

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRR-2342-2022 (O&M)
Reserved on : 01.12.2023
Pronounced on : 07.12.2023**

SHASHI MAINI

.... Petitioner

VERSUS

ASHIMA MAINI

.... Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Akshay Bhan, Senior Advocate with
Mr. H.P.S. Sandhu, Advocate
Ms. Neha Sonawane, Advocate
Ms. Amrita Garg, Advocate and
Mr. Harsh Gupta, Advocate for the petitioner.

Mr. Aashish Chopra, Senior Advocate with
Ms. Nitika Sharma, Advocate and
Mr. Yashpal Sharma, Advocate for the respondent.

ALKA SARIN, J.

1. The present revision petition has been filed challenging the interim order dated 28.09.2022 passed by the Sessions Judge, Gurugram on an appeal filed under Section 29 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as 'DV Act') in proceedings filed by the respondent under Sections 12, 17, 18(A), (B), (D), (E) and (F), 19(A), (C), (D) and 19(8), 22 and 23 of the DV Act.

2. The brief facts relevant to the present *lis* are that the petitioner is the mother-in-law of the respondent. The petitioner is the owner of House No.1132, Sector-17B, IFFCO Nagar, IFFCO Chowk, Gurugram (hereinafter referred to as 'the house in dispute') vide a conveyance deed executed in the

year 1997. On 31.10.2012 the husband of the petitioner expired leaving behind movable and immovable properties. There is a Will dated 01.10.2012 alleged to have been left by the husband of the petitioner. On 24.01.2022 a petition was filed for grant of probate of Will dated 01.10.2012 by the son of the petitioner namely, Sourabh Maini. The petitioner as well as her daughter (Smt. Surbhi Maini Malhotra) were impleaded as parties in the said petition. An application was filed by the respondents therein i.e. the present petitioner (Smt. Shashi Maini) and her daughter (Smt. Surbhi Maini Malhotra) under Order 7 Rule 11 read with Section 151 CPC. On 09.03.2022 the petitioner herein filed a petition (Annexure P-3) under Section (sic) 23(2)(i) and (5) of the Haryana Maintenance of Parents and Senior Citizens Rules, 2009 under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as 'the Senior Citizens Act'). The said petition was filed against her son (Sourabh Maini) and her daughter-in-law i.e. the respondent herein (Ashima Maini). It was alleged in the said petition that the respondents therein were ill-treating the petitioner (Shashi Maini) and had also siphoned-off her money. She inter-alia sought physical possession of the house in dispute. On 18.08.2022 a complaint (Annexure P-8) was filed by the respondent herein under various Sections of the DV Act against the petitioner herein (Shashi Maini) and her daughter i.e. sister-in-law of the respondent herein (Smt. Surbhi Maini Malhotra). Vide order dated 07.09.2022 (Annexure P-7) the petition filed by the present petitioner under the Senior Citizens Act was allowed and the respondents therein i.e. son (Sourabh Maini) and daughter-in-law (Ashima Maini) were directed to vacate the house in dispute within one month from the date of the order and

also pay Rs.10,000/- per month as maintenance to the petitioner herein. The said order was challenged unsuccessfully before this Court by the son (Sourabh Maini) and daughter-in-law (Ashima Maini) by preferring CWP-25202-2022. The said writ petition was dismissed on 19.10.2023. On 12.09.2022, in the proceedings under the DV Act, it was ordered that the residence rights of the respondent herein in the matrimonial house would remain intact. Thereafter, vide order dated 14.09.2022 passed by the learned JMIC, Gurugram it was directed that the respondent herein would reside on the first floor of the house leaving the ground floor exclusively for the petitioner herein. The respondent was also allowed to give the second floor on rent subject to payment of Rs.20,000/- per month as maintenance to the petitioner herein. Vide order dated 27.10.2022 (Annexure P-2) the application under Order 7 Rule 11 read with Section 151 CPC filed in the probate case was allowed by the Additional District Judge, Gurugram. The petitioner herein preferred an appeal against the orders dated 12.09.2022 and 14.09.2022 passed by the JMIC, Gurugram in the proceedings under the DV Act. Vide impugned interim order dated 28.09.2022 passed by the Additional Sessions Judge, Gurugram the order dated 14.09.2022 passed by the JMIC, Gurugram allowing the respondent herein to occupy the second floor of the house in dispute was stayed. However, there was no stay granted with regard to the other directions. Aggrieved by the said order, the present revision petition has been filed.

