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

+ CM(M) No.1043/2016, CM No.38198/2016 (for stay), CM No.38199/2016, CM No.38200/2016, CM No.38201/2016 (all for exemption), CM No.38202/2016 (for direction), CM No.43386/2016, CM No.43387/2016 (both for exemption) and CM No.30271/2017 (of the respondent for vacation of stay) in CM(M) No.1043/2016.

ANITA BARREJA ..... Petitioner

Through: Mr. Pankaj Batra, Adv. along with petitioner in person.

versus

JAGDISH LAL BARREJA ..... Respondent

Through: Ms. Manmeet Arora, Ms. Sanam tripathi, Mr. Keshav Sehgal, Mr. Sunny Arora and Mr. S.K. Garg, Advs.

**AND**

+ CONT.CAS(C) No.589/2017

JAGDISH LAL BARREJA ..... Petitioner

Through: Ms. Manmeet Arora, Ms. Sanam Tripathi, Mr. Keshav Sehgal, Mr. Sunny Arora and Mr. S.K. Garg, Advs.

versus

ANITA BARREJA ..... Respondent

Through: Mr. Pankaj Batra, Adv. along with petitioner in person.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

**ORDER**

% **26.09.2017**

1. CM(M) No.1043/2016 was instituted impugning the order dated 5<sup>th</sup> October, 2016 of Maintenance Tribunal (North-West District), constituted under the Maintenance and Welfare of The Parents and Senior Citizens Act, 2007 (hereinafter called as Senior Citizens Act) directing the petitioner to vacate house no.C-2/27, 1<sup>st</sup> Floor, Ashok Vihar, Phase-II, Delhi – 110 052

within 15 days of the order and further directing the Station House Officer (SHO), PS: Ashok Vihar, Delhi to ensure that the respondent peacefully gets the vacated possession of his said property from the petitioner and further directing the SHO, PS: Ashok Vihar to, if the petitioner does not in compliance of the order vacate the property within the stipulated time, to have the same forcefully vacated and handed over to the respondent.

2. The petition was entertained and vide order dated 14<sup>th</sup> October, 2016, while issuing notice of the petition, *status quo* as of then was ordered to be maintained.

3. The petition was adjourned from time to time.

4. The counsels have been heard.

5. The Maintenance Tribunal, in the impugned order dated 5<sup>th</sup> October, 2016, has recorded (i) that the respondent had earlier, in the month of September, 2015, filed a complaint against the petitioner, being his daughter-in-law and which complaint was disposed of vide order dated 16<sup>th</sup> February, 2016 in which the Maintenance Tribunal took a lenient view towards the petitioner for the reason of the petitioner being a lady and directed the petitioner to maintain peace in the house and not to disturb the respondent in day-to-day activities; (ii) that the respondent had again filed an application regarding harassment by the petitioner and the troubles being caused by the petitioner in the peaceful residence of the respondent and his wife in the property; (iii) that it was the case of the respondent that the son of the respondent and who is the husband of the petitioner had left the house and was living separately but the petitioner had refused to live in the house or to go and live in the house of her husband; (iv) on the contrary, it was the

contention of the petitioner that her husband also was living in the same house with his parents; (v) that the property was acquired by the father of the respondent and after the demise of the parents of the respondent had been inherited by the respondent and his brother Shri Kishore Bardeja in equal share; (vi) Shri Kishore Bardeja being the brother of the respondent had executed a Power of Attorney of his share in the property in favour of the respondent; (vii) the respondent had requested the Maintenance Tribunal for eviction of the petitioner from the house; (viii) that though the Maintenance Tribunal had asked the petitioner to shift to the house where her husband was residing but the petitioner refused, stating that the subject house was her matrimonial house and she would not leave the same; (ix) that in view of the acrimonious relationship between the petitioner on the one hand and the respondent and his family on the other hand, it is the statutory duty on the part of the State Government under Chapter-V of the Senior Citizens Act to protect the senior citizens; and, (x) in view of the apprehension expressed by the respondent, a senior citizen, it was necessary to issue the directions as issued.

