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

Date of decision: 01.09.2023

+ **CM(M) 617/2018&CM APPL. 21686/2018**

VIDYA DEVI & ORS

..... Petitioner

Through: Mr Aayush Agarwala, Advocate with
Petitioner No. 1 in person

versus

SHYAM LAL & ANR

..... Respondent

Through: Ms. Shweta Bari, Advocate for R-
1 along with R-1 in person

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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 (ORAL):

1. This Petition filed under Article 227 of the Constitution of India impugns the order dated 24.04.2018 passed by the Civil Judge, West District, Tis Hazari Courts, Delhi ('Executing Court') in Execution Proceedings No. 62372/2016 titled as "**Shyam Lal v. Sant Lal**" ('execution petition') whereby, the Executing Court dismissed (i) the application filed by the objectors i.e., Vidya Devi and Ashish filed under Section 26 of the Protection of Women from Domestic Violence Act, 2005 ('D.V. Act') and (ii) the review application filed by the objectors against the order dated 17.01.2018 dismissing the objection filed by Mr. Kishan.

1.1. For the sake of convenience, the parties are being referred to as per their original status and rank before the Trial Court. The Petitioners herein are objectors, the Respondent No. 1 is the Decree Holder ('DH') and



Respondent No. 2 is the Judgement Debtor ('JD') before the Executing Court.

Brief Facts:

2. It is stated that the DH has filed the execution petition with regard to a consent decree passed on 08.08.2014 whereby, the JD was directed to hand over the peaceful and vacant possession of the first floor of the suit property i.e., property bearing No. D4/32, Vashist Park, Pankha Road, New Delhi to the DH on or before 31.08.2014. The suit property measures 150 sq. yards. JD was in possession of the first floor of the suit property.

2.1. It is stated that DH and JD are real brothers and JD has transferred his share admeasuring 75 sq. yards of the suit property to DH.

2.2. It is stated that DH got a Sale Deed executed and registered on 08.01.2014 in his favour relying on the power of attorney dated 30.01.2001 executed by JD in his favour, with respect to JD's share in the suit property. In this manner DH acquired absolute title of the suit property admeasuring 150 sq. yards.

2.3. It is stated that JD undertook before the Civil Judge, West District, Tis Hazari Court, Delhi ('Trial Court') to vacate the first floor of the suit property on or before 31.08.2014 failing which it was agreed that the DH can execute the decree of possession. The decree dated 08.08.2014 has become final.

Submissions of the Respondent No. 1 i.e., Decree Holder

3. The learned counsel for the Respondent No.1 states that the JD's share of the suit property was sold by JD to DH.

3.1. She states that there has been no challenge to the said transfer by the



Petitioners and the sale deed dated 08.01.2014 makes the DH absolute owner of the suit property.

3.2. She states that the Petitioners and more specifically, Petitioner No. 1 herein was all the time aware about the transfer affected by the JD.

3.3. She states that in fact, DH herein is entitled to recover mesne profits from the Petitioners for not handing over the peaceful and vacant possession of the first floor of the suit property.

3.4. She states that the Petitioner No. 1 is not residing at the suit property and she and her family members (three sons) are residing in a separate house at Plot No. 69, Raghu Nagar, Delhi which is owned by her middle son Mr. Rohan Chaurasiya.

Findings

4. This Court has considered the submissions of the counsel for the parties and perused the paper-book.

5. The objections filed by Petitioner No. 3 herein i.e., Mr Kishan was dismissed by the Executing Court *vide* order dated 25.01.2017.

5.1. The Executing Court held that the applications filed by the Petitioners under Section 26 of the D.V. Act is not maintainable and is beyond the jurisdiction of the Executing Court.

5.2. The Executing Court held that there was no domestic relationship between the parties and more specifically, the Court held that no application can be maintained by Petitioner No. 3 under the DV Act.

5.3. The Executing Court opined that the objections have been filed to obstruct the execution proceedings and dismissed the said application with costs.

6. The Executing Court *vide* order dated 17.01.2018 dismissed the



objections filed by Petitioner No. 1 and Petitioner No. 2 in holding that there is no provision under Order XXI Rule 58 CPC to stay the proceedings of execution to await the conclusion of the petition filed by Petitioner No. 1 under the D.V. Act on 22.11.2014.

6.1. The Petitioner Nos. 1 and 2 filed an application for review of the order dated 17.01.2018. The said review application has been dismissed by the Executing Court *vide* impugned order dated 24.04.2018.

6.2. The Executing Court observed that all reliefs claimed by the Petitioner No.1 i.e., Vidya Devi are based on the premise that the suit property is a shared household under the provisions of D.V. Act.

6.3. The Executing Court held that since the Petitioner No. 1 has filed a substantive petition under Section 12 of the D.V. Act before the MM, Patiala House Court, Delhi ('Mahila Court') being CC No. 23771/216 titled as "**Vidya Devi v. Sant Lal**"; the objections filed in the execution proceedings on the same ground are not maintainable.

6.4. The Executing Court also returned the finding that the Petitioners do not have a domestic relationship with the DH and for this additional reason, no relief can be sought against the DH under the D.V. Act and no reliance can be placed on the said provisions for injuncting the execution of the decree. This finding has also been returned by the Mahila Court as discussed hereinafter.

