

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

% **Date of decision: 14th September, 2017**

+ **C.R.P. 190/2015**

VIREET INVESTMENTS PVT LTD Petitioner

Through: Mr. V.N. Koura, Ms. A. Payal
& Mr. Abihnav Tandon, Adv.

Versus

VIKRAMJIT SINGH PURI & ANR Respondents

Through: Mr. Vaibhav Vats, Adv. for R-1.
Mr. Prashant Mendiratta, Mr.
Anirudh K. Mudgal & Ms.
Malvika, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This Civil Revision Petition under Section 115 of the Code of Civil Procedure, 1908 (CPC) impugns the order [dated 27th August, 2015 in Civil Suit No.55/2014 of the Court of Additional District Judge-02 (ADJ), South-East District, Saket Courts, New Delhi] of dismissal of an application filed by the petitioner / plaintiff under Order XII Rule 6 of the CPC for a decree for possession on admissions in a suit filed by the petitioner / plaintiff against the two respondents / defendants for ejectment of the respondents / defendants from property No.12A/3, Friends Colony (West), New Delhi and for recovery of *mesne profits* / damages for use and occupation.

2. The petition was entertained and notice thereof ordered to be issued. The counsels for the two respondents have been appearing.

3. The counsel for the petitioner and the counsel for the respondent no.2 Ms. Ekta Puri (wife of respondent no.1) were heard yesterday and have been further heard today. The occasion for hearing the counsel for the respondent no.1 who supports the petitioner / plaintiff has not arisen.

4. The petitioner / plaintiff instituted the suit from which this petition arises, pleading i) that the petitioner / plaintiff had let out the property aforesaid to the respondent / defendant no.1 by a lease deed 1st June, 2013 for a period of 11 months at a rent of Rs.35,000/- per month; ii) that the period of lease expired on 30th April, 2014 and no fresh lease deed had been executed; iii) that the petitioner / plaintiff called upon the respondent / defendant no.1 to vacate the premises but the respondent / defendant no.1 had not done so.

5. The respondent / defendant no.1 filed a written statement pleading that the respondent / defendant no.2 was his wife and though the respondents / defendants were residing in the property but their relationship had deteriorated and the respondent / defendant no.1 had vacated the property in October, 2013 and it was the respondent / defendant no.2 only who was continuing to reside in the property.

6. The respondent / defendant no.2 also filed a separate written statement pleading, i) that the respondent / defendant no.1 was and even then a Director of the petitioner / plaintiff and which fact had been suppressed; ii) that the petitioner / plaintiff is a company controlled entirely by the respondent / defendant no.1 and his family members; iii) that the issue of residence of the respondent / defendant

no.2 in the subject property was *sub judice* before two separate forums and the subject suit was an offshoot of the matrimonial litigation between the respondents / defendants; iv) that a complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (DV Act) filed by the respondent / defendant no.2 against the respondent / defendant no.1 and her in-laws was pending adjudication before the Metropolitan Magistrate; v) that there was already an injunction in favour of the respondent / defendant no.2 and against the respondent / defendant no.1 qua the property; vi) that the subject property is a “shared household” of the respondents / defendants within the meaning of Section 2(s) of the DV Act; vii) that the title of the petitioner / plaintiff over the property is denied for want of knowledge; viii) that the petitioner / plaintiff is controlled completely by the respondent / defendant no.1 who is a shareholder / Director therein; ix) that even if the respondent / defendant no.1 has now recused himself from Directorship of the petitioner / plaintiff, the mother-in-law and father-in-law of the respondent / defendant no.1 are the Directors and shareholders of the petitioner / plaintiff; x) that the lease deed between the petitioner / plaintiff and the respondent / defendant no.1 is nothing but a sham document tailored to provide concealment of income and associated tax benefits to the respondent / defendant no.1; xi) that the subject property being a shared household and for all practical purposes being owned by the respondent / defendant no.1, the respondent / defendant no.2 has full rights to reside therein and to have a claim thereto; xii) that thus the possession of the respondent / defendant no.2 to the said property is neither illegal

nor unauthorized and the respondent / defendant no.2 has a right to stay in the property under the special statute i.e. the DV Act.

