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

+ **TR.P.(C.) 152/2023**

SANGEETA

..... Petitioner

Through: Mr. Amit Negi and Mr.
Ksheetej Rajput, Advs.

Versus

NEETU

..... Respondent

Through: Mr. D Hasija, Ms Prachi Hasija,
Mr Surya Shekhar Kumar and Mr Kushal
Kumar, Advocates

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT (ORAL)

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09.01.2024

TR.P.(C.) 152/2023

1. This petition under Section 24 of the Code of Civil Procedure, 1908 (CPC) seeks transfer of suit SCJ 754/2018 (*Sangeeta v. Neetu*), presently pending before the learned Civil Judge, Central District, Tis Hazari Courts, Delhi to the Family Court, Central District, Tis Hazari Courts, Delhi.

2. The petitioner Sangeeta, through Mr. Amit Negi, learned Counsel, predicates her case on the judgment of this bench in *Avneet*



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***Kaur v. Sadhu Singh*¹.**

3. Mr. Hasija, learned Counsel for the respondent, *per contra*, submits that the facts of the present case do not attract the ratio in ***Avneet Kaur***.

4. All that has to be seen, therefore, is whether the fact of the present case attracts the ratio of ***Avneet Kaur***. If they do, Sangeeta would be entitled to the transfer of her case to the Family Court as sought. If they do not, the request has to be rejected.

5. For this, what has to be seen is the case that Sangeeta sets up in the plaint.

6. In the plaint, Sangeeta sets up the following case.

(i) Sangeeta and Neetu were the plaintiff and the defendant in the suit. Neetu is the sister-in-law of Sangeeta, having been married to her brother, Kamal Kumar Gulati (“Kamal”, hereinafter). Sita Rani is the mother of Sangeeta and Kamal and the mother-in-law of Neetu.

(ii) The suit property was purchased jointly by Sita Rani and Kamal.

(iii) Sita Rani sold her share to Kamal on 4 August 2004.



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(iv) On 4 July 2011, Kamal sold the suit property to Sita Rani and the plaintiff Sangeeta. As such, no right of Kamal survived in the suit property.

(v) By a Will dated 10 February 2012, Sita Rani bequeathed the suit property to Sangeeta.

(vi) On 17 October 2017, Sita Rani expired.

(vii) Sangeeta claims to have been permitted Kamal and Neetu, to continue to stay in the suit property as permissive licensees. (Mr. Negi submits that Kamal left the suit property and Neetu continued to reside there as a permissive licensee, though there is no such specific averment of permissive licensees in the plaint.)

(viii) In November 2017, Sangeeta terminated the licence of Neetu to continue to stay in the suit property and required her to vacate.

7. As Neetu did not vacate the suit property, SCJ 754/2018 was instituted by Sangeeta against Neetu seeking

(i) a decree of permanent injunction restraining Neetu from creating any third party interest in respect of the suit property, and



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(ii) a decree of mandatory injunction directing Neetu to hand over vacant and peaceful possession of the suit property to Sangeeta, apart from costs.

8. As already noted, the suit is presently pending before the learned Civil Judge, Central District, Tis Hazari Courts. Sangeeta prays, by this Transfer Petition, that the suit may be transferred from the Civil Court to the Family Courts, Central District, Tis Hazari Courts, Delhi.

9. For this purpose, she places reliance, as already noted, on the judgment in *Avneet Kaur*.

10. The facts in *Avneet Kaur* require, therefore, to be noted to ascertain whether they do or do not parallelize the facts in the present case.

11. *Avneet Kaur*

11.1 Avneet Kaur was the wife of S. Pardip (“Pardip”, hereinafter), who was the son of the respondents before this Court in that case.

11.2 The respondents alleged that, a few months into the marriage, Avneet Kaur started behaving abnormally towards them, and also involved them in false criminal cases. The relationship between Avneet Kaur and Pradip, too, became strained. Repeated attempts, by the respondents, to pacify Avneet Kaur and salvage the marriage of



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Avneet Kaur and Pardip did not bear fruit. Avneet Kaur also sent telephonic messages to Respondent 2, her mother-in-law alleging that she was spoiling her family life. On 29 December 2015, according to the plaint, Pardip gifted 50% of his share of the suit property, which was the matrimonial home of Avneet Kaur, to his mother-in-law, i.e. Respondent 2. Respondent 2 thereby became absolute owner of 50% in the suit property. Owing to continue persecution by Avneet Kaur, the plaint alleged that Pardip had also left the suit property and shifted elsewhere. It was in these circumstances that the respondents, i.e. the parents of Pardip and parents-in-law of Avneet Kaur, instituted a suit against Avneet Kaur, seeking a decree of permanent injunction restraining her from entering the suit property and a decree of mandatory injunction directing her to remove all her belongings from the suit property.

11.3 Avneet Kaur moved an application seeking transfer of the proceedings to the Family Court. The application was rejected by the learned Senior Civil Judge by order dated 30 October 2019. The said order was carried by Avneet Kaur to this Court by way of a writ petition instituted under Article 227 of the Constitution of India, which had come to be decided by this Bench by the judgment under reference.

