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

+ **W.P.(C) 6592/2018**

SMT. DARSHNA

..... Petitioner

Through: Mr Niraj Choudhary and Mr A. S.
Sharma, Advocates.

versus

GOVERNMENT OF NCT OF DELHI & ORS

..... Respondents

Through

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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18.07.2018

CM No.28045/2018

1. The petitioner (also referred to as Darshna) has filed the present application, *inter alia*, praying that the petition be heard at an early date and in the meantime the order dated 08.06.2018 passed by the District Magistrate, in case No. 6/2018 captioned *Sh. Dhani Ram v. Smt. Darshna and Ors.*, be stayed.

2. The application is allowed to the extent that the petition is taken up for hearing.

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3. Darshna has filed the present petition impugning an order dated 08.06.2018 (hereafter 'the impugned order') passed by the District Magistrate, whereby she has been directed to vacate the first floor of

House No. 2777/21, Beadonpura, Karol Bagh, New Delhi-110005 (hereafter 'the Premises') occupied by her and handover peaceful possession of the property to respondent no.2 (Sh. Dhani Ram).

4. Darshna is the daughter-in-law of Dhani Ram and is currently residing in the Premises along with Sh. Dhani Ram and his wife. It is stated that she occupies only one room in the said premises.

5. Concededly, there are matrimonial disputes between Darshna and her husband. Further, there are also disputes between Darshna and her in-laws (Dhani Ram and his wife). Darshna had instituted the proceedings under the Protection of Women from Domestic Violence Act, 2005 against her in-laws. Darshna's husband has also instituted divorce proceedings before the Principal Judge, Family Court on the grounds of cruelty. It is not disputed that Darshna and her husband are now separated and he is not living with his parents in the Premises for the past several months. Darshna has also filed a petition for maintenance under Section 125 of Cr.P.C. which is stated to be pending. She has also filed an FIR alleging offences under Section 498A, 406, 34 of IPC against her husband and her parents-in-law. It is stated that Dhani Ram had also filed a Civil Suit (Suit No. 1003/2018 captioned "Dhani Ram v. Darshna and Ors.") for permanent and mandatory injunction, which is pending before the learned Civil Judge, Tis Hazari Courts, Delhi.

6. Dhani Ram had filed an application before the District Magistrate seeking eviction of his son and Darshna from the Premises.

7. Mr Niraj Choudhary, learned counsel appearing for Darshna has assailed the impugned order, essentially, on four grounds. First, he

submitted that the proceedings for eviction are not maintainable as Dhani Ram has not sought any relief of maintenance under Section 4 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereafter 'the Act'). He submitted that Dhani Ram was receiving rent to the extent of ₹90,000/- from the shops on the ground floor and ₹50,000/- per month from the tenants of the second and the third floor of the premises in question. In addition, he is also receiving pension from DESU Department and, therefore, did not require any maintenance from his children.

8. Second, he submitted that the impugned order was patently erroneous as the opening paragraph of the impugned order mentioned that Sh. Dhani Ram had filed an application under Section 22(3)(2)(1) of the Act and no such provision exists. He submitted since no such provision exists, the application was not competent.

9. Third, he submitted that the provisions of the Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2009 as amended in 2016 (hereafter 'the Rules'), only enables a Senior citizen to evict his son and daughter or legal heirs from his self-acquired property on account of his non-maintenance and ill-treatment. He submitted that the daughter-in-law did not fall within the scope of said Rules and, therefore, Dhani Ram's application for evicting his daughter-in-law is not maintainable. Fourth, he submitted that the Premises in question, was ancestral property of Dhani Ram and, therefore, he could not maintain the application for eviction under the Act or the relevant rules.

10. I have heard the learned counsel for the parties at length.

11. It is stated that Mr Dhani Ram is aged about 75 years and his wife is about 70 years of age. Both are senior citizens. Dhani Ram had alleged in his application before the District Magistrate that Darshna misbehaves with him and his wife and, had also subjected them to physical violence. He claimed that the harassment suffered by him and his wife was to the extent that they were compelled to lock themselves in a room. He had also furnished the medical records/MLCs of him and his wife in order to substantiate his claim that they had been physically assaulted. Dhani Ram had also produced CCTV recordings, which showed Darshna assaulting him and his wife.

12. Darshna, on the other hand, has also made serious allegations against Dhani Ram and his wife. As noticed above, she has instituted proceedings against them.

13. After receipt of Dhani Ram's application, the District Magistrate had referred the matter to the Sub-Divisional Magistrate of Karol Bagh for verification of the Premises and to make an enquiry into the facts of the case. The report submitted by *Tehsildar* indicates that he had made enquiries from the neighbours who had confirmed that Darshna used to fight with her in-laws. She used to spit on them and also used filthy language. The report also indicated that Darshna used to throw their food items from the kitchen.

14. It is apparent from the allegations made by Dhani Ram as well as Darshna that they cannot live peacefully in the same premises.

