would not include a landlord in whose premises the couple resided under a lease agreement, the period of which has expired.

24. Considering the contention of the appellant and the beneficent provisions of the Domestic Violence Act overrides all other provisions and no law can deprive an estranged wife from such reliefs as contemplated under the Act, it would be necessary to refer to Section 26 of the Domestic Violence Act. Section 26 reads as hereunder:-

“26. Relief in other suits and legal proceedings.—

(1) 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.

(2) Any relief referred to in sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court.

(3) In case any relief has been obtained by the aggrieved person in any proceedings other than a

proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief.”

25. The provisions of Section 26 of the Act only declares that the reliefs to which an estranged wife is entitled to under the Act could be sought in any legal proceeding before either Civil Court, Family Court or a Criminal Court but with the necessary condition that it affects the aggrieved person and the respondent whether such proceedings are before the commencement of the Act or after. What Section 26 specifies is that even in other forums, the reliefs to which a woman is entitled could not be refused and such relief would be over and above what is granted to her under the Act. This provision also does not bring in a landlord in the category of a respondent for any Court to pass an order against him on any proceeding in accordance with law, even to the detriment of a woman in distress or an estranged wife.

26. Section 36 of the Act clarifies that the provisions of the Domestic Violence Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

27. In ***B.P.Achala Anand vs. S.Appi Reddy and Anr.***, 2005 (3) SCC 313 the issue before the Supreme Court was whether a deserted wife who has been or is entitled to be in occupation of the matrimonial home can contest the suit for eviction filed against her husband in her capacity as tenant. The aforesaid question was answered by saying that subject to the condition that the tenant has given up the contest or is not interested in contesting the suit and such giving up by the tenant-husband shall prejudice the deserted wife who is residing in the premises. Another issue which was before the Supreme Court was

whether the scope and ambit of the contest or defence by the wife would be on a higher/larger footing than that of the tenant himself. Answer to the aforesaid poser was that the wife would only be entitled to raise such pleas and claims as would have been available to the tenant himself and no more.

28. The Supreme Court in the aforesaid case made it very clear that a deserted wife in occupation of the tenanted premises cannot be placed in a position which is different from her husband if he had contested the suit. In paras 32 & 33, the Supreme Court clarified the conditions under which a deserted wife would be in a position to contest the suit for eviction:-

32. In our opinion, a deserted wife who has been or is entitled to be in occupation of the matrimonial home is entitled to contest the suit for eviction filed against her husband in his capacity as tenant subject to satisfying two conditions: first, that the tenant has given up the contest or is not interested in contesting the suit and such giving up by the tenant-husband shall prejudice the deserted wife who is residing in the premises; and secondly, the scope and ambit of the contest or defence by the wife would not be on a footing higher or larger than that of the tenant himself. In other words, such a wife would be entitled to raise all such pleas and claim trial thereon, as would have been available to the tenant himself and no more. So long as by availing the benefit of the provisions of the Transfer of Property Act and rent control legislation, the tenant would have been entitled to stay in the tenancy premises, the wife too can continue to stay exercising her right to residence as a part of right to maintenance subject to compliance with all such obligations

including the payment of rent to which the tenant is subject. This right comes to an end with the wife losing her status as wife consequent upon decree of divorce and the right to occupy the house as part of right to maintenance coming to an end.

33. *We are also of the opinion that a deserted wife in occupation of the tenanted premises cannot be placed in a position worse than that of a sub-tenant contesting a claim for eviction on the ground of sub-letting. Having been deserted by the tenant-husband, she cannot be deprived of the roof over her head where the tenant has conveniently left her to face the peril of eviction attributable to default or neglect of himself. We are inclined to hold — and we do so — that a deserted wife continuing in occupation of the premises obtained on lease by her husband, and which was their matrimonial home, occupies a position akin to that of an heir of the tenant-husband if the right to residence of such wife has not come to an end. The tenant having lost interest in protecting his tenancy rights as available to him under the law, the same right would devolve upon and inhere in the wife so long as she continues in occupation of the premises. Her rights and obligations shall not be higher or larger than those of the tenant himself. A suitable amendment in the legislation is called for to that effect. And, so long as that is not done, we, responding to the demands of social and gender justice, need to mould the relief and do complete justice by exercising our jurisdiction under Article 142 of the Constitution. We hasten to add that the purpose of our holding as above is to give the wife's right to residence a meaningful efficacy as dictated by the needs of the times; we do not intend nor do we propose the landlord's right to eviction against his tenant be subordinated to the*

wife's right to residence enforceable against her husband. Let both the rights coexist so long as they can.”

