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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 22nd May, 2023

+ W.P.(C) 6986/2023 & CM APPLs. 27185-86/2023

RITU CHERNALIA

..... Petitioner

Through: Mr. Harshvardhan Pandey, Mr.
Shashank Agrawal & Mr. Rohish
Arora, Advocates (M- 9953134789)

versus

AMAR CHERNALIA & ORS.

..... Respondents

Through: Ms. Rosemarry Raju, Advocate

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

CM APPL. 27186/2023 (for exemption)

2. Allowed, subject to all just exceptions. Application is disposed of.

W.P.(C) 6986/2023 & CM APPL. 27185/2023 (for stay)

3. This is a matrimonial dispute between Ms. Ritu Chernalia and her in-laws and husband.

4. The present petition has been filed by the Petitioner - Ritu Chernalia challenging the impugned order dated 31st March, 2023 passed by the Id. Divisional Commissioner, GNCTD (*hereinafter*, 'DC').

5. Respondent No.1 and 2 are the Petitioner's in-laws who are both senior citizens. Respondent No.3 is the husband of the Petitioner. Respondent No.1 and 2 preferred an eviction petition before the District Magistrate (South East), GNCTD (*hereinafter*, 'DM') under the

Maintenance and Welfare of Parents and Senior Citizens Act, 2007. The said petition was decided by the DM vide order dated 22nd September 2022 by which the DM directed eviction of the Petitioner from the property bearing no. C-30, South Extension I, New Delhi - 110049 (*hereinafter, 'Suit Property'*). The suit property is a 3 BHK floor in South Extension, New Delhi. The relevant extract of the said order is set out below:

"10. In view of the above observations, I, Isha Khosla, District Magistrate, District South East, through the powers conferred upon me vide 'The Maintenance and Welfare of Parents and Senior Citizens Act, 2007' and 'The Delhi Maintenance of Parents And Senior Citizens Rules (Amended) Rules, 2016', on considering the facts and appreciating the evidence brought on records, pass the following orders:

(1) That the Respondent Smt. Ritu Chernalia shall vacate the entire premises of the subject property bearing House No. C- 30, South Extension- 1, New Delhi- 110049 and handover the vacant peaceful possession of the subject property to the Complainants Sh. Amar Chernalia and Smt. Sunita Chernalia within 30 days of the receipt of this Order.

(ii) That the Deputy Commissioner of Police, South-East District is directed to ensure enforcement/compliance of the directions mentioned above, as per provisions under the Delhi Maintenance and Welfare of Parents and Senior Citizens (Amendment) Rules, 2016, 3(3)(ii) and also ensure that the life and property of the Complainants is secured and no harassment is caused to them by the Respondent.

(i) Beat Staff be further deputed for regular visits to the Senior Citizens Sh. Amar Chernalia and Smt. Sunita Chernalia in order to safeguard the life and property of the said Senior Citizens. Compliance report of

eviction of the Respondent. Smt. Ritu Chernalia be sent to this Court within 35 days as per the provisions under The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, referred above.

11. Given under the hand and seal of this Court par 9th day of September 2022.

12. Ordered accordingly.

13. File be consigned to record room.”

6. The said order was appealed by the Petitioner which was allowed by the DC. Vide the impugned order dated 31st March 2023 the eviction was set aside, however, the DC permitted the Respondent No. 1 and 2 to live in the suit property along with the Petitioner. The operative portion of the said impugned order reads as under:

“7 This appellate authority has carefully perused the records and considered the detailed argument made both the sides during the hearing. It appears that the respondents and their son have grudge against the appellant as they were, at the time of marriage between their son and the appellant, not informed of the fact that the appellant suffers from epilepsy. It also appears that appellant has temperamental streak in her personality. She has herself admitted that she took high dose of pills and became unconscious but she has explained that this was precipitated due to uncaring and tortuous behaviour of the respondents and her son towards her. There seems to be substance in this. The person suffering epilepsy and facing mental trauma needs to be given care rather than being deserted. There is indeed collusion between the respondents and their son. The respondents were also advised to provide a reasonable alternate accommodation/maintenance acceptable to the appellant. However no such solution was worked out between the two parties. The respondents have taken the stand during the hearing that it is the job of their

son to take care of the appellant and provide the alternate accommodation. This stand of the respondents is not justified in view of the collusion between the respondents and their son. The appellant has small child to look after. She also has the order of Mahila court in her favour protecting her stay in the property in question. Of course, this is subject to due process of the law but it does recognize the need of the appellant. In view of this this appellate authority finds that the eviction is not justified and the S. Vanitha judgment of the Honble Apex Court applies. The impugned order is set aside and the appeal is allowed. The respondents and their son are expected to show sensitivity towards the appellant who suffers from epilepsy and her small child. On the other hand the appellant must welcome the respondent in the property in question the respondents have right to stay in the property in question. Both the sides shall maintain peace and harmony and resolve their matrimonial discord and property related issues in the competent court under the law.

