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

\+ **Crl. M.C. No. 725/2011 & Crl. M.A. No.2797/2011 (Stay)**

% Reserved on: 19th July, 2011

Decided on: 2nd September, 2011

KUSUM LATA SHARMA ..... Petitioner

Through: Mr. Atul Verma, Advocate

versus

STATE & ANR. ..... Respondents

Through: Mr. Pawan Bahl, APP for the State
Mr. M.S. Jadhav, Adv. for R-2.

Coram:
HON'BLE MS. JUSTICE MUKTA GUPTA

1. Whether the Reporters of local papers may be allowed to see the judgment? Not Necessary

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

MUKTA GUPTA, J.

1. The Petitioner, one of the Respondents in a Complaint Case No. 40/2011, PS Hauz Khas, New Delhi titled as "Ms. Shakuntala Sharma vs. Nagender Vashishtha & Ors" received summons from the Court of learned Metropolitan Magistrate under Section 12 of the Protection of Women from

Domestic Violence Act, 2005(in short the 'Act') to appear on 8th March, 2011. The Petitioner states that the Complainant/Respondent No. 2 is her mother-in-law who is having property dispute with the Petitioner's husband since 2005 and in order to coerce the Petitioner's husband to forego his share in the property left behind by Petitioner's father-in-law, the Respondent no.2 has filed the complaint.

2. It is contended that the object of the Act was for redressal of married women who were subjected to cruelty by their husband or in-laws. The object of the Act clearly states that it does not enable any relative of the husband or the male partner to file a complaint against the wife or the female partner. Thus in a nutshell the contention is that a mother-in-law cannot take recourse to the proceedings under Section 12 of the Act to file a complaint against the daughter-in-law.

3. The learned counsel for the Petitioner relies upon the object of the Act and contends that as per para '2' and '4' of the Statements of Objects & Reasons of the Act, the Act was enacted to address to the phenomena of cruelty inflicted under Section 498A IPC in its entirety. It is further contended that as per Section 2, the Respondent means any adult male person who is or has been in a relationship with the aggrieved person and against whom any relief has been sought under this Act. The proviso to Section 2(q)

which provides that an aggrieved wife or female living in a relationship in the nature of marriage may also file a complaint against a relative or the husband or the male partner does not include a female relative.

4. The issue whether the 'females' are included or not in the definition of 'Respondent' in Section 2(q) of the Act came up for consideration before the Hon'ble Supreme Court in *Sou. Sandhya Manoj Wankhade vs. Manoj Bhimrao Wankhade & Ors., 2011 (3) SCC 650* wherein their Lordships held:-

> *13. It is true that the expression "female" has not been used in the proviso to Section 2(q) also, but, on the other hand, if the Legislature intended to exclude females from the ambit of the complaint, which can be filed by an aggrieved wife, females would have been specifically excluded, instead of it being provided in the proviso that a complaint could also be filed against a relative of the husband or the male partner. No restrictive meaning has been given to the expression "relative", nor has the said expression been specifically defined in the Domestic Violence Act, 2005, to make it specific to males only.*
>
> *14. In such circumstances, it is clear that the legislature never intended to exclude female relatives of the husband or male partner from the ambit of a complaint that can be made under the provisions of the Domestic Violence Act, 2005.*
>
> *15. In our view, both the Sessions Judge and the High Court went wrong in holding otherwise, possibly being influenced by the definition of the expression "Respondent" in the main body of Section 2(q) of the aforesaid Act.*
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> *16. The Appeal, therefore, succeeds. The judgments and orders, both of the learned Sessions Judge, Amravati, dated 15th July, 2009 and the Nagpur Bench of the Bombay High Court dated 5th March, 2010, in Crl. Writ Petition No. 588 of 2009 are set aside.*

Consequently, the trial Court shall also proceed against the said Respondent Nos. 2 and 3 on the complaint filed by the Appellant"

5. Division Bench of this Court in *"Varsha Kapoor vs. UOI & Ors. 2010 VI AD(Delhi) 472* interpreting Section 2(q) of the Act also came to the same conclusion. Thus the issue whether under Section 2(q) of the Act "the female relative" would be inclusive in the definition is no more res integra. The Division Bench held as under:-