29. Facts of the aforesaid case are different from the case of the appellant. In the suit, preferred by respondent No.1, the appellant was impleaded as a party (defendant No.2). Even the notice of eviction was separately served upon her. The Supreme Court in ***B.P.Achala Anand*** (Supra) took reference to a case which was cited by Lord Denning states in *The Due Process of Law* (London, Butterworths, 1980, at p. 212)—

“A wife is no longer her husband's chattel. She is beginning to be regarded by the laws as a partner in all affairs which are their common concern. Thus the husband can no longer turn her out of the matrimonial home. She has as much right as he to stay there even though the house does stand in his name. ... Moreover it has been held that the wife's right is effective, not only as against her husband but also as against the landlord. Thus where a husband who was statutory tenant of the matrimonial home, deserted his wife and left the house, it was held that the landlord could not turn her out so long as she paid the rent and performed the conditions of the tenancy.

(Emphasis supplied)”

30. Another instance which has been quoted in the aforesaid judgment is as hereunder:-

“If a statutory tenant goes out of occupation, leaving lodgers or sub-tenants or no one in the house, he ceases to be entitled to the protection of the Rent Restriction Acts, but he does not, in my

opinion, lose the protection if he goes out leaving his wife and furniture there. The reason is because the wife has a very special position in the matrimonial home. She is not the sub-tenant or licensee of the husband. It is his duty to provide a roof over her head. He is not entitled to tell her to go without seeing that she has a proper place to go to. He is not entitled to turn her out without an order of the court: see Hutchinson v. Hutchinson [(1947) 2 All ER 792] . Even if she stays there against his will, she is lawfully there, and, so long as she is lawfully there, the house remains within the Rent Acts and the landlord can only obtain possession if the conditions laid down by the Acts are satisfied.”

31. No doubt, right of residence is a part of the right of maintenance to a wife. Had the appellant taken the plea that she would continue to pay the monthly rental, the situation would have been different. However, this is also debatable in as much as no person could be forced to enter into a contract with another without his consent or choice. Thus it would have depended upon the desire and willingness of the landlord to continue with the tenancy when the tenancy has expired.

32. In ***Smt.Preeti Satija vs. Smt.Raj Kumari & Anr***, RFA (OS) No.24/2012 a Division Bench of the Delhi High Court explained the definition of shared household:-

15. The definition of "shared household" emphasizes the factum of a domestic relationship and no investigation into the ownership of the said household is necessary, as per the definition. Even if an inquiry is made into the aspect of

ownership of the household, the definition casts a wide enough net. It is couched in inclusive terms and is not in any way, exhaustive (S. Prabhakaran v. State of Kerala, 2009 (2) RCR 883. It states that "...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).

16. It would not be out of place to notice here that the use of the term "Respondent" is unqualified in the definition nor is there any qualification to it under Sections 12, 17 or 19. Therefore, there is no reason to conclude that the definition does not extend to a house which is owned by a mother-in-law or any other female relative, since they are encompassed under the definition of "Respondent" under Section 2(q)." (emphasis supplied)

16. The above decision of a single judge was approved by the Division Bench in Evenet Singh v. Prashant Chaudhari (DB, FAO (OS) 71-72/2011, decided on 08.11.2011)

"12. Thus, at best it can be urged that while deciding an issue pertaining to a wife's claim for residence in the shared household the discussion must start with a presumption in favour of the wife that law leans in her favour to continue to reside in the shared household and only upon adequate circumstances being manifestly and

objectively disclosed by the opposite party, could an order contemplated by clause (f) of sub-section 1 of Section 10 of the Act be passed. 13. In the instant case the circumstance to take recourse to clause (f) of sub-section 1 of Section 19 of the Act would be the extreme ill health of the mother-in-law of the appellant; medical documents pertaining to whom would show that she suffers from 'tachycardia' with heart muscles functioning at about 20%. The constant strife with the newly married daughter-in-law in her house would certainly have an adverse effect on the mother-in-law. Besides, the husband of the appellant is currently in Hyderabad and not at Delhi.

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

33. Thus in that case the term shared household was being interpreted in the context of a family property and the “respondent” stood in special relationship with the aggrieved person i.e. the mother-in-law.

34. The ratio in ***Ishpal Singh Kahai vs. Mrs.Ramanjeet Kahai***, 2011 Vol.3 Mh.L.J, does not improve the case of the appellant as it talks about the right of a woman to residence not as a proprietary right but in the nature of entitlement to protection for human rights against violence by a respondent. A tenanted premises may come within the expression of shared household but such premises would come out of the scope of such definition, no sooner the tenancy expires.

29. It can, therefore, be seen that there is no place for proprietary rights under the D.V. Act. The Act is an extension of the deeper and profounder principle of Women's Rights as a part of Human Rights. The matrimonial home or the shared household of a person does not require it to be owned or co-owned by the person who has been violated. It could be any household "whether owned or tenanted, either jointly or by either of them" as specifically set out in section 2(s) above. It is the household in which the victim and the violator may be having rights, singly or jointly. Consequently, they may or may not have title to the property and hence the victim can apply for a residence order to the Court in respect of a shared household, which includes their matrimonial home, whether or not she has any right, title or beneficial interest therein. The very consideration of ownership rights would put materialism before matrimony.

