

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-3664-2018 (O&M)
Date of decision: 22.08.2022

Smt. Manpreet Sahni

....Petitioner

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Kunal Dawar, Advocate for the petitioner.

Mr. Saurabh Mohunta, DAG Haryana.

Mr. M.S. Vinaik, Advocate and
Mr. Gurpreet Singh, Advocate
for respondent No.3-Senior Citizen.

ARUN MONGA, J. (ORAL)

And yet again, in conflict herein is between the right of a married woman to secure her residence, pleading it to be matrimonial home/ shared household, under the Protection of Women from Domestic Violence Act, 2005 (for short 'Domestic Violence Act') *vis-à-vis* right of a Senior Citizen (mother-in-law) to seek eviction, pleading it to be a self-acquired property, by invoking summary procedure under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short 'Senior Citizens Act').

2. Petitioner-wife and her estranged husband (respondent No.4) are concededly living separately. She is aggrieved by an eviction order dated 18.01.2018 (Annexure P-12) passed at the instance of her mother-in-law (respondent No.3-Senior Citizen) by Maintenance Tribunal (respondent No.2-the District Magistrate, Gurugram) *qua* property in question i.e. C-166, Ground Floor, Sushant Lok, Phase-1, Gurugram. Petitioner pleads that she has been

resident in the said premises for the last 13 years along with her minor daughter aged 16 years (at the time of filing the petition, now about 21 years old). She seeks issuance of a writ in the nature of Certiorari to quash the aforesaid eviction order claiming it to be an arbitrary exercise of power under the Senior Citizens Act.

3. Succinct factual narrative first, as pleaded in the writ petition. Marriage between petitioner (daughter-in-law) and respondent No.4, son of respondent No.3 (mother-in-law), was solemnized on 27.12.1998 as per Sikh rites. They were blessed with a daughter Ms. Rhea Sahni on 24.05.2001. Initially, family resided at J-11/76, Rajouri Garden, New Delhi, the property owned by respondent No.3. They later shifted to the house in question in Gurugram on 06.07.2004. Petitioner states she too had financially helped the family in purchase of said property, though this is disputed by respondent No.3 vehemently. When her marriage fell on rocks, petitioner was forced to start working as a teacher to fend for herself and her daughter. Sometime in October 2015, petitioner filed an application under Section 12 of the Domestic Violence Act in Family Court, Delhi against her husband and mother in law, followed by a complaint dated 01.12.2015 under section 498-A of IPC etc. in *Mahila Police Station*, Gurugram (later converted into an FIR in July, 2016). In between, on or around 08.12.2015 husband filed a divorce petition in Family Court, Delhi. Allegations and cross allegations exchanged between the parties are not relevant for adjudication of the controversy in hand, and are, therefore not being referred herein. But the very nature of proceedings, both civil and criminal, reflect the level of acrimony amongst them. On or around 17.12.2015, husband (respondent No.4) left the matrimonial home i.e., house in question and shifted to Delhi in a house bearing No. WZ 107, Plot No.324, Ground Floor, Chand

Nagar, New Delhi, which too is under the ownership of mother in law-respondent No.3. Vide order dated 17.02.2016 (Annexure P2), Domestic Violence Court directed the respondent No. 4 (husband) not to dispossess the petitioner without due process of law. As a counter blast, so it is alleged, mother in law (Respondent No.3), at the instance of her son (respondent No.4) filed a civil suit, dated 31.05.2016, in Civil Court, Gurugram for permanent and mandatory injunction against the petitioner. Respondent No.3 then followed it up by an application dated 08.06.2017 under Senior Citizens Act for petitioner's eviction from the house of Gurugram. Pursuant thereto, Maintenance Tribunal (Respondent No.2) vide an order dated 18.01.2018 (Annexure P-12), impugned herein, directed eviction of the petitioner from the house in question, within one month from the date of the order.