> "12. When we interpret the provisions of Section 2 (q) in the context of the aforesaid scheme, our conclusion would be that the petition is maintainable even against a woman in the situation contained in proviso to Section 2(q) of the DV Act. No doubt, the provision is not very satisfactorily worded and there appears to be some ambiguity in the definition of 'respondent' as contained in Section 2 (q). The Director of Southern Institute for Social Science Research, Dr. S.S. Jagnayak in his report has described the ambiguity in Section 2(q) as "Loopholes to Escape the Respondents from the Cult of this Law" and opined in the following words:
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> > "As per Section 2 Clause (q) the respondent means any adult male person who is or has been in a domestic relationship. Hence, a plain reading of the Act would show that an application will not lie under the provisions of this Act against a female. But, when Section 19(1) proviso is perused, it can be seen that the petition is maintainable, even against a lady. Often this has taken as a contention, when ladies are arrayed as respondents and it is contended that petition against female respondents are not maintainable. This is a loophole which should be plugged."
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> 13. But then, Courts are not supposed to throw their hands up in the air expressing their helplessness. It becomes the duty of the Court to give correct interpretation to such a provision having

regard to the purpose sought to be achieved by enacting a particular legislation. This so expressed by the Supreme Court in the case of *Ahmedabad Municipal Corpn. Anr.* Vs. *Nilaybhai R. Thakore & Anr.* [(1999) 8 SCC 139 in the following words:

> "14. Before proceeding to interpret Rule 7 in the manner which we think is the correct interpretation, we have to bear in mind that it is not the jurisdiction of the court to enter into the arena of the legislative prerogative of enacting laws. However, keeping in mind the fact that the Rule in question is only a subordinate legislation and by declaring the Rule ultra vires, as has been done by the High Court, we would be only causing considerable damage to the cause for which the Municipality had enacted this Rule. We, therefore, think it appropriate to rely upon the famous and oft-quoted principle relied by Lord Denning in the case of Seaford Court Estates Ltd. v. Asher [1994] 2 All ER 155 wherein he held : "When a defect appears a judge cannot simply fold his hand and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament and then he must supplement the written words so as to give 'force and life' to the intention of the Legislature. A judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do as they would have done. A judge must not alter the material of which the Act is woven, but he can and should iron out the creases". This statement of law made by Lord Denning has been consistently followed by this Court starting in the case of M. Pentiah and Ors. v. Muddala Veeramallappa and Ors. : [1961]2SCR295 and followed as recently as in the case of S. Gopal Reddy v. Slate of Andhra Pradesh : 1996CriLJ3237 . Thus, following the above Rule of interpretation and with a view to iron out the creases in the impugned Rule which offends Article 14, we interpret Rule 7 as follows : "Local student means a student who has passed H.S.C./New S.S.C.

> examination and the qualifying examination from any of the High Schools or Colleges situated within the Ahmedabad Municipal Corporation limits and includes a permanent resident student of Ahmedabad Municipality who acquires the above qualifications from any of the High School or College situated within Ahmedabad Urban Development Area."

14. This Court also followed the aforesaid principles in the case of *Star India P. Ltd.* Vs. *The Telecom Regulatory Authority of India and Ors.* [146 (2008) DLT 445 (DB) in the following words:

> "28. It is also a firmly entrenched principle of interpretation of statutes that the Court is obliged to correct obvious drafting errors and adopt the constructive role of 'finding the intention of Parliament... not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it' as enunciated in State of Bihar v. Bihar Distillery Ltd.: AIR1997SC1511 . The Court should also endeavor to harmoniously construe a statute so that provisions which appear to be irreconcilable can be given effect to, rather than strike down one or the other. It must also not be forgotten that jural presumption is in favor of the constitutionality of a statute."

15. Having regard to the purpose which the DV Act seeks to achieve and when we read Section 2 (q) along with other provisions, out task is quite simple, which may in first blush appear to be somewhat tricky. We are of the considered view that the manner in which definition of 'respondent' is given under Section 2(q) of DV Act, it has to be segregated into two independent and mutually exclusive parts, not treating proviso as adjunct to the main provision. These two parts are:

> a) Main enacting part which deals with those aggrieved persons, who are 'in a domestic relationship'. Thus, in those cases where aggrieved person is in a domestic

relationship with other person against whom she has sought any relief under the DV Act, in that case, such person as respondent has to be an adult male person. Given that aggrieved person has to be a female, such aggrieved person in a domestic relationship can be a mother, a sister, a daughter, sister-in-law, etc.

b) Proviso, on the other hand, deals with limited and specific class of aggrieved person, viz. a wife or a female living in relationship in the nature of marriage. First time by this legislation, the legislator has accepted live in relationship by giving those female who are not formally married, but are living with a male person in a relationship, which is in the nature of marriage, also akin to wife, though not equivalent to wife. This proviso, therefore, caters for wife or a female in a live in relationship. In their case, the definition of 'respondent' is widened by not limiting it to 'adult male person' only, but also including 'a relative of husband or the male partner', as the case may be.