7. The need to detail the replication filed by the petitioner / plaintiff to the written statement aforesaid of respondent / defendant no.2 is not felt and suffice it is to state that as per petitioner / plaintiff, the respondent / defendant no.1 was not a shareholder and / or Director of the petitioner / plaintiff at the time of grant of lease deed.

8. Vide order dated 3rd December, 2014 in the suit, the following issues were framed:

- “1. Whether the suit is not maintainable in view of the proceedings initiated by defendant no.2 against defendant no.1 under provisions of PWDVA and the order passed by the court in those proceedings? OPD-02
2. Whether the ownership of the plaintiff over the suit premises is a sham and same is in fact owned and controlled by defendant no.1? OPD-2
3. Whether plaintiff is entitled to decree of possession, as prayed for? OPP
4. Whether the plaintiff is entitled to any mesne profit, if so, at what rate and for which period? OPP
5. Whether the plaintiff is entitled to interest on the mesne profit, at what rate and for which period? OPP
6. Relief.

and the suit set down for evidence.

9. The petitioner / plaintiff thereafter filed the application aforesaid under Order XII Rule 6 of the CPC, against the order of dismissal whereof, this petition has been preferred.

10. The learned ADJ has dismissed the application under Order XII Rule 6 of the CPC reasoning i) that the admissions of the respondent / defendant no.1 in his written statement could not lead to a decree on admissions as admittedly the respondent / defendant no.2 who is the wife of the respondent / defendant no.1 is in possession of the property; ii) that the respondent / defendant no.2 has taken a stand that the lease deed is a sham document and the petitioner / plaintiff company is owned and controlled by the family of the respondent / defendant no.1 and the suit has been filed by the petitioner / plaintiff in collusion with the respondent / defendant no.1, to oust the respondent / defendant no.2 from the property; and, iii) that in view of the said difference in the written statements of the respondent / defendant no.1 and respondent / defendant no.2, there is no admission of the respondent / defendant no.2 on the basis whereof the suit could be decreed under Order XII Rule 6 of the CPC. The judgments cited by the counsel for the petitioner / plaintiff were held to be not applicable to facts of the case.

11. Though there was no interim order in this proceeding, of stay of suit proceedings, but since the Trial Court record was requisitioned in this Court, in the last about one and a half years of pendency of this petition, no proceedings have taken place in the suit.

12. The counsel for the petitioner / plaintiff, on enquiry during the hearing yesterday, informed that the lease deed between the petitioner / plaintiff and the respondent / defendant no.1 was not registered. On further enquiry, it was informed that the respondents / defendants were

married prior to the execution of the lease deed of June, 2013 and since their marriage in the year 2007 have been residing in the property and that there was no lease deed prior to that of June, 2013. On yet further enquiry as to the capacity in which the respondent / defendant no.1 was residing in the property prior to the lease deed of June, 2013, it was informed that the respondent / defendant no.1 was then residing in the property as a Director of the petitioner / plaintiff.

13. The first contention of the counsel for the respondent / defendant no.2 was that in the face of the written statement of the respondent / defendant no.2, it can by no stretch of imagination be said that the respondent / defendant no.2 had made any admissions therein on the basis whereof a decree on admissions under Order XII Rule 6 could be sought or granted.

14. Attention of the counsel for the respondent / defendant no.2 was invited to Order XV Rule 1 of the CPC and to ***Ashoka Estate Pvt. Ltd. Vs. Dewan Chand Builders Pvt. Ltd.*** 159 (2009) DLT 233 holding i) that the plaintiff, if otherwise found entitled to a decree on admission, cannot be deprived thereof by astute drafting of the written statement and/or by taking pleas therein which have no legs to stand upon; ii) the Court is to read the pleadings of the parties meaningfully; iii) issues are to be framed on 'material' and not on all propositions of law and fact; iv) a plea, which on the face of it is found by the court to be untenable, does not require the framing of any issue. Attention of the counsel for the respondent / defendant no.2 was also invited to ***Adarsh Kumar Puniyani Vs. Lajwanti Piplani*** 2015 SCC OnLine 14022 *inter*

alia holding that material proposition of law or fact would mean such issues which are relevant and necessarily arise for deciding the controversy involved; if a plea is not valid and tenable in law or is not relevant or necessary for deciding the controversy involved, the Court would not be bound and justified in framing issue on such unnecessary or baseless pleas, thereby causing unnecessary and avoidable inconvenience to the parties and waste of valuable Court time. Reliance was *inter alia* placed on ***Abbot India Ltd. Vs. Rajinder Mohindra*** (2014) 208 DLT 201 holding that once it was found that there was no defence, merely because a bogey thereof is raised at the stage of framing of issues or upon the respondents / plaintiffs filing an application under Order XII Rule 6 of the CPC, would not call for framing of an issue. Attention of the counsel for the respondents / defendants was similarly invited to ***P.C. Jain Company Ltd. Vs. Atma Ram Properties (P) Ltd.*** (2013) 205 DLT 302.