3. Learned senior counsel appearing on behalf of the petitioner would contend that the learned Additional Sessions Judge has not dealt with the eviction order passed against the respondent under Senior Citizens Act

and has granted a stay of eviction. As per learned senior counsel, vide the impugned order, in effect, the eviction order dated 07.09.2022 (Annexure P-7) passed under the Senior Citizens Act has been stayed without the same being under challenge in the proceedings before the Additional Sessions Judge. It is submitted that there has to be harmonizing of the competing reliefs under the DV Act and the Senior Citizens Act. It is further the contention that though the eviction order passed under the Senior Citizens Act was brought to the notice of the JMIC, Gurugram, however, the same was brushed aside by observing that the same was neither under challenge before the Court nor the same was binding in the said proceedings.

4. Further, learned senior counsel for the petitioner has relied upon the judgment delivered by the Hon'ble Supreme Court in the case of '*S. Vanitha vs Deputy Commissioner, Bengaluru Urban District & Ors.*' [(2021) 15 Supreme Court Cases 730] to contend that any relief to be given could have been given only after adverting to the competing reliefs in dispute and that the order passed under the Senior Citizens Act could not have been brushed aside. Reliance has also been placed upon the judgments in the cases of '*Jyotsna Pawar v. Daulat Ram Pawar*' [2021 (4) RCR (Civil) 826]; '*Ritika Prashant Jasani v. Anjana Niranjana Jasani*' [2021 (3) Crimes 310]; '*Manpreet Sahni V. State of Haryana*' [2023 (1) RCR (Civil) 134] and '*Mamta Sharma v. Additional DC*' [2021 (1) RCR (Civil) 287].

5. Per contra, learned senior counsel for the respondent has contended that the respondent has a right to residence in the shared household being the daughter-in-law and as such the JMIC, Gurugram as well as the Additional Sessions Judge were justified in protecting her

possession. The learned Senior counsel appearing on behalf of the respondent has also placed reliance on the judgment rendered by the Hon'ble Supreme Court in the case of *S. Vanitha* (supra). It is also submitted that the respondent has nowhere to go and that the flat owned by them in Noida is on rent and that the husband of the respondent (i.e. son of the petitioner herein) is not employed and that their son is studying in a school in Gurugram and in such circumstances the respondent would not be able to get any alternate accommodation within her means. It was submitted that the orders passed by the JMIC, Gurugram and the impugned order are just and equitable and cannot be faulted with.

6. I have heard the learned senior counsel for the parties.

7. In the present case a final order (Annexure P-7) was passed under the Senior Citizens Act on 07.09.2022 directing the respondent herein and her husband to vacate the house in dispute. The said order was challenged unsuccessfully before this Court by the son (Sourabh Maini) and daughter-in-law (Ashima Maini) by preferring CWP-25202-2022 which writ petition was dismissed on 19.10.2023. After the filing of the petition under the Senior Citizens Act and before the passing of the order dated 07.09.2022, on 18.08.2022 a complaint under the DV Act was filed by the respondent. The final order passed under the Senior Citizens Act was brought to the notice of the JMIC, Gurugram who, on 14.09.2022, brushed aside the same by observing as under :

*“Applicant is daughter-in-law of respondent No.1.
There is dispute between respondent No.1 and her son
Saurabh Maini regarding the property and accounts.*

Other cases are also filed before this Court and various other Courts and authorities. The dispute initiated due to mis-management of funds and the properties. The house belongs to respondent No.1, however, the documents placed on record by the applicant prima facie show that the same is her matrimonial house as well. There may be a dispute regarding title between respondent No.1 and her son by the applicant being daughter-in-law, has a right in the house. It has also come on record that applicant's husband owns a flat at Noida in Uttar Pradesh but the documents placed on record by the applicant shows that she has been living at the matrimonial house in Gurugram right after her marriage and her son has been studying at Gurugram. Although an eviction order is passed against the son by the District Magistrate under Senior Citizens Act but the same is neither under challenge before this Court nor the order is binding in this proceeding. Residence right of the daughter-in-law is not within scope of Senior Citizens Act.”

8. The Additional Sessions Judge, while hearing the appeal against the order dated 14.09.2022 passed by the JMJC, Gurugram, inter-alia held that :

“Keeping in view the totalities of facts and circumstances of the case, direction/order dated

14.09.2022 allowing complainant/respondent to occupy second floor of the house is stayed till next date. However, there is no stay with regard to other directions. File be put up on 29.11.2022.”