4. No counter affidavit has been preferred by either the mother-in-law or the son. Learned counsel representing mother in law-respondent No.3 would submit that the same is not warranted, as he would rely on the record appended with the writ petition at the time of arguments.

5. Adverting first now to the competing contentions of learned counsel for the parties. Learned counsel for the petitioner first and foremost laid emphasis on the fact that, given the admitted position that the petitioner has been residing along with her minor daughter at the premises in question by virtue of her being married in the family, is *per se* sufficient to arrive at the conclusion that the same is her matrimonial home and a shared household. And, therefore, until her rights arising out of matrimony are determined after trial by a competent Court i.e., the learned jurisdictional Magistrate seized of the matter under the Domestic Violence Act, she is entitled to security of her residence and the summary procedure adopted to pass eviction orders under the Senior

Citizens Act cannot be invoked. Alternatively, he would argue that, in any case, until the decision is rendered by the trial Court after going through the respective evidence of the parties, summary order passed by *quasi-judicial* Tribunal under challenge herein cannot be implemented and must be put on hold. Failing that, he argued, shall result in an irreversible situation, rendering the matrimonial proceedings to be a nullity, including extinguishing the rights of the petitioner under the matrimonial laws.

6. It is in this context, he read out the impugned order and laid stress on it being not sustainable, particularly, the finding rendered on question No.(iii) therein, which is reproduced herein below:-

“(iii) Whether the house in dispute is ‘Shared Household’ of respondent No.1-

Hon’ble Supreme Court in case SR Batra Vs. Taruna Batra, 2007 (1) RCR (criminal) 403 : 2007 (1) RCR (Civil) 378 “ 2007 (1) Recent Apex Judgments (R.A.J.) 1 “ (2007) 3 SCC 169 held that a ‘Shared Household’ would only mean the house belonging to or taken on rent by the husband, or the house which belong to joint family of which the husband is a member. It was also held that the house which was exclusive property of mother-in-law could not be said to be a shared house hold entitling the daughter-in-law to claim a right of residence therein. The Hon’ble Court negatived the condition (sic) on behalf of the daughter-in-law that as per the definition, ‘Shared Household’ would include a household where the aggrieved person lives or at any stage had lived in a domestic relationship”. This judgments of Hon’ble Supreme Court is fully applicable on the present case. Petitioner is exclusive owner of the house, in dispute, vide sale deed No.21827 dated 17-12-2012. The respondent No.1 has miserably failed to lead any evidence in support her averments which proves that she had given financial help in purchasing the house, in dispute. Thus, this issue is decided accordingly in favour of plaintiff and against the respondent No.1.”

He would argue that Maintenance Tribunal completely misdirected itself in summarily giving a finding that merely because respondent No.3-Senior Citizen was a recorded exclusive owner of the house in question by virtue of a

sale-deed executed in her favour and, petitioner having not led any evidence of contributing any financial help in purchase of the said house, an inescapable conclusion is that the house is, therefore, not a shared household. Learned counsel stressed that there was no occasion to adduce any evidence in summary proceedings adopted by the Maintenance Tribunal and, the same would be done at appropriate stage before the trial Court, where matter is *sub judice*.

7. He would then argue that, be that as it may, Maintenance Tribunal could not have passed eviction order by completely disregarding a pre-existing protection order *qua* the same very house in question, passed by competent Court under the Domestic Violence Act. District Magistrate, thus had no power to pass the impugned eviction orders in view of law laid down by Supreme Court in **S. Vanitha versus The Deputy Commissioner Bengaluru Urban District &Ors.**¹.

8. Next, learned counsel laid emphasis on the fact that not only the house in question is a shared household, but is also a joint family property, since the petitioner had monetarily contributed for the same. Until a finding *qua* the same is rendered by the competent Court through a proper trial, the petitioner ought not to be evicted without awaiting the outcome thereof.