15. Issues are to be framed only on material propositions of law or fact requiring trial and not on all propositions of fact or law which may be contained in the pleadings and which are not material i.e. on the outcome whereof the outcome of the suit does not depend. The Court is not obliged to, on finding pleas to have been raised in the written statement, mechanically frame issues thereon. If issues were to be framed in such manner, the same would be in disregard of the word “material” in Order XIV Rule 1 of the CPC. The enquiry thus to be made at the time of framing of issues is, whether the pleas raised in the written statement, purportedly in defence to the claim in the plaint,

have any material bearing to the outcome of the suit and if it is found that irrespective of the findings thereon, the plaintiff would be entitled to the relief, the parties are not to be put to trial in the suit.

16. Though the counsel for the respondent / defendant no.2 yesterday also contended that the ownership of the petitioner / plaintiff of the property is also disputed, but his attention was invited to issue no.2 aforesaid framed in the suit on his pleadings and which is on the premise of the petitioner / plaintiff being the recorded owner of the property though according to the respondents / defendant no.2, it is a sham i.e. the corporate veil is to be pierced.

17. It is enquired from the counsel for the respondent /defendant no.2, whether a wife would have a right to live in a property which may be allotted to the husband by the government or by the employer and which the husband owing to matrimonial disputes relinquishes, entitling the government or the employer to repossess the same. Attention in this regard was invited to the recent controversy reported in the press with respect to allotment by the Government of India of a house to Mr. Omar Abdullah, Member of Parliament and the proceedings taken by his wife with respect thereto. It was yet further enquired, whether not the position was akin to as under Section 630 of the Companies Act, 1956 and whether not the company can always seek recovery of possession, not only from the ex-employee / ex-Director, but also from family members of the ex-employee / ex-employer.

18. A company, as the petitioner / plaintiff is, it is well settled in law, is a juristic person / entity and / or is a person distinct from its Directors and shareholders and the ownership of an immovable property of a company cannot be deemed to be the ownership of immovable property by the Directors and / or shareholders of the company.

19. The counsel for the respondent / defendant no.2 was thus requested yesterday to today confine the hearing to the said aspect i.e. that even if what was pleaded in the written statement were to be correct, whether the same has any bearing on the outcome of the suit.

20. The counsel for the petitioner / plaintiff has drawn attention to:

- A. (i) ***S.R. Batra Vs. Smt. Taruna Batra*** (2007) 3 SCC 169;
- (ii) ***B.P. Achala Anand Vs. S. Appi Reddy*** AIR 2005 SC 986;
- (iii) ***Shumita Didi Sandhu Vs. Sanjay Singh Sandhu*** 174 (2010) DLT 79;
- (iv) ***Anukriti Dubey Vs. Partha Kansabanik*** 2016 SCC OnLine Del 1930;

To contend that a right of a spouse to continue in a matrimonial home is subject to the legal right of any of the spouses to continue to reside in those premises; if these are tenanted premises, of which husband is a tenant, a wife has no right to continue to reside in the premises after the termination of tenancy of the husband.

- B. (v) ***Shammi Nagpal Vs. Sudhir Nagpal, Director of Hotel Taj-President, Indian Hotels Company Ltd.*** MANU/MH/0411/2008;
- (vi) ***Lalita Jalan Vs. Bombay Gas Co. Ltd.*** (2003) 6 SCC 107;

To contend that the position is the same where the property is owned by a company and allotted to a Director or any other employee of the company and that the spouse or the other relative of the Director or employee of the company to whom the premises were allotted, has a right to occupy the premises only as long as the company permits the Director / employee to do so and if the spouse/relative of the Director / employee continues in occupation of the premises after the right has come to an end, such spouse/relative of the Director / employee is liable to be evicted and to be prosecuted under Section 630 of the Companies Act, 1956 (Sections 439 and 452 of the Companies Act, 2013).