6. The counsel for the petitioner has argued (i) that as per the photocopy of the passport filed by the respondent on record, the respondent was born on 27<sup>th</sup> September, 1955; (ii) that the petitioner married the son of the respondent on 21<sup>st</sup> April, 2013 and since then is in occupation of the house aforesaid of the respondent; (iii) that as on 21<sup>st</sup> April, 2013 when the respondent granted a license to the petitioner as his daughter-in-law to occupy the house, the respondent was not a senior citizen, though on the date of approaching the Maintenance Tribunal, was a senior citizen; (iv) that

for Section 23 of the Senior Citizens Act to apply, 'transfer' has to be by a senior citizen, meaning that the person effecting the transfer must be a senior citizen on the date of effecting the transfer; (v) that since the respondent here was not a senior citizen when he granted licence to the petitioner to occupy the house, Section 23 is not applicable; (vi) the respondent was not a senior citizen also on the date when the respondent got issued the legal notice asking the petitioner to vacate; (vii) thus the remedy under Section 23 of the Senior Citizens Act was not available to the respondent and the respondent, for the reason of having the petitioner removed from the premises, should have gone to the Civil Court; (viii) that though all the aforesaid arguments were urged by the petitioner before the Maintenance Tribunal but no finding has been returned thereon; (ix) that though Rule 14 of Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2009 provides for evidence to be taken in the proceedings, but no evidence has been taken; (x) that the respondent, in his prayer in the complaint to the Maintenance Tribunal, did not even seek eviction of the petitioner and inspite of there being no prayer, the relief of eviction has been granted; (xi) that the first floor of the house where the petitioner is residing is of the brother of the respondent and the respondent is not entitled to seek eviction of the petitioner therefrom – the respondent has not filed the complaint before the Maintenance Tribunal on behalf of his brother; and, (xii) that the Co-ordinate Benches of this Court in (a) *Nasir Vs. Government of NCT of Delhi* 2015 SCC OnLine Del 13060; and in, (b) *Sunny Paul Vs. State NCT of Delhi* 2017 SCC OnLine Del 7451 disagreed with *Sanjay Walia Vs. Sneha Walia* 2013 (204) DLT 618 wherein it was held that no relief of eviction could be given by the Maintenance Tribunal and the said Benches

ought to have had the matter placed before the Division Bench instead of taking a contrary view.

7. Per contra, the counsel for the respondent has contended (i) that the petitioner, in the memorandum of this petition or in the grounds taken therein has not even taken the ground with respect to Rule 14 supra; (ii) that the impugned order records that the respondent had expressly sought eviction of the petitioner owing to the nuisance and disturbance of peace of the respondent being caused by the petitioner – it is stated that the petitioner calls the Police to the house on a regular basis and has also lodged a First Information Report (FIR) under Sections 354 and 354A of the Indian Penal Code, 1860 against the younger son of the respondent – that the petitioner also lodged a complaint to the Police against the brother of the respondent namely Shri Kishore Bardeja who was visiting and no merit was found in the said complaint; (iii) that the son of the respondent has filed a petition against the petitioner for Restitution of Conjugal Rights and the petitioner has filed a complaint against the son of the respondent under the Protection of Women from Domestic Violence Act, 2005 (Domestic Violence Act) and in which complaint the petitioner has also sought the relief of alternate accommodation; (iv) that in accordance with Sections 3 and 27 of the Senior Citizens Act, the jurisdiction of the Civil Court would have been barred and the respondent thus had no right to approach the Civil Court; (v) attention is drawn to Sections 18 and 19(f) of the Domestic Violence Act to contend that the petitioner has right therein of claiming alternative residence; (vi) the petitioner herself has stated in the proceedings from which this petition arises that she feels unsafe living in the subject house; and, (vii) that the

respondent and his brother are joint owners, with each having equal right to each and every inch of the house which is constructed with a single kitchen and there is no separation or division of the share of the respondent and his brother.

8. The counsel for the petitioner in rejoinder has drawn attention to (i) the complaint lodged by the aforesaid Shri Kishore Bardeja to the Police wherein he had stated that the respondent and he had decided to share the property, with the respondent having the lower level and the said Shri Kishore Bardeja having the upper level; (ii) that the son of the respondent and who is the husband of the petitioner has been taking false stands of working elsewhere when in fact he is working at the shop of the respondent; and, (iii) attention in this regard is also drawn to the evidence of the son of the respondent in the Domestic Violence Act proceedings.

