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

% Reserved on: 18th February, 2022
Decided on : 24th February, 2022

\+ **RFA 832/2018 & CM APPLN No.54495/2019**

RAVNEET KAUR ..... Appellant
Through : Mr.Sahilendra Bhardwaj and Ms.Aroma S Bhardwaj, Advocates.

versus

PRITHPAL SINGH DHINGRA ..... Respondent
Through : Mr.Rajat Wadhwa, Mr.Aman Kapoor, Mr.Lakshay Luthra, Mr.Aditya Varun, Advocates.

CORAM:
HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. This appeal is filed for setting aside the impugned judgment and decree dated 10.07.2018 passed in Civil Suit No.*613347/2016* by Additional District Judge-04 (West), Tis Hazari Courts, Delhi (hereinafter referred as the learned *Trial Court*). Before coming to the impugned judgment let us see the facts of the case.

2. The respondent herein claims to be an absolute and sole owner of the property bearing No.E-7, Second Floor, Front Side, Rajouri Garden, New Delhi-27 vide a registered sale deed 27.09.2004. He filed a suit for eviction against the defendant *viz*. his daughter-in-law. A decree of possession with damages equivalent to the market rent of the alleged illegal possession was passed against the appellant and also a decree of permanent injunction to restrain her from creating any third party right in such property.

3. It is submitted after the marriage of the son of respondent with appellant in the year 2003 both were residing together with the respondent, *firstly* in property No.D-1041, First Floor, New Friends Colony, New Delhi-65 and thereafter they shifted to the suit property when it was purchased in the year 2004.

4. It is the case of the appellant she being a legally wedded wife of respondent's son has been residing with her two minor daughters in one room with an attached bathroom and a balcony in the suit property, marked in the site plan.

5. The appellant in her written statement has alleged earlier she was residing with her husband at House No.D-1041, First Floor, New Friends Colony, New Delhi-65 which was purchased by S. Kesar Singh, the late father of respondent and the grandfather of appellant's husband. The said land was allotted to New Friends Colony Co-operative House Building Society vide lease deed dated 13.11.1963 of which S. Kesar Singh was a member. S. Kesar Singh then purchased the said property out of the joint family funds and paid sale proceeds from such funds, which he had collected from disposal of ancestral properties. After the death of S. Kesar Singh, the respondent and his siblings inherited the New Friends Colony property and other family businesses of his late father. In the year *2004* the respondent sold his share in the aforesaid property and out of such sale proceeds he purchased the subject property.

6. The respondent filed an application under Order *VI* Rule *17* CPC seeking amendment in the written statement to implead the facts qua S.Kesar Singh, HUF saying S.Kesar Singh, the Karta of

S.Kesar Singh and Sons (HUF) died in the year 1977 but her husband was born in the year 1976 and hence he became a coparcener of the said *HUF* created by his grandfather. The said application was, however, dismissed by the learned Trial Court. Admittedly no appeal was filed against such order.

7. Thus the main plea of the appellant was S. Kesar Singh had purchased the New Friends Colony property out of joint family funds and from sale proceeds of the ancestral property and after the death of S. Kesar Singh the subject property was purchased by the respondent from such ancestral funds, hence the suit property is a joint family property in which the appellant has also a right to reside.

8. After hearing the parties the impugned order was passed whereby a decree of possession was awarded to the respondent. It was held the property was a *self-acquired property* of the respondent and the appellant was residing in the property as his daughter-in-law and after termination of the license, she has no right to stay therein, thus the impugned order.