- C. (vii) ***Catherine Lee Vs. Lee's Air Farming Ltd.*** (1961) A.C. 12;

To contend that a company is an independent entity from its shareholders and Directors and even a one man company is an independent entity from its sole Director

and shareholder and can enter into an independent enforceable contract with the sole Director / shareholder.

D. (viii) ***Charanjit Lal Mehra Vs. Kamal Saroj Mahajan*** (2005) 11 SCC 279.

To contend that the Court, at the stage of deciding the application under Order XII Rule 6 of the CPC, can look at the documents on record in order to examine whether there is any merit in the defence raised to the suit and if the defence is found to be without merit and merely a moonshine, the Court can pass a decree under Order XII Rule 6 of the CPC.

21. Supreme Court, in ***Abhilash Vinodkumar Jain Vs. Cox & Kings (India) Ltd.*** (1995) 3 SCC 732 held that a petition under Section 630 of the Companies Act is maintainable against the legal heirs of the deceased officer / employee, for retrieval of the company's property wrongfully withheld by them after the demise of the officer or employee concerned. Similarly, in ***Gopika Chandrabhushan Saran Vs. XLO India Ltd.*** (2009) 3 SCC 342, it was held that Section 630 of the Companies Act will cover within its ambit not only the employee or the officer but also the past employee or past officer or the heir of the deceased employee or anyone claiming under them in possession of the property.

22. Though in the light of what has transpired subsequently, the other contentions made by the counsel for the respondent / defendant

no.2 are not felt to be relevant but it is deemed appropriate to record the same.

23. The contention of the counsel for the respondent / defendant no.2 is i) that the statement that the respondent / defendant no.1 was not a shareholder in the petitioner / plaintiff on the date of execution of the lease deed in June, 2013 is incorrect as as per the documents filed by the respondent / defendant no.2, the respondent / defendant no.1 was holding the shares in the petitioner / plaintiff and has transferred the same on 4th June, 2013 only; ii) that the father of the respondent / defendant no.1 has since died and he was holding 53% share (with the mother of the respondent / defendant no.1 holding the remaining 43% share) in the petitioner / plaintiff and the respondent / defendant no.1 as an heir of his father also would have inherited the said shares; iii) that the petitioner / plaintiff and / or the respondent / defendant no.1 have not disclosed the status of shareholding of the petitioner / plaintiff after the demise of the father of the respondent / defendant no.1; iv) that once it is found that the respondent / defendant no.1 has even a minuscule share in the petitioner / plaintiff, the respondent / defendant no.2 as his wife would be entitled to reside therein; v) that though the stamp paper for the lease deed of June, 2013 was purchased on 5th June, 2013 but the lease deed is dated 1st June, 2013; vi) that the petitioner / plaintiff is a “shell company” which has never carried on any business; and, vii) that the respondent / defendant no.2 since her marriage has resided with the respondent / defendant no.1 in the subject property and the mother-in-law and

father-in-law of the respondent / defendant no.2 were residing in a separate property in the neighbourhood. It was / is argued that all these raise triable issues in the suit.

24. On the right of the respondent / defendant no.2 to reside in the property, attention is invited to Sections 2(s), 17 and 19 as under of the DV Act:

“2. **Definitions.**—In this Act, unless the context otherwise requires,-

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- (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;

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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.

19. Residence orders.—(1) While disposing of an application under sub-section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order—

- (a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;
- (b) directing the respondent to remove himself from the shared household;
- (c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;
- (d) restraining the respondent from alienating or disposing off the shared household or encumbering the same;
- (e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or
- (f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require:

Provided that no order under clause (b) shall be passed against any person who is a woman.

(2) The Magistrate may impose any additional conditions or pass any other direction which he may deem reasonably necessary to protect or to provide for the safety of the aggrieved person or any child of such aggrieved person.

(3) The Magistrate may require from the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence.

(4) An order under sub-section (3) shall be deemed to be an order under Chapter VIII of the Code of Criminal Procedure, 1973 (2 of 1974) and shall be dealt with accordingly.

