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

Date of Decision: 15.07.2019

+ **RFA No. 448/2019 & C.M. Nos.22422/2019 (for direction regarding service of court order, 22424/2019 (for stay), 26125/2019 (for delay of 148 days in filing the appeal)**

RISHIKA PURI Appellant
Through: Ms.Niti Richhariya, Adv. with
appellant in person.

versus

NIRMAL PURI & ANR Respondents
Through: Mr.Ashwin Romy, proxy counsel
for R-1 with R-1 in person.
Mr.Manish Garg, Adv. for R-2
with R-2 in person.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present appeal under Section 96 of the Code of Civil Procedure, 1908 assails the judgment and decree dated 27.08.2018 passed by the learned Trial Court in CS No.141/2017 whereby the suit preferred by the respondent no. 1 has been decreed for possession, on admission, by invoking Order XII Rule 6 CPC.

2. The first respondent, aged about 73 years, is the mother-in-law of the appellant who is married to her son, i.e., respondent no.2. The first floor of the property, bearing no. A-241, Meera Bagh, Paschim Vihar, New Delhi, ('suit premises' for short) admittedly belongs to the respondent no.1. In her suit for possession, mesne profits and damages against the appellant, she

had pleaded that the respondent no.2 was her son and had gotten married to the appellant on 25.10.2004. Out of the said wedlock, they were blessed with a girl child who is presently about 13 years old. It was further claimed that the respondent no.1 had permitted the appellant and her son- respondent no.2 to reside in the suit premises as a licensee, purely out of her love and affection for them; but for the last many years, both the appellant and her husband/respondent no.2 had become highly disrespectful towards her aged husband and her and, therefore, she was under no obligation to permit them to continue to reside in her house, when they had become a source of constant nuisance and trouble to her. It was further claimed in the plaint that even though the appellant used to abuse and torture the respondent no.1 and her husband, they were still continuing to take care of her minor daughter, in her absence.

3. On the other hand, the appellant, in her defence, while not denying that the property was in the name of the respondent no.1, had stated that her husband/respondent no.2, with whom she was having matrimonial differences, was in league with the respondent no.1 and had, merely as a ruse, taken a nearby accommodation on rent. She claimed that the respondent no.2 continued to stay in the suit premises but had taken a false stand that he was not residing there in support of his plea that the suit premises was not a 'shared household' of the appellant within the ambit of the Protection of Women from Domestic Violence Act, 2005 ('D.V. Act' for short) thereby disentitling her to continue to reside in the suit premises. She further contended that the respondent no.2 had, at the instigation of his parents, filed a wholly misconceived divorce petition against her, which she is suitably defending.

4. In view of the appellant not denying that the suit premises was in the name of her mother in law/respondent no.1, an application under Order XII Rule 6, CPC was preferred by the said respondent. The learned Trial Court found merit in the respondent no.1's application and accordingly, vide the impugned judgment dated 27.08.2018, passed a decree for possession against the appellant. It is stated that the respondent no.1's claim for mesne profits is pending adjudication before the learned Trial Court.

5. When the present appeal was taken up for hearing, the parties were heard at length in Chamber. The appellant raised a grievance that even though the respondent no.2 had been directed to pay her a monthly maintenance of Rs.5,000/- by the matrimonial court, the said amount is not being paid to her regularly. On the other hand, respondent no.2 claimed that he is already paying a monthly sum of Rs.7,000/- towards their daughter's tuition fee, which is, in fact, much more than the maintenance awarded to the appellant by the Matrimonial Court.

6. Keeping in view the fact that the respondent no.1, due to her old age, did not want the appellant to continue to stay in her house, certain suggestions were made to them and the respondent no.2 was asked to look for a suitable alternative accommodation in the neighbourhood of the suit premises, where the appellant could reside with their daughter. It was made clear to the parties that this aspect was not a subject of consideration before this Court and that the parties would be free to agitate this issue before the matrimonial court, where the appellant's claim regarding maintenance is pending adjudication. On the last date, the respondent no.1 had made an offer to the appellant that she, along with their minor daughter, could shift to the premises in which the

