

\$~36

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 16th April, 2018

+ C.R.P. 74/2018 and CM 14565-14566/2018

NITIKA KANDHARI GULERIA Petitioner

Through: Mr. A.Tewari, Advocate

versus

HARBANS SINGH GULERIA Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner is the defendant in the civil suit (CS 907/2007) instituted by the respondent for reliefs of possession, mandatory injunction and recovery including of *mesne* profits. The petitioner (defendant) is the wife of the son of the respondent (plaintiff). It appears that she is in possession of a property bearing flat no.1026, United Friends (U.F.) Apartments Society, Plot-9, Sector-6, Dwarka, New Delhi. The plaintiff claims to be the owner of the said property. According to his case, the defendant had come to be in use and occupation of the said property on account of she being the daughter-in-law. It appears the marriage of the defendant with the son of the plaintiff has run into rough weather, she having taken out certain proceedings, including under the Protection of Women from Domestic

Violence Act, 2005, in such wake. The plaintiff has brought the suit, *inter alia*, on the averments that the permissive user of the premises by the defendant has come to an end, he having cancelled the licence. The suit is being contested by the defendant, she having moved an application praying for rejection of the plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC) that was dismissed by the trial court by order dated 15.02.2018, which order is challenged by the petition at hand.

2. From the chronology of events narrated and the impugned order, it is clear that the suit has entered trial, evidence of some witnesses having already been recorded. Be that as it may, the prime contention urged by the petitioner is that the provision of the Protection of Women from Domestic Violence Act, 2005 has an overriding effect and since her complaint under the said law is pending before the court of the Metropolitan Magistrate, the jurisdiction of the civil court to entertain the suit is impliedly barred. The petitioner places reliance on *P. Nirathilingam vs. Annaya Nadar and Ors.*, (2001) 9 SCC 673 and *Vaishali Abhimanyu Joshi Vs. Nanasaheb Gopal Joshi*, AIR 2017 SC 2926.

3. This court finds no substance in the plea raised by the petitioner. It may be that the petitioner as the defendant may arguably contest the suit asserting her right, if any, in the subject property on the ground that it has been a “*shared household*” within the meaning of the expression used in the Protection of Women from Domestic Violence Act, 2005. But, this does not mean that the plaint of the suit

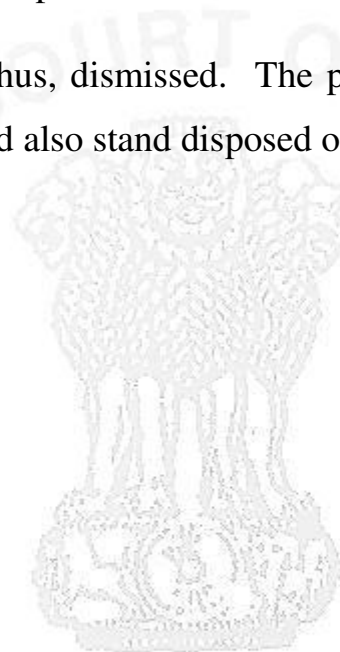
filed by a person who indisputably is the owner of the property is to be thrown out without trial. The civil court has put the case to trial, and rightly so, to adjudicate upon the claim of the plaintiff for the reliefs mentioned above. It cannot be said in the given facts and circumstances that the jurisdiction of the civil court is barred only because the defendant has raised defences with reference to rights claimed by her under the special law.

4. The petition is, thus, dismissed. The pending applications are rendered infructuous and also stand disposed of.

R.K.GAUBA, J.

APRIL 16, 2018

yg



सत्यमेव जयते