15. The District Magistrate had also examined the material placed before him and concluded that ill-treatment of Dhani Ram and his wife at

the hands of Darshna was proved from (a) the report of Sub Inspector, Amit Tyagi, who had reported that inquiries made from the neighbours had indicated that Darshna used to create a scene in the house and make trouble for Dhani Ram and his wife; and (b) the inquiries made by the Tehsildar, which indicated that Darshna used to fight with her in-laws. The Tehsildar had reported that Darshna used to spit on them and used filthy language. Further, she would also throw their food items from the kitchen. District Magistrate also took note of the CCTV footage, which had been examined by the Investigating Officer(IO) pursuant to the orders passed by this Court. The IO had verified that the CCTV footage showed that Darshna had attacked Dhani Ram and his wife.

16. This Court finds no reason to doubt the aforesaid findings. Mr Choudhary also did not dispute that the CCTV recording showed Darshna attacking her in-laws. However, he contended that the CCTV recordings were manipulated as the footage was without any sound recording. He contended that if the sound recordings were heard, it would have revealed that Darshna was merely asking for some milk. This Court is not persuaded to accept the aforesaid contention as the sound recording would not be necessary to establish whether Darshna had been violent with her in-laws. This Court, thus, finds no reason to interfere with the finding that Darshna had ill-treated her in-laws (Dhani Ram and his wife).

17. It is also relevant to note that the proceedings before the District Magistrate are summary proceedings and do not entail recording of elaborate evidence. Such proceedings are to be concluded swiftly for

protection of the life and property of the senior citizens.

18. The contention that the application filed by Dhani Ram was not maintainable as he had not requested for maintenance is unmerited. The application filed by Dhani Ram was in terms of Rule 22(3)(1) of the Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2009 as amended by the Delhi Maintenance and Welfare of Parents and Senior Citizens (Amendment) Rules, 2016. In terms of Rule 22(3)(1)(i) of the said Rules, a Senior Citizen is entitled to make an application before the Deputy Commissioner/District Magistrate for eviction of his son and daughter or his legal heirs from the self-acquired property on account of non-maintenance and ill-treatment. In the present case, the District Magistrate has come to the conclusion that Dhani Ram and his wife were being ill-treated and, therefore, Dhani Ram was well within its right to seek protection under the afore-mentioned Rules.

19. It is also relevant to refer to section 22 of the Act which is set out below :-

“(2) The State Government shall prescribe a comprehensive action plan for providing protection of life and property of senior citizens.”

It is relevant to note that Section 22(2) of the Act expressly provides that State Government shall prescribe a comprehensive action plan for providing protection of life and property of senior citizens. The aforesaid Rules are an aid of the said provision. The Delhi Maintenance and Welfare of Parents and Senior Citizens (Amendment) Rules, 2016, entitling a senior citizen to seek eviction of his son, daughter or his legal heirs on account of ill-treatment were framed in aid of protecting the life

and property of senior citizens and not in furtherance of Section 4 of the Act. Thus, the assumption that it is necessary for a senior citizen to claim maintenance for seeking the protection of the Act or the Rules made there under is erroneous.

20. The contention that the property in question was not Dhani Ram's self-acquired property and, therefore, his application for eviction was not maintainable, is also unmerited. Dhani Ram had explained that the property in question was allotted to her mother Smt. Bahuti Devi on 04.05.1967 and he had acquired the property by virtue of a registered Will dated 28.01.1968. The contention that the property in question is ancestral or HUF property *prima facie* does not appear to be sustainable. However, the said issue is not relevant as by virtue of the Delhi Maintenance and Welfare of Parents and Senior Citizens (Amendment) Rules, 2017. Rule 22(3)(1)(i) was amended to read as under:-

“(i) A senior citizen/parents may make an application before the Deputy Commissioner/District Magistrate of his district for eviction of his son and daughter or legal heir from his property of any kind whether movable or immovable, ancestral or self- acquired, tangible or intangible and include rights or interests in such property on account of his non-maintenance and ill-treatment.”

21. It is apparent from the plain language of Rule 22(3)(1)(i) as quoted above that a senior citizen is also entitled to evict his son, daughter or legal heir from his property irrespective of whether it is an ancestral or self-acquired property.

22. The contention that the application filed by Dhani Ram was not maintainable on the ground that Section 22(3)(2)(1) of the Act did not exist, is unsubstantial. It appears that Dhani Ram had mentioned a wrong provision and instead of referring to Rule 22(3)(1)(i) of the Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2009 as amended, Dhani Ram had erroneously mentioned that Section 22(3)(2)(1) of the Act. It is well settled that mentioning an incorrect provision of law in a petition/application does not render the petition/application incompetent.