9. Per contra, learned counsel for respondent No.3-Senior Citizen would contend that the District Magistrate/ Maintenance Tribunal is fully empowered to invoke summary proceedings for passing eviction orders. He relied on various judgments of this Court as well as Delhi High Court, i.e., **Hamina Kang versus District Magistrate (U.T.), Chandigarh and others**², **Smt. Ravneet Kaur versus Shri Prithpal Singh Dhingra**³, **Vrinda Sharma**

¹ 2021 AIR (SC) 177

² (2016 (1 RCR (Civil 976)

versus State of Haryana and others⁴, Mamta Sharma versus Additional Deputy Commissioner-cum-Maintenance Tribunal and others⁵, Madalsa Sood versus Maunicka Makkar and another⁶ and Vrinda Sharma versus State of Haryana and others⁷.

10. He would argue that, given her age and stage of life, the 86 year old wheel-chaired widow-respondent No.3 was forced to take the extreme step of filing an application under the special Act. Such a move on her part is a just pointer on the intensity of her suffering. In any case, no third party is even equipped to judge or feel the level of suffering of a Senior Citizen and it is best left to the sufferer alone to take a call on it, he would contend. Whatever it takes, amelioration of the suffering of senior citizen is paramount and must take precedence over anything else, including procedural legal niceties. It was with this intent that the special statute was enacted for providing succor to the Senior Citizens in twilight of their life so that they live the rest of their life in peace and tranquility.

11. As regards the claim of the petitioner *qua* the house being a shared household and/or a joint family property, he would strenuously argue that on both counts, she is not entitled to seek any indulgence of this Court. He argued that her *ex facie* plea in the writ petition itself as well as in the other fora is that she and her husband have been living separately since the year 2015. Therefore, it does not lie in the petitioner's mouth to say that property in question by any stretch of imagination can be termed as her matrimonial home. He would also rely on the reasoning given in the impugned eviction order and emphatically support the reasons given therein *qua* the finding that the property is not a

⁴ 2020 SCC OnLine P&H 3514

⁵ (2021) 1 RCR (Civil) 287

⁶ 2021 SCC OnLine Del 5217

shared household. *Qua* the assertion that same is joint family property, he argued that beyond a mere bald statement to that effect, there is nothing on record to establish that the petitioner ever contributed any funds. On the other hand, he pointed out that the petitioner has nowhere ever pleaded the existence of any Hindu undivided family nor is there any such stand taken either in course of arguments or in any other litigation. Therefore, any such bald assertions, *dehors* any *prima facie* material in support are akin to a square peg in a round hole and, therefore, just wouldn't fit, no matter what.

12. He would then argue that the order passed under the Domestic Violence Act, at best, had granted a limited protection stating that the petitioner be not evicted except through lawful proceedings. The enforcement of Senior Citizen's right under the special statute by invoking the relevant provisions is very much a lawful proceeding. The impugned order does not, therefore, require any interference from this Court. Learned counsel for respondent No.3, rather over emphatically, also laid stress on what he called as serious infirmity, in as much as, Domestic Violence Family Court in Delhi had no jurisdiction to pass any orders *qua* the property situated in Gurugram. Territorial Maintenance Tribunal, at Gurugram, has thus rightly passed the impugned order, well within its statutory powers. He would submit that, even otherwise, DV Court order dated 17.02.2016 (Annexure P-2) is *qua* another house situated at Subhash Nagar, New Delhi as is borne out from memo of parties therein, though the petitioner's second address of Gurugram has also been given therein stating it to be her present address. Had she mentioned her Gurugram address, the DV court in Delhi would not have any territorial jurisdiction. Petitioner, therefore, can-not take dual advantage of heads I win and tails you loose. Fact remains, he would argue, that Tis Hazari Court in Delhi could not have passed the protection orders

for property in Gurugram. To that extent, therefore, reliance on **S. Vanitha's case (supra)** *ibid* to the effect that once the Domestic Violence Court had passed a protection order *qua* the same very property then until its finality thereof, Maintenance Tribunal ought not to have passed eviction order, is misplaced.

