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

Date of decision: 11th April, 2023

+ **W.P.(C) 4498/2023**

SHEENA TOMAR

..... Petitioner

Through: Mr Atul Kharbanda, Advocate along
with Petitioner in person (M-
9811333939).

versus

STATE (NCT OF DELHI) & ANR.

..... Respondents

Through: Mr. Satyakam, ASC with Ms. Pallavi
Singh, Advocate for R-1.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

CAV 183/2023

2. The caveat is discharged, as the caveator has appeared.

**W.P.(C) 4498/2023 & CM APPLs.17194 (interim stay), 17195/2023 (for
exemption)**

3. This petition has been filed by the Petitioner challenging the
impugned order passed by the Divisional Commissioner dated 22nd March,
2023.

4. The background of the case is that a complaint was filed before the
District Magistrate by Respondent No.2- the father-in-law of the Petitioner
under the Maintenance and Welfare of Parents and Senior Citizens Act,
2007 seeking her eviction from property bearing Plot No.698, Akshardham
Apartment, Sector-19, Pocket 3, Dwarka, New Delhi-110075 (*hereinafter*

'subject property'). By order dated 23rd February, 2023 passed by the District Magistrate, the Petitioner was directed to vacate the subject property. An application seeking stay of the said order was filed before the Divisional Commissioner along with an appeal against the order of the District Magistrate.

5. By way of the impugned order, the Divisional Commissioner has dismissed the stay application in the appeal challenging the District Magistrate's order dated 23rd February, 2023. Also, vide the impugned order, the Divisional Commissioner has directed Respondent No.2 to pay Rs.25,000/- as monthly rent to the Petitioner.

6. Ld. counsel for the Petitioner submits that the Petitioner has a right to peacefully live in the subject property on the fourth floor and that the amount of Rs.25,000/- would be insufficient for her to find an alternate premises.

7. On behalf of Respondent No.2, it is submitted that completely baseless and unlawful allegations have been raised against the said Respondent which has repeatedly resulted in litigations between the parties. Criminal complaints are also stated to have been filed by the Petitioner against Respondent No.2. In fact, the said Respondent has been forced to move out from the subject property because of the ill-treatment which has been meted to him.

8. During the course of arguments, it has been revealed that the Petitioner has in fact rented out other floors of the subject property and this fact was not revealed in the writ petition. She has also been receiving rents from the tenants residing in the other floors of the subject property.

9. The Petitioner is present in Court and her statement has been recorded

which reads as under:

I reside on the fourth floor of the property at Plot No. 698, Akshardham Apartment, Sector-19, Pocket-3, Dwarka, New Delhi-110075 (hereinafter "Subject property"). There are two tenants living on the second floor and third floor of the subject property. My father-in-law had asked me to sign the rent agreements with the said tenants. I am collecting the rent from said tenants. (A rent agreement dated 4th February, 2022 executed between Ms. Sheena Tomar and Ms. Radhika in respect of the third floor of the subject property marked as 'Exhibit R-1' was shown to the Petitioner at this stage). I have seen the document marked as 'Exhibit R-1'. I admit that the signature on the said document are mine. I had informed my counsel about the fact that the subject property was given on rent."

10. From the Petitioner's statement, it is clear that she has in fact executed rent agreements with the tenants and is enjoying the rent from the remaining floors of the subject property.

11. The Divisional Commissioner's order is clear to the effect that the Petitioner and Respondent No.2 cannot live in the same property. In fact, the said Respondent has been forced to move out of the subject property and live with his daughter. Under such circumstances, the Divisional Commissioner has observed as under:

"6. On perusal of the documents placed on record and the submissions/arguments of both the sides, this appellate authority is of the view that there is a dispute between two sides. On one side are respondent no. 1, her younger son and daughter and on other side are his elder son/respondent no. 2 and appellant. A number of complaints have been filed from both sides. During the hearing both the sides have also shown

video clips and messages/whatsapp chats are shows a highly abusive and obscene and full of proganities acrimonious relation between two sides.

7. It is revealed during the hearing that respondent no. 2 and appellant had love marriage and that created first fault line. Also, respondent 2 faced criminal cases. Respondent 1 stated he tried to persuade his elder son/respondent 2 to mend his ways but failed to convince him. Resultantly, the respondent No. 1 stated that he distanced himself from/disowned respondent no. 2 and leaned towards his younger son/daughter. This further infuriated respondent no.2. Appellant also seems to have retaliated by filing criminal cases against respondent no. 1.