(5) While passing an order under sub-section (1), sub-section (2) or sub-section (3), the court may also pass an order directing the officer in charge of the nearest police station to give protection to the aggrieved person or to assist her or the person making an application on her behalf in the implementation of the order.

(6) While making an order under sub-section (1), the Magistrate may impose on the respondent obligations relating to the discharge of rent and other payments, having regard to the financial needs and resources of the parties.

(7) The Magistrate may direct the officer in-charge of the police station in whose jurisdiction the Magistrate has been approached to assist in the implementation of the protection order.

(8) The Magistrate may direct the respondent to return to the possession of the aggrieved person her stridhan or any other property or valuable security to which she is entitled to.”

25. This Court in *Anukriti Dubey* supra, being a second appeal against a decree on admissions in a suit filed by the landlord for ejectment of the husband after determination of tenancy, held i) 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; ii) thus, a landlord is completely out of the scheme of the DV Act, not being in domestic relationship with a person who along with her husband was a tenant in the premises; iii) a tenanted premises may come under the definition of "shared household" under Section 2 (s) of the DV 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 premises—this definition, though is inclusive of tenanted premises, but is limited to the period during which the tenancy subsists; vi) a landlord does not have any domestic relationship even during the subsistence of a tenancy and therefore is outside the realm of the D.V. Act; v) after the expiration of the tenancy, the premises 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; vi) that the right of a spouse under Section 17 of the DV Act would not be enforced against a landlord; and, vii) Section 26 of the DV Act also does not entitle any Court to

pass an order against a landlord in any proceeding, even if the same be to the detriment of a woman in distress or an estranged wife. Thus the decree on admission under Order XII Rule 6 of the CPC was upheld.

26. During the hearing, it has been informed that in the DV Act proceedings, an order dated 21st September, 2015 has been made whereunder the respondent / defendant no.1 has been directed to pay to the respondent / defendant no.2 maintenance at the rate of Rs.1 lac per month with effect from the date of filing of the application under Sections 23 and 25 of the DV Act till the date of that order and with effect from the date of that order till a period of one year, at the rate of Rs.1.70 lacs per month including the expenses for alternate accommodation.

27. The counsel for the respondent / defendant no.2 has stated that the respondent / defendant no.1 even after the date of that order has been paying maintenance to the respondent / defendant no.2 at the rate of Rs.1 lacs (though it is stated that complete payment has not been made) on the ground of the respondent / defendant no.2 continuing in possession of the subject property.

28. I have immediately enquired from the counsel for the respondent / defendant no.2, i) that it is not as if Section 17 supra creates an absolute bar to ejectment of a woman in a domestic relationship from a shared household as defined in Section 2(s) thereof and the only prohibition is to eviction, save in accordance with the procedure prescribed by law; ii) that the jurisdiction to decide in this

regard has been vested in the Court under DV Act and which Court in exercise of that jurisdiction has limited the right of the respondent / defendant no.2 including for residence at Rs.1.70 lacs; and, iii) whether not with the aforesaid order, the right of the respondent/defendant no.2 to resist the suit for possession filed by the petitioner / plaintiff on the ground of her rights under the DV Act has disappeared.

29. The counsel for the respondent / defendant no.2 has made two submissions. Firstly, it is stated that the amounts fixed of Rs.1,70,000/- per month for residence is too meager, considering the entire house in occupation of the respondent / defendant no.2 at Friends Colony (West), New Delhi. Secondly, it is contended that the respondent / defendant no.2 would like to cross-examine the witness of the petitioner / plaintiff on issue no.2 framed in the suit. Reliance is also placed on *Navneet Arora Vs. Surender Kaur* MANU/DE/2132/2014 and *Ram Saroop Gupta Vs. Major S.P. Marwah* MANU/DE/2506/2012.

30. I have enquired from the counsel for the respondent / defendant no.2 that if the amount fixed by the Court under the DV Act for residence is meagre as contended, whether not the remedy therefor is under that Act only and on what basis can the same be agitated in this proceeding. It is informed that an appeal has been preferred by the respondent / defendant no.2 as well as the respondent / defendant no.1 before the Sessions Court and which is pending consideration for long. The counsel for the respondent / defendant no.2 however controverts

that the respondent / defendant no.1 has preferred any appeal against the order dated 21st September, 2015 supra under the DV Act.