13. Having noted the broad outlines of the rival arguments in preceding paragraphs, I shall now proceed to deal with the same and render my opinion thereupon.

14. Last contention first, as canvassed by learned counsel for respondent no.3. An overall reading of text of petitioner's DV complaint, Annexure P-1, and DV court orders dated 17.02.2016 (Annexure P-2) and 23.12.2017 (Annexure P-3) passed therein leaves no manner of doubt that the said orders pertain to house No.C-166, Ground Floor, Sushant Lok, Phase-1, Gurugram, Haryana. I, therefore, reject the contention that the said orders pertain to another property at Subhash Nagar, New Delhi. Though, of course, despite mother in law being party in DV court, it appears that DV court consciously passed the restraint order only against husband/son (Jaswinder Singh Sahni) not to dispossess the petitioner, that too with a rider i.e., without due process of law.

15. Section 17(2) of the Domestic Violence Act, 2005 is as under:

"17. Right to reside in a shared household. – (1) xx xxxx
(2) The aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law."

Thus, there is no prohibition in DV Court orders against the any dispossession which is as per procedure established by law.

16. Reference may be had at this stage to paras 153 and 154 of **Satish Chandra Ahuja v. Sneha Ahuja**⁸ also relied upon by the petitioner's learned counsel, which are as under:

“153. We take an example to further illustrate the point. In the plaint of suit giving rise to this appeal, the plaintiff has pleaded that the wife of the plaintiff has been subjected to various threat and violence in the hands of the defendant on several occasions. In event, the suit is filed by wife of the plaintiff against the defendant for permanent injunction and also praying for reliefs under Section 19[except Section 19(1)(b)]. The suit be fully maintainable and the prayers in the suit can be covered by the reliefs as contemplated by Section 19 read with Section 26 of the Act, 2005.

154. By a written statement, the defendant is sure to resist the suit on the ground that she had already filed an application under Section 12 where plaintiff Dr. Premkant Ahuja(mother-in-law of the defendant) is one of the respondent and she may also place reliance on the interim order dated 26.11.2016 restraining the respondents which included Dr. Prem Kant Ahuja from dispossessing the applicant except without obtaining an order of competent Court. The order dated 26.11.2016 which was passed by the Magistrate under D.V. Act, 2005, shall be relevant evidence and fully admissible in the civil suit, but the above order shall only be one of the evidence in the suit but shall neither preclude the civil court to determine the issues raised in the suit or to grant the relief claimed by the plaintiff Dr. Prem Kant Ahuja. The Civil Court in such suit can consider the issues and may grant relief if the plaintiff is able to prove her case. The order passed under D.V. Act whether interim or final shall be relevant and have to be given weight as one of evidence in the civil suit but the evidentiary value of such evidence is limited. The findings arrived therein by the magistrate are although not binding on the Civil Court but the order having passed under the Act, 2005, which is an special Act has to be given its due weight.”

17. The analogy of civil suit *ibid* is equally applicable to the proceedings in the instant case initiated by respondent No. 3 before the Maintenance Tribunal under the Senior Citizens Act, 2007, giving rise to present petition. In view thereof and the mandate of section 17(2) of the 2005 Act, the DV Court orders, though not passed against respondent No. 3 herein,

⁸Civil Appeal No.3483/2020 decided by three Judge Bench of the Apex Courton 15.10.2020

however, even if it were so, would certainly be relevant and entitled to due weightage in the proceedings under the Senior Citizens Act- 2007, but would not preclude the Maintenance Tribunal from determining the issues raised in those proceedings and from granting relief to respondent No. 3, provided of course, she otherwise established her case.

18. Resultantly, I am of the opinion that DV Court orders of Delhi, especially in the light of same specifically and consciously not being passed against the senior citizen herein, did/do not bar, or in any other way act as a legal hindrance for Maintenance Tribunal, Gurugram, to exercise its jurisdiction under the Senior Citizens Act, 2007.

