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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision : September 07, 2016

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CRL.M.C. 5361/2014

PURINMA SAHNI

..... Petitioner

Represented by: Mr.Arjun Mitra, Advocate

versus

RATI SAHNI & ANR.

..... Respondents

Represented by: None for R-1 and R-2

Mr.Amit Ahlawat, APP for State

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

PRADEEP NANDRAJOG, J. (Oral)

Crl.M.A.No.439/2016 (Impleadment of State as R-3)

Allowed.

Crl.M.C.No.5361/2014

1. The fight is between the petitioner and respondent No.1 who share the relationship of mother-in-law – daughter-in-law.
2. The grievance of the petitioner is to the order dated September 06, 2014 dismissing appeal filed by the petitioner under Section 29 of the Protection of Women from Domestic Violence Act 2005 against the orders dated July 18, 2013 and December 18, 2013 passed by the learned Metropolitan Magistrate.
3. Vide order dated July 18, 2013 respondent No.1 was allowed to re-enter house No.K-76 Kirti Nagar, New Delhi owned by the petitioner. A Protection Officer was appointed to facilitate the re-entry. Vide order dated December 18, 2013, order dated July 18, 2013 was not recalled. The appellate order affirms the said two orders passed by the learned

Metropolitan Magistrate.

4. It is the common case of the litigating parties that the son of the appellant got married to respondent No.1 on November 28, 2002 and the couple migrated to Canada on September 02, 2008. As and when the couple came to India in the year 2009 and the year 2012 they stayed at the house of the appellant being the ground floor of K-76 Kirti Nagar, New Delhi which belonged to Smt. Gomti Sahni, the mother-in-law of the appellant and was the house where the appellant was residing with her mother-in-law.

5. Disputes and differences arose between the first respondent and her husband in Canada. The husband of the first respondent sought divorce. The first respondent submitted to the jurisdiction of the Court in Canada. She lodged a counter claim. As per the pleadings of respondent No.1 in the Court at Canada it emerges that she resides with her husband in the same house in Edomonton. The first respondent came to India firstly on February 10, 2013 and then on July 13, 2013. She filed the petition before the learned Metropolitan Magistrate which resulted in the order dated July 18, 2013 being passed. On the strength of the said order she entered the ground floor and took possession of a room on July 19, 2013, and since then there is hell in the house. The appellant who is the mother-in-law of respondent No.1 and even the mother-in-law of the appellant claim that they are on the receiving end.

6. Executing a Power of Attorney in favour of her father to prosecute the proceedings initiated by her, the order dated December 18,2013 shows that the first respondent informed the Court and went to Canada.

7. The question would be that under the circumstances could it be held that the ground floor of premises bearing Municipal No.K-76 Kirti Nagar,

New Delhi is the shared household of the couple.

8. In the decision reported as 213 (2014) Delhi Law Times 611 (DB) Navneet Arora v. Surender Kaur & Ors., relevant facts were that the husband of Surender Kaur : Harpal Singh Arora, was the owner of the ground floor of property bearing municipal No. B-44, Vishal Enclave, Rajouri Garden, New Delhi. Surender Kaur and Harpal Singh Arora had three children : Gurpreet Singh, Raman Pal Singh and Sherry. In due course of time, all three children got married. Gurpreet Singh married Navneet Arora. Raman Pal Singh married Neetu Singh. The two couple lived together with Surender Kaur and Harpal Singh Arora in the ground floor of B-44, Vishal Enclave; sharing a common kitchen. Upon the intestate death of Harpal Singh in the year 2008, his wife Surender Kaur and their three children inherited one fourth share each in the estate of Harpal Singh. On June 13, 2008 the children of Surender Kaur executed a relinquishment deed in her favor, whereby Surender Kaur became the sole owner of the property in question. However, the Gurpreet Singh and Raman Pal Singh along with their wives, continued to reside with their mother in the ground floor of the property.

9. After the death of Gurpreet Singh on May 20, 2012, the relationship between Surender Kaur and Navneet Kaur soured. As a consequence, Surender Kaur filed a suit for permanent and mandatory injunction against Navneet Arora, Raman Pal Singh and Neetu Arora in relation to the ground floor of B-44, Vishal Enclave. While Raman Pal Singh and Neetu Kaur informed the Court that they would move out of the ground floor of B-44, Vishal Enclave, Navneet Kaur contested the suit pleading that she had challenged the relinquishment deed executed by her husband Gurpreet Singh

in favor of his mother Surender Kaur in a separate civil suit and that upon the death of her husband, proprietary rights in the property had devolved upon her and their daughter.

10. Relying upon the judgment of the Supreme Court reported as I (2007) SLT 1 S.R. Batra & Anr. v. Taruna Batra, the learned Single Judge of this Court, vide order dated March 21, 2014 held that the property at B-44, Vishal Enclave was not ‘shared household’ under Section 2(s) of the Protection of Women from Domestic Violence Act, 2005; that Surender Kaur was the sole owner of the property and as a consequence, Navneet Kaur, being the daughter-in-law of Surender Kaur, would have no right to stay in the property owned by her mother-in-law.

