

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE
A.P.O.T. No. 105 of 2021
IA No: GA/1/2021
Anuradha Agarwal
Versus
Shiv Shankar Agarwal & Ors.

BEFORE:

The Hon'ble JUSTICE SUBRATA TALUKDAR

-And-

The Hon'ble JUSTICE SAUGATA BHATTACHARYYA

Date : 16th July, 2021.

Mr. Prabal Kr. Mukherjee, Sr. Adv. with
Mr. Ayan Bhattacharya & Mr. Rahul Auddy, Adv.
... for the Appellants

Mr. Abhratosh Majumdar with Mr. Suddhasatva Banerjee
& Md. Zohaib Rauf, Adv.
... for the Respondent no.1

Mr. Mayukh Moitra, Adv.
... for the respondent no.2

Mr. Prabal Mukherjee, learned Senior Counsel, appears for the appellant. The appellant is the wife of the respondent no.2 in this appeal and the daughter-in-law of the respondent no.1 to in this appeal. The respondent no.1 in this appeal is the writ petitioner before the Hon'ble Single Bench.

Mr. Mukherjee is aggrieved by the order dated 14th July, 2021 in the writ petition being W.P.O. No. 246 of 2021. The Hon'ble Single Bench, *inter alia*, noticing the fact that the writ petitioner/respondent no.1 to this appeal is the exclusive owner of the flat in which the appellant has been

residing with her husband/the respondent no.2, has complained of ill-treatment at the hands of the appellant. It has been also noticed that the respondent no.1, being a senior citizen, is entitled to enjoy peaceful residence in his own house and the status of the appellant as well as the respondent no.2 are not better than licencees.

In the above view of the matter, the Hon'ble Single Bench has directed the local police station to ensure that the appellant and the respondent no.2, i.e. respectively the daughter-in-law and her husband, are escorted out of the said flat and shall not enter into the said flat without the written consent of the respondent no.1.

Mr. Mukherjee submits that the Hon'ble Single Bench, acting in writ jurisdiction, could not have evicted the appellant from the said flat which is in the nature of a shared household. The direction granting police assistance is drastic and goes against the concept of providing shelter to the daughter-in-law in her matrimonial home. In support of his contentions, Mr. Mukherjee relies on the judgements reported in **(2021) 1 SCC 414 (Satish Chander Ahuja vs. Sneha Ahuja)** and **AIR 2021 SC 177 (S. Vanitha vs. Deputy Commissioner, Bengaluru Urban District & Ors.)**.

On behalf of the respondent no.1/the writ petitioner, Mr. Abhratosh Majumdar, learned Senior Counsel, takes this Court to the order dated

26th November, 2019 of the Presiding Officer, Maintenance Tribunal, Kolkata, as passed in a proceeding under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short the 2007 Act). Further taking this Court to the operative portion of the order dated 26th November, 2019, Mr. Majumdar submits that the Maintenance Tribunal, Kolkata, has come to the clear finding that the respondent no.1, as a senior citizen, has the right to determine whom he will allow to reside in his house. Therefore, in exercise of powers under Rule 7(7)(a) of the West Bengal Maintenance and Welfare of Parents and Senior Citizens Rules, 2008 (for short the 2008 Rules), the Officer-in-Charge of the Shakespeare Sarani Police Station, was directed to ensure the protection of the life and property of the senior citizen/the writ petitioner/the respondent no.1 to this appeal.

Mr. Majumdar, therefore, submits that the Hon'ble Single Bench has acted in proper exercise of writ jurisdiction by upholding the direction of the Maintenance Tribunal, Kolkata and the emphasis on eviction, placed by Mr. Mukherjee, learned Senior Counsel, is misconceived.

It is the further stand of the respondent no.1 that the proceedings initiated by him under the 2007 Act, was in the year 2019 and, as a counter-blast, the appellant instituted proceedings under the Prevention of Domestic Violence Act, 2005 against the respondent no.1 and his son/ her husband/the respondent no.2, in 2020.

After the order dated 26th November, 2019 of the Maintenance Tribunal, Kolkata, the respondent no.1, through his writ petition has sought action from the police in granting him the peaceful and exclusive legal possession of his flat as granted by the Maintenance Tribunal, Kolkata.

Mr. Mayukh Moitra, learned Counsel appearing for the respondent no.2/husband of the appellant, does not challenge the order of the Hon'ble Single Bench dated 14th July, 2021. It is submitted that the respondent no.2/the husband of the appellant/son of the respondent no.1 has already taken a separate residence away from the residence of the respondent no.1/his father. Mr. Moitra limits his submission to the effect that any observations in this appeal may not touch upon the issue of domestic violence since such issue is pending consideration before the appropriate forum.

Having heard the parties and considering the materials placed, this Court finds adequate justification in the submissions of Mr. Majumdar, learned Senior Counsel appearing for the respondent no.1, that the respondent no.1/the writ petitioner is entitled to complete reliefs, as granted to him by the Maintenance Tribunal, Kolkata, *vide* its order dated 26th November, 2019. This Court also notices that the concept of shared house-hold/shelter in a matrimonial home would apply *qua* the appellant

in relation primarily to the respondent no.2/her husband. In so far as the status of the appellant in the said flat owned by the respondent no.1/her father-in-law exclusively, the Hon'ble Single Bench has correctly held the same to be that of a licensee. This Court must also notice that the husband/respondent no.2 is already residing in a separate residence and, the appellant is, in the facts of this case, entitled to claim a shared household status only with her husband.

In the light of the above discussion, this Court is not persuaded to interfere in the order dated 14th July, 2021, as impugned in this appeal. It is noticed that the matter has been directed to be listed for further consideration before the Hon'ble Single Bench on 20th July, 2021.

Accordingly, this appeal and the connected application are not detained further.

APOT/105/2021 and **GA/1/2021** stand thus **disposed of**.

Since affidavits have not been invited, the allegations contained are deemed not to be disputed.

Liberty is also granted to the parties to act upon gist of this order to be communicated by the parties.

All parties are to act on a server copy of this order.

(SAUGATA BHATTACHARYYA, J.)

(SUBRATA TALUKDAR, J.)