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

Reserved on: 22.04.2021

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Date of Pronouncement: 03.05.2021

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LPA No.155/2021

JYOTSANA PAWAR & ORS.

..... Appellants

Through: Mr. Madhav Gupta, Adv.

versus

DAULAT RAM PAWAR & ORS.

..... Respondents

Through: Mr. Ritesh Kumar, Adv. for R-1
Ms. Urvi Kapoor, Adv. on behalf of Mr.
Sameer Vashisht, ASC Civil/ GNCTD/ for R-2
to R-5

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE JASMEET SINGH

JUDGMENT

: **JASMEET SINGH, J**

Proceedings in the matter have been conducted through video conferencing.

CM APPLs .15095-15096/2021 (Exemptions)

Allowed, subject to all just exceptions.

The applications are disposed of.

LPA 155/2021 & CM APPLs. 15094/2021 (Stay) & 15097/2021 (Seeking permission to file lengthy synopsis and list of dates)

The present Letters Patent Appeal (LPA) has been filed under Clause 10 of the letters patent seeking setting aside of the impugned judgment and order dated 09.04.2021 passed by the learned Single Judge in W.P.(C) NO. 4469/2021 titled “Daulat Ram Pawar versus Govt. of NCT of Delhi & Ors.”

1) That briefly stating facts giving rise to the filing of the present appeal are as under: -

- a) That respondent No.1 filed a writ petition in this Hon’ble High Court seeking vacation of First floor of B-7, Extension 75, Safdarjung Enclave, New Delhi – 110029 (hereinafter referred to as the “Subject Premises”). There is a long history of litigation prior to filing the writ petition.
- b) Respondent No. 1 had filed an eviction petition against his son (Respondent No.6 in the present appeal) under “The Maintenance and Welfare of Parents and Senior Citizens Act, 2007.” The learned District Magistrate (South) vide order dated 18.12.2017 rejected the application of respondent No.1. Against the order of the rejection passed by the learned District Magistrate (South) dated 18.12.2017, respondent No.1 filed an appeal bearing appeal No. 17/2018 which was disposed of by the Appellate Court of Divisional Commissioner, Office of The Secretary-Cum-Divisional Commissioner, Department of Revenue on 23.03.2018. The learned Appellate Court was pleased to allow the appeal and directed respondent No.6 to vacate the

premises within a period of 15 days from the date of receipt of the order.

- c) The said order of the learned Divisional Commissioner was challenged by respondent No.6 by filing a writ petition bearing W.P.(C) No. 3413/2018 titled “Sunil Pawar vs. Learned Appellate Authority/Divisional Commissioner & Ors.” which was disposed of by the learned Single Judge of this Hon’ble Court on 10.05.2018. The learned Single Judge was pleased to grant respondent No.6 six months time to hand over, vacant and peaceful possession of first floor of property bearing B-7, Extension 75, Safdarjung Enclave, New Delhi - 110029 i.e., on or before 08.10.2018.
- d) Respondent No.6 was required to file an affidavit/undertaking before the writ court and the relevant paras of the affidavit are reproduced herein below: -

2. That in the aforesaid writ petition, this Hon’ble Court vide Order dated 09/04/2018 was pleased to issue notice to the respondent no. 4, limited to the extent of extending time accorded to the petitioner and his family for vacating the subject property i.e., the First Floor of the property bearing no:- B-7, Extension 75, Safdarjung Enclave, New Delhi- 110029.

3. That statement of the petitioner/deponent to the effect that he would require six (6) months' time to vacate the, subject.' property was also taken on record vide the

aforesaid Order dated 09/04/2018.

4. That accordingly the petitioner hereby undertakes to this. Hon'ble Court that the petitioner along with his family shall vacate and hand over peaceful possession of the First Floor of the property bearing no. B-7, Extension 75, Safdarjung Enclave, New Delhi-110029, to the Respondent no. 4- Sh. Daulat Ram Pawar, on or before the expiry of the period of six months i.e., on or before 08.10.2018.

5. That the petitioner/deponent agrees and confirms to remain bound by his undertaking contained in this affidavit and that the petitioner/deponent is well aware about the legal consequence of non-compliance/breach of undertaking.

- e) Respondent No.6 despite having given an undertaking and despite having availed a period of 6 months, approached the Hon'ble Supreme Court by filing SLP(C) No. 25386/2018 titled "Sunil Pawar versus the Govt. of NCT of Delhi & Anr." challenging the order dated 10.05.2018 passed by the learned Single Judge of this Hon'ble Court.
- f) The Hon'ble Supreme Court dismissed the SLP but modified the order of 10.05.2018 by granting respondent No.6 time upto 30.04.2019 subject to furnishing a fresh undertaking. Respondent No.6 in terms of the order dated 08.10.2018 passed by the Hon'ble

Supreme Court gave another undertaking in the Hon'ble Supreme Court, para 2 of which is relevant and reproduced hereunder.

