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IN THE HIGH COURT OF DELHI AT NEW DELHI*Reserved on: 21st March, 2023**Date of decision: 13th April, 2023*

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W.P.(C) 15291/2022**SHUCHI GOEL**

..... Petitioner

Through: Mr. Insaaf Duggal, Ms. Aayushi Gupta, Advocates alongwith Petitioner in Person (M- 9811700310)

versus

SHASHI GOEL AND ORS

..... Respondents

Through: Ms. Deepika V. Marwaha, Sr. Advocate with Ms. Stuti Gupta & Ms. Raunika Johar, Advocates for R-1&2 (M-9560493552)
Mr Avishkar Singhvi Mr Naved Ahmed and Mr Vivek Kumar, Advocates. [M:8586915499]**CORAM:****JUSTICE PRATHIBA M. SINGH****JUDGMENT****Prathiba M. Singh, J.**

1. This hearing has been done through hybrid mode.

Factual background:

2. The present petition has been filed by the Petitioner-Ms. Shuchi Goel challenging the order dated 27th October, 2022 passed by the Divisional Commissioner (*hereinafter*, “DC”), Department of Revenue, GNCTD. Vide the said order, the DC dismissed the appeal against the eviction order passed by the District Magistrate (East) (*hereinafter*, “the DM”) dated 25th February 2021 under Rule 22(3)(4) of the Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2009 (*hereinafter*, “2009 Rules”). The said order of the DM arose out of a petition bearing no. Eviction No. 218/2019 filed by Respondent No. 1-Smt. Shashi Goel who is the mother-in-

law of the Petitioner.

3. The DM directed the Petitioner to vacate the premises bearing House No. 261, Pocket-D, Mayur Vihar-II, New Delhi-110091 (“*said premises*”) belonging to Respondent No. 1. Both the Petitioner and Respondent No. 1 reside in the said premises. Respondent No. 2- Mr. Vikram Goel- the husband of Petitioner and the son of Respondent No. 1, reside in a separate property in Gurgaon with their minor daughter.

4. The Petitioner and Respondent No. 2 were married in 2005 and, thereafter, it is the case of the Respondent No.1, that her son and the Petitioner had shifted various premises between 2006 to 2018 owing to his jobs. The case of Respondent No. 2 before the DM was, that the Petitioner had made baseless allegations and had instituted proceedings under the Protection of Women from Domestic Violence Act, 2005 (*hereinafter “DV Act”*) after the matrimonial discord had occurred between them.

Submissions of parties:

5. The submission of Id. Counsel for the Petitioner, present along with the Petitioner, is that the Id. MM, Mahila Court-02, East District, Karkardooma Court, Delhi vide order dated 24th May 2019 in the proceedings under the DV Act, has directed Respondent No. 2 to pay interim maintenance to the Petitioner. Further, vide order dated 2nd August 2021, the Id. MM, Mahila Court directed that the Petitioner shall not be dispossessed till the disposal of the application under the DV Act, except in accordance with procedure established by law.

6. It is, further, submitted that the Respondent No. 2 was directed in ***W.P.(C) 14863/2021***, titled ‘***Shuchi Goel v. Shashi Goel***’ vide order dated 22nd December, 2021 to offer alternate accommodation which has not been

offered.

7. In addition, it is submitted by the Id. Counsel for the Petitioner that the Petitioner does not live with Respondent No. 2 and their daughter, and since the custody of her daughter is also with Respondent No.2 and thus, she is entitled to stay in the matrimonial home/said premises. She is now alone and does not wish to move away from the in-laws.

8. Ld. counsel also relies upon the objects and reasons behind the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (*hereinafter*, “*Senior Citizens Act*”) to argue that the Senior Citizens Act does not provide for a mechanism for eviction and thus, no eviction order can be passed under the said Act by the DM or the DC. Thus, according to the Id. Counsel for the Petitioner, the order of the DC, thus, completely lacks jurisdiction and the Petitioner cannot be evicted from the said premises.

9. The Petitioner relies upon the judgment of the Supreme Court in *S. Vanitha vs. Deputy Commissioner, Bengaluru Urban District and Ors.*, [2020 SCC OnLine 1023] to argue that the right of the Petitioner to secure residence order under the DV Act in respect of the said premises cannot be defeated by the eviction order passed under the Senior Citizens Act, 2007. Reliance is also placed on *Prabha Tyagi v. Kamlesh Devi* [(2022) 8 SCC 90], where the Supreme Court has held that a woman cannot be evicted from the shared household under section 17 of the DV Act.

10. In addition to above, in the written submissions filed by the parties on 27th March 2023, the Petitioner also submits:

“22. That during the course of arguments in the present case on 21.03.2023 this Hon'ble Court had put across a question whether the Petitioner is willing to shift to an alternate accommodation separate from the current

residence of the in-laws at Mayur Vihar, subject to some amount being awarded to her in lieu of the said alternative accommodation, the Petitioner refused to the said proposal because Petitioner has an apprehension that if she moves out of her shared household on rented accommodation with additional amount then Respondent No. 2 may backtrack to pay her house rent and she may end up being more helpless as the said course would not bind Respondent No. 2 of his responsibility of maintaining the Petitioner. Maintenance of a wife by a husband is her right as per law.”

