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

Date of Decision: 02.03.2021

+ **CM(M) 179/2021**

SNEHA AHUJA

..... Petitioner

Through Mr.Prashant Mehta,
Mr.Himanshu Kapoor, Advs.
(Mob. No.9899249819)

versus

SATISH CHANDER AHUJA & ANR.

..... Respondents

Through Mr.Prabhjit Jauhar,
Ms.Aishwarya, Ms.Tulika
Bhatnagar, Advs. for R-1 (Mob.
No.9811139939) alongwith R-1
in person.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

CM No.8407/2021 (Exemption)

Allowed, subject to all just exceptions.

CM(M) 179/2021 & CM No.8406/2021

1. This petition has been filed by the petitioner being aggrieved of the order dated 29.01.2021 passed by the learned Additional District Judge-03 (South-East), Saket Courts in suit, being CS No.792/2017, filed by the respondent no.1 herein, calling upon the respondent no. 1

to file an application offering alternate accommodation to the petitioner.

2. The suit has been filed by the respondent no. 1 against the petitioner and the respondent no.2 seeking *inter-alia* a decree of Mandatory Injunction directing the petitioner herein to remove herself from the first floor of the property bearing No.D-1077, New Friends Colony, New Delhi-110025.

3. By the order dated 08.04.2019, the suit was decreed in favour of the respondent no.1 herein under Order XII Rule 6 of the Code of Civil Procedure, 1908. The petitioner challenged the said order before this Court. This Court vide its judgment and order dated 18.12.2019, passed in a batch of appeals, *inter-alia* passed the following directions:

“56. In these circumstances, the impugned judgments cannot be sustained and are accordingly set aside. The matters are remanded back to the trial Court for fresh adjudication in accordance with the directions given hereinbelow:

(i) At the first instance, in all cases where the respondent's son/the appellant's husband has not been impleaded, the trial Court shall direct his impleadment by invoking its suo motu powers under Order I Rule 10 CPC.

(ii) The trial Court will then consider whether the appellant had made any unambiguous admission about the respondent's ownership rights in respect of the suit premises; if she has and her only defence to being dispossessed therefrom is her right of residence under the DV Act, then the trial Court shall, before passing a decree of possession on the sole premise of ownership rights,

ensure that in view of the subsisting rights of the appellant under the DV Act, she is provided with an alternate accommodation as per Section 19(1)(f) of the DV Act, which will continue to be provided to her till the subsistence of her matrimonial relationship.

(iii) In cases where the appellant specifically disputes the exclusive ownership rights of the respondents over the suit premises notwithstanding the title documents in their favour, the trial Court, while granting her an opportunity to lead evidence in support of her claim, will be entitled to pass interim orders on applications moved by the respondents, directing the appellant to vacate the suit premises subject to the provision of a suitable alternate accommodation to her under Section 19(1)(f) of the DV Act, which direction would also be subject to the final outcome of the suit.

*(iv) While determining as to whether the appellant's husband or the in-laws bears the responsibility of providing such alternate accommodation to the appellant, if any, the trial Court may be guided by paragraph 46 of the decision in **Vinay Verma** (supra).*

(v) The trial Court shall ensure that adequate safeguards are put in place to ensure that the direction for alternate accommodation is not rendered meaningless and that a shelter is duly secured for the appellant, during the subsistence of her matrimonial relationship.

(vi) This exercise of directing the appellant to vacate the suit premises by granting her alternate accommodation will be completed expeditiously and not later than 6 months from today."

4. The said judgment was carried in Appeal by the respondent no.1 before the Supreme Court in Civil Appeal No.2483/2020. The

Supreme Court vide its judgment and order dated 15.10.2020 was pleased to dispose of the appeal *inter-alia* holding as under:

“83. Before we close our discussion on Section 2(s), we need to observe that the right to residence under Section 19 is not an indefeasible right of residence in shared household especially when the daughter-in-law is pitted against aged father-in-law and mother-in-law. The senior citizens in the evening of their life are also entitled to live peacefully not haunted by marital discord between their son and daughter-in-law. While granting relief both in application under Section 12 of Act, 2005 or in any civil proceedings, the Court has to balance the rights of both the parties. The directions issued by High court in paragraph 56 adequately balances the rights of both the parties.

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134. However, at the same time, it is to be observed that in a case any relief available under Sections 18, 19, 20, 21 and 22 is sought by aggrieved person in any legal proceedings before a civil court, family court or a criminal court including the residence order, the aggrieved person has to satisfy by leading evidence that domestic violence has taken place and only on the basis of the evidence led on being satisfied that the domestic violence has taken place, the relief available under Section 19 can be granted as Section 19(1) specifically provides that while disposing of an application under sub-Section 1 of Section 12, the magistrate may, on being satisfied, that domestic violence has taken place, pass the residence order.

135. At this stage, it is also required to be noted that while passing the order of residence under Section 19, more particularly under sub-section 19(1)(b) as per the

proviso to Section 19(1), no order under clause(b) shall be passed against any person who is a woman.

136. Therefore, on conjoint reading of Sections 12(2), 17, 19, 20, 22, 23, 25, 26 and 28 of the D.V. Act, it can safely be said that the proceedings under the D.V. Act and proceedings before a civil court, family court or a criminal court, as mentioned in Section 26 of the D.V. Act are independent proceedings, like the proceedings under Section 125 of the Cr. P.C. for maintenance before the Magistrate and/or family court and the proceedings for maintenance before a civil court/ family court for the reliefs under the Hindu Adoption and Maintenance Act. However, as observed hereinabove, the findings/orders passed by the one forum has to be considered by another forum.