What follows is that on the one hand, aggrieved persons other than wife or a female living in a relationship in the nature of marriage, viz., sister, mother, daughter or sister-in-law as aggrieved person can file application against adult male person only. But on the other hand, wife or female living in a relationship in the nature of marriage is given right to file complaint not only against husband or male partner, but also against his relatives.

16. Having dissected definition into two parts, the rationale for including a female/woman under the expression „relative of the husband or male partner" is not difficult to fathom. It is common knowledge that in case a wife is harassed by husband, other family members may also join husband in treating the wife cruelty and such family members would invariably include female relatives as well. If restricted interpretation is given, as contended by the petitioner, the very purpose for which this Act is enacted would be defeated. It would be very easy for the

husband or other male members to frustrate the remedy by ensuring that the violence on the wife is perpetrated by female members. Even when Protection Order under Section 18 or Residence Order under Section 19 is passed, the same can easily be defeated by violating the said orders at the hands of the female relatives of the husband.

19. It is also well-recognized principle of law that while interpreting a provision in statute, it is the duty of the Court to give effect to all provisions. When aforesaid provisions are read conjointly keeping the scheme of the DV Act, it becomes abundantly clear that the legislator intended female relatives also to be respondents in the proceedings initiated by wife or female living in relationship in the nature of marriage."

6. The next issue which arises for consideration is whether the word 'aggrieved person' in Section 2(a) of the Act has to be given a restricted meaning in view of the Statement of Objects & Reasons so as to include the daughter-in-law only and excludes only a mother-in-law, sister-in-law or daughter from its ambit. The relevant Sections read as under:-

"2(a) "aggrieved person" means any woman who is or has been in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent;

(b)……..

(c)……..

(d)……..

(e)……..

(f) "domestic relationship" means a relationship between two persons who live or have, at any point of time, lived together in a

shared household, when they are related by consanguinity, marriage or through a relationship in the nature of marriage, adoption or are family members living together as a joint family;"

7. Thus, a perusal of Section 2(a) and 2(f) of the Act shows that any woman who is in a domestic relationship, the said domestic relationship being one between two persons who lived at any point of time together in a shared household related by consanguinity, marriage or through a relationship in the nature of marriage, adoption or family members living as a joint family and alleges that she has been subjected to any domestic violence by the Respondent is entitled to relief under the Act.

8. The word 'aggrieved person' cannot be given a restricted meaning in view of para '2' of the Statement of Objects & Reasons which states that:-

"The phenomenon of domestic violence is widely prevalent but has remained largely invisible in the public domain. Presently, where a woman is subjected to cruelty by her husband or his relatives, it is an offence under Section 498A of the Indian Penal Code. The civil law does not however address this phenomenon in its entirety.

Thus, it is evident that phenomenon which was sought to be addressed was "domestic violence" and not "domestic violence qua the daughter-in-law or the wife only as contemplated under Section 498A.

9. As a matter of fact, para '4(i)' clarifies that even those women who are sisters, widows, mothers, single woman or living with the abuser are entitled

to legal protection under the proposed legislation. A mother who is being maltreated and harassed by her son would be an "aggrieved person". If the said harassment is caused through the female relative of the son i.e. his wife, the said female relative will fall within the ambit of the 'respondent'. This phenomenon of the daughters-in-law harassing their mothers-in-law especially who are dependent is not uncommon in the Indian society.

10. In view of the authoritative pronouncement of the Hon'ble Supreme Court, para '4' of the Statement of Objects and Reasons cannot be stated to have excluded a female relative of the male partner or a respondent and thus, a mother-in-law being an "aggrieved person" can file a complaint against the daughter-in-law as a respondent.

11. Thus, I find that no case for quashing of the complaint is made out. Petition and application are dismissed.

(MUKTA GUPTA)
JUDGE

SEPTEMBER 02, 2011
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