12. The dispute in that case – as in this – revolved around the interpretation of Explanation (d) to Section 7(1)² of the Family Courts

² 7. **Jurisdiction.** –

(1) Subject to the other provisions of this Act, a Family Court shall—



Act, 1984. “A suit or proceeding for an order or injunction *in circumstances arising out of marital relationship*” would, as per the said Explanation, fall within the jurisdiction of the Family Court. Where a proceeding falls within the jurisdiction of the Family Court, all other Courts are, by operation of Section 8(a)³ of the Family Courts Act proscribes the civil court from dealing with any matter which has necessarily to be heard and decided by the Family Courts.

13. As in the present case, this Court was concerned, in *Avneet Kaur*, with the issue of whether there existed the necessary causal relationship between the circumstances in which the suit had been instituted and the marriage of the parties, as would justify relegating the matter to the Family Court.

14. This Court has dealt with the issue in paras 26 to 33 of the said

(a) have and exercise all the jurisdiction exercisable by any district court or any subordinate civil court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the Explanation; and

(b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a district court, as the case may be, such subordinate civil court for the area to which the jurisdiction of the Family Court extends.

Explanation. —The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely: —

(d) a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship;

³ 8. Exclusion of jurisdiction and pending proceedings. — Where a Family Court has been established for any area,—

(a) no district court or any subordinate civil court referred to in sub-section (1) of Section 7 shall, in relation to such area, have or exercise any jurisdiction in respect of any suit or proceeding of the nature referred to in the Explanation to that sub-section;

(c) every suit or proceeding of the nature referred to in the Explanation to sub-section (1) of Section 7 and every proceeding under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974),—

(ii) which would have been required to be instituted or taken before or by such Family Court if, before the date on which such suit or proceeding was instituted or taken, this Act had come into force and such Family Court had been established,

shall stand transferred to such Family Court on the date on which it is established.



decision thus:

“26. Unquestionably, the dispute in this case revolves around Clause (d) of explanation to Section 7 (1) of the Family Courts Act. A mere glance at the provision indicates that it has been worded in careful and cautious terms. It states that a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship would lie exclusively before the Family Court.

27. What has to be seen is whether the circumstances in which the order or injunction is sought in the present case arise out of a marital relationship. The test is not whether the cause of action, forming the basis of the prayer for injunction, arises out of a marital relationship or whether the marital relationship is the reason for the grievance ventilated by the plaintiff. All that has to be seen are the circumstances in which the injunction is sought. Once the Court identifies the circumstances, if those circumstances arise out of a marital relationship, Clause (d) of the Explanation to Section 7 (1) of the Family Courts Act would *ipso facto* be attracted.

28. Explanation (d) in Section 7 (1) of the Family Courts Act does not, either expressly or by necessary implication, require the parties to the *lis* to be husband and wife. Clearly, in so opining, the learned SCJ has effectively re-written the statutory provision. There is nothing in Clause (d) of the explanation to Section 7 (1) of the Family Courts Act in which indicates that the clause would apply only where the litigation is between husband and wife. For the clause to apply, all that is required is that (i) there is a marital relationship, (ii) the marital relationship has resulted in a certain set of circumstances and (iii) the order or injunction which is sought in the suit is sought in those circumstances.

29. Applying these tests to the case at hand, if one examines the plaint, and the case set up by the respondents in the plaint, it is clear that the circumstances in which injunction has been sought by them have arisen out of the marital relationship between the petitioner and Pardip. Had the petitioner not married Pardip, she would never have been the daughter-in-law of the respondents, she would never have come to stay in the residence of the respondents, the respondents would never have given her any permissive licence to reside therein, and the entire chiaroscuro of events, which have been emphasised in the plaint by the plaintiffs, to highlight the alleged ignominy and persecution to which petitioner allegedly subjected the respondents, would not be in existence. The fact that the petitioner married the respondents' son was the foundation of the relationship that emerged between the petitioner



and the respondents, and *it was in the circumstances which arouse out of that relationship* that the entire dispute between the respondents and the petitioner, as per the allegations contained in the plaint, filed by the respondents, arose.

30. The words "arising out of" have been held, by the Supreme Court, in several decisions, to be words of wide amplitude. One may refer, in this context, to the judgments of the Supreme Court in *Renusagar Power Company Ltd. v. General Electric Co.*⁴, *Dhanrajmal Govindram v. Shamji Kalidas*⁵ and *Doypack Systems Ltd. v. Union of India*⁶. In *State of Orissa v. State of Andhra Pradesh*⁷, the Supreme Court held that the expression "arising out of" is wider in scope than the expression "arising under" and would include matters not only "arising under" but also matters "connected with" the instrument under consideration in that case.

31. Applying the understanding of the expression "arising out of" as contained in the afore cited decisions of the Supreme Court, it is clear that the circumstances in which the allegedly offending acts of the petitioner, against the respondents, from which the entire dispute in the suit filed by the respondents against the petitioner germinated, arose out of the marital relationship between the petitioner and the respondent.

