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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 6802/2019 & CM No. 28459/2019, 28460/2019,**
28461/2019, 32398/2019

JASPREET GHURA Petitioner
Through Mr Yatendra Sharma, Advocate.

versus

NCT OF DELHI AND OTHERS Respondents
Through Mr Rizwan, Mr Sameydeen,
Advocates for R-1 and R-2.
Counsel for R-3 (appearance not given).

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER
% **13.08.2019**

VIBHU BAKHRU, J

1. The petitioner has filed the present petition impugning an order dated 17.05.2019, passed by the District Magistrate (DM), District Central, Daryaganj directing that the petitioner be evicted from the property bearing No. 30/11, 3rd Floor, Old Rajinder Nagar, New Delhi (hereafter "the premises"). The said order was passed to enforce an earlier order dated 04.02.2019 passed by the DM directing the petitioner to hand over vacant possession of the said property to respondent no.3 (the petitioner's mother-in-law, Smt Ranjit Kaur Ghura). This order was passed on an application filed by respondent no.3 under Rule 22(3) of the Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2009.

2. The petitioner states that she married respondent no.4 on 14.02.1993 and came to reside in the matrimonial house (D-399, Tagore Garden). She states that the said house was sold in the year 1995-96 and from the sale proceeds, another house was purchased at Paschim Vihar. The petitioner claims that she also contributed to the purchase of the said house, as her jewellery was sold to part finance the same. She claims that she was removed from that house after 4-5 months and had to move into her father's house. She states that after two years, respondent no. 4 (her husband) and respondent no.3 agreed to keep her and she moved back into the house with respondent nos. 3 and 4. It is stated that during the said period, the house at Pachim Vihar was sold and a new house at Rajouri Garden was purchased. Thereafter, the said house was also sold and residential units in the name of respondent no.3 were purchased. The petitioner claims that her father also contributed to the purchase of the said properties.

3. The petitioner claims that it was agreed that respondent no. 3 would reside at Pitampura and the petitioner and respondent no. 4, alongwith their children, would reside at the premises (30/11, 3rd Floor, Old Rajinder Nagar, New Delhi.)

4. The petitioner alleges that respondent no.4 has been continuously harassing and torturing the petitioner. Aggrieved by his conduct, the petitioner filed a complaint dated in PS Rajender Nagar. The petitioner also states that she has no financial support after the demise of her father and is struggling to make ends meet.

5. The petitioner also filed an application under Section 125 of the Code of Criminal Procedure, 1973 against respondent no.4, seeking maintenance for herself and her daughter, who is pursuing her college education.

6. Thereafter, on 05.07.2018, respondent no.4 filed a Divorce Petition bearing No. 1402/2018. He alleged on the basis of certain video clippings that the petitioner's conduct was immoral. The petitioner claims that the said video clippings are fake. The petitioner further claims that the divorce petition was filed as a counter blast to the previous complaints and applications filed by the petitioner.

7. On 11.07.2018, respondent nos. 2 and 3 filed an application under the Maintenance and Welfare of Parents & Senior Citizens Act, 2007 seeking eviction of the petitioner from the premises. The petitioner claims that this application was filed in collusion with respondent no.4 by showing him as residing with the petitioner in the premises.

8. On 11.12.2018 and 17.12.2018, the petitioner filed complaints before the DCP, Cyber Cell against respondent no.4 for making and circulating false video clippings.

9. On 21.12.2018, the petitioner filed a complaint under the provisions of the Domestic Violence Act, 2005, seeking protection and relief of shelter.

10. On 04.02.2019, the District Magistrate, Central District

disposed of respondent no.3's application directing the petitioner to vacate the premises. It was observed that respondent no. 4 had already vacated the premises and therefore, the directions for vacating the premises was confined to the petitioner.

11. Respondent nos.3 & 4 appeared before the Family Court in the proceedings commenced pursuant to the Complaint of the Petitioner under Section 125 Code of Criminal Procedure, 1973. At the instance of the parties, they were referred to Mediation Centre for an amicable resolution of their disputes.