8. It is noticed that all criminal cases by the appellant including one alleging charge of rape against respondent no. 1 who is a senior citizen and the DV case were filed after the filing of the complaint before District Magistrate under Senior Citizen Act. This clearly shows that the same are counter blast to the eviction application of the respondent no. 1. It is also vehemently argued by the respondent no. 1 that his and his son-in-law's image has been maligned by the appellant by alleging false charge of heinous offence of Rape. The two sides have alleged physical violence too.

9. It is not the case where there is a matrimonial discord between the appellant and respondent no. 2. The appellant argued that she is only living on the fourth floor and the respondent can occupy the rest of the property in question to which respondent no. 1 objected that appellant has levelled the charges of rape against him and he is on bail and there is no security for him if another false complaint was filed after he enters into the premises. This appellate authority find merits in this. The appellant has levelled the charges of rape against respondent no. 1 and therefore, it is not feasible to direct both the parties to

reside in the property in question together irrespective of floors. In these circumstances, it is appropriate to provide an alternate reasonable accommodation to appellant. In view of the S. Vanitha judgement of the Apex Court and the fact that the appellant has a school going child, the appellate authority advised the respondent no. 1 to pay cost of rent @ Rs. 25,000 to appellant to live on rent. The respondent initially offered Rs. 10,000 p.m. as the cost of rent but then agreed to pay Rs. 25,000 p.m. as the cost of rent. **The respondent No. 1 also stated that he will try to purchase 50 sq yr. property for the sake of his grandson but pleaded with tears in his eyes that he should be protected from further torture from appellant and respondent 2 who are out to grab his property and have embroiled him false cases in this old age.**

12. Thus, the Divisional Commissioner was clearly of the view that the relationship between the parties is far from cordial. In fact as per the Respondent no.2, allegations of rape have been made against him without any basis and thus he is completely unable to live in the same property as the Petitioner. Respondent No.2 has disowned his son- Respondent No.3 and the Petitioner in August, 2020. Moreover, the Divisional Commissioner was also of the opinion that the criminal cases filed by the Petitioner herein were a counter blast to the eviction petition filed by Respondent No.2 herein. The submission of the Petitioner that the parties could live on different floors of the subject property was also rejected by the Divisional Commissioner in view of the gravity and nature of criminal allegations levelled by the Petitioner against Respondent No.2.

13. In view of the above discussion, the Divisional Commissioner has directed as under:

“10. In facts and circumstance above:-

i. The appellant shall vacate the property in question by 5th April, 2023.

ii. The respondent no.1 shall have right to live peacefully in the property in question w.e.f 6th April, 2023,

iii. The respondent no. 1 shall pay Rs. 25,000/- per month in the first week of month to the appellant towards the cost of rent in her bank account. The appellant shall find the accommodation at her own level. It shall be the responsibility of the appellant to provide her bank account to the respondent no. 1, with a copy to this appellate authority, immediately.

iv. If the respondent no. 1 fails to pay the said amount, the appellant and her child shall have the right to go back and take possession of the fourth floor of the property in question. However, this option to revert back to the property in question will not be available to the appellant if the appellant fails to inform her updated bank account to respondent no.1.

v. Meanwhile, third party interests shall not be created in the property in question during the pendency of appeal.”

14. It is submitted by Id. Counsel for Respondent No.2 as also for the Petitioner that as of yesterday i.e., 10th April, 2023, the Petitioner has already handed over the possession of the subject property to the concerned District Magistrate.

15. After having perused the record and having heard the Id. Counsels as also the parties who are also present, it is clear to the Court that if the parties live in the same premises, there is a possibility of untoward incidents. Under these circumstances, no case is made for interference in the impugned order in this writ petition. The petition is accordingly dismissed along with all pending applications.

16. The Divisional Commissioner is directed to decide the appeal within a period of two months. In deciding the appeal finally, the Divisional Commissioner, shall not take into consideration any observations made in the present order.

17. The facts relating to renting out of the property by the Petitioner and earning rent therefrom have not disclosed in the Petition. However, no costs are being imposed and no action is being taken against the Petitioner for having concealed material facts, considering the relationship between the parties.

18. The Petition is disposed of in the above terms.

PRATHIBA M. SINGH
JUDGE

APRIL 11, 2023

Rahul/SK