11. Therefore, the Petitioner submits that the eviction order passed by the DM cannot be sustained.

12. On the other hand, Ms. Marwah, Id. Sr. counsel on behalf of the Respondent No.1 submits that the judgments of the Supreme Court in *S. Vanitha (supra)* and *Satish Chandra Ahuja v. Sneha Ahuja, [2020 (11) SCALE 476]* relied upon by the Petitioner would have no application as almost for a period of 11 years the Petitioner and Respondent No. 2 never lived with the Respondent No.1 and her husband. Further, the parents i.e. Respondent No. 1 and her husband are 66 and 78 years old respectively. They are also suffering from several ailments. The said premises in Mayur Vihar is a 2BHK flat which has only one common washroom facility. The Respondent No.1 alleges that the Petitioner is abusive in her nature and ill-treats the parents.

13. It is also submitted that vide order dated 24th May, 2019, passed by the Id. MM, a substantive amount is being paid in the form of interim maintenance which includes Rs.1,00,000/- on monthly basis along with a substantial share of the bonus which the Respondent No.2 receives. In the said order passed by Id. MM granting interim maintenance, the amount has

been fixed considering the alternate accommodation that the Petitioner would be requiring for her occupation. On this aspect, Id. counsel for the Petitioner submits that the maintenance of Rs.1,00,000/- is for the Petitioner and the daughter and now the Petitioner is only receiving Rs.50,000/- which is the interim maintenance.

14. Ms. Marwah, Id. Sr. Counsel also submits that the couple i.e the Petitioner and Respondent No. 2 have a minor daughter who also appeared before the Family Court (East), Karkardooma and owing to the statement made by the daughter before the Family Court vide order dated 22nd March 2022 in the matter titled '**Vikram Goel v. Suchi Goel**' [G.P No. 22/2021], the custody of the daughter has now been handed to the Respondent No. 2-father. The Respondent No. 2 is also bearing all the expenses of the child's education who is studying in a boarding school in Mussoorie. The Id. Counsel for the Respondent relies upon the order dated 27th December 2021 passed by the Id. Division Bench in a habeas corpus petition titled '**Vikram Goel v. State of NCT Delhi**' [W.P (Crl.) 2602/2021] where the daughter had appeared before the Division Bench and also on the above order of the Family Court which gave sole custody of the minor daughter to the Respondent No. 2.

15. The Id. Counsel for the Respondent also relies upon the judgment of this Court in **Madalsa Sood v. Maunicka Makkar** [2021 SCC OnLine Del 5217] which has considered the entire law on this aspect and has recognized the rights of the senior citizens under the Senior Citizens Act *qua* a shared household.

Analysis

16. Heard. The first issue raised by the Petitioner is that the provisions of

the Senior Citizens Act and the 2009 Rules do not provide for the remedy of eviction to be availed of by the parents/senior citizens.

17. Under the Senior Citizens Act, various rights and obligations with respect to senior citizens have been clearly recognized including:

- The right of senior citizens to claim monetary maintenance.
- The obligation of children as well as grandchildren to maintain the parents.
- The right of the senior citizens to lead a normal life.
- The obligation of any relative, who is in possession of the property or who may be entitled for inheritance of the property, to maintain the senior citizen. Such obligation extends to persons, who may be entitled to inheritance of the property of the senior citizen.
- The right to receive allowances for daily living.

18. Under Section 19 of the Senior Citizens Act, the State is also expected to take care of the interests of senior citizens by establishment of old age homes to provide medical care and means of entertainment. Under Section 20 of the Senior Citizens Act, the State is mandated to ensure that beds in Government hospital and other hospitals, separate medical facilities for treatment of senior citizens, expansion of research activities for senior citizens are made available.

19. Further, Section 23 of the Senior Citizens Act recognizes that if any property has been transferred by the senior citizen, and the transferee does not provide basic amenities and physical needs, such transfer of property by the senior citizen would be void. Therefore, it is noticed that Section 23 creates a '*deeming fiction*' that in such circumstances, as contemplated in the said provision, transfer of the property would be deemed to have been by

fraud or coercion or undue influence. Abandonment of a senior citizen is also punishable under Section 24 of the Senior Citizens Act. Under Section 32 of the Senior Citizens Act, power is granted to the State Government to make rules for carrying out the purposes of the said Act.