9. Hon’ble Supreme Court in the case of **S. Vanitha** (supra), upon which reliance has been placed by the learned senior counsel appearing for both the parties, deals with harmonizing of competing claims under the DV Act and the Senior Citizens Act. In the said case the facts were that the daughter-in-law was estranged from her husband which culminated in a decree of divorce, which was under challenge before the High Court of Karnataka. The house which was originally purchased by the husband of the appellant therein was sold to the father-in-law and thereafter the father-in-law gifted the same to the mother-in-law. Subsequently, the mother-in-law and the father-in-law filed a petition invoking the provisions of the Senior Citizens Act by instituting the application before the Assistant Commissioner Bengaluru (North) Sub-Division. The appellant therein filed an objection petition alleging therein that the proceedings were malicious and were instituted with the sole intention to evict her from the suit property and that the same was filed in connivance with her husband. The Assistant Commissioner, Bengaluru vide order dated 25.06.2015 directed the appellant therein to vacate the premises. An appeal was preferred but the same was also dismissed by the Deputy Commissioner on 29.02.2016. The order passed by the Deputy Commissioner in the proceedings was challenged under Article 226 of the Constitution of India which also came to be dismissed by the learned Single Judge of the Karnataka High Court.

Aggrieved by the order of the learned Single Judge, a writ appeal was preferred. The same also came to be dismissed. This led to the filing of the appeal by the daughter-in-law before the Hon'ble Supreme Court of India. In the said case their Lordships held inter-alia as under :

“E. Harmonising competing reliefs under the PWDV Act, 2005 and the Senior Citizens Act, 2007

34. Section 36 of the PWDV Act 2005 stipulates that the provisions of the Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force. This is intended to ensure that the remedies provided under the enactment are in addition to other remedies and do not displace them. The Maintenance and Welfare of Parents and Senior Citizens Act 2007 is undoubtedly a later Act and as we have noticed earlier, Section 3 stipulates that its provisions will have effect, notwithstanding anything inconsistent contained in any other enactment. However, the provisions of Section 3 of the Senior Citizens Act 2007 giving it overriding force and effect, would not by themselves be conclusive of an intent to deprive a woman who claims a right in a shared household, as under the PWDV Act, 2005. Principles of statutory interpretation dictate that in the event of two special acts containing non obstante clauses, the later law shall typically prevail. In the present case, as we have seen,

the Senior Citizens Act 2007 contains a non obstante clause. However, in the event of a conflict between special acts, the dominant purpose of both statutes would have to be analyzed to ascertain which one should prevail over the other. The primary effort of the interpreter must be to harmonize, not excise. A two-judge bench of this Court, in the case of Bank of India v. Ketan Parekh²⁵, in examining a similar factual scenario, observed that:

“28. In the present case, both the two Acts i.e. the Act of 1992 and the Act of 1993 start with the non obstante clause. Section 34 of the Act of 1993 starts with non obstante clause, likewise Section 9-A (sic 13) of the Act of 1992. But incidentally, in this case Section 9-A came subsequently i.e. it came on 25-1-1994 Therefore, it is a subsequent legislation which will have the overriding effect over the Act of 1993. But cases might arise where both the enactments have the non obstante clause then in that case, the proper perspective would be that one has to see the subject and the dominant purpose for which the special enactment was made and in case the dominant purpose is covered by that contingencies, then notwithstanding that the Act might have come at a later point of time still the intention can be

ascertained by looking to the objects and reasons. However, so far as the present case is concerned, it is more than clear that Section 9-A of the Act of 1992 was amended on 25-1-1994 whereas the Act of 1993 came in 1993. Therefore, the Act of 1992 as amended to include Section 9-A in 1994 being subsequent legislation will prevail and not the provisions of the Act of 1993.”

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37. The above extract indicates that a significant object of the legislation is to provide for and recognize the rights of women to secure housing and to recognize the right of a woman to reside in a matrimonial home or a shared household, whether or not she has any title or right in the shared household. Allowing the Senior Citizens Act 2007 to have an overriding force and effect in all situations, irrespective of competing entitlements of a woman to a right in a shared household within the meaning of the PWDV Act 2005, would defeat the object and purpose which the Parliament sought to achieve in enacting the latter legislation. The law protecting the interest of senior citizens is intended to ensure that they are not left destitute, or at the mercy of their children or relatives. Equally, the purpose of the PWDV Act 2005 cannot be ignored by a sleight of statutory

interpretation. Both sets of legislations have to be harmoniously construed. Hence the right of a woman to secure a residence order in respect of a shared household cannot be defeated by the simple expedient of securing an order of eviction by adopting the summary procedure under the Senior Citizens Act 2007.