9. I have considered the rival contentions.

10. Though I was of the view and expressed so during the hearing, that the residence of the petitioner as a licensee in the house of her father-in-law i.e. the respondent would not be a 'transfer' in law and accordingly not a 'transfer' within the meaning of Section 23 of the Senior Citizens Act but a Co-ordinate bench of this Court in ***Sunny Paul*** supra has expressly held that even transfer of possession by parents to the son, daughter-in-law and grandchildren for residence would be covered under Section 23 of the Act and the Maintenance Tribunal under the Senior Citizens Act would have jurisdiction to direct removal of the said persons as well.

11. No merit is found in the contention of the counsel for the petitioner of Section 23 being inapplicable for the reason of the respondent being not a

senior citizen when the petitioner entered his house as a daughter-in-law or on the day when the respondent terminated the license. Once the petitioner admits to be a licensee under the respondent, the said license is renewed day by day when the respondent allows the petitioner to continue to reside in his house. It is not the case of the petitioner that any fixed term licence was granted to her. Thus, it cannot be said that the transfer by way of licence was at one time only. The said licence was granted even after the respondent became a 'senior citizen' and till he approached the Maintenance Tribunal and on which date the respondent was admittedly a senior citizen. It thus cannot be said that the respondent was not entitled to invoke Section 23. However the same should not be understood as accepting the contention that under Section 23 the transferor should be a senior citizen on the date of the transfer inasmuch as the need to adjudicate the said question in law does not arise in the facts of the present case.

12. No merit is also found in the plea of the counsel for the petitioner, of the Maintenance Tribunal having not returned any finding on the aforesaid aspect and the order of Maintenance Tribunal being bad for the said reason. It cannot be lost sight of that the jurisdiction under the Senior Citizens Act has been conferred on the Maintenance Tribunal and which is not to decide the complaints like civil proceedings where findings on all the pleas / issues raised have to be returned. If it were to be held so and the orders of the Maintenance Tribunal under the Senior Citizens Act were to be interfered with on such pleas, the Maintenance Tribunal would be converted into Civil Court leading to the complaints / proceedings remaining pending before them for long and defeating the whole purpose of setting up thereof.

13. For the same reason, there is no merit in the contention of the counsel for the petitioner qua Rule 14 of the Act inasmuch as in every case evidence is not to be led. For the same reasons, no merit is also found in the contention of there being no express prayer for eviction. The respondent approached the Maintenance Tribunal for his protection and if the Maintenance Tribunal felt that the protection of the respondent was best afforded by removal of the petitioner from the premises, the Maintenance Tribunal was entitled to do so. This is without prejudice to the contention of the counsel for the respondent that the second time when the respondent approached the Maintenance Tribunal it was with a specific prayer of removal of the petitioner.

14. I have considered the complaint lodged by the brother, namely Shri Kishore Bardeja, of the respondent to the Police and am unable to find the same as a categorical statement of division of the property between the respondent and the brother. Moreover it is not in dispute that during the absence of the said Shri Kishore Bardeja, who is living abroad, it is the respondent who is in control and possession of the entire property and the petitioner is residing only in one of the rooms on the first floor while the other portions of the first floor also are in the use of the respondent and his family members.

15. As far as the only other contention regarding the need to refer the matter to the Division Bench is concerned, at least I have in *Nasir* supra given reasons for not feeling the need therefor and the counsel for the respondent on enquiry states that similarly in *Sunny Paul* it has been held that since Section 23 was not for consideration in *Sanjay Walia*, there was

no need to refer the matter to the Division Bench.

16. No merit is thus found in the petition which is dismissed. However, time till 15<sup>th</sup> November, 2017 is granted to the petitioner to vacate the premises on her own and / or to in the said interregnum approach the Court under the Domestic Violence Act for necessary relief. If the petitioner does not so vacate the premises, the SHO, PS: Ashok Vihar, Delhi to immediately thereafter implement the order dated 5<sup>th</sup> October, 2016 of the Maintenance Tribunal.

No costs.

17. I may record that the counsel for the respondent has also offered to provide alternate accommodation to the petitioner and in the alternative a sum of Rs.11,000/- per month to enable the petitioner to secure alternate accommodation but the same has not been accepted by the petitioner.

18. As far as Cont.Cas (C) No.589/2017 is concerned, it is deemed appropriate to dispose of the same with the condition that if the petitioner does not comply with the order aforesaid, the respondent shall be entitled to revive the same.

**RAJIV SAHAI ENDLAW, J**

**SEPTEMBER 26, 2017**

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*(Corrected and released on 6<sup>th</sup> October, 2017).*