

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision : November 15, 2016*

+ **RFA(OS) 113/2015**

SHILPA TANDON Appellant
Represented by : Ms.Shobhana Takiar, Advocate with
Appellant in person

versus

HARISH CHAND TANDON & ANR Respondents
Represented by: Ms.Shalini Kapoor, Advocate with
Ms.Ruhini Dey and Mr.Dikshant
Khanna, Advocates

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE YOGESH KHANNA

PRADEEP NANDRAJOG, J.

1. The first respondent, aged 69 years, is the father-in-law of the appellant who, is married to respondent No.2. Obviously respondent No.2 is the son of respondent No.1.
2. House bearing Municipal No.D-3, Green Park Extension, New Delhi, admittedly belongs to respondent No.1. In the suit filed by him claiming mandatory and prohibitory injunction and damages, respondent No.1 pleaded that after the appellant and the respondent No.2 were married on November 18, 2016 they resided on the barsati/first floor of his house, but claims the status of his son and daughter-in-law to be that of a licensee. In para 3 of the plaint he admitted that initially the couple were having meals in a shared kitchen with him and his other children, but pleaded that due to differences they started cooking meals separately in a kitchen on the first

floor. Pleading that he had revoked the license and in spite thereof his son and his daughter-in-law continued to occupy the barsati/first floor of his house the suit was filed with prayers aforenoted.

3. As per the first respondent her husband and her father-in-law were in league. Her husband had shifted to the ground floor at the instigation of her father-in-law who wanted her to abort the foetus when it was found that she was carrying a female child. She resisted. She gave birth to a female child who is hated by her father-in-law and her sister-in-laws. She predicates a right to reside on the barsati/first floor on the strength of it being her '*shared household*' as defined under Section 2(s) of the Protection of Women from Domestic Violence Act, 2005.

4. Vide impugned judgment dated April 23, 2015, recording that respondent No.1 gave up relief for damages, decree has been passed requiring appellant to vacate the barsati/first floor of property bearing No.D-3, Green Park Extension, New Delhi. The learned Single Judge has referred to the decision of the Supreme Court reported as (2007) 3 SCC 169 S.R.Batra & Anr. Vs. Taruna Batra, two other judgments by learned Single Judges of this Court and a Division Bench judgment to hold that neither a son nor the wife of the son would have any claim over the self-acquired property of either the mother or the father of the son i.e. a daughter-in-law cannot claim right of residence in the properties owned by her mother-in-law or father-in-law.

5. A Division Bench of this Court in the judgment reported as 213 (2014) DLT 614 (DB) Navneet Arora Vs. Surender Kaur & Ors. had extensively explained the ratio of law declared in S.R.Batra's case. Regretfully the impugned decree has missed the nuanced points concerning

‘shared household’ as defined under Section 2(s) of the Protection of Women from Domestic Violence Act, 2005.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. In the instant case the pleading by the first respondent in the plaint, in paragraph 3, is an admission that after the appellant and respondent No.2 were married they shared a common kitchen with him on the ground floor; though they slept on the barsati/first floor. That is to say, the shared residence would be the barsati/first floor of his property. As per his pleadings they shifted their kitchen on the barsati/first floor. Therefore, the barsati/first floor of the property owned by the first respondent would be the shared residence and the appellant would have a right of residence therein notwithstanding said fact.

14. The impugned judgment is overruled.
15. But that is not the end of the matter.
16. Workable solutions have been found out by Courts where the estranged daughter-in-law and her in-laws are under threat of violence from each other.
17. Orders passed in the instant appeal would show attempts made by the predecessor bench to resolve the issue by securing appellant rent in sum of ₹15,000/- per month towards accommodation under Section 19(1)(f) of the Protection of Women from Domestic Violence Act, 2005. The appellant refused.
18. Today, the first respondent has offered to the appellant to shift to a one bedroom plus living room accommodation on the second floor of house bearing No.X-6, Green Park undertaking liability to pay rent for the same. Another one bedroom plus living room accommodation on the third floor at G-42, Green Park has been offered. Yet another alternative accommodation on the second floor at K-40, Green Park has been offered. Four other accommodations of one bedroom plus living room in House No.19, Arjun Nagar on the second floor, A-2/91, Safdarjung Enclave on the second floor, B-7/106, Safdarjung Enclave on the first floor and Y-77A, Hauz Khas on the first floor have been offered. The appellant refuses to opt for any.
19. The aforesaid accommodations comprise a living room and a bedroom with a kitchen and a toilet. The shared residence of the appellant on the barsati/first floor of the first respondent concededly comprises two rooms, a toilet and a kitchen.
20. Since this Court cannot force the appellant to opt for a particular property, we take on record the statement made by learned counsel for the