30. In fact, the lesser the entitlement to property rights, the more is the entitlement to protection of human rights against violence. It may not be out of place to rethink the depth of the words of none other than Mahatma Gandhi reaching out to the most vulnerable of humankind in generic terms:

"I hold that the more helpless a creature, the more entitled it is to protection by men, from the cruelty of men."

35. In the present case there is no dispute with respect to the right of the appellant in contesting the suit for eviction, which right she has exhausted.

36. What the Courts below were required to see was whether the pleadings of the parties were express and direct for the suit to have

been decreed under Order 12 Rule 6 or not. A clear and unambiguous pleadings justify the judgment and decree of both the Courts below in decreeing the suit under Order 12 Rule 6.

37. While issuing notice to the respondent, this Court by order dated 04.02.2016 had framed the following questions of law though tentatively, to be answered by the respondent:-

- (i) *Whether a tenanted premises where a woman lives with her husband would come in the category of a shared household?*
- (ii) *Whether respondent No.2 has, in a colourable manner invoked a provision under the civil law seeking ouster of the appellant from the shared household?*
- (iii) *Whether a husband could be directed to continue with the tenancy of residence in which the woman was residing for past several months along with him and*
- (iv) *Whether a landlord, even though not related by blood or consanguinity, could be asked to extend the tenancy, and not pursue with the execution of the decree in his favour, when the possession has not been given up by the lessee i.e. the husband of the woman in distress and the tenancy continued through the wife and the belongings of the husband?"*

38. At the time of hearing of the present second appeal apart from the aforesaid questions, the appellant raised the following issues:

- (a) The respondent landlord is *dominus litis* i.e. master of the suit and the party who has control of the action he has brought about and therefore the Trial Court and the First Appellate Court ought to have directed him to continue

with the tenancy where the appellant had been residing hitherto.

- (b) The respondent had sought relief against both husband and wife jointly and therefore the suit could not have been decided under Order 12 Rule 6 of the CPC merely on the basis of the written statement of the appellant and the same ought to not have been treated as a waiver of her statutory right flowing from the Domestic Violence Act.
- (c) While deciding a suit under Order 12 Rule 6 of the CPC the court was duty bound to see the entire and overall effect of the pleadings and documents and no myopic view of the case was permitted to be taken merely on the basis of some part of the written statement of the appellant (wife).
- (d) The courts while allowing the suit of the respondent under Order 12 Rule 6 of the CPC paved way for respondent No.2 (husband) to evade his responsibilities and thereby defeat the beneficent and ameliorating provisions of law and lastly.
- (e) That the landlord could have been directed under the D.V. Act, as the third party to enable the effectuation of the appellant's right by way of garnishee orders.

39. The answer to the above posers are as hereunder:

40. The tenanted premises where a woman lives with her husband would definitely come within the category of shared household but as long as the tenancy survives.

41. The fact that the husband of the appellant (respondent No.2; defendant No.1 in the original suit) made a clear statement, which fact stands admitted by respondent No.1 herein that upto date payments were made prior to the termination/expiration of the tenancy lease, makes it very evident that there was no colourable/malafide action on the part of either respondent No.1 or respondent No.2 (the husband).

42. Learned counsel for the respondent No.1 has drawn the attention of this Court to the affidavit appended with the present appeal wherein the appellant has shown herself as temporarily residing with her parents at B-234, GH-09, GAIL Housing Colony, Sector 56, Gurgaon. This fact also reinforces the submission of the respondent No.1 that the tenancy has not been continued even through the belongings of the appellant or her husband.

43. It would not be lawful, in the opinion of this Court, to force an outsider who is not privy to any dispute between the warring couple or has any truck or alliance with them to extend tenancy in their/in wife's favour without his choice or willingness despite the beneficent provisions of the Domestic Violence Act when the term of lease has expired and the tenancy also stands terminated.

44. The rights of a person is no less valuable than the right of the appellant, here in this case to have a place of residence and protection.

45. The Domestic Violence Court rightly expressed its inability to direct the respondent No.1, the landlord, to continue with the tenancy and only suggested that the appellant could request the landlord for extension/renewal of the tenancy lease.

46. For the reasons aforesaid, the appeal fails and is dismissed.

47. The impugned judgments are upheld and affirmed.

CM Appl.No.4388/2016

1. In view of the appeal having been dismissed, this application has become infructuous.
2. This application is disposed of accordingly.

ASHUTOSH KUMAR, J

MARCH 23, 2016

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