9. The learned counsel for the appellant, primarily, relied upon *Satish Chander Ahuja vs. Sneha Ahuja* AIR 2020 SC 5397 wherein the following questions were raised:

> *"(1) Whether definition of shared household under Section 2(s) of the Protection of Women from Domestic Violence Act, 2005 has to be read to mean that shared household can only be that household which is household of joint family or in which husband of the aggrieved person has a share?*
> *(2) Whether judgment of this Court in S.R. Batra and Anr. Vs. Taruna Batra, (2007) 3 SCC 169 has not correctly interpreted the provision of Section 2(s) of Protection of Women from Domestic Violence Act, 2005 and does not lay down a correct law?*
> *(3) Whether the High Court has rightly come to the conclusion that suit filed by the appellant could not have been decreed under Order XII Rule 6 CPC?*

(4) Whether, when the defendant in her written statement pleaded that suit property is her shared household and she has right to residence therein, the Trial Court could have decreed the suit of the plaintiff without deciding such claim of defendant which was permissible to be decided as per Section 26 of the Act, 2005?
(5) Whether the plaintiff in the suit giving rise to this appeal can be said to be the respondent as per definition of Section 2(q) of Act, 2005?
(6) What is the meaning and extent of the expression "save in accordance with the procedure established by law" as occurring in Section 17(2) of Act, 2005?"

10. These questions were answered as follows:

"64. In paragraph 29 of the judgment, this Court in S.R. Batra Vs. Taruna Batra (supra) held that wife is only entitled to claim a right to residence in a ***shared household and a shared household would only mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member.*** *The definition of shared household as noticed in Section 2(s) does not indicate that a shared household shall be one which belongs to or taken on rent by the husband. We have noticed the definition of* ***"respondent"*** *under the Act.* ***The respondent in a proceeding under Domestic Violence Act can be any relative of the husband.*** *In event, the shared household* ***belongs to any relative of the husband with whom in a domestic relationship the woman has lived, the conditions mentioned in Section 2(s) are satisfied and the said house will become a shared household.*** *We are of the view that this court in S.R. Batra Vs. Taruna Batra (supra) although noticed the definition of shared household as given in Section 2(s) but did not advert to different parts of the definition which makes it clear that for a shared household* ***there is no such requirement that the house may be owned singly or jointly by the husband or taken on rent by the husband****. The observation of this Court in S.R. Batra vs. Taruna Batra (supra) that definition of shared household in Section 2(s) is not very happily worded and it has to be interpreted, which is sensible and does not lead to chaos in the society also does not commend us. The definition of shared household is clear and exhaustive definition as observed by us. The object and purpose of the Act was to grant a right to aggrieved person, a woman of residence in shared household. The interpretation which is put by this Court in S.R. Batra Vs. Taruna Batra (supra) if accepted shall clearly frustrate the object and purpose of the Act. We, thus, are of the opinion that the interpretation of definition of shared household as put by this Court in S.R. Batra Vs. Taruna Batra (supra) is not correct interpretation and the said judgment does not lay down the correct law.*
86. The question which is posed for the consideration is, whether the learned Trial Court was justified in passing the decree on alleged admission under Order XII Rule 6 of the CPC or not. What is required to

be considered is what constitutes the admission warranting the judgment on admission in exercise of powers under Order XII Rule 6, CPC. This Court had occasion to consider above in decisions; Himani Alloys Limited Vs. Tata Steel Limited, (2011) 15 SCC 273 and S.M. Asif Vs. Virender Kumar Bajaj, (2015) 9 SCC 287.

96. In view of the ratio laid down by this court in the above case, the claim of the defendant that suit property is shared household and she has right to reside in the house ought to have been considered by the Trial Court and non-consideration of the claim/defence is nothing but defeating the right, which is protected by Act, 2005.

98. The power under Order XII Rule 6 is discretionary and cannot be claimed as a matter of right. In the facts of the present case, the Trial Court ought not to have given judgment under Order XII Rule 6 on the admission of the defendant as contained in her application filed under Section 12 of the D.V. Act. Thus, there are more than one reason for not approving the course of action adopted by Trial Court in passing the judgment under Order XII Rule 6. We, thus, concur with the view of the High Court that the judgment and decree of the Trial Court given under Order XII rule 6 is unsustainable.

118. Learned counsel for the appellant challenging the direction issued by the High Court that the husband of respondent be impleaded by the Trial Court by invoking suo moto powers under Order I Rule 10 CPC, submits that no relief having been claimed against the son of the appellant, he (son) was neither necessary nor proper party. Learned counsel for the appellant has relied on the judgments of this Court in Razia Begum Vs. Sahebzadi Anwar Begum and others, AIR 1958 SC 886 and Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay and others, (1992) 2 SCC 524.