20. In order to give effect to the provisions of the Senior Citizens Act, under Section 32, the State Government has been permitted to enact rules. In the case of Delhi, the Government of NCT of Delhi has enacted the Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2009. Initially, the same was amended in 2010. Finally, vide Notification dated 28th July, 2017, the said Rule 22(3) of the 2009 Rules has been substituted as under:

SOCIAL WELFARE DEPARTMENT

NOTIFICATION

Delhi, the 28th July, 2017

F. No. 30(405)/Amendment of Rules-MAWPSC 2007/DD (SS)/DSW/2015-16/11684-11712.—In exercise of the powers conferred by section 32 read with clause (i) of section 2 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, the Lt. Governor of National Capital Territory of Delhi hereby makes the following rules to amend the Delhi Maintenance and Welfare of Parents and Senior Citizens Rules 2009, namely:-

1. **Short title and Commencement.**—(1) These rules may be called The Delhi Maintenance and Welfare of Parents and Senior Citizens (Amendment) Rules, 2017.
(2) They shall come into force on the date of their publication in the Delhi Gazette.
2. In the Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2009 in rule 22 in sub-rule (3), for clauses (i) and (iv), the following shall be substituted respectively, namely :-
 - (i) A senior citizen/parents may make an application before the Deputy Commissioner/District Magistrate of his district for eviction of his son and daughter or legal heir from his property of any kind whether movable or immovable, ancestral or self acquired, tangible or intangible and include rights or interests in such property on account of his non-maintenance and ill-treatment.
 - (iv) The Deputy Commissioner/ District Magistrate during summary proceedings for the protection of senior citizen parents, shall consider all the relevant provisions of the said Act. If the Deputy Commissioner/ District Magistrate is of opinion that any son or daughter or legal heir of a senior citizen/parents is not maintaining the senior citizen and ill treating him and yet is occupying the property of any kind whether movable or immovable, ancestral or self acquired, tangible or intangible and include rights or interests in such property of the senior citizen, and that they should be evicted. The Deputy Commissioner/ District Magistrate shall issue in the manner hereinafter provided a notice in writing calling upon all persons concerned to show cause as to why an order of eviction should not be issued against them/him/her.

By Order and in the Name of the Lt. Governor
of the National Capital Territory of Delhi,

A. K. SINGH, Secy. (Social Welfare)

Rule 22(3) prior to, and post the 2017 Amendment to the 2009 Rules reads as under:

Rule 22(3) prior to 2017 Amendment¹ to the 2009 Rules	Rule 22(3) post the 2017 Amendment² to the 2009 Rules
Rule 22(3) (1) Procedure for eviction from property/residential building of Senior Citizen/Parents,- (i) A senior citizen may make an application before the Dy. Commissioner/District Magistrate (DM) of his district for eviction of his son and daughter or legal heir from his self-acquired property on account of his non-maintenance and ill-treatment. (ii) The Deputy Commissioner/DM shall immediately forward such application to the concerned Sub Divisional Magistrates for verification of the title of the property and facts of the case within 15 days from the date of receipt of such application. (iii) The Sub Divisional Magistrate shall immediately submit its report to the Deputy Commissioner/DM for final orders within 21 days from the date of receipt of the complaint/application. (iv) The Deputy Commissioner/DM during summary proceedings for the	Rule 22(3) (1) Procedure for eviction from property/residential building of Senior Citizen/Parents,- <u>(i) A senior citizen/parents may make an application before the Deputy Commissioner/District Magistrate of his district for eviction of his son and daughter or legal heir from his property of any kind whether movable or immovable, ancestral or self acquired, tangible or intangible and include rights or interests in such property on account of his non-maintenance and ill-treatment.</u> (ii) The Deputy Commissioner/DM shall immediately forward such application to the concerned Sub Divisional Magistrates for verification of the title of the property and facts of the case within 15 days from the date of receipt of such application. (iii) The Sub Divisional Magistrate shall immediately submit its report to the Deputy Commissioner/DM for final orders within 21 days from the

1 The Delhi Maintenance and Welfare of Parents and Senior Citizens (Amendment) Rules, 2016, Notification bearing F. No. 30(405)/Amendment of Rules-MAWPSC2007/DD(SS)/DSW/2015-16/24836-865 dated 19th December 2016.

2 The Delhi Maintenance and Welfare of Parents and Senior Citizens (Amendment) Rules, 2017, Notification bearing F. No. 30(405)/Amendment of Rules-MAWPSC 2007/DD (SS)/DSW/2015-16/11684-11712 dated 28th July, 2017.

protection of senior citizen parents shall consider all the relevant provisions of the said Act 2007. If the Deputy Commissioner/DM is of opinion that any son or daughter or legal heir of a senior citizen/parents is not maintaining the senior citizen and ill treating him and yet is occupying the self acquired property of the senior citizen, and that they should be evicted, the Deputy Commissioner/DM shall issue in the manner hereinafter provided a notice in writing calling upon all persons concerned to show cause as to why an order of eviction should not be issued against them/him/her.

(v) The notice shall–

(a) specify the grounds on which the order of eviction is proposed to be made; and

(b) require all persons concerned, that is to say, all persons who are, or may be, in occupation of, or claim interest in, the property/premises, to show cause, if any, against the proposed order on or before such date as is specified in the notice, being a date not earlier than ten days from the date of issued thereof.

(2) Eviction Order from property/residential building of Senior Citizens/Parent. –

(i) If, after considering the cause, if any, shown by any person in pursuance to the notice and any evidence he/she may produce in support of the same and after giving

date of receipt of the complaint/application.