11. The issue in appeal before the Division Bench of this Court was whether the ground floor of B-44, Vishal Enclave could be considered ‘shared household’ as per Section 2(s) of the Protection of Women from Domestic Violence Act, 2005. In this regard, the Division Bench had to construe whether the judgment of the Supreme Court in Taruna Batra’s case (supra), which dealt with the scope of ‘shared household’ as per Section 2(s) of the Protection of Women from Domestic Violence Act, 2005, would be applicable to the facts of the current case.

12. According to the Division Bench, the ratio of the judgment in Taruna Batra’s (supra) case was that a wife did not have a ‘right of residence’ in premises owned by the relatives of the husband, where the wife had stayed along with her husband separately, and not as member of a joint family along with the relatives of the husband who owned the premises. The Division Bench highlighted that in Taruna Batra’s case (supra) the husband and wife stayed on a separate floor of the house from their relatives and did

not share a common kitchen. The Division Bench held that in light of the judgment of the Supreme Court in *Taruna Batra*'s case (supra) a wife could claim a 'right of residence' under Section 2(s) of the Protection of Women from Domestic Violence Act, 2005 in the premises where she stayed along with her husband as a joint family with the owners of the premises, regardless of whether she or the husband had any right, title or interest in the 'shared household'. According to the Division Bench, such a view was buttressed by the reading of the Protection of Women from Domestic Violence Act, 2005 as a whole, wherein even under Section 19 (1) (a) of the Act, right of residence of a wife in a 'shared household' where she had no legal or equitable interest was recognized.

13. Relying upon established rules of interpretation as enunciated in case law and commentaries, the Division Bench noted that reliance by Courts on the policy underlying the Act to further the legislative intent in cases of ambiguous drafting was a recognized tool of interpretation. In order to understand the scope of 'shared household' and the rights of a wife therein under the Protection of Women from Domestic Violence Act, 2005, as intended by the legislature, the Division Bench surveyed the policy underlying the Protection of Women from Domestic Violence Act, 2005 and opined that the Act was a social welfare legislation enacted for the benefit of women, keeping in view societal conditions whereby most married families in India, regardless of their religion or community, continued to live in premises owned by their parents. The Division Bench opined that in light of the policy underlying the Act, a wide construction was needed to be given to the term 'joint family' as provided in Section 2(s) of the Protection of Women from Domestic Violence Act, 2005 and therefore, 'joint family' as

understood under the Act would have a wider import than the concept of 'Hindu Undivided Family'. Noting that the term 'joint family' had not been defined under the Act, the Division Bench relied upon the definition of 'joint family' in other statutes as well as the construction of the term by Courts, to conclude that the scope of the term 'joint family' as per the Act would mean a household where the members of a family live in commensality, that is, habitually reside in shared accommodation and partake meals from the same kitchen. However, the Division Bench clarified that this expanded scope of 'joint family' would not include within its ambit guests/visitors who stayed with their relatives for a short duration of time.

14. In light of its findings, the Division Bench held that since Navneet Kaur stayed with her husband and his parents in commensality sharing a common kitchen, that is, as a joint family, in the ground floor of B-44, Vishal Enclave, Rajouri Garden, New Delhi, she had a right to reside in such 'shared household' under the Protection of Women from Domestic Violence Act, 2005.

15. Even this widest view of the concept of a shared household would not entitle the respondent No.1 to any benefit of the legislative provision, which is not intended for an estranged daughter-in-law who has settled abroad with her husband for five years to seek a right of residence in a property owned by the mother-in-law of her mother-in-law. The commensality shared was broken way back on September 02, 2008. The respondent No.1 and her husband had their matrimonial house in Canada. During pendency of the divorce proceedings in Canada she continued to stay in the matrimonial house in Canada. She cannot come back one fine day to India and forced an entry into the house which five years back was the matrimonial house. The

intention under the legislation is to protect the existing right of an estranged wife and protect the roof above her head which was available to her when the marriage soured. The fact that respondent No.1 has executed a power of attorney in favour of her father to prosecute various proceedings initiated by her in India and she went back to Canada to contest not only the divorce petition filed by her husband but even prosecute her counter claim shows that she continues to accept her residence to be the matrimonial house in Canada.

16. Allowing the petition I set aside the impugned dated September 06, 2014, December 18, 2013 and vacate the ex-parte order dated July 18, 2013.

17. Since one room has been locked by the first respondent I direct that within one week of the appellant serving respondent No.1's father who has been appointed by respondent No.1 as her constituent attorney a notice sent at his address under Regd.A.D.Post, upon the belongings from the room not being removed the appellant would be rendered assistance by the SHO of the concerned Police Station to break open the lock and in the presence of the SHO or his nominee prepare a inventory of the goods lying in the room. Said goods would be stored and on the next date of hearing before the learned Metropolitan Magistrate the respondent No.1 through her father would be obliged to take custody and possession of the goods.

Crl.M.A.No.18252/2014

Dismissed as infructuous.

(PRADEEP NANDRAJOG)
JUDGE

SEPTEMBER 07, 2016

mamta/ dkb