

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

% *Date of Decision: February 20, 2017*

+ **RSA 57/2017**

SHIKHA MATHUR Appellant

Through: Mr.Saqib, Advocate with Appellant in person.

versus

SUSHILA MATHUR & ORS Respondents

Through: Mohd. Qamar Ali & Mr.Amit Punj,
Advocates for R-1.

CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI

JUDGMENT (Oral)

1. On 15th February, 2017, when this appeal came up for hearing, learned counsel for the appellant was heard on the substantial question of law raised in this appeal and following order was passed:

'1. Counsel as above appears for the appellant with the appellant in person.

2. After some arguments on not being able to convince the Court that the instant appeal raises a substantial question of law, the appellant who is present in person sought permission to make her submissions.

3. The appellant submits that she does not want to press the appeal on merits, her request is limited to the extent that she be given one month time to vacate.

4. Limited notice to the above extent be issued to respondent, returnable for 20th February, 2017.

5. *In the meantime status quo be maintained by the parties.*
6. *Copy of the order be given dasti under the signatures of the Court Master.'*

2. Learned counsel for the respondent who has appeared on the limited notice, submits on instructions that respondent is ready to give one month time to the appellant who is her daughter-in-law, to vacate the suit property.

3. At this stage, learned counsel for the appellant submits that substantial question of law arises in this case and he wants to argue on merits.

4. Once after hearing the parties, on request of the appellant, that she be given one month time to vacate the suit property, which request has been acceded to, the appellant cannot be permitted now to re-agitate that substantial question of law arises in this case.

5. The suit property No.C-21, Nizammudin (East), New Delhi-110013 was purchased in the joint name of respondent No.1 and her late husband Sh.Rajinder Bahadur Mathur vide sale deed dated 29th August, 1975. The appellant herein is daughter-in-law of respondent No.1. Respondent No.2 is her husband and respondent No.3 is daughter of appellant and respondent No.2.

6. The instant appeal does not raise any substantial question of law in view of the legal position settled by the Supreme Court in the decision reported as S.R.Batra vs. Taruna Batra 2007(3) SCC 169, wherein the Supreme Court dealt with the legal position regarding the right of a daughter-in-law in a shared household under Section 17(1) of the Domestic Violence Act, 2005.

7. In S.R. Batra case (supra), the property in question belonged to the mother-in-law and the defence taken by the daughter-in-law was that the said property was a joint family property and therefore she enjoyed a protection

under Section 17(1) of the Domestic Violence Act, 2005. However, the Court took a view that daughter-in-law cannot claim any right in an accommodation which belongs to mother-in-law or the father-in-law as such an accommodation does not satisfy the test of shared household accommodation as envisaged under Section 2(s) of the Domestic Violence Act, 2005.

8. The Supreme Court in S.R.Batra vs. Taruna Batra 2007(3) SCC 169 has held as under:-

'16. There is no such law in India, like British Matrimonial Homes Act, 1967 and in any case, the rights which may be available under any law can only be as against the husband and not against the father-in-law or mother-in-law.

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...

30. No doubt, the definition of "shared household" in Section 2(s) of the Act is not happily worded, and appears to be the result of clumsy drafting, but we have to give it an interpretation which is sensible and which does not lead to chaos in the society.'

9. Since this appeal does not raise any substantial question of law, the same deserves dismissal.

10. However, in view of the submissions made by the appellant herself on 15th February, 2017, seeking one month time to vacate the suit property, no objection given by responded No.1 in this regard, subject to furnishing of affidavit cum undertaking by the appellant with the Registry within three days from today, the appellant is given one month time to vacate the suit

property. It is made clear that on failure of the appellant to furnish the affidavit cum undertaking within the stipulated time agreeing to abide by the same, the decree holder shall be at liberty to get the decree executed.

11. RSA No.57/2017 is dismissed.

12. No costs.

CM No.6123/2017 (stay)

The application is dismissed as infructuous.

PRATIBHA RANI
(JUDGE)

February 20, 2017
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