(iv) The Deputy Commissioner/ District Magistrate during summary proceedings for the protection of senior citizen parents, shall consider all the relevant provisions of the said Act. If the Deputy Commissioner/ District Magistrate is of opinion that any son or daughter or legal heir of a senior citizen/parents is not maintaining the senior citizen and ill treating him and yet is occupying the property of any kind whether movable or immovable, ancestral or self acquired, tangible or intangible and include rights or interests in such property of the senior citizen, and that they should be evicted. The Deputy Commissioner/ District Magistrate shall issue in the manner hereinafter provided a notice in writing calling upon all persons concerned to show cause as to why an order of eviction should not be issued against them/him/her.

(v) The notice shall–

(a) specify the grounds on which the order of eviction is proposed to be made; and

(b) require all persons concerned, that is to say, all persons who are, or may be, in occupation of, or claim interest in, the property/premises, to show cause, if any, against the proposed order on or before such date as is specified in the notice, being a date not earlier than ten days

him/her a reasonable opportunity of being heard, the Deputy Commissioner/DM is satisfied that the eviction order needs to be made, the Deputy Commissioner/DM may make an order of eviction, for reasons to be recorded therein, directing that the property/residential building shall be vacated;

(3) Enforcement of Orders,

(i) If any person refuses or fails to comply with the order of eviction within thirty days from the date of its issue, the Deputy Commissioner/DM or any other officer duly authorized by the Deputy Commissioner/DM in this behalf may evict that person from the premises in question and take possession;

(ii) The Deputy Commissioner/DM shall have powers to enforce the eviction orders through Police and the Dy. Commissioner of Police concerned shall be bound to carry out execution of the eviction order.

(iii) The Deputy Commissioner/DM will further handover the property/premises in question to the concerned Senior Citizen.

(iv) The Deputy Commissioner/DM shall forward monthly report of such cases to the Social Welfare Department by 7th of the following month.

(4) Appeal

(i) The appeal against the order of Dy. Commissioner/DM shall lie before Divisional Commissioner,

from the date of issued thereof.

(2) Eviction Order from property/residential building of Senior Citizens/Parent. –

(i) If, after considering the cause, if any, shown by any person in pursuance to the notice and any evidence he/she may produce in support of the same and after giving him/her a reasonable opportunity of being heard, the Deputy Commissioner/DM is satisfied that the eviction order needs to be made, the Deputy Commissioner/DM may make an order of eviction, for reasons to be recorded therein, directing that the property/residential building shall be vacated;

(3) Enforcement of Orders,

(i) If any person refuses or fails to comply with the order of eviction within thirty days from the date of its issue, the Deputy Commissioner/DM or any other officer duly authorized by the Deputy Commissioner/DM in this behalf may evict that person from the premises in question and take possession;

(ii) The Deputy Commissioner/DM shall have powers to enforce the eviction orders through Police and the Dy. Commissioner of Police concerned shall be bound to carry out execution of the eviction order.

(iii) The Deputy Commissioner/DM will further handover the property/premises in question to the concerned Senior Citizen.

Delhi. (ii) Provisions regarding disposal of appeal before Appellate Tribunal shall apply mutatis mutandis to the appeals before the Divisional Commissioner, Delhi.	(iv) The Deputy Commissioner/DM shall forward monthly report of such cases to the Social Welfare Department by 7th of the following month. (4) Appeal (i) The appeal against the order of Dy. Commissioner/DM shall lie before Divisional Commissioner, Delhi. (ii) Provisions regarding disposal of appeal before Appellate Tribunal shall apply mutatis mutandis to the appeals before the Divisional Commissioner, Delhi.
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21. The 2009 Rules framed under the Senior Citizens Act are not under challenge in the present petition. The issue involved in the present petition, is no longer *res integra* as the same has been decided by the Id. Division Bench of this Court in *Sunny Paul v. State of NCT of Delhi [(2018) 253 DLT 410]*. In the said judgment, the Court has considered the Senior Citizens Act as also the 2009 Rules as amended from time to time. In the said decision, the Id. Division Bench observed as under:

“16. A further amendment has been carried out to Sub Rule 3 to Rule 22 of the Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2009 in the year 2017, which amendment has already been reproduced above. The aforesaid Rules also deal with enforcement of orders passed by the Tribunal.

17. A reading of the Rules framed by the Government of NCT clearly reflect that a senior citizen can file an application seeking eviction of his son and daughter or legal heir from his self-

acquired or ancestral property on the ground of ill-treatment or non-maintenance. The vires of these Rules has not been challenged by the appellant. The limited challenge is to the jurisdiction of the Maintenance Tribunal to order an eviction under the Act of 2007. So noting the limited challenge to the order passed by the Tribunal and keeping in view the fact that the enactment being a social legislation and the same requires to be given liberal interpretation to achieve the mandate of the Act of 2007 i.e for the welfare of the parents and senior citizens and for the protection of their life and property, there is no doubt that the Tribunal does have the jurisdiction to direct vacation by the children of any property in which the senior citizen has a right of residence / possession. In this regard, we may refer to the judgment of the Supreme Court in Board of Muslim Wakfs, Rajasthan v. Radha Krishna and Ors (1979) 2 SCC 468 wherein it was held that the construction which tends to make any part of the Statute meaningless or ineffective must always be avoided and the construction which advances the remedy intended by the Statute should be accepted”.