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157. From the above discussions, we arrive at following conclusions:-

(i) The pendency of proceedings under Act, 2005 or any order interim or final passed under D.V. Act under Section 19 regarding right of residence is not an embargo for initiating or continuing any civil proceedings, which relate to the subject matter of order interim or final passed in proceedings under D.V. Act, 2005.

(ii) The judgment or order of criminal court granting an interim or final relief under Section 19 of D.V. Act, 2005 are relevant within the meaning of Section 43 of the Evidence Act and can be referred to and looked into by the civil court.

(iii) A civil court is to determine the issues in civil proceedings on the basis of evidence, which has been led by the parties before the civil court.

(iv) In the facts of the present case, suit filed in civil court for mandatory and permanent injunction was fully maintainable and the issues raised by the appellant as well as by the defendant claiming a right under Section 19 were to be addressed and decided on the basis of evidence, which is led by the parties in the suit.”

5. On the remand, the Impugned Order dated 29.01.2021 has been passed by the learned Trial Court *inter-alia* observing as under:

“7. In the judgement passed by the Hon'ble Supreme Court of India, it has already been held that the word “respondent” not only include “husband” but it may include other persons (parents-in-law) also with whom the defendant was residing in the property as a joint share-hold property of all. In the Para No.84 of the said judgement it was also held that the definition of shared household cannot be read to mean that shared household can only be that the household which is household of the joint family of which husband is a member or in which husband of the aggrieved person has a share and that the judgement of “S.R. Batra vs. Saruna Batra” was overruled by saying that it does not lay down a correct law. This court is also of the opinion that the plaintiff is also required to state the specific area/portion which in possession of the defendant along with the average utility charges, or in the alternative, the other suitable accommodation or the approximate amount of rent equivalent to the present status of the property under the occupation of the defendant besides

the name of the person (whether plaintiff or his son/defendant No.2) by whom the alternative accommodation or rent will be provided. Therefore, filing of said application is essential especially to have the version of the defendant also in the form of its reply.

8. Accordingly, the plaintiff is given an opportunity to file such application within 7 days with advance copy to the opposite counsel on his Whatsapp/e-mail. Upon receiving of the said application, the defendants will also file their replies within 10 days with advance copy to the opposite counsel on his Whatsapp/e-mail. The defendant No.1 may also suggest the alternative accommodation or the amount of rent, which she is entitled from the plaintiff or her husband.”

6. The petitioner is aggrieved of the above order and has challenged the same before this Court. The primary contention of the learned counsel for the petitioner is that in view of the above direction of the Supreme Court as contained in Paragraph 157 (iv) reproduced hereinabove, the learned Trial Court erred in calling upon the respondent no. 1 to file an application offering alternate accommodation to the petitioner. He submits that the suit would have to be decided after taking evidence of the parties and on merit.

7. The learned counsel was the petitioner also makes submissions even with respect to the merit of the application filed by the respondent no.1 pursuant to the liberty granted to him by the Impugned Order.

8. On the other hand, the learned counsel for the respondent no.1, who appears on advance notice, submits that as the directions given in paragraph 56 of the judgment of this Court referred hereinabove have been specifically affirmed by the Supreme Court, the application of the respondent no.1 offering alternate accommodation to the petitioner is maintainable. He submits that the direction contained in Paragraph 157 (iv) of the order passed by the Supreme Court does not bar the maintainability of the said application at an interim stage.

9. He also makes submissions on the merits of the application filed by the respondent no. 1 pursuant to the impugned order.

10. I have considered the submissions made by the learned counsels for the parties.

11. The impugned order dated 29.01.2021 permits the respondent no.1 to file an application offering alternate accommodation to the petitioner. The said application is yet to be adjudicated and infact, was filed only after the passing of the impugned order. I cannot agree with the learned counsel for the petitioner as far as he submits that the judgment and order of the Supreme Court bars the maintainability of an application offering alternate accommodation to the petitioner. Paragraph 157(iv) of the judgment of the Supreme Court does not suggest any such bar on the maintainability of the application at an interim stage. However, at the same time, such application cannot be allowed as a matter of routine and has to be considered by the learned Trial Court on the facts and circumstances of each case and keeping in

view of the judgment of the Supreme Court. Mere offer of an alternate accommodation is not the determining factor for such an application.

12. In the present case, the Impugned Order merely permits the respondent no.1 to file such application, which has been subsequently filed. The said application is pending disposal before the learned Trial Court. Though, the learned counsels for the parties have tried to make submissions on the merits of the said application, I do not intend to get into the same as the same is yet to be adjudicated by the learned Trial Court.

13. In view of the above, the present petition is disposed of clarifying that all the submissions made by either party on the merits of the application, including on the effect of the orders passed by the High Court and Supreme Court are left open to be adjudicated by the learned Trial Court. The learned Trial Court shall adjudicate on the same while considering the application of the respondent no.1, remaining uninfluenced of any observation that has been made by the learned Trial Court in the Impugned Order.

14. There shall be no order as to costs.

NAVIN CHAWLA, J

MARCH 2, 2021/Arya