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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CONT.CAS(C) 1409/2022 & CM APPL. 55636/2022**

NEELAM ARORA

..... Petitioner

Through: Ms. Preeti Singh, Mr. Sunklan
Porwal, Ms. Saumya Dwivedi,
Ms. Kumkum Mandhanya, and
Mr. Rishabh Munjal, Advocates

versus

MANJU ARORA

..... Respondent

Through: None.

Reserved on: 5th January, 2023

Date of Decision: 11th January, 2023

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J:

1. The present contempt petition has been filed alleging violation of the order dated 06.07.2022 passed by the *Mahila* Court-04, Tis Hazari Courts, Delhi, ('Trial Court') restraining the Respondent, the daughter-in-law, from dispossessing the Petitioner herein, the mother-in-law, from the shared household, without following the due process of law. The said order was passed in a complaint filed by the Petitioner herein under Section 12 of Protection of Women from Domestic Violence Act, 2005 ('DV Act'). The relevant portion of the order dated 06.07.2022 reads as follows:

"Various acts of domestic violence are alleged to have been committed by the respondent upon the complainant as mentioned in

the complaint U/s 12 DV Act. Considering the fact that complainant is an old aged lady and she has apprehension that respondent might dispossess her from the shared household or which her husband is stated to be the owner. Therefore, in the interest of justice respondent is restrained from dispossessing the complainant from the shared household without following due process of law till next date.

(Emphasis Supplied)

2. Learned counsel for the Petitioner states that the Respondent has violated the aforesaid order in as much as the Petitioner who is a resident of Shivaji Enclave, Tagore Garden, has been removed from the local Resident Welfare Association ('RWA') WhatsApp group known as 'SEWA'. She states that the Petitioner believes that the Petitioner has been removed from the said social media group at the behest of the Respondent, who has spread false stories about the Petitioner and thus defamed the Petitioner amongst the residents of RWA. She states that the said act of Respondent is akin to dispossessing the Petitioner from the shared house hold as the Petitioner is feeling ostracized in her neighborhood.

3. I have heard the learned counsel for the Petitioner and perused the paper-book.

4. It is pertinent to note that the Petitioner had filed an application on 23.06.2022 under Section 23 of the DV Act before the Trial Court seeking interim relief of eviction against the Respondent from the shared household. The grounds in this application on which the eviction was sought were that the Respondent is subjecting the Petitioner to financial, emotional and physical abuses by resorting to both mental and physical violence. To buttress the aforesaid allegations, the Petitioner also filed a second application alleging that the Respondent is harassing

the Petitioner, Petitioner's husband and their tenant. The Trial Court after hearing the parties dismissed the aforesaid applications *vide* order dated 15.09.2022. The relevant findings of the Trial Court read as under:-

*"11. Now coming to the case in hand the complainant is residing in the shared household since her marriage i.e. 04.12.1998 i.e. more than 24 years. There is no documentary evidence of any kind of domestic violence prior to the filing of the present case. The complainant and her husband, the respondent and her husband have been living in the shared household happy from last 24 years. The version of the respondent is that when the legal notice dated 24.05.22 was served upon the complainant's son as to the adulterous relationship of the complainant's son with another woman and having a child from said relationship then the disputes arose and the complainant now as a counter blast has filed the present domestic violence case against the respondent and seeks eviction of the respondent by moving this application and by claiming urgency. Several complaints made by complainant or her husband has been placed on record. **The said complaints needs to be investigated upon and at this stage cannot be believed to be true, further there is no medical record i.e. MLC etc. as to the injuries having been sustained by the complainant or her husband and no FIR is registered on the said complaints.** Prima-facie this court is of the opinion that the relationship between the parents and son are peaceful and same is also manifest from the fact that present complaint has been filed against the daughter in law only and not against her son by the complainant, it seems that the complainant is colluding with her son , in such a situation when they have been living as a part of joint family there is obligation to maintain and to provide shelter to the daughter-in-law not only of the husband but also her in-laws. However the complainant would be entitled to seek eviction of the daughter-in-law by filing appropriate case against her for seeking the said relief. The judgements relied upon by counsel for petitioner pertains to civil cases, judgements and orders passed in civil proceedings and further does not apply to the facts and circumstances of the present case and also in view of the latest judgement of Satish **Chander Ahuja Vs. Sneha Ahuja (2021) 1 SCC 414, Prabha Tyagi Vs. Kamelsh Devi 192022) DMC 308 SC** the right of residence of respondent needs to be protected. Therefore in view of proviso to Section 19(1) DV and the observations made above the right of residence of respondent needs to be protected, therefore application seeking interim relief seeking direction to respondent to vacate the shared household is dismissed."*