22. Further, the Constitutional validity of Rule 22(3) of the 2009 Rules as reproduced above, has been upheld by a Division Bench of this Court in **Aarshya Gulati (through: next friend Mrs. Divya Gulati) v. GNCTD [2019 SCC OnLine Del 8801]**. Thus, in view of the above judgments of this Court, the objection of Id. Counsel for the Petitioner that the Divisional Commissioner/DC is not vested with the powers to direct eviction as the Senior Citizen Act and 2009 Rules do not provide for the same, is contrary to the settled legal position.

23. Coming to the facts of the present case, the order passed by the DM dated 25th February, 2021, clearly concludes that Respondent No.1's ownership of the property has not been disputed or questioned by the Petitioner or Respondent No. 2 at any point of time. Relevant finding is set out herein below:

“13. Next on the issue of the property, the Applicant has submitted that the same is in her name, purchased vide conveyance deed he her favour by the DDA on 23.11.2007. It is pertinent to note that the Respondents, at no point of time have questioned or disputed the fact that the said property belongs and is in the name of the Applicant and in fact have admitted the same.”

24. On the issue of ill-treatment, the DM concludes that there are serious differences between the Respondent No. 2-son and Petitioner-daughter in law, who are fighting with each other. Police complaints have been filed by the parties. In the domestic violence case bearing no. **DV No. 2858/2018** titled '**Suchi Goel v. Vikram Goel**' under the DV Act, Id. MM has, vide order dated 24th May, 2019, recorded as under:

“In view of the principles laid down in Annurita Vohra v. Sandeep Vohra 2004(3) AD 252, admitted monthly income of the respondent is Rs.3,84,524/- per month through it is also not denied by the Respondent that he has annual income of Rs. 75 lakh along with performance based periodic bonuses as well as the fact he has no other legal liability other than petitioner and their minor daughter and therefore, the family resource cake appears to be between Rs.3,84,000/- to Rs.6,25,000/- per month. Further, respondent bears expenses qua his rent as well as EMI towards home loan, which has to

be deducted from the net income to arrive at disposable income. Therefore, considering the element of variable bonus included in annual salary of respondent, I deem it fit to direct the respondent to pay Rs.1 lakh per month to petitioner (inclusive of interim maintenance of Rs.50,000/- per month for their minor daughter) and 1/3 share of his annual bonus received from his employer which shall be payable at end of each year to petitioner as interim maintenance towards food, clothing, household expenses, electricity bill, alternate accommodation/rent, water bill all-inclusive from the date filing of petition, till further order. The above said interim maintenance amount shall be adjustable to the amount, if any, the Petitioner is getting towards maintenance of herself and her child from the respondent No.1 from any other proceedings.”

25. In view of the findings of the Id. MM, who has directed payment of maintenance in the sum of Rs.1 lakh per month, which is inclusive of alternate accommodation, the DM records that the present case of the Petitioner is clearly distinguishable from the decisions of the Supreme Court in *Satish Chand Ahuja (supra)* and *S. Vanitha (supra)*. The DM finally concludes as under:

“17. It is clear that in the instant case, the Ld. MM Court, has while directing maintenance vide order dated 24.05.2019, has specifically provided for maintenance which is inclusive of provision for alternate accommodation/rent. Thus, in such circumstances, the right of residence of the Respondent No. 2 has already been secured by the Ld. MM, therefore, the Respondent No.2, while already receiving maintenance in lieu of alternate accommodation/rent on the one hand, cannot

insist on her right to continue residing in the subject property on the other. This assumes even greater significance in view of the fact that the Applicant/Senior Citizen has not even been made a party by the Respondent No.2 before the DV proceedings and further the subject property admittedly belongs to the Applicant/Senior Citizen.

18. Thus, in view of the aforesaid observations, after having carefully considered the facts of the matter, I find that in the present case, the Applicant has made out a case of eviction of the Respondents under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and the Rules framed thereunder. Accordingly, the instant Eviction Case No.251/2020 is hereby decided in favour of the Applicant and against the Respondents. The Respondent No.1 is admittedly not residing in the subject premises. Resultantly, the Respondent No.2 (Smt. Shuchi Goyal), is hereby directed to vacate the subject property i.e. H. No. 261, Pocket D, Mayur Vihar III, Delhi-110091 within 30 days of the date of this order.”

26. In the meantime, the Petitioner also filed an application bearing **CS No. 2585/2018** in the case titled **‘Shuchi Goel v. Vikram Goel’** under Section 19 of the DV Act, seeking a protection order for safeguarding of the right to reside in the said premises. In the said application, ld. MM, Mahila Court directed as under vide order dated 2nd August 2021:

“Considering that appeal preferred by petitioner herein against order of eviction dated 24.03.2021 passed by Tribunal under Senior Citizen Act is pending before Appellate Tribunal and her application u/s 19 of DV Act is also pending for adjudication before this Court, therefore, in interest of justice, it is hereby directed that

petitioner or her minor child shall not be disposed or forcefully removed from her present residence at House no. 261, D-Block, Mayur Vihar, Delhi till disposal of application u/s 19 of Protection of Women from Domestic Violence Act by this court, except in accordance with procedure established by law.”