121. The above direction is a little wide and preemptory. In event, the High Court was satisfied that impleadment of husband of defendant was necessary, the High Court itself could have invoked the power under Order I Rule 10 and directed for such impleadment. When the matter is remanded back to the Trial Court, Trial Court's discretion ought not to have been fettered by issuing such a general direction as noted above. The general direction issued in paragraph 56(i) is capable of being misinterpreted. ***Whether the husband of an aggrieved person in a particular case needs to be added as plaintiff or defendant in the suit is a matter, which need to be considered by the Court taking into consideration all aspects of the matter.***

157. From the above discussions, we arrive at following conclusions:-

(i) The pendency of proceedings under Act, 2005 or any order interim or final passed under D.V. Act under Section 19 regarding right of residence is not an embargo for initiating or continuing any civil proceedings, which relate to the subject matter of order in-

terim or final passed in proceedings under D.V. Act, 2005.

(ii) The judgment or order of criminal court granting an interim or final

relief under Section 19 of D.V. Act, 2005 are relevant within the meaning of Section 43 of the Evidence Act and can be referred to and looked into by the civil court.

(iii) A civil court is to determine the issues in civil proceedings on the basis of evidence, which has been led by the parties before the civil court.

(iv) In the facts of the present case, suit filed in civil court for mandatory and permanent injunction was fully maintainable and the issues raised by the appellant as well as by the defendant claiming a right under Section 19 were to be addressed and decided on the basis of evidence, which is led by the par- ties in the suit."

11. Further in *Sneh Ahuja vs. Satish Chander Ahuja and Ors.* MANU/DE/3061/2021 the Coordinate Bench of this Court held as follows:

"24. The Supreme Court had considered the right of residence under the DV Act which includes the right of alternate residence and held that the right of residence would depend on evidence being led on there being a shared household and domestic violence, which were to be pleaded and proved by way of evidence. The right to residence is closely connected to the aspect of 'shared household' and it is where situations were such that made it impossible for continued residence in a shared household, that the question of alternate residence would arise. ***The right to seek alternate residence thus flows from the right to a residence****. Technically, it is the aggrieved person who can file an application including under Section 19(1)(f) of the DV Act. However, this Court had in the judgment dated 18th December, 2019* ***permitted the husband and in-laws to move an application under Section 19(1)(f) of the DV Act even before the Civil Court where their suit was pending****.*

37. In the present case, the learned Trial Court seems to have been particularly keen to pass an eviction order against the petitioner without proper application of mind to all the circumstances that could justify such an order of eviction.

38. In light of the special circumstances in the present case that: (a) since marriage, the petitioner has been in occupation of the first floor; (b) ***the premises in her occupation was separate from the premises in occupation of the respondents****; (c) the subsistence of an injunction order in this very suit, restraining the petitioner from disturbing the possession of the respondents of the ground floor; (d) the fact that this order has not been violated by the petitioner; (e) the petitioner being pushed to file Execution Petitions to obtain the maintenance awarded to her; (f) the application moved by the petitioner for payment of the electricity charges in respect of the first floor of the premises where the petitioner is residing and the claim of the respondent No.2 that he did not have the means to do so; (g) the uncertainty, in these circumstances of the respondents meeting their obligation of paying rent regularly, and (h) finally, the prevailing*

circumstances of the pandemic when such an order was passed, all reflect the perversity and unreasonableness of the impugned order. The directions issued to the petitioner to shift out to a rented accommodation were most unwarranted."

12. Heard.

13. Admittedly, the suit for possession was filed by the respondent in August, 2016 on grounds; he being an absolute owner of the property; having terminated the license of appellant; the husband of appellant having shifted to some other place; various litigations being pending between the parties; the respondent had cancelled such license and was not inclined to live with his daughter-in-law. The suit was decreed under Order XII Rule 6 CPC.