respondent no.2 claimed to have been residing since 2016. The said property, i.e., half portion on the eastern side of second floor without roof rights a part of property bearing no. A-173, Meera Bagh, Paschim Vihar, New Delhi ('alternative accommodation' for short) is a tenanted property which had been taken up by the respondent no.2 on lease. After negotiations, it had been agreed between the parties that the appellant will shift to the alternative accommodation on or before 31.07.2019 for which purpose, a fresh rent agreement will be executed between the landlady thereof namely, Ms.Saroj Sharma and the appellant for a period of 11 months. A copy of the draft rent agreement has been handed over by the learned counsel for the respondent no.2 and the same is taken on record. The agreed monthly rent of the alternative accommodation is Rs.13,000/- w.e.f. 01.08.2019 which will be paid directly by respondent no.2 to the landlady. The respondent no.2 will also pay a fixed monthly sum of Rs.2,000/- to the appellant towards electricity charges which will be directly credited into the appellant's account bearing the following details: Ms.Rishika, Saving A/c No.20004041921, Bank of Maharashtra, Paschim Vihar Branch, IFSC-MAHB0001239. In return, the appellant will send a copy of the electricity bill to the respondent no.2 by post, as and when the same is received by her. It is, however, made clear that irrespective of the actual amount payable under the electricity bill, the respondent no.2 shall continue to pay the appellant the agreed amount of Rs.2,000/- towards payment of the electricity charges.

7. As the minor daughter of the parties is also shifting to the aforesaid alternative accommodation, the respondent no.2 has also offered to obtain a gas connection and basic utensils for running

the kitchen in the said premises. It is also stated that an air conditioner and a geyser are already installed there, for the use of the appellant and the minor daughter of the parties. Though the said offer is acceptable to the appellant, she has expressed her apprehension that in case the lease is not executed or is not extended by the landlady in the future, the appellant and her minor daughter might be left without any shelter and it may become very difficult for her to gain entry into her matrimonial home, which is owned by the respondent no.1. Accordingly, it is agreed between the parties that, subject to the rent agreement being executed by the landlady for a period of 11 months as assured by the respondent, the appellant along with her minor daughter will vacate the suit premises on or before 31.07.2019 and that she will be allowed to take her belongings which are enumerated herein below:-

- i. Double Bed
- ii. Cooler
- iii. Iron
- iv. Clothes of the appellant & her daughter
- v. Utensils
- vi. Footwears
- vii. Books
- viii. Blender

8. Learned counsel for the respondent no.2, on instructions from the respondent no.2 who is present in Court, submits that though the draft of the proposed lease deed has already been finalized, in case the lease is not executed or not extended subsequently for any reason whatsoever, the respondent no.2 undertakes to pay a monthly sum of Rs.15,000/- to the appellant towards rent and electricity charges w.e.f. 01.08.2019, amount will continue to be paid by him till the matter is finally resolved in the pending proceedings under the D.V. Act or in case the parties

arrive at any other amicable settlement. The aforesaid statement of the respondent no.2 is taken on record and an undertaking to this effect will be filed by him before this Court within one week. It is made clear that the breach of the aforesaid statement would not only entitle the appellant to seek execution but would also entitle her to initiate contempt proceedings against the respondent no.2.

9. At this stage, learned counsel for the appellant further expresses her apprehension that since the appellant is a working mother, in case she shifts to the alternative accommodation as is being offered by the respondent no.2, she may face occasional difficulties in taking care of her minor daughter who is presently living in the joint family and is being looked after with the help of the respondent no.1 and her husband when the appellant is not at home. Learned counsel for the respondent no.1, on instructions from the respondent no.1, submits that the said respondent and her husband are very fond of their granddaughter and in case the appellant occasionally entrusts her in their care and custody during the day, they will take care of her even though they are under no legal obligation to do so. Learned counsel for the respondent no.1, on instructions from the said respondent, submits that she will withdraw her claim for mesne profits and damages for the period during which the appellant had continued to reside in the suit premises. She however, submits that she will continue to pursue her remaining claims against the appellant.

10. In view of the aforesaid settlement whereby the appellant along with her minor daughter will shift to an alternative accommodation, the parties undertake not to interfere with the peaceful possession and enjoyment of each other's premises.

11. For the aforesaid reasons, the appeal is partly allowed by

modifying the impugned judgment and decree. The suit filed by the first respondent is disposed of by decreeing that the appellant would vacate the first floor of the suit premises bearing no. A-241, Meera Bagh, Paschim Vihar, New Delhi on or before the midnight of 31.07.2019.

12. Since the appeal is being disposed of on the basis of an amicable settlement arrived at between the parties, the respondents do not oppose the application for condonation of delay being C.M. No.26125/2019. For the reasons stated in the same, the aforesaid application is allowed and the delay in filing the appeal is condoned.

13. The appeal is disposed of along with the pending applications in the aforesaid terms.

(REKHA PALLI)
JUDGE

JULY 15, 2019

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