27. In the interim, the DC vide order dated 27th October, 2022, dismissed the appeal filed by the Petitioner against the order passed by the DM. The finding of the DC is as under:

“24. Hon'ble Delhi High Court in Vinay Verma Vs Kanika Pasricha laid down certain guidelines, according to which, if the son has abandoned both parents and his own wife/children then if the sons' family was living as part of joint family prior to the breakdown of relationships, the parents would be entitled to seek possession from their daughter-in-law, however, for a reasonable period should provide some shelter to the daughter-in-law during which time she is able to seek her remedies against her husband. This clearly shows that the parent in-laws can seek possession from their daughter-in-law despite of matrimonial discord. Also, herein this case appellant not resided as joint family in the suit property from 2006 to 2018 and her domestic violence case is already pending against respondent no. 2 i.e the husband wherein she has already received order of interim maintenance which is inclusive of alternate accommodation/rent. The case in hand is at much better footing.

25. The Maintenance and Welfare of Parents and Senior Citizen Act, 2007 and Delhi Rules 2009 amended time to time, is a welfare legislation enacted for the benefit and protection of senior

citizens/Parents, so that they can spend their twilight years peacefully as the safety of the senior citizen is prime objective of the Act and Amended Rules and herein this case the suit property is a 2 BHK flat. The respondent no.1 was forced to file complaint to police officials against the atrocities of the appellant and has also moved to the District Magistrate for the eviction of appellant from her house so that she can reside peacefully with her husband in her house in her old age.

26. Keeping in view the aforesaid facts and circumstances and the citations of the Hon'ble Supreme Court and Hon'ble Delhi High Court, this appellate authority is of the clear view that the respondent no. 1 is harassed and ill-treated at the hands of the appellant and was forced to approach the authorities so as to live peacefully in her own house. Accordingly, there is no infirmity in the impugned order dated 25.02.2021 passed by the DM (East). Appellant having no right to reside in respondent no.1 house against her wishes specially when provisions for her alternative accommodation are already made by the Court of Ld. M.M in DV case and therefore appellant is directed to vacate and hand over the peaceful possession of the suit property to the respondent no.1 with immediate effect and shall not create any hassles in her and her husband peaceful life. District Magistrate and concerned DCP shall ensure compliance of this order and also ensure that life and property of the respondent no.1 shall be secured and no harassment shall be caused to her or to her husband.

The Appeal stands disposed off accordingly. Copy of this order be provided to both parties. Record of the Proceedings before DM (East) be

also sent back to DM with copy of this order.”

28. Both the DM and DC have thus, concluded that the maintenance to the Petitioner is already being paid for by the Respondent No.2-husband vide order dated 24th May 2019 for the alternate accommodation. There are clear findings of harassment and ill-treatment of Respondent No. 1 at the hands of the Petitioner. Moreover, the circumstances of this case reveal that the Id. MM has duly safeguarded the interest of the Petitioner with maintenance of Rs.1 lakh per month. Further, order dated 22nd March, 2022 passed by the Family Court in GP No.22/2021 shows that the Petitioner and the Respondent No.2 have a minor daughter. In the said order, the Court records as under:

“6. Perusal of file reveals that the petitioner has filed petition u/s 7 & 25 of Guardian & Wards Act alongwith application u/s 12 of Guardian & Wards Act. On 15.03.2022 the petitioner has withdrawn the application u/s 12 of Guardian & Wards Act. One proxy counsel on behalf of respondent appeared on 23.12.2021 and sought some time to file reply to the main petition as well as reply to interim application and matter was posted for 22.02.2022. On 22.02.2022 none appeared on behalf of respondent and child "SG" also joined the proceedings through VC and it was submitted by the child that yesterday respondent has given beatings to her and she has made complaint to the police. It was also submitted by the child that she wants to reside with the petitioner. As none appeared on behalf of respondent on 22.02.2022, one opportunity was granted to the respondent to file reply and matter was posted for 25.02.2022. On 25.02.2022 one counsel for the respondent appeared and filed fresh vakalatnama and matter was posted for

08.03.2022. On the last date, the child appeared in the court and this court has made interaction with the child and relevant portion of order dated 15.03.2022 reads as under:-

"I have made interaction with the child. The child appears to be confident. It is stated by the child that she wants to become lawyer or pilot. It is submitted by the child that she is completing her 16 years of age in June, 2022. It is further submitted by the child that she wants to reside with her father. It is also submitted by the child that she was residing with her mother for the last four years and due to litigation respondent used to abuse and beat her. It is also submitted by the child that she was telling her mother that she does not want to reside with her and she wanted to reside with her father. It is also submitted by the child that her mother never allows her to have interaction with her father in any circumstances and she does not want to live with her mother at any cost."