first respondent that in lieu of the accommodation currently occupied by the appellant he would pay her ₹30,000/- per month as rent for her to take on lease a one bedroom plus living room accommodation as per her choice.

21. We are constrained to accept the aforesaid offer for the reason we find the relationship between the appellant and her in-laws very acrimonious evidenced by FIR No.605 dated November 15, 2003 PS Safdarjung. She records therein that after her marriage on November 18, 2011 she was ill-treated and beaten by her husband and her sister-in-laws : Rashmi, Nirupama and Anita. We note that whereas Anita is married, Rashmi and Nirupama are unmarried and live with their father. She states therein that after a daughter was born to her even her daughter was hit. She has stated that her in-laws let lose their pet dog to cause harm to her and her daughter.

22. The fear of the first respondent is that his daughter-in-law would ensnare him and/or his two unmarried daughters who live with him in multiple false complaints and makes a grievance of she using the good offices of a relation of hers, who is a doctor at Safdarjung Hospital, to manipulate MLCs at the adjoining trauma centre of AIIMS.

23. In the present appeal we are not to go into the allegations and counter-allegations concerning acts of cruelty or false FIRs lodged. But suffice would it be to highlight that keeping in view the allegations made against each other, the appellant must move out from the property which she is occupying.

24. The fear of the appellant was that once she moves out from the barsati/first floor in question, her father-in-law would sell the house at Green Park and what if he stops paying to her ₹30,000/- per month. What happens if he dies.

25. Learned counsel for the first respondent, on instructions from the first respondent said that firstly the first respondent would not sell his house and if in future he does so, he would file an application in the present appeal and seek prior permission to sell his house and in such eventuality would deposit ₹40 lakhs in a fixed deposit for a term to be decided by the Court so that from the interest which accrues therefrom the liability to pay rent could be met. Further, the undertaking by the first respondent to pay ₹30,000/- per month to the appellant towards rent would be treated as an undertaking to this Court and a condition of the present judgment.

26. We accept the aforesaid statement made by learned counsel for the first respondent as the undertaking of the first respondent to this Court, making it clear that breach thereof would not only entitle the appellant to seek execution but even initiate contempt proceedings against the first respondent.

27. We dispose of the appeal modifying the impugned decree and dispose of the suit filed by the first respondent; decreeing that the appellant would vacate the barsati/first floor of property bearing Municipal No.D-3, Green Park Extension, New Delhi on or before the midnight of December 31, 2016, provided the first respondent deposits in this Court, under intimation to appellant's counsel ₹1,20,000/- being advance payment for four months commencing from the month of January, 2017. Thereafter, advance payment for the month of May, 2017 and ensuing months would be deposited in this Court on or before the 20th day of each preceding month with intimation to the appellant's counsel – with direction to the Registry that within two days of the deposit the deposited money would be paid over to the appellant by means of a cheque without any application filed by her.

Learned counsel for the appellant would identify the appellant before the concerned officer of the Registry when the cheque would be handed over to her. We are constrained to make the payment a little onerous and cumbersome because there is complete lack of communication between the appellant and the respondent No.1. If however, the appellant were to provide her bank account to learned counsel for respondent No.1 within a period of four weeks from today, the respondent No.1 would transfer the money by RTGS i.e. instructing his banker to transmit the money to the account of the appellant. The first respondent would be bound by the statement made by his counsel regarding sale of his house and the said statement would form part of the decree including the undertaking as per para 25 above.

28. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(YOGESH KHANNA)
JUDGE

NOVEMBER 15, 2016
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