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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 13.05.2021

Pronounced on: 17.05.2021

+ **CRL.M.C. 1327/2021 & CRL.M.A.7314/2021**

VIBHUTI WADHWA SHARMAPetitioner
Through: Mr. Jatan Singh, Mr. Saurav Joon
& Mr. Tushar Lamba, Advocates

Versus

KRISHNA SHARMA AND ANR.Respondents
Through: Mr. Roopenshu Pratap Singh,
Advocate

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT

JUDGMENT

1. Parties to the present petition are related to each other in a way that petitioner is the daughter-in-law and respondents are her parents-in-law. The matrimonial dispute between petitioner-wife, with son of respondents is the foundation of dispute *inter se* parties. Multiple legal proceedings are said to be pending between husband and wife but what has brought parties to this Court is the Agreement to Sell dated 18.02.2021 entered between respondent No.1- mother-in-law with third party qua property bearing Flat No.33, Second Floor, SFS DDA Flats, Motia Khan, New Delhi, which is

purportedly in her name. According to petitioner the property in question is a shared household property where she had lived with her husband and so, she cannot be alienated from the said property.

2. In the aforesaid view of the matter, petitioner filed an application under Section 19(1)(d) of the Protection of Women from Domestic Violence Act, 2005 (“*DV Act*”) and the learned Magistrate after issuance of notice, vide order dated 15.03.2021 granted interim relief to petitioner restraining the respondents from selling or alienating the property in question. The learned Metropolitan Magistrate posted the matter for 27.07.2021 for arguments on interim application as well as on application seeking restraint.

3. Aggrieved against the said interim order dated 15.03.2021 passed by the learned Magistrate, respondents herein preferred a revision petition before the Court of Sessions under Section 395/397 Cr.P.C., which was converted into an appeal and vide judgment dated 03.05.2021 the said appeal was allowed. This is how petitioner is before this Court seeking setting aside of judgment dated 03.05.2021 passed by the learned Appellate Court.

4. Since the subject matter of the present petition is Agreement to Sell dated 18.02.2021 which has to be concluded or executed by 18.05.2021 and

also since time is the essence of any agreement, therefore, the present petition has been heard on a short notice. Learned counsel for respondents has chosen to argue the present petition without filing any reply and therefore, with the consent of counsel for the parties, the present petition was finally heard at length.

5. Mr. Jatan Singh, learned counsel for petitioner submitted that the impugned judgment dated 03.05.2021 passed by the learned Appellate Court shows utter non application of mind, as it has been passed without considering the facts and circumstances of the case. Learned counsel submitted that the learned Sessions Judge has failed to consider the provisions of Section 2(a) and 2(s) of DV Act, 2005 and has also failed to correctly interpret the law laid down the Hon'ble Supreme Court in ***Satish Chandra Ahuja Vs. Sneha Ahuja 2021 (1) SCC 148***, as the said decision does not distinguish between permanent living or short duration living in the shared household. Further submitted that the Appellate Court has not considered said judgment in its correct perspective wherein definition of shared household in Section 2(s) of DV Act has been rewritten by the Hon'ble Supreme Court.

6. Learned counsel for petitioner further submitted that the Appellate

Court has wrongly held that since petitioner most of the time had stayed at different workstations of her husband, however, lived in the property in question on three occasions for a short duration with the respondents, therefore, the said house cannot be said to be a shared household.

7. Lastly, learned counsel submitted that petitioner's complaint under the DV Act, 2012 is pending consideration for the last 4½ years and by permitting the respondents to execute the Agreement to Sell, great prejudice has been caused to petitioner and her minor son. Thus, interest of justice demands that the impugned judgment is liable to be set aside and respondents be restrained from selling the property in question without making any provision for alternative accommodation for the petitioner and her son. A direction is also sought to the learned trial court to expeditiously decide petitioner's application under Section 19 (1) (d) of DV Act.