12. On 08.02.2019, respondent nos.3 and 4, alongwith the petitioner and her daughter participated in the mediation proceedings (in Mt No. 86/2019) before the Delhi Mediation Centre, Tis Hazari. After due deliberations, all the pending disputes/ proceedings, including the proceedings under Maintenance and Welfare of Parents and Senior Citizen Act, 2007, were settled on mutual terms. It was specifically agreed by respondent no.3 that the premises would be transferred by her in favour of the petitioner's children, that is, her two grandchildren. And, the transfer expenses would be borne by the petitioner herein.

13. The disputes between the parties ought to have ended, but it appears that respondent no.4 had a re-think. He filed an application before the Family Court seeking clarification of the settlement dated 08.02.2019. The petitioner states that the same was done to avoid compliance on part of respondent no. 4 to the terms of the

settlement.

14. The petitioner moved an application before the District Magistrate, placing on record the settlement arrived at the Mediation Centre and seeking review of the order dated 04.02.2019. However, no action has been taken with reference to the same.

15. Thereafter, the petitioner filed an appeal against the order dated 04.02.2019, before the Divisional Commissioner and the said appeal is pending consideration.

16. Respondent no. 3 filed an execution application on 12.05.2019 before the District Magistrate seeking execution of the order dated 04.02.2019 without disclosing that a settlement had been arrived at between the parties on 08.02.2019.

17. On 17.05.2019, the District Magistrate passed the impugned order to get the evicted within seven days from the receipt of the said order.

18. On 20.05.2019, the petitioner was informed of the order dated 17.05.2019. And, the petitioner once again sought to approach the concerned authorities to seek benefit of the settlement dated 08.02.2019.

19. The petitioner states that she has been receiving threatening calls from respondent no.4. The petitioner states that she has no alternative accommodation to reside and does not have the financial

means to arrange the same.

20. The petitioner states that the two flats purchased by the petitioner and respondent no.4, at Pitampura and Old Rajinder Nagar respectively, are registered in the name of respondent no.3. It is claimed that the petitioner had contributed financially in the purchase of the aforesaid two flats by selling off her jewellery but the said respondents (respondent no.3 and respondent no.4), by way of foul play, convinced the petitioner to agree to register the properties in the name of respondent no.3.

21. It is stated that the petitioner's daughter also sought to approach the Divisional Commissioner seeking urgent relief. However, an urgent hearing was not granted. In the aforesaid background, the petitioner filed the present petition claiming urgent reliefs. The petition was filed on 11.06.2019 (while the Court was in vacation) and before the petition could be taken up for hearing, the District Magistrate had executed its order and evicted the petitioner as well as her two children from the premises.

22. The learned counsel appearing for the petitioner contended that the District Magistrate had failed to consider the petitioner's application that the parties had arrived at a settlement on 08.02.2019 and, therefore, the order passed on 04.02.2019 was not required to be enforced.

23. The learned counsel appearing for respondent no.3 contended that the present petition was infructuous as the petitioner had already

been evicted from the premises. She also countered the submission that the parties had arrived at a settlement on 08.02.2019. She stated that respondent no.4 had filed an application seeking certain modifications in the settlement dated 08.02.2019 contending that certain aspects had been left out of the said settlement. In view of the above, the said settlement was not accepted and by an order dated 26.03.2019 the Principal Judge, Family Court (Central District) had directed the parties to appear before the same Mediator. She stated that thereafter, the matter was returned by the Mediator as “not settled”.

24. The learned counsel appearing for the petitioner, on the other hand, contended that the settlement arrived on 08.02.2019 was not inchoate. He also stated that the petitioner had no objection to the issues raised by respondent no.4, namely, that the roof right of the premises remain with respondent no.3 and a default clause be included to provide for consequences if the petitioner defaults in fulfilling her obligations.