2. That the petitioners herein shall not induct any other person in the suit premises and shall handover vacant and peaceful, possession of the said premises to the respondents on or before the 30th day April, 2019

- g) Thereafter respondent No.6 made another application for extension of time to vacate the subject premises which was rejected by the Hon'ble Supreme Court on 08.05.2019.
- h) That the appellant No.2 and 3 filed a suit for partition before this Hon'ble Court bearing CS(OS) 350/2020 titled "Nandita Pawar & Anr. versus Daulat Ram Pawar & Ors." seeking partition of entire property bearing B-7, Extension 75, Safdarjung Enclave, New Delhi –110029 consisting of Ground Floor, First Floor, Second Floor, Third Floor and Top Floor. The appellant No.2 and 3 also filed an application bearing 1A 10623/20 under order 39, Rule 1 and 2 seeking an ad interim ex parte injunction restraining respondent No.1 from compelling the appellant No. 2 and 3 to vacate portion of suit property in which appellant No.2 and 3 were residing.
- i) The learned Single Judge hearing the said interim application by an order dated 17.11.2020 gave a prima facie view that the appellant No.2 and 3 have been set up by respondent No.6 to get over the orders passed by this Hon'ble Court as well as the orders passed Hon'ble Supreme Court.

- j) The learned Single Judge further opined that the appellant 2 and 3 are acting for respondent No.6, Sunil Pawar i.e., their father. After giving the prima facie view, the learned Single Judge rejected the relief sought by appellant 2 and 3 from requiring the appellant No.2 and 3 to vacate the subject premises.

Admittedly, no appeal has been filed against this order.

- 2) After going through this entire history of litigation, the learned Single Judge in the impugned order dated 09.04.2021 directed: -

Appellant 1, 2 and 3 to vacate the suit premises on or before 25.04.2021. Respondent No.6 was further directed to pay a sum of Rs. 15,000/- per month to appellant 1, 2 and 3 and to enable them to find an alternate premise.

- 3) The present appeal has been filed by the appellants agitating the following: -

- (i) That the learned Single Judge has failed to consider that the appellants were never a party to the proceeding initiated by respondent No.1 under “The Maintenance and Welfare of Parents and Senior Citizens Act, 2007” and have not been given any hearing. The appellants have further argued that all the orders of eviction have been passed behind their back, without affording them any hearing and in fact, it is respondent No.6 who has colluded with respondent No.1 so that appellants can be evicted from their residence namely, First Floor of B-7, Extension 75, Safdarjung Enclave, New Delhi - 110029

- (ii) That appellants have a statutory right to reside at the subject premises under “The Protection of Women from Domestic Violence Act, 2005”. The right of residence is provided under Section 2(s) read with Section 17 and 19 of the Protection of Women from Domestic Violence Act, 2005, as the appellants were staying with respondent No.6 within the meaning of shared household.
- (iii) The appellants have further stated that all the undertakings filed by respondent No.6 before this Hon’ble Court in W.P.(C) NO. 3413/2018 and before the Hon’ble Supreme Court in SLP (C) No. 25386/2018 have been filed by respondent No.6 in his individual capacity and not for and on behalf of the appellants and hence cannot bind them.
- (iv) The appellants have further stated that they have right under “The Protection of Women from Domestic Violence Act, 2005” and those rights cannot be ignored by collusive proceeding filed by respondent No.1 and respondent No.6.
- (v) Lastly, the appellants have relied upon the law laid down by the Hon’ble Supreme Court in S. Vanitha versus Deputy Commissioner¹ and Satish Chandra Ahuja versus Sneha Ahuja² to argue that statutory rights under “The Protection of Women from Domestic Violence Act, 2005” to live in shared household cannot be taken away by the quick summary order under Senior Citizens

¹2020 SCC Online SC 1023, decided on December 15, 2020

² 2021 1 SCC 414, decided on October 15, 2020

Act and further that the statutory right under “The Protection of Women from Domestic Violence Act, 2005” to live in a shared household must be balanced with the right under Senior Citizens Act.

- 4) We have heard the learned counsel for the appellants as well as gone through the paper book and the judgments cited by the learned counsel for the appellants. The respondent No.1 had filed an application seeking eviction of respondent in the year 2017. The said application was rejected by the learned District Magistrate (South) on 18.12.2017. The said order was taken in appeal before the Divisional Commissioner and the Divisional Commissioner on 23.03.2018 was pleased to direct respondent No.6 to vacate the subject premises i.e., B-7, Extension 75, Safdarjung Enclave, New Delhi -110029 within 15 days. The order of 23.03.2018 was challenged in a W.P.(C) 3413/2018 by respondent No.6 and the learned Single Judge of this Hon’ble Court by order dated 10.05.2018 was pleased to grant time upto 08.10.2018 to vacate the subject premises. The said period of 08.10.2018 was further extended by the Hon’ble Supreme Court till 30.04.2019 by the order dated 08-10-2018 in SLP (C) 25386/2018.
- 5) It will be pertinent to note and observe that from 2017 till 30.04.2019, there were no instances of Domestic Violence between appellant No.1 and respondent No.6 and no proceedings were filed under “The Protection of Women from Domestic Violence Act, 2005” by appellant No.1. In fact, in the undertakings filed by respondent No.6, he has categorically stated that “he along with his family will vacate”.