8. On the other hand, Mr. Rupenshu Pratap Singh, learned counsel for respondents submitted that the property in question is in the name of mother-in-law and being the sole owner, she has a legal right to alienate or sell the property as per her wish and so, the Agreement to Sell dated 18.02.2021 is a valid agreement and petitioner has no right to challenge it. Learned counsel submitted that petitioner has no title or interest in the

property in question and the property is not a joint property. Moreover, since the marriage of petitioner with the son of respondents, she has stayed with him at the place of his posting and has visited them occasionally, so, the house cannot be said to be a shared household. Further submitted that the learned Appellate Court has rightly passed the impugned judgment while discussing the various provisions of law and applying the law laid down by the Hon'ble Supreme Court in ***Satish Chandra Ahuja (Supra)***, and so, the present petition deserves to be dismissed. Lastly, learned counsel emphasized that the Agreement to Sell has to be concluded by the first respondent by 18.05.2021 and if it is not so done, it would cause huge loss to her.

9. This Court heard the learned counsel for the parties, perused the impugned judgment, provisions of DV Act as well as Hon'ble Supreme Court's decision in ***Satish Chandra Ahuja (Supra)*** carefully.

10. On an application filed by the petitioner/complainant to restrain the respondents/parents-in-law from selling or alienating the subject property, notice was issued and a restrained order was passed on 15.03.2021 by the learned Metropolitan Magistrate. However, since Agreement to Sell has to be executed within a limited time frame, the aggrieved parents-in-law filed

an appeal against the restraint order, which was allowed by the learned Appellate Court after giving due opportunity of being heard.

11. While passing the impugned judgment, the learned Appellate Court has elaborately discussed the various provisions of law under the DV Act with regard to shared house hold. While noting the provisions of Section 17 of the Statute, the learned Appellate Court observed as under:-

“The provision grants a right to the aggrieved person to reside in shared house-hold irrespective of her right, title or interest in the same. Sub-sec.-2 of the Sec.-17 of the Statute provides that the aggrieved person shall not be evicted or excluded from the shared house-hold save in accordance with procedure established by law. Exclusion, here, cannot be read to protect titular interests of aggrieved person.”

12. Further, the learned Appellate Court has referred to Section 2(s) of the Statute, which defines shared household and relied upon decision in **Satish Chandra Ahuja (Supra)** where the rights of an aggrieved woman as provided under Sections 17 & 19 of the Statute, came to be revisited by the Hon'ble Supreme Court.

13. The said decision has been intricately discussed in the impugned judgment dated 03.05.2021 passed by the learned Appellate Court. The relevant paras relied upon are as under:-

“67.When we look into the different kinds of

orders or reliefs, which can be granted on an application filed by aggrieved person, all orders contemplate providing protection to the women in reference to the premises in which aggrieved person is or was in possession. Our above conclusion is further fortified by statutory scheme as delineated by Section 19 of the 2005 Act. In event, the definition of “shared household” as occurring in Section 2(s) is read to mean that all houses where the aggrieved person has lived in a domestic relationship along with the relatives of the husband shall become shared household, there will be number of shared household, which was never contemplated by the legislative scheme. The entire scheme of the Act is to provide immediate relief to the aggrieved person with respect to the shared household where the aggrieved person lives or has lived. As observed above, the use of the expression “at any stage has lived” was only with intent of not denying the protection to aggrieved person merely on the ground that aggrieved person is not living as on the date of the application or as on the date when the Magistrate concerned passes an order under Section 19. The apprehension expressed by this Court in para 26 in S.R. Batra v. Taruna Batra, thus, was not true apprehension and it is correct that in event such interpretation is accepted, it will lead to chaos and that was never the legislative intent. We, thus, are of the considered opinion that shared household referred to in Section 2(s) is the shared household of aggrieved person where she was living at the time when application was filed or in the recent past had been excluded from the use or she is temporarily absent.

68. *The words “lives or at any stage has lived in a domestic relationship” have to be given its normal and purposeful meaning. The living of woman in a household has to refer to a living which has some permanency. Mere*

fleeting or casual living at different places shall not make a shared household. The intention of the parties and the nature of living including the nature of household have to be looked into to find out as to whether the parties intended to treat the premises as shared household or not. As noted above, the 2005 Act was enacted to give a higher right in favour of women. The 2005 Act has been enacted to provide for more effective protection of the rights of the women who are victims of violence of any kind occurring within the family. The Act has to be interpreted in a manner to effectuate the very purpose and object of the Act. Section 2(s) read with Sections 17 and 19 of the 2005 Act grants an entitlement in favour of the woman of the right of residence under the shared household irrespective of her having any legal interest in the same or not.”