23. The contention that the provisions of Rule 22(3) of the aforesaid Rules applies to a son, daughter and other heirs and not to the daughter-in-law is also unpersuasive. The provisions of Rule 22(3)(1)(i) cannot be interpreted in a restrictive manner. The Division Bench of this Court in ***Shadab Khairi & Anr. v. The State & Ors.: LPA 783/2017, decided on 22.02.2018*** held that the Act, being a welfare legislations was required to be interpreted liberally. In ***Sunny Paul & Anr. v. State NCT of Delhi & Ors.: W.P.(C) 10463/2015, decided on 15.03.2017***, a Coordinate Bench of this Court had referred to an earlier decision in ***Nasir V. Govt. of NCT of Delhi & Ors.: 2015 (153) DRJ 259*** and reiterated that the provisions of the Act have to be liberally construed as one of the primary objects of the Act is to protect the life and property of the senior citizens.

24. Rule 22(3)(1)(i) of the Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2009 as subsequently amended in 2016 is a piece of welfare legislation. It must be read in meaningful and liberal manner so as to aid and further the object of the enactment and not in a

manner as to restrict its width.

25. In ***Union of India v. Prabhakaran Vijaya Kumar and Ors.*** : (2008) 9 SCC 527, the Supreme Court considered the scope of the expression “untoward incident” in terms of Section 123(c) of the Railways Act, 1989. The said expression included “the incidental falling of any passenger from a train carrying passengers”. The Supreme Court extended the scope of the aforesaid clause to also include the passengers trying to board the train. Following the principles of purposive interpretation the Court observed that *“since the provision for compensation in the Railways Act is a beneficial piece of legislation, in our opinion, it should receive a liberal and wider interpretation and not a narrow and technical one. Hence, in our opinion the latter of the abovementioned two interpretations i.e. the one which advances the object of the statute and serves its purpose should be preferred.”* In ***Executive Engineer, Southern Electricity Supply Co. of Orissa Ltd. & Ors v. Sri Seetaram Rice Mill***: (2012) 2 SCC 108, the Supreme Court observed that *“an approach or an interpretation which will destroy the very purpose and object of the enacted law has to be avoided”*. In that case the Court was considering the expression “unauthorized use” under Section 126 of the Electricity Act, 2003.

26. In the present case, excluding daughter-in-law from the scope of Rule 22(3)(1)(i) of the Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2009 as amended would debilitate the provisions of the Rules and render it incapable to serve the object of Section 22 of the Act. It is difficult to accept that although a senior citizen is entitled to

evict his/her son who is maltreating him, he/she has no option but to suffer the ill-treatment at the hands of his/her daughter-in-law. A daughter-in-law's right to reside in the premises of her in-laws cannot be greater than her husband's'. The expression "son and daughter or legal heirs" as used in the aforesaid Rules must also take within its sweep the families of the daughter/son, of a senior citizen. The term "legal heirs" must be understood in the broadest sense. Indisputably, a daughter-in-law is also a heir in certain circumstances (widow of a pre-deceased son).

27. In *Sunny Paul & Anr. v. State NCT of Delhi & Ors.* (supra), a Coordinate Bench of this Court had held that the scope of Section 22 of the Act could not be restricted. Section 22 (2) of the Act requires the State Government to prepare a comprehensive action plan for providing protection of life and property of senior citizens and thus, the State Government was enjoined to do so. The court further held that in absence of a comprehensive plan, the Court could intervene judicially to pass necessary orders for protection of life and property of senior citizens. The Delhi Maintenance and Welfare of Parents and Senior Citizens (Amendment) Rules, 2016 were framed in aid of provisions of Section 22 (2) of the Act and, thus, must be construed in the widest sense to ensure protection of life and property of senior citizens. In this view, the question of excluding daughter-in-law from the scope of Rule 22 (3)(1)(i) of the said Rules does not arise.

28. It is also relevant to note that Darshna has no right, title and interest in the premises and, therefore, cannot insist on residing with Dhani Ram and his wife especially when the relationships between the

said parties have deteriorated to the extent as indicated above.

29. Mr Choudhary had also pointed out that Darshna has been awarded maintenance of only ₹4,000/- per month, which would make it very difficult for her to survive with dignity. There is no dispute that Darshna would be entitled to reasonable maintenance. It is not clear whether the Family Court had also taken into account that she was living in the premises of her in-laws, while fixing the amount of maintenance. Since the order to evict her has been passed, it would be apposite if the concerned Family Court re-considers the question as to the quantum of maintenance to be paid to Darshna.

30. Since it is contended that Darshna would be rendered homeless, this Court considers it apposite to direct that the impugned order would not be implemented for a further period of eight weeks. In the meanwhile, Darshna would be at liberty to approach the concerned Family Court for enhancement of the maintenance awarded to her. Needless to state that such request would be considered on its own merits and in accordance with law.

31. The petition is dismissed in the aforesaid terms. The date already fixed on 18.01.2019 stands cancelled.

VIBHU BAKHRU, J

JULY 18, 2018/
RK /pkv