Appeal stands disposed of accordingly. Copy of this order be provided to both parties. Record of the Proceedings before DM (South-East) be also sent back to DM with the copy of this order.”

7. Today, Id. counsel for the Petitioner submits that the Petitioner is satisfied with the setting aside of the order of eviction. However, the Petitioner has a minor son, aged 9 years with whom she lives in the suit property. Since the Petitioner does not enjoy good relations with her in-laws she does not wish that her in-laws live in the same property with her.

8. On a query from the Court, it is not disputed by the Petitioner, who is present in Court, that the property being suit property belongs to Respondent No.1 and 2. On behalf of the Petitioner, it is submitted that certain alternate homes were given to the Petitioner, however, the same were not acceptable

to the Petitioner. In fact, the neighbouring property viz., C-29 where a comfortable residence has been arranged by the in-laws, is also not acceptable to her on the ground that the same is consisting of a shared corridor with other occupants.

9. On behalf of the Respondents, it is submitted that the Respondent Nos. 1 and 2 are living with their married daughter which is a source of embarrassment. The submission of Id. Counsel for the Respondents is that the following alternate properties were suggested to the Petitioner, none of which has been accepted by the Petitioner:

- (i) C/29 South Extension, Part- 1, ground floor. (two bedroom)
- (ii) Vardhaman Mantra, Sector 67, Gurugram
- (iii) F/112, Man Sarovar Garden
- (iv) F/224, Man Sarovar Garden
- (v) F/91, Man Sarovar Garden

10. Heard. The Hon'ble Supreme Court of India in its judgement dated 15th October, 2020 in **CA No. 2483/2020** titled **Satish Chander Ahuja v. Sneha Ahuja** while discussing the concept of 'shared household' held as under:

"83. 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 Act, 2005 or in any civil proceedings, the Court

has to balance the rights of both the parties. The directions issued by High court in paragraph 56 adequately balances the rights of both the parties.”

11. Thus, the concept of ‘shared household’ clearly provides that the right of the daughter-in-law in a shared household is not an indefeasible right and cannot be to the exclusion of the in-laws. The stand of the Petitioner that the in-laws should not be allowed to live in their own property is completely contrary to the settled understanding on the subject. The daughter-in-law, while claiming rights to live in her matrimonial home or shared household, cannot be seen to argue that the in-laws ought not to live with her in the shared household. If circumstances exist which demonstrate that they cannot live together, alternate accommodation may also have to be explored for the daughter-in-law.

12. In the present case, the DC has merely held that the Respondent No. 1 and 2 have a right to stay in the suit property, which obviously cannot be questioned because the property belongs to them. The Petitioner is currently in occupation of the entire property consisting of one floor. The Petitioner is not willing to considering shifting to any alternate premises, though the same is offered by the Respondents 1 and 2. Considering the impugned order passed by the DC, in the above factual background, the following directions are issued:

- (i) The Petitioner and her son shall occupy one room in the suit property. The Respondent Nos. 1 and 2 together shall also occupy one bedroom.

- (ii) The grandson, i.e., Petitioner no.2 shall be permitted to use the third bedroom for his studies, tuitions, etc., However, the said room shall be accessible to all the parties.
- (iii) The common areas such as the kitchen, the drawing and the dining room and staircase, etc., shall be used by all the occupants.
- (iv) The Respondent Nos.1 and 2 are permitted to put up CCTV cameras and the recordings of the same shall be accessible to the Petitioner.

13. The parties shall ensure that they maintain peace and order and do not engage in any acrimony. The locks to the suit property shall be changed and the Petitioner and the Respondent No.1 and 2 shall have duplicate keys of the rooms.

14. The present petition, along with all pending applications, is disposed of in the above terms.

PRATHIBA M. SINGH
JUDGE

MAY 22, 2023
dj/kt