19. No doubt, the proceedings under the Senior Citizens Act, 2007 before the Maintenance Tribunal are summary in nature, but there is no bar to the production of evidence and parties thereto, if they or anyone of them so wish, are not precluded from producing their evidence by way of affidavits and documents. It is not the petitioner's case that she had sought production of her evidence but the Tribunal had refused to receive the same. I am, therefore, unable to buy the argument and accept the contention of the petitioner's Learned counsel that there was no occasion to adduce any evidence in summary proceedings adopted by the Maintenance Tribunal and that the same would be done at the appropriate stage in the trial Court, where the matter is *sub judice*. In my opinion, the impugned order does not suffer from any illegality merely because of the petitioner's own failure to produce any evidence.

20. The petitioner has, no doubt, claimed in the instant proceedings as well that the disputed house at Gurugram was a joint Hindu Family property and, she had also contributed about 7-8 lacs in its purchase. However, no proof, even at this stage, has been adduced to show, at least *prima facie* that it is a

joint Hindu Family property or that she had also contributed any money for its purchase. In the absence thereof, I am unable to persuade myself to accept the petitioner's mere bald claim that she too had contributed about 7-8 lacs for the purchase of the house in question and/or it is a joint Hindu Family property.

21. Before adumbrating further, it would be apposite to notice the relevant provisions section 26 of the Domestic Violence Act, 2005 and section 8(2) of the Senior Citizens Act, 2007, which are extracted below:

Section 26 of Domestic Violence Act, 2005

“26. Relief in other suits and legal proceedings.—(1) Any relief available under sections 18, 19, 20, 21 and 22 may also be sought in any legal proceeding, before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act.

(2) Any relief referred to in sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court.

(3) In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief.”

Section 8(2) of the Senior Citizens Act, 2007

“8. Summary procedure in case of inquiry.—(1) xx xxxx

(2) The Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).”

22. A conjunctive reading of these statutory provisions shows that any relief available under sections 18, 19, 20, 21, 22 of the 2005 Act, affecting an aggrieved person or even a respondent, may and can also be sought in any collateral proceedings, before a civil court, family court or a criminal court, irrespective, whether such proceeding was initiated before or after the

commencement of the said Act. Thus, by virtue of the section 26 *ibid*, relief under section 19 for right to residence in the house at Gurugram, could also be claimed by petitioner in the proceedings initiated by respondent No. 3, under the Senior Citizens Act- 2007, being a respondent therein.

23. In **Satish Chandra Ahuja** *supra*, Supreme Court, it was *inter alia*, held that shared household referred to in section 2(s) is the shared household of the aggrieved person, where she was living at the time when application was filed or in the recent past had been excluded from its usage and she is temporarily absent. The 2005 Act has to be interpreted in a manner to effectuate its very purpose and object. Section 2(s) read with section 17 and 19 of the Act grants an entitlement to a woman qua her right of residence under the shared household, regardless, of her having any legal interest in the same or not. Further, it has been held that for the purpose of determination of the right of defendant under sections 17 and 19 read with section 26 of the 2005 Act, in the suit in question and for the grant of any relief to the defendant or for successful resisting the suit of the plaintiff, as a necessary condition for grant of relief by the civil Court under section 19, it has to be pleaded and proved by the defendant that the respondent (who in that matter was the plaintiff in the civil suit) is committing or has committed an act of domestic violence on the aggrieved person and, only then the relief can be granted by the Civil Court to the defendant. Relevant part of the judgment *ibid* is reproduced hereunder:-

“62. x.x.x.x.x.x. 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.

63. 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, Act 2005 was enacted to give a higher right in favour of woman. The Act, 2005 has been enacted to provide for more effective protection of the rights of the woman 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 Act, 2005 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.