14. While relying upon the principles annunciated by the Hon'ble Supreme Court in the aforesaid decision, the learned Appellate Court in the impugned judgment observed that the daughter-in-law (petitioner herein) was not residing at the house in question on the day of presentation of the complaint nor any time soon before. Further observed that she was occupying a staff quarter allotted to her husband and lived in the house in question only for short duration and occasionally visited parents-in-law, to say only thrice. The Appellate Court accordingly held that *these short durational visits or stay of daughter-in-law at the house of the parents-in-law would not get the house a colour of being a shared house hold* and having hold so, the restraint order of the learned Metropolitan Magistrate

CrI.M.C. 1327/2021

was set aside, it being without any finding as regards the nature of premises being a shared house hold. Further held that the parents-in-law shall be well within their rights to sell off the house in question.

15. The stand of petitioner is that the Appellate Court could not have applied the law laid down by the Hon'ble Supreme Court in **Satish Chandra Ahuja (Supra)** as the said judgment does not distinguish between permanent living or short living. Reliance was placed upon extract of Para-67, which reads as under:-

“67..... We, thus, are of the considered opinion that shared household referred to in Section 2(s) is the shared household of aggrieved person where she was living at the time when application was filed or in the recent past had been excluded from the use or she is temporarily absent.”

16. This Court is in agreement with the ratio of law laid down by the Hon'ble Supreme Court in **Satish Chandra Ahuja (Supra)**, however, the facts of the present case are distinguishable on facts of the said case. In **Satish Chandra Ahuja (Supra)** the daughter-in-law was residing on the first floor of the subject property and had therefore claimed her right as shared household but in the present case, the petitioner has actually never resided

with the parents-in-laws.

17. Pertinently, the marriage of petitioner with son of respondents was solemnized on 12.12.2013, who is an officer in Indian Air Force. It is not disputed by either side that after marriage, petitioner along with her husband i.e. son of respondents, lived at the place of his postings. The fact remains that petitioner never resided with parents-in-laws and always stayed at the place of posting of her husband and visited them occasionally. However, it cannot be lost sight of the fact that petitioner had been living with her husband in 'official accommodation' at the place of his posting and she cannot claim the said official accommodation as the shared household, but the element of living in 'permanency' has also to be seen. In this regard, the pertinent observations of The Hon'ble Supreme Court in Para-68 of decision ***Satish Chandra Ahuja (Supra)***, have been rightly relied upon by the Appellate Court in my considered opinion.

18. Further, multiple legal proceedings arising out of matrimonial discord between petitioner and her husband as well as parents-in-law are said to be pending. The intent and purpose of DV Act is to safeguard the interest of distressed women. Petitioner in her complaint filed under the DV Act has prayed for restraining the respondents from dispossessing her or in any

manner disturbing her possession from the subject property. Further, she has also prayed for an alternative accommodation.

19. The provisions of Section 17 of the DV Act stipulates that every woman in a domestic relationship shall have a right to reside in the shared household whether or not she has any right, title or beneficial interest in the same. However, in the present case admittedly petitioner has in fact neither permanently nor for a longer period resided in the house of parents-in-laws and so, it cannot be termed as 'shared household'. Thus, there is no question of evicting or dispossessing her from there. However, to safe guard the interest of petitioner the trial court, while deciding petitioner's petition under the DV Act, may pass an order to provide with an alternative accommodation to petitioner under Section 19 (1) (f) of the DV Act.

20. But the pertinent question which arises for consideration before this Court is whether the old aged parents-in-laws, who at the fag-end of their life, wish to sell off their property to relocate themselves in a better place of their choice, be restrained to sell of the house or permitted to do it? In this regard, the pertinent observations of the Hon'ble Supreme Court in **Satish Chandra Ahuja (Supra)** are as under:-

"90. 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 Court [Ambika Jain v. Ram Prakash Sharma, 2019 SCC OnLine Del 11886] in para 56 adequately balance the rights of both the parties.”

21. Applying the afore-noted observations of the Hon’ble Supreme Court to the case in hand, this Court finds that the impugned judgment dated 03.05.2021 suffers from no illegality or infirmity.
22. The present petition is accordingly dismissed while making it clear that the observations made by this Court are in the peculiar facts of the present case and shall not be treated as a precedent in any other case.
23. Pending application is disposed of being infructuous.

(SURESH KUMAR KAIT)
JUDGE

MAY 17, 2021

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