(Emphasis supplied)

5. The aforesaid findings of the Trial Court are noteworthy as the substance of the present petition is similar to the aforesaid dismissed applications seeking eviction of the Respondent from the shared household. The Trial Court has observed that there is no documentary evidence submitted regarding the domestic violence by Respondent as alleged by the Petitioner. The order dated 15.09.2022 records that the Petitioner, her husband, the Respondent have been living and co-existing peacefully in the shared household for the last 24 years.

6. This Court has put a query to the learned counsel for the Petitioner that in light of order dated 15.09.2022 the present proceedings are barred by *estoppel* as Petitioner is re-agitating similar, if not identical issues. In reply to the said query, the learned counsel for the Petitioner states that the order dated 15.09.2022 of the Trial Court has no bearing on the averments made in this contempt petition without explaining any further. This Court is unable to accept the said bald submission of the Petitioner. The Supreme Court in *K.K. Modi Vs. K.N. Modi (1998) 3 SCC 573 at paragraph 44* has held that if is same issue is sought to be re-agitated it also amounts to an abuse of the process of court.

7. There is nothing on record to substantiate that the removal of the Petitioner from the RWA WhatsApp group was at the behest of the Respondent. Even otherwise, this Court is unable to appreciate as to how removal of the Petitioner from a RWA WhatsApp group can constitute contempt of court or violation of order dated 06.07.2022. The contention of Petitioner that her removal from WhatsApp group amounts to dispossession is untenable in fact and law. It is trite law that

this Court has discretion to exercise its jurisdiction in contempt proceedings for maintenance of court's dignity and majesty of law; and that an aggrieved party has no right to insist that the court should exercise its jurisdiction, as held in *R.N. Dey and Ors. v. Bhagyabati Pramanik and Ors.*, (2000) 4 SCC 400. Thus, allegations in the petition, even if assumed to be correct are wholly inadequate for this Court to exercise its contempt jurisdiction.

8. Section 2(b) of Contempt of Courts Act, 1971 defines civil contempt as wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court. In *Kapildeo Prasad Sah & Ors. v. State of Bihar & Ors.*, (1999) 7 SCC 569, the Supreme Court has explained the ingredients of wilful disobedience in the following terms:

“9. For holding the respondents to have committed contempt, civil contempt at that, it has to be shown that there has been wilful disobedience of the judgment or order of the court. Power to punish for contempt is to be resorted to when there is clear violation of the court's order. Since notice of contempt and punishment for contempt is of far-reaching consequence, there powers should be invoked of only when a clear case of wilful disobedience of the court's order has been made out. Whether disobedience is wilful in a particular case depends on the facts and circumstances of that case. Judicial orders are to be properly understood and complied with. Even negligence and carelessness can amount to disobedience particularly when the attention of the person is drawn to the court's order and its implications. Disobedience of the court's order strikes at the very root of the rule of law on which our system of governance is based. Power to punish for contempt is necessary for the maintenance of effective legal system. It is exercised to prevent perversion of the course of justice.

“11. No person can defy the court's order. Wilful would exclude casual, accidental, bonafide or unintentional acts or genuine inability to comply with the terms of the order. A petitioner who

complains breach of the court's order must allege deliberate or contumacious disobedience of the court's order."

(Emphasis supplied)

9. The Petitioner admittedly continues to physically reside in the shared household and therefore this Court finds there has been no violation of the order dated 06.07.2022.

10. Accordingly, the present petition and the pending applications, if any, are dismissed.

MANMEET PRITAM SINGH ARORA, J

JANUARY 11, 2023

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