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103. x.x.x.x.x.x. For granting any relief by the Civil Court under Section 19 it has to be proved that the respondent is committing or has committed an act of domestic violence on the aggrieved person. To treat a person as the “respondent” for purposes of Section 2(q) it has to be proved that person arrayed as respondent has committed an act of domestic violence on the aggrieved person.

104. We, thus, are of the view that for the purposes of determination of right of defendant under Sections 17 and 19 read with Section 26 in the suit in question the plaintiff can be treated as “respondent”, but for the grant of any relief to the defendant or for successful resisting the suit of the plaintiff necessary conditions for grant of relief as prescribed under the Act, 2005 has to be pleaded and proved by the defendant, only then the relief can be granted by the Civil Court to the defendant.”

24. It would be seen that as per ratio in **Satish Chandra**, applicable to the present case by necessary corollary, for determination of petitioner’s right of residence, there were twin requirements to be satisfied by her before the Tribunal under the Senior Citizens Act. Firstly, it had to be shown that the house in question was the petitioner’s shared household. Secondly, she had also to plead and prove that respondent No. 3 was committing and/or had committed an act of domestic violence on the petitioner.

25. Let us see if these conditions were/are satisfied in the present case.

26. First, whether is it a shared household? Undisputed facts are that senior citizen-respondent No. 3 is the registered owner of the house in question. It was in 2004, that the petitioner alongwith her husband and daughter as well as her mother in law (respondent No. 3) and her father in law (now deceased) altogether shifted to the disputed house in Gurugram. The petitioner's father in law died in May- 2013. After that, in December-2015, petitioner's husband (respondent No. 4) left the said house and shifted to another house No. WZ 107, Plot No. 324 G.F.Chand Nagar, New Delhi, which is also owned by respondent No. 3. The petitioner being the daughter-in-law of respondent No. 3, with her daughter is thus living in the disputed house at Gurugram in domestic relationship with respondent No. 3/senior citizen. In this backdrop, applying the ratio of **Satish Chandra Ahuja supra**, it is, therefore, held that the petitioner has been/is living in the house in question, in domestic relationship with respondent No. 3 and, the same is petitioner's shared household. Thus, the first requirement of the property being the petitioner's shared household stood/stands satisfied for further determination of her right under sections 17 and 19 read with section 26 of the 2005-Act, in the proceedings instituted before the Tribunal under the Senior Citizens Act- 2007.

27. Second, whether petitioner pleaded and *prima facie* established that respondent No. 3 was committing or had committed an act of domestic violence on the petitioner? For, only then grievance of petitioner qua shared household could have been considered/ mitigated by the Maintenance Tribunal. In the case in hand, respondent No. 3 moved the application under the 2007 Act before the Tribunal, duly replied by petitioner, to which respondent No. 3 also filed a rejoinder and petitioner yet again filed a suo-rejoinder (Annexure P-11). Perusal

of the petitioner's reply (Annexure P-9) and her suo-rejoinder shows that nothing at all is pleaded therein to the effect that respondent No. 3 was committing or had committed an act of domestic violence on the petitioner. It is also not shown if any specific material in support of domestic violence was produced before the Tribunal. In the absence of any pleading or proof in this behalf, no fault can, therefore, be found on the part of Tribunal in passing the eviction order in favor of senior citizen.

28. As regards reliance on **S.Vanitha supra** by the learned counsel for the petitioner, para 23 of thereof, refers to the series of the transactions which took place in respect of the property as under:

“The spouse of the appellant purchased it in his own name few months before the marriage but subsequently sold it, after a few years, under a registered sale deed at the same price to his father (the father-in-law of the appellant), who in turn gifted it to his spouse i.e. the mother-in-law of the appellant after divorce proceedings were instituted by the fourth respondent. Parallel to this, the appellant had instituted proceedings of dowry harassment against her mother-in-law and her estranged spouse and her spouse had instituted divorce proceedings. The appellant had also filed proceedings for maintenance against the fourth respondent and the divorce proceedings were pending. It is subsequent to these events, that the second and third respondents instituted an application under the Senior Citizens Act, 2007.”