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9. The petitioner has placed on record screen shot of the Whatsapp conversation between the child and the petitioner wherein, the child has mentioned that yesterday respondent had hit her again and she is such a narcissistic and she is suffocating her now. Child has also mentioned in the Whatsapp message that she feel like killing herself now and honestly if she did not have the thought that she could live with petitioner, she would have killed herself by now. Petitioner has also placed on record photos to show that she has received injuries. Petitioner has also placed copy of application dated 21.02.2022 given by the child to the SHO, PS- Pandav Nagar wherein, child has

mentioned that respondent abused her and she wanted protection from her. Today respondent had hit her so hard that her mouth started bleedings and now it is completely swollen. The respondent kicked in her stomach and she hits her almost every day. Child has also mentioned in the application that her mother and father have custody battle going on in the court and I want to live with my father Vikram Goel. It is also mentioned in the application that all this happened today because tomorrow we have a custody hearing in Court and she puts so much pressure upon me to speak against him (petitioner) in the court. She is traumatising me to the point where I am taking therapy sessions. Today, I was very scared as she gave threats to me that if I call the police, she will kill me and create a scene. Please save me from her or I will kill myself. I need to live with father because she is making me suicidal. Please send protection. If I continue living here I will die. Please help me. She hits me so much that I am bleedings now and she threatens me, if I decide to ask for help. Ld. Counsel for the petitioner has also placed on record Whatsapp conversation dated 02.02.2022.

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12. In the present case, child appeared in the court on 22.02.2022 through VC and it was submitted by the child that yesterday she was given beatings by the respondent and she has made complaint to the police. She also submitted that she wanted to reside with the petitioner. The child again appeared on 15.03.2022 and child clearly stated that she wanted to reside with her father and her mother used to abuse and beat her. It was also submitted by the child that her mother did not allow her to have interaction with the

father. In view of the submissions made by the child on 15.03.2022, in view of the application given by the child on 21.02.2022 to the SHO, PS-Pandav Nagar and in view of the Whatsapp conversation of the child with the petitioner, I am of the view that this court cannot decide the custody of the child against the wishes of the child and to hand over the custody of the child to the respondent. The child is aged about 16 years and she has conveyed to this Court that she wants to reside with the petitioner and she does not want to reside with the respondent at any cost. The application u/s 10 of Family Court Act filed on behalf of respondent is without any merits and same is hereby dismissed. However, the petitioner is directed to take the child at the residence of the respondent, as admittedly respondent is residing with the parents of the petitioner in one room, to have meeting of child with the respondent for about two hours thrice in a week i.e. on Wednesday, Saturday & Sunday from 5:00 PM to 7:00 PM. With this application is disposed of.”

29. The above orders of the Family Court, DM and the DC show that the Petitioner has not only been indulged in the ill-treatment of her in laws but also her own child. There are allegations of violence by the Petitioner against her daughter, which were confirmed by the daughter to the Judge in the Family Court. Moreover, the parents-in-law are senior citizens, who are suffering from various medical ailments and are living in the said premises. The Petitioner and Respondent No. 2-husband are at complete loggerheads and the minor child is currently being taken care of by the Respondent No. 2 and is studying in a boarding school in Mussoorie. The documents showing the payment of fee etc. have also been placed on record. The Petitioner has

been fully taken care of by the substantial maintenance amount of Rs.1 lakh that is being paid to the Petitioner.

30. The present clearly is a case, which is covered by the recent orders of this Court in ***Kartika Grover v. State of NCT of Delhi & Ors.*** being ***W.P.(C) 17386/2022*** dated ***20th December, 2022***. In the said decision, the Court has considered the judgments of the Supreme Court in ***Satish Chand Ahuja (supra)*** and ***S. Vanitha (supra)*** and has concluded as under:

“13. The rights of the daughter-in-law and the senior citizens who are in-laws, have been the subject matter of several decisions of the Supreme Court and of this Court. The latest decision of the Supreme Court in this regard is Smt. S. Vanitha v. The Deputy Commissioner, Bengaluru Urban District & Ors., 2020 (14) SCALE 210, wherein the overlap between the two statutes i.e., the DVA and the MWSCPA has been considered and the Supreme Court has held that the provisions of the two statutes need to be construed harmoniously. In that case, disputes arose between both the in-laws on the one hand, and the daughter-in-law, on the other. The in-laws had preferred an application under the MWSCPA and obtained orders for eviction of their daughter-in-law and grand-daughter. This was upheld by the Id. Division Bench of the Karnataka High Court, which held that the remedy of the daughter-in-law to seek maintenance and shelter, lies only against the husband i.e., the son, and accordingly the eviction order was valid. This judgment of the Karnataka High Court was challenged before the Supreme Court. The Supreme Court considered the right of residence given to the daughter-in-law under the DVA, as also the relevance of the provisions of the MWSCPA, holding that the intention of the legislators would be to read the

said two legislations harmoniously, as both deal with the salutary aspects of public welfare and interest. It held that the MWSCPA cannot have an overriding effect in all situations irrespective of competing entitlements of a woman in a “shared household”, as the same would defeat the purpose of the DVA. The provisions of both the statutes cannot be ignored and have to be harmoniously construed. The relevant observations of the Supreme Court are as under:

“... 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.”