32. I deem it necessary to emphasize, in this context, that Clause (d) of the explanation to Section 7 (1) of the Family Courts Act does not envisage a causal relationship, i.e. a relationship of cause and effect, between the marital relationship and the circumstances in which injunction was sought. All that is required is that the circumstances in which injunction was sought *arose out of* the marital relationship. A holistic reading of the case set up by the respondents against the plaintiff in suit 12114/2016 clearly indicates that the circumstances in which injunction was sought by the respondents against the petitioner did arise out of the marital relationship between the petitioner and Pardip, the son of the respondents.

33. That being so, in my view, the case squarely falls within Clause (d) of the explanation to Section 7 (1) of the Family Courts Act."

⁴ (1984) 4 SCC 679

⁵ AIR 1961 SC 1285

⁶ (1988) 2 SCC 299

⁷ (2006) 9 SCC 591



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15. Mr. Hasija, learned Counsel for Neetu, sought to distinguish the present case from *Avneet Kaur* by pointing out that Sangeeta had never averred, in the plaint, that she had permitted the defendant to stay in the suit property as a licensee. Her avowed stand was that Kamal had been permitted to stay in the suit property in that capacity. Additionally, it was not averred that permissive licence to stay was granted to Kamal on account of any circumstances relatable to the marriage between Kamal and Neetu. In that view of the matter, Mr. Hasija submits that the necessary causal connect between the marriage of Kamal and Neetu and the plaint filed by Sangeeta, was conspicuously absent. This case, therefore, he submits, cannot be analogized to *Avneet Kaur*.

16. I am unable to accept the submissions. In my view, there are stark similarities between the facts of the present case and those in *Avneet Kaur*. This would be apparent even from a comparison of the facts in the present case as set out in para 6 to 7 *supra vis-à-vis* the facts in *Avneet Kaur* as set out in para 11 *supra*.

17. The question is not whether the grievance in the suit has arisen out of the matrimonial relationship. As has been noted in *Avneet Kaur*, the words used in Explanation (d) to Section 7(1) of the Family Courts Act are conscious and circumspect. The clause states that a proceeding for an order or *injunction in circumstances arising out of a marital relationship* would have to be heard by the Family Court.

18. The question, therefore, is whether the order or injunction in the



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present case had been sought *in circumstances which arise out of a marital relationship* – more specifically, in circumstances which arose out of the marital relationship between Neetu and Kamal.

19. The answer can only be in the affirmative.

20. As in *Avneet Kaur*, there is no dispute, in the present case, that Neetu was continuing to stay in the suit property only because of the fact that she was Kamal's wife. Had Neetu not married Kamal, she would not have been residing in the suit property at all, and the entire dispute would not have arisen. The continuation of Neetu in the suit property, which is what the petitioner seeks to injunct in the plaint is, therefore, wholly and solely attributable to the fact that Neetu happened to be the wife of Kamal.

21. As such, the necessary causal relationship between the relief sought in the plaint and the marriage between Kamal and Neetu has certainly been made out. The case, as already noted, earlier, is eerily similar to that which was before the Court in *Avneet Kaur*.

22. Moreover – though this may not be a determinative circumstance – a major stand of Neetu, in her defence to the suit, is that the suit property is her matrimonial home, as she is the wife of Kamal. The marital relationship between Neetu and Kamal, therefore, is both the provocation for Sangeeta having had to institute the suit against Neetu, as well as the substratum of the defence that Neetu seeks to advance by way of response thereto.



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23. Simply stated, had Neetu not chosen to marry Kamal, this whole dispute would not have arisen.

24. In these circumstances, in my considered opinion, Suit SCJ 754/2018 is clearly a “proceeding for an order or injunction in circumstances arisen out of marital relationship”, as envisaged by Explanation (d) to Section 7(1) of the Family Courts Act.

25. **Avneet Kaur** applies, and it applies on all fours.

26. In view of the aforesaid, there is merit in Sangeeta’s prayer for transfer of the proceedings in the present case, as the learned Civil Court would be *coram non judice* to deal with the present matter in the light of Section 7(1) read with Explanation (d) thereto and Section 8(a) of the Family Courts Act.

27. The request of the petitioner, therefore, requires to be granted.

28. As such, SCJ 754/2018 (**Sangeeta v. Neetu**), presently pending before the learned Civil Judge, Central District, Tis Hazari Courts, Delhi shall stand transferred to the Family Court, Central District, Tis Hazari Courts, Delhi.

29. The Registry in the Tis Hazari Courts is directed to take expeditious steps to transmit the records from the earlier Court to the transferee Court.



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30. The petition stands allowed in the aforesaid terms.

31. It is clarified that this judgment only considers the aspect of whether the case falls within the jurisdiction of the learned Civil Judge or the Family Court in the light of the Family Courts Act. It does not decide any other aspect and shall not, therefore, have any impact either on the merits of the suit or on the application filed by the defendants (in the said suit) under Order VII Rule 11 of the CPC.

C.HARI SHANKAR, J

JANUARY 9, 2024

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Click here to check corrigendum, if any