- 6) On 29.10.2020, appellant No.2 and 3 filed a suit for partition seeking a share in property No. First Floor of B-7, Extension 75, Safdarjung Enclave, New Delhi –110029. The said suit was signed by appellant No.1 for and on behalf of appellant No. 3 as is evident from the application under Order 39, Rule 1 and 2 filed in this paper book at Annexure P-9. In the application also there is no mention of any domestic violence between the appellant no.1 and/or the Respondent No.1 or the Respondent No.6. The most important document on the basis of which the appellants are claiming their rights is a complaint under “The Protection of Women from Domestic Violence Act, 2005”. Admittedly, the said complaint has not been filed with the paper book. As per the list of dates and events, the said proceeding have been initiated by the appellants against respondent No.1 only on 23.12.2020.
- 7) From the facts stated above, it is clear that the proceedings for eviction have been carrying on from 2017 and the appellants have taken the benefit of 2 extensions of 6 months i.e., one by the Hon’ble High Court and one by the Hon’ble Supreme Court. We are of the view that the complaint under “The Protection of Women from Domestic Violence Act, 2005” is merely an eyewash and has been filed only to defeat the eviction order passed under the maintenance of the Senior Citizens Act.
- 8) The judgment of the Hon’ble Supreme Court in S. Vanitha has also been considered by us. The facts in S. Vanitha’s case are totally different from the facts of the present case. In S. Vanitha’s case, the property initially belonged to the husband and immediately after the marriage, matrimonial disputes arose between the husband and wife. The husband sold the land to

his father and thereafter the father gifted the land along with the house to his wife and thereafter the wife filed a petition against her daughter-in-law under “The Maintenance and Welfare of Parents and Senior Citizens Act, 2007”. The Hon’ble Supreme Court in S. Vanitha’s case held that the transfer of the title could not be viewed in isolation from the context of ongoing matrimonial dispute which had taken place. Since the transfer of title of the property in question during the ongoing matrimonial dispute was lacking bonafide, the Hon’ble Supreme Court was of the view that a situation should not arise where an order of eviction deprived the daughter-in-law from pursuing her claim under “The Protection of Women from Domestic Violence Act, 2005”. In the present case, the property in question did not belong to Respondent No.6 and the proceedings under the Domestic Violence Act were only filed as late as 23.12.2020. Hence S. Vanitha’s judgment is not applicable to the facts of the present case.

- 9) We have also gone through the judgment of Satish Chandra Ahuja and it will be relevant to reproduce para 90 of the judgment which reads as under:-

“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 the 2005 Act or in any civil proceedings, the Court has to balance the rights of both the

parties. The directions issued by the High Courts. in para 56 adequately balance the rights of both the parties.”

- 10) From the aforesaid two judgments, it is clear that the rights under “The Protection of Women from Domestic Violence Act, 2005” and the rights under “The Maintenance and Welfare of Parents and Senior Citizens Act, 2007” have to be balanced.
- 11) We are of the view that the proceeding filed by appellants under “The Protection of Women from Domestic Violence Act, 2005” on 23.12.2020 i.e., after having exhausted all possible avenues is clearly an eyewash to in fact defeat the orders passed by this Hon’ble Court as well as the Hon’ble Supreme Court.
- 12) The appellants who were staying in the subject premises with Respondent No.6 would have been aware of the proceedings pending since 2017 under “The Maintenance and Welfare of Parents and Senior Citizens Act, 2007” and after having availed the benefits of two extensions of 6 months each, cannot now be permitted to resile and set up their independent rights under “The Protection of Women from Domestic Violence Act, 2005” which according to us, appears to be an eyewash.
- 13) Hence, we do not find any merit in any of the contentions raised by the Ld. Counsel for the Appellants and the same are accordingly rejected. Consequently, we see no reason to interfere in the judgment and order dated 09.04.2021 passed by the learned Single Judge in **W.P.(C) 4469/2021** titled “Daulat Ram Pawar Versus Govt Of NCT Of Delhi & Ors”. The present

appeal along with pending applications, is dismissed as being devoid of merit.

CHIEF JUSTICE

JASMEET SINGH, J

May 03, 2021/ms