25. I have heard the learned counsel for the parties.

26. At the outset, it is relevant to refer to 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, 2017. The said Rule reads as under:-

**“22(3)(1) Procedure for eviction from
property/residential building of Senior**

Citizen/Parents.-

- (i) A senior citizen/parents may make an application before the Deputy Commissioner/District Magistrate (DM) of his district for eviction of his son and daughter of 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.
- (ii) The Deputy Commissioner/DM shall immediately forward such application to the concerned Sub Divisional Magistrates for verification of the title of the property and facts of the case within 15 days from the date of receipt of such application.
- (iii) The Sub Divisional Magistrate shall immediately submit its report to the Deputy Commissioner/DM for final orders within 21 days from the date of receipt of the complaint/application.
- (iv) The Deputy Commissioner/District Magistrate during summary proceedings for the protection of senior citizen/parents shall consider all the relevant provisions of the said Act. If the Deputy Commissioner/District Magistrate is of opinion that any son or daughter or legal heir of a senior citizen/parents is not maintaining the senior citizen and ill treating him and yet is occupying the property of any kind whether movable or immovable, ancestral or self acquired, tangible or intangible and include rights or interests in such property of the senior citizen, and that they should be evicted. The Deputy Commissioner/ District Magistrate shall issue in the manner hereinafter provided a notice in writing calling upon all persons

concerned to show cause as to why an order of eviction should not be issued against them/him/her.”

27. As is apparent from the plain language of Rule 22(3)(1) of the said Rules, a senior citizen can make an application for eviction of son, daughter and legal heir on account of his *non-maintenance and ill-treatment*. In the present case, respondent no.3 is not living in the premises; she is living in a separate house and, therefore, there is no question of the petitioner ill-treating respondent no.3. The only question that was required to be addressed is whether respondent no.3 required the said premises for her maintenance or self-use. The petitioner had specifically alleged that respondent no.3 was a person of means and did not require the premises. In terms of Rule 22(3)(1)(ii), the District Magistrate was required to forward the said application for verification of the title of the premises and the “*facts of the case*”. It appears that SDM had submitted a report regarding the title of the premises but regarding not any other facts, including the financial condition of respondent no.3 and whether she required the premises to cater to her needs. It is not necessary for this Court to examine this issue in any further detail as the petitioner had already preferred an appeal before the Divisional Commissioner under Rule 22(3)(4) of the said Rules.

28. It is relevant to note that the petitioner is residing at the premises along with her college going daughter and her son. It is also clear that there are serious disputes between the petitioner and respondent no.4. Clearly, if the allegations made by the petitioner

regarding circulation of a fake video clipping is found to be correct, respondent no4 would be required to be prosecuted to the full extent of law. There is no material to indicate that respondent no.3 requires the premises urgently and, therefore, this Court is of the view that the enforcement of the order dated 04.02.2019 ought to have been stayed till the petitioner's appeal against the aforesaid order is heard. Failure to do so would, effectively, render the said appeal as infructuous and frustrate the petitioner's appellate remedy.

29. It is also seen from the records that the parties (the petitioner, respondent no3 and respondent no.4) had arrived at a settlement before the Mediator on 08.02.2019. The said settlement was reduced to writing and had been signed not only by parties (petitioner, respondent no.3 and respondent no.4) but also their respective advocates. In terms of the said settlement, respondent no.3 had agreed to transfer the premises (property bearing no. 30/11, Third Floor, Old Rajender Nagar, New Delhi-110060) to her grandson Amit Ghura and grand daughter Simran Ghura, through registered document (GPA/sale deed) on or before 15.03.2019. The contents of the settlement executed between the parties are set out below:-

“After due discussions, both parties have agreed to settle their disputes in full and final on the following terms and conditions:-

1. It is agreed between the parties that Ms. Ranjit Kaur, mother of the Respondent shall transfer her own property bearing no.30/11, 3rd Floor, Old Rajinder Nagar, New Delhi-110060 to her grand son Amrit Ghura and

grand daughter Simran Ghura through registered documents (GPA/Sale Deed) on or before 15.03.2019. The expenses for the transferring of the aforesaid property shall be borne by the Petitioner.