14. This issue has also been considered previously in **Satish Chandra Ahuja v. Sneha Ahuja, 2020 (11) SCALE 476** wherein the Supreme Court was dealing with a dispute between in-laws and son on the one hand, and the daughter-in-law on the other hand. A suit for injunction was filed by the father-in-law against the daughter-in-law without impleading the son. The daughter-in-law, who was having marital disputes with her husband, had in her defence claimed that the New Friends Colony residence, which was her matrimonial home, would be a “shared household” in terms of Section 2(s) of the DVA, and accordingly she could not be evicted

from the same. The Trial Court had passed a decree of eviction under Order 12 Rule 6 of CPC, against the daughter-in-law, in the said suit. The High Court had set aside the decree passed by the Trial Court and remanded the matter for fresh adjudication. The said decision of the High Court was challenged before the Supreme Court. The Supreme Court, in this background, held that the right to residence, as provided to the daughter-in-law under Section 19 of the DVA, is not an indefeasible right, and hence the Court has to balance the rights of the parties. The observations of the Supreme Court are 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.”

15. The dispute between in-laws and children has repeatedly been faced by this Court as well. In the judgment of **Vinay Verma v. Kanika Pasricha and Ors.**, 265 (2019) DLT 211, which has also been relied upon by the ld. Divisional Commissioner in the impugned order, the following guidelines were given by this Court:

“46. However, later decisions of various High Courts have, while giving divergent opinions on the concept of ‘shared household’, followed one uniform pattern in order to protect the daughter-in-law and to provide for a dignified roof/ shelter for her. The question then arises as to whether the obligation of providing the shelter or roof is upon the in-laws or upon the husband of the daughter-in-law i.e., the son. Some broad guidelines as set out below, can be followed by Courts in order to strike a balance between the PSC Act and the DV Act:

1. The court/tribunal has to first ascertain the nature of the relationship between the parties and the son’s/ daughter’s family.

2. If the case involves eviction of a daughter in law, the court has to also ascertain whether the daughter-in-law was living as part of a joint family.

3. If the relationship is acrimonious, then the parents ought to be permitted to seek eviction of the son/daughter-in-law or daughter/son- in-law from their premises. In such circumstances, the obligation of the husband to maintain the wife would continue in terms of the principles under the DV Act.

4. If the relationship between the parents and the son are peaceful or if the parents are seen colluding with their son, then, an obligation to maintain and to provide for the shelter for the daughter-in-law would remain both upon the in laws and the husband especially if they were living as part of a joint family. In such a situation, while parents would be entitled to seek eviction of the daughter-in-law from their property, an

alternative reasonable accommodation would have to be provided to her.

5. In case the son or his family is ill-treating the parents then the parents would be entitled to seek unconditional eviction from their property so that they can live a peaceful life and also put the property to use for their generating income and for their own expenses for daily living.

6. If the son has abandoned both the parents and his own wife/children, then if the son's family was living as part of a joint family prior to the breakdown of relationships, the parents would be entitled to seek possession from their daughter-in-law, however, for a reasonable period they would have to provide some shelter to the daughter-in-law during which time she is able to seek her remedies against her husband."

16. This Court has subsequently considered the two statutes and relied upon **Vinay Verma (supra)** to decide another case being **Aarti Sharma & Anr. v. Ganga Saran [RSA 14/2021, decided on 24th August, 2021]**, where the husband and wife were not estranged from each other. In the said decision, this Court had upheld the eviction of the daughter-in-law and husband.

17. Thus, the settled position is that the DVA and the MWSCPA must be construed harmoniously, and the relationship between the son and daughter-in-law must also be considered, among other factors, while deciding the dispute.

18. In the present case, the first notable feature that there is no domestic violence complaint against the in-laws. It is also noted that the in-laws are of advanced age and they are deprived of using their second property for rental income. It is

also noticed that the husband is well-qualified and he is capable of maintaining his wife and daughter. Under such circumstances, there would be no justification in allowing the daughter-in-law to continue to occupy the subject property which is admittedly owned by the in-laws, when clearly an alternative accommodation can be provided to her.”

31. In the facts of the present case, there are no allegations of domestic violence against the in-laws i.e Respondent No.1 and her husband. In fact, there are allegations of ill-treatment of the in-laws by the Petitioner and the same is also confirmed by the above order of the DC. Repeated orders of the Mahila Court, Family Court, the DM and the DC lead this Court to the only conclusion i.e. the Petitioner’s interest has been sufficiently safeguarded by the payment of Rs.1 lakh per month maintenance and the senior citizens are entitled to enjoy their property in the twilight of their life.

32. In these facts and circumstances, and in light of the judgment of this Court in **Kartika Grover (supra)**, this Court does not deem fit to interfere in the order passed by the DC dated 27th October 2022. Therefore, the present writ petition is devoid of merits and the same is, accordingly, dismissed.

33. The Petitioner is given time of one week to voluntarily vacate the premises. If she fails to do so, the concerned SDM (Mayur Vihar) shall take appropriate steps for giving effect to the orders of eviction in accordance with law. Needless to add, the Respondent No.2-husband shall continue to abide by the order dated 24th May 2019 passed by the Id. MM, Mahila Court and pay maintenance amount of Rs.1 lakh per month, subject to further orders of the said Court.

34. The petition and along with all applications is disposed of in the above terms.

PRATHIBA M. SINGH, J.

APRIL 13, 2023

dk/dn