7. The notice was issued in this petition on 10.07.2018 and an interim order was granted in favour of the Petitioners herein directing that the Petitioners shall not be evicted from the first floor of the suit property.

8. When the matter was called out for hearing today, the learned counsel for the Petitioners has apprised this Court that the application filed by Petitioner No. 1 herein, under Section 12 of the D.V. Act has been dismissed



by the Competent Court on 28.11.2022. A copy of the said judgement has been handed over to this Court during the course of hearing and provided to the counsel for the DH. The said judgment is taken on record.

9. A perusal of the said judgement shows that the Mahila Court has returned a finding that the Petitioner No. 1 has no domestic relationship with the DH. Further, with respect to the claim for relief of residence under Section 19 of the D.V. Act; the Mahila Court after considering the submissions of the Petitioner No. 1 has rejected the said relief and held that Petitioner No. 1 is not entitled to claim the relief of residence against the DH. The operative portion of the judgement reads as under: -

“15. The complainant has also claimed the relief of residence under section 19 of PWDV act. She has claimed the relief that she be not dispossessed from the shared household and the respondent be removed from the shared household. The complainant has claimed that she has been threatened by the respondents to vacate the shared household i.e., D-4/32, first floor, Vashistha park, Delhi. She has stated that she has grave apprehension of dispossession from the shared household. Aggrieved has claimed that the respondent no. 1 and respondent no. 2 (who is not summoned by this court) acted in collusion and both of them conspired together and got a collusive decree passed with the intention to get the appellant evicted from her residential premises which was a shared household. The aggrieved has relied on EX CW1/F i.e., compromise decree passed by LD Civil court dated 08.08.2014 in support of her contentions. Therefore, the aggrieved by way of present application is seeking the relief that she may not be disposed from her shared household i.e., D-4/32, First floor, Vashistha Park, Delhi pursuant to decree of the civil court.

16. Under section 19 of PWDV act, every woman has a right to reside in her shared household irrespective of the fact whether she has any other right or share in the property in question. However, the said right is not an absolute right. Under section 19 of PWDV Act, the respondents, who share a domestic relationship with the aggrieved can be restrained from dispossessing the aggrieved from the shared household otherwise in accordance with the procedure established by law. The object and intention of the legislation was to protect women from being forcefully dispossessed from their shared household. In the present case, the decree holder i.e., respondent no. 2 is not a party to the case since he has not been summoned by the court. Further admittedly a decree has passed against the aggrieved and the execution proceeding qua the the said property is pending



consideration. The execution proceedings have been adopted as per the procedure established by law. By way of present application, the execution proceedings cannot be interfered with. Further admittedly the said premises has been alienated by respondent no. 1 before the filing of the present application. Therefore, in the opinion of court, no grounds for passing any order regarding the premises i.e., D-4/32, first floor, Vashistha Park, Delhi is made out. Therefore, this relief is denied to the aggrieved.”

(Emphasis supplied)

10. The said order has become final as Petitioner No. 1 has admittedly not assailed the judgement dated 28.11.2022.

11. Pertinently, in the said judgement, the Mahila Court has also returned a finding that Petitioner No. 1 has failed to establish that she has been subjected to any domestic violence by the JD i.e., Respondent No. 2 herein.

11.1. The learned counsel for the Respondent No. 1 stated that the Petitioner No. 1 is not residing at the suit property. She states that Petitioner No. 1 is residing with her middle son, Mr Rohit Chaurasia, who owns his independent property at Plot No. 69, First Floor, Raghu Nagar, Delhi. She states that the Petitioner No. 1 has three adult sons aged 30, 32 and 34 respectively. Petitioner No. 2 is 34 years old and Petitioner No. 3 is 30 years old and in fact, has his independent business of cloth.

11.2. The aforesaid facts were confirmed by Petitioner No. 1, who was present in Court. She however, stated that since there is no electricity or water connection in the first floor of the suit property, she is not residing on the first floor.

11.3. In the judgment dated 28.11.2022 passed by Mahila Court it has been recorded that the Petitioner last resided at the first floor of the suit property till 2002. The said Court also held that Petitioner has no domestic relationship with DH.

11.4. The aforesaid submissions and facts show that Petitioners herein are



not residing at the first floor of the suit property and therefore the entire basis for raising objections to recovery of possession is without any basis.

12. In the aforesaid facts and circumstances, where the only ground raised by the Petitioner No. 1 before the Executing Court was to seek a stay of the said proceedings to await the outcome of the decision of the proceedings initiated by her before the Mahila Court in D.V. Act, with the dismissal of the said petition on 28.11.2022; the challenge raised in the present petition to the impugned order dated 24.04.2018 does not survive.

13. The Petitioner Nos. 2 and 3 were admittedly not the Petitioners in the complaint filed before the Mahila Court and therefore, they have no separate right to object to the execution of the decree.

14. It has come on record that the Petitioner is not residing at the suit property and the same is lying locked. There is no dispute that the right, title and interest in the said property of JD stands transferred to DH by decree dated 08.08.2014 and sale deed dated 08.01.2014.

15. In these circumstances, there is no merit in this petition and the same is accordingly dismissed and interim order dated 10.07.2018 stands vacated forthwith.

MANMEET PRITAM SINGH ARORA
(JUDGE)

SEPTEMBER 1, 2023/rhc/asb