38. This Court is cognizant that the Senior Citizens Act 2007 was promulgated with a view to provide a speedy and inexpensive remedy to senior citizens. Accordingly, Tribunals were constituted under Section 7. These Tribunals have the power to conduct summary procedures for inquiry, with all powers of the Civil Courts, under Section 8. The jurisdiction of the Civil Courts has been explicitly barred under Section 27 of the Senior Citizens Act 2007. However, the over-riding effect for remedies sought by the applicants under the Senior Citizens Act 2007 under Section 3, cannot be interpreted to preclude all other competing remedies and protections that are sought to be conferred by the PWDV Act 2005. The PWDV Act 2005 is also in the nature of a special legislation, that is enacted with the purpose of correcting gender discrimination that pans out in the form of social and economic inequities in a largely patriarchal society. In deference to the dominant purpose of both the legislations, it would be appropriate

for a Tribunal under the Senior Citizens Act, 2007 to grant such remedies of maintenance, as envisaged under section 2(b) of the Senior Citizens Act 2007 that do not result in obviating competing remedies under other special statutes, such as the PWDV Act 2005. Section 26 of the PWDV Act empowers certain reliefs, including relief for a residence order, to be obtained from any civil court in any legal proceedings. Therefore, in the event that a composite dispute is alleged, such as in the present case where the suit premises are a site of contestation between two groups protected by the law, it would be appropriate for the Tribunal constituted under the Senior Citizens Act 2007 to appropriately mould reliefs, after noticing the competing claims of the parties claiming under the PWDV Act 2005 and Senior Citizens Act 2007. Section 3 of the Senior Citizens Act, 2007 cannot be deployed to over-ride and nullify other protections in law, particularly that of a woman's right to a "shared household" under Section 17 of the PWDV Act 2005. In the event that the "aggrieved woman" obtains a relief from a Tribunal constituted under the Senior Citizens Act 2007, she shall duty-bound to inform the Magistrate under the PWDV Act 2005, as per Sub-section (3) of Section 26 of the PWDV Act 2005. This course of action would ensure that the common intent of

the Senior Citizens Act 2007 and the PWDV Act 2005- of ensuring speedy relief to its protected groups who are both vulnerable members of the society, is effectively realized. Rights in law can translate to rights in life, only if there is an equitable ease in obtaining their realization.”

10. In the present case the JMIC, Gurugram, without delving into the competing claims of the parties, has simply brushed aside the final order (Annexure P-7) passed under the Senior Citizens Act by holding that the same is not a binding on the proceedings under the DV Act. The said observations are clearly not in consonance with the law laid down by the Hon’ble Apex Court in the case *S. Vanitha* (supra). However, the order dated 14.09.2022 passed by the JMIC, Gurugram is only an interim order and the proceedings under the DV Act are still pending before him. The appeal against the said interim order dated 14.09.2022 is also still pending before the Additional Sessions Judge. Before passing any final order in the proceedings under the DV Act, the JMIC, Gurugram and the Additional Sessions Judge have to balance the claim of both the parties and thereafter, keeping in view the order passed under the Senior Citizens Act, ought to pass an order.

11. In view of the above, since the impugned order under challenge in the present petition is only the order passed by the Additional Sessions Judge, which is an interim order passed even before the respondent had put in appearance and there is no final adjudication by the Additional Sessions Judge, this Court does not find any ground to interfere with the same.

However, considering the rival contentions and the relationship between the contesting parties, this Court deems it appropriate to request the Additional Sessions Judge to finally decide the appeal pending before him within the next two months while keeping in mind the ratio of the decision by the Hon'ble Supreme Court in the case of *S. Vanitha* (supra).

12. It is also made clear that any observation made herein shall not be treated as an expression of opinion on the merits of the case.

13. Disposed of. Pending applications, if any, also stand disposed of.

07.12.2023

Aman Jain

**(ALKA SARIN)
JUDGE**

NOTE:

*Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No*