2. That it is agreed by the parties that after the execution of the registered document of the property in favour of the Amrit Ghura and Simran Ghura petitioner No.1 & 2 shall not claim any right and interest from respondent and his mother as this Mediation settlement is full and final (Past present and future). It is further agreed by the respondent and his mother that they will not create any objection/incumbrance regarding further sale of the above property by the petitioner no.1 & 2.
3. The respondent has filed a petition for divorce petition on the basis of cruelty and the said divorce petition shall be withdrawn by the respondent. It is further agreed by both the parties that they shall not leveled any allegation/claim upon each other in future as well.
4. It is agreed by the parties that they shall withdraw the above mentioned cases alongwith any other cases if any, after the execution of the above said property documents.
5. It is further agreed by the parties that they will file the divorce petition by mutual consent and first motion shall be filed on or before 30.03.019.
6. It is further agreed the respondent and his mother will not claim any maintenance or

claim from petitioner, Amit and Simran. It is mutually agreed that Amrit and Simran having rights to meet with their grand mother and respondent.

This settlement has been voluntarily arrived at between the parties with their own free will and without any force, pressure or coercion and both the parties are bound by the terms and conditions mentioned herein above. The contents of the settlement have been explained to the parties in vernacular and they have understood the same and have admitted the same to be correct.”

30. Despite the said settlement arrived at in unequivocal terms, respondent no.4 filed an application captioned as “application for some clarification in the mediation settlement dated 08.02.2019”. In the said application, respondent no.4 reaffirmed that the parties had settled the disputes before the Mediation Cell on 08.02.2019; however, he also stated that some part of the facts were missing and the said settlement needed some clarification. The contents of the said application are set out below:-

- “1. That the abovesaid matter is pending before this Hon’ble court on 26.03.2019.
2. That the above said matter is settlement before mediation cell on 08.02.2019 but there are some part of the facts are missing and there is need of some clarification in the mediation settlement.
3. That there is some portion of settlement is missing in the said mediation settlement as there is not mentioned about the default clause

as per mother of the respondent will execute the property documents in the name of the petitioner no.2 and son sh. Amit Ghura, prior to withdraw the all proceedings so there is apprehension that after execution of property documents, if the petitioner no.1 will not comply the terms and condition of the settlement then what remedy with the respondent, and other thing is also not mentioned about the roof right of the said floor, as the roof right shall remain with mother of the respondent, who is senior citizen and owner of the said property.

It is therefore, prayed to this Hon'ble Court may kindly be considered all facts & circumstances and order to send the file again to mediation centre for clarification in the mediation settlement dated 08.02.2019 in the interest of justice.”

31. It is clear from the above that only two issues were raised by respondent no.4. Neither of the two issues were destructive of the terms of the settlement agreed between the parties. The first was regarding the default clause as to the recourse available, if the petitioner did not comply with her obligation and the second was regarding to the roof rights of the premises. The learned counsel appearing for the petitioner had stated that the said issues were non-existent, as the petitioner was willing to accept any clause providing for consequences in the event she failed to comply with her obligation. And second, that the petitioner was not claiming any roof rights in respect of the premises.

32. In the aforesaid view, this Court is, *prima facie*, of the view that

the said application was merely a ruse to overcome the settlement agreement and respondent no.4 ought not to have been permitted to resile from the agreement.

33. This Court is refraining from making any further comment in this regard, since the matter is pending before the concerned Court and it would be open for the petitioner to seek appropriate relief from the concerned Court (Principal Judge, Family Court, Central District).

34. The learned counsel appearing for respondent no.3 had erroneously contended that the present petition was infructuous as the petitioner had been removed from the premises. She contended that no relief could be granted to the petitioner. The said contention is unpersuasive. This Court is of the view that the petitioner had filed the present petition before this Court before she was evicted, however, she was removed from the premises before the same could be considered.

35. In the circumstances, this Court considers it apposite to restore *status quo ante*.

36. For the reasons stated above, respondent nos. 1 and 2 are directed to forthwith put the petitioner and her children back in possession of the premises. This is subject to further orders, that may be passed by the Divisional Commissioner, in the appeal preferred by the petitioner against the order dated 04.02.2019 passed by the District Magistrate.

37. The petition is disposed of in the aforesaid terms. All pending applications also stand disposed of.

38. Order *dasti* under signatures of the Court Master.

AUGUST 13, 2019
pkv/RK

VIBHU BAKHRU, J