31. In my opinion, the first of the aforesaid submissions cannot be a ground to allow the respondent / defendant no.2 to contest the suit from which this petition arises. As far as the second plea is concerned, once the right asserting which the respondent / defendant no.2 was contesting the suit is found to have been addressed by the order under the DV Act, the trial in the suit is not to be ordered merely to allow the respondent / defendant no.2 to cross-examine the witnesses of the petitioner / plaintiff to prove the issue no.2 inasmuch as even if the said issue was to be decided in favour of the respondent / defendant no.2, the finding thereon would not lead to the suit of the petitioner / plaintiff being dismissed inasmuch as the rights claiming which the respondent / defendant no.2 is defending the suit have been adjudicated under the DV Act and the grievance if any with respect thereto can only be in appeals / remedies thereagainst and not under this suit.

32. As far as the judgments aforesaid relied upon by the counsel for the respondent / defendant no.2 are concerned, in ***Ram Saroop Gupta*** supra, in the context of the ground of eviction under Section 14(1)(e) of the Delhi Rent Control Act, it was held i) that though a company is a distinct legal entity separate from its shareholders, however the principle of piercing the veil of the corporate personality in order to reveal the true identity of the company is a recognized doctrine; ii) that the principle behind the doctrine is a changing concept and it is

expanding its horizon; iii) that the principle of piercing the veil of corporate personality should be utilized not to prevent somebody from doing any wrong but merely in order to recognize the reality of the situation. In *Navneet Arora* supra, a Division Bench of this Court held that *S.R. Batra* supra is only an authority for the proposition that a wife is precluded under the law from claiming right of residence in a premises owned by relatives of husband, wherein she has lived with her husband separately, but not as a member of the joint family along with the relatives of the husband who own the premises; however in the later eventuality if a couple live as members of joint family in a domestic relationship with the relatives of the husband in a premises owned by such relatives of the husband, statutory prescription would indeed enable the wife to claim right of residence since it would fall within the realm of shared household as contemplated under Section 2(s) of the Act irrespective of whether she or her husband has any right, title or interest in the shared household.

33. I am afraid, the judgments aforesaid have no relevance to the present factual controversy where in the DV Act proceedings, while fixing the entitlement of the respondent / defendant no.2 to maintenance, the component of residence has been included. The respondent / defendant no.2 cannot at the same time resist her eviction in accordance with law contending a right to residence.

34. I am therefore of the view that no purpose will be served by putting the suit from which this petition arises to trial and the

petitioner / plaintiff is entitled to a decree for ejectment of both the respondents / defendants from the premises forthwith.

35. Considering the entirety of the facts, need to keep the suit alive for adjudication of the claim of the petitioner / plaintiff for recovery of *mesne* profits / damages for use and occupation is also not felt if the respondent / defendant / defendant no.2 abides by the decree for possession.

36. Thus the impugned order dated 27th August, 2015 is set aside.

37. The application of the petitioner / plaintiff under Order XII Rule 6 of the CPC, for the reasons aforesaid, is allowed.

38. Resultantly, a decree is passed in favour of the petitioner / plaintiff and against the respondents / defendants, of ejectment, by recovery of possession of the property No.12A/3, Friends Colony (West), New Delhi.

39. In exercise of powers under Article 227 of the Constitution of India, Sh. A.K. Kuhar, Additional Sessions Judge, Saket Courts, New Delhi, before whom the Appeal No.75/2015 (New Appeal No.204397/2016) titled “Ekta Puri Vs. Vikramjeet Puri & Ors.” of the respondent / defendant no.2 against the order dated 21st September, 2015 under the DV Act is pending, is requested to decide the said appeal on or before 31st December, 2017.

40. The decree for ejectment is made executable only after 31st January, 2018.

41. If the respondent / defendant no.2 abides by the decree, the claim of the petitioner / plaintiff for *mesne profits* / damages for use and occupation and for costs would also stand satisfied and the suit shall be disposed of. However if the respondent / defendant no.2 contests the matter further, the petitioner / plaintiff shall be entitled to continue the suit for the remaining reliefs claimed therein.

42. Decree sheet be drawn up.

No costs.

Trial Court record be sent back.

RAJIV SAHAI ENDLAW, J.

SEPTEMBER 14, 2017

‘gsr’

(corrected & released on 17th October, 2017)