It was in the aforesaid peculiar facts and circumstances, that the Court found that recourse to summary procedure adopted under the Senior Citizens Act, 2007 was not available for the purpose of facilitating strategies, that were designed, merely to defeat the claim of a married woman in respect of shared household. Such facts and circumstances do not exist in the instant case. In my opinion, therefore, the judgment *ibid*, read with the one rendered by Supreme Court in Satish Chandra does not help the petitioner in resisting the claim of respondent No. 3.

29. As a result of the above discussion, I am of the opinion that on merits, there is nothing wrong or illegal in the impugned order directing petitioner's eviction from the house in question in Gurugram.

30. However, in the course of arguments learned counsel for respondent No. 3, under instruction, stated that she is about 86 years old now and in twilight years of her life, in order to buy peace in lieu of petitioner's moving out of house in question i.e., C-166, Ground Floor, Sushant Lok, Phase-1, Gurugram, she (respondent No. 3) was/is willing to give possession of her house No.WZ 107, plot No. 324,G.F.,Chand Nagar, New Delhi for the residence of the petitioner as well as her granddaughter. The petitioner then present in the Court, however, simply declined the said offer.

31. Indisputably, for the last about 7 years since 2015, the petitioner's husband is living on the ground floor of house at Chand Nagar, New Delhi, though alone. This indicates that it is fairly livable and the accommodation meets his needs. It seems that the petitioner and her daughter now aged about 21 years can also live there, may be, after some need based permissible internal changes/repairs/renovation. The petitioner has no doubt out rightly rejected the offer made by respondent No. 3.

32. To my mind, the rapprochement gesture, approach and offer made by respondent No. 3, if added upon by some money for the need based permissible internal changes/repairs/renovation of the house would be fair and reasonable. If acted upon, the same would considerably mitigate the problem of accommodation for the residence of the petitioner and her daughter now aged about 21 years, in the event of and upon their eviction from the disputed house at Gurugram.

33. In the peculiar facts and circumstances, and in exercise of powers of this Court under Article 226 of the Constitution of India, it would be just, fair and proper if respondent No. 3 is bound by the offer made by her. Accordingly, respondent no.3 is thus directed to offer vacant possession of her House No. WZ 107 (ground floor), plot No. 324 Chand Nagar, New Delhi to the petitioner and also arrange to give/send her a bank demand draft of Rs. 7 lacs drawn in favour of petitioner to enable her to carry out need based, but only legally permissible internal changes/ repairs/ renovation of the house.

34. This Court hopes and expects that the petitioner and respondent No. 3 would take these directions in the spirit of mutual co-operation, give and take and to mitigate further agony to themselves. For an amicable and non-adversarial outlook will go a long way not only in larger family interest to maintain harmony and inter-se cordiality, but also bestow the much needed calm and mental tranquility and, save both sides from the anxiety and uncertainty of the outcome of litigation.

35. Petition is accordingly disposed of with the aforesaid directions and modification in the impugned order. However, the eviction of the petitioner from house in question i.e., C-166, Ground Floor, Sushant Lok, Phase-1, Gurugram shall remain stayed till the offer of actual vacant possession of House No. WZ 107 (ground floor), plot No. 324 G.F. Chand Nagar, New Delhi by respondent No. 3 to the petitioner and the tender of a bank demand draft of Rs. 7 lacs drawn in the petitioner's favour and for a further period of two months thereafter to enable her to carry out the need based but legally permissible internal changes, renovation and repairs of and shift to that house. In the parting, needless to say, that instant order/ judgment shall not preclude the

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petitioner to enforce her right of residence against her husband, in accordance with law.

(ARUN MONGA)
JUDGE

22.08.2022
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No