14. The case of the respondent is the New Friends Colony's land was allotted in the year 1973 by the DDA to S. Kesar Singh, who later died on 17.10.1977 and both these events happened after passing of the Hindu Succession Act, 1956. He stated all the legal heirs of the New Friends Colony property thereafter relinquished their shares in favour of the respondent and his brother/Surender Singh. The respondent then sold his share in New Friends Colony's property and purchased the subject property and this is his self acquired property.

15. Admittedly, the husband of the appellant is not residing in the subject property since 2016 and the respondent had also undertaken he would provide an alternate property of same status to the appellant herein and hence in these circumstances *if* she can insist to stay in the subject property when her old parents in law intend to live a peaceful life, is to be answered. The first question is if it is an ancestral property?

16. In *Arshnoor Singh vs. Harpal Kaur and Ors.* AIR 2019 SC 3098 the Court held as under:

> *"6. The issues that arise for consideration before us are two-fold:*
> *(i) whether the suit property was coparcenary property or self-acquired property of Dharam Singh; (ii) the validity of the Sale Deeds executed on 01.09.1999 by Dharam Singh in favour of Respondent No. 1, and the subsequent Sale Deed dated 30.10.2007 executed by Respondent No. 1 in favour of Respondent Nos. 2 & 3.*
> *7. With respect to the first issue, it is the admitted position that Inder Singh had inherited the entire suit property from his father Lal Singh upon his death. As per the Mutation Entry dated 16.01.1956 produced by Respondent No. 1, Lal Singh's death took place in 1951. Therefore, the succession in this case opened in 1951 prior to the commencement of the Hindu Succession Act, 1956 when Inder Singh succeeded to his father Lal's Singh's property in accordance with the old Hindu Mitakshara law.*
> *7.1. xxxxx*
> *7.3. Under Mitakshara law, whenever a male ancestor inherits any property from any of his paternal ancestors* ***upto three degrees above him, then his male legal heirs upto three degrees below him****, would get an equal right as coparceners in that property.*
> *7.5. After the Hindu Succession Act, 1956 came into force, this position has undergone a change. Post – 1956,* ***if a person inherits a self-acquired property from his paternal ancestors, the said property becomes his self-acquired property, and does not remain coparcenary property****.*
> *7.6. If succession opened under the old Hindu law, i.e. prior to the commencement of the Hindu Succession Act, 1956, the parties would be governed by Mitakshara law. The property inherited by a male Hindu from his paternal male ancestor shall be coparcenary property in his hands vis-à-vis his male descendants upto three degrees below him. The nature of property will remain as coparcenary property even after the commencement of the Hindu Succession Act, 1956."*

17. Where S. Kesar Singh admittedly died in 1977, the succession opened after the commencement of 1956 Act, hence there is no basis to say the subject property was an ancestral property or there existed HUF.

18. The subject property, even otherwise, is admitted by the respondent to be *shared household*, hence *per* para *90* of the *Satish Chander* (supra) the Court was expected to maintain a balance between the rights of the parties. *Satish Chander Ahuja (supra)* rather noted:

"16. The High Court opined that the Trial Court erroneously proceeded to pass decree under Order XII Rule 6 CPC by not impleading the husband and failing to appreciate the specific submission of the appellant while admitting the title of the respondent that the suit premises was the joint family property but also losing the site of the DV Act. The directions given by the High Court are contained in the paragraph 56 to the following effect:

"56. In these circumstances, the impugned judgments cannot be sustained and are accordingly set aside. The matters are remanded back to the Trial Court for fresh adjudication in accordance with the directions given herein below:

(i)At the first instance, in all cases where the respondent's son/the appellant's husband has not been impleaded, the Trial Court shall direct his impleadment by invoking its suo motu powers under Order I Rule 10 CPC.

(ii) The Trial Court will then consider whether the appellant had made any unambiguous admission about the respondent's ownership rights in respect of the suit premises; if she has and her only defence to being dispossessed there from is her right of residence under the DV Act, then the Trial Court shall, before passing a decree of possession on the wife premise of ownership rights, ensure that in view of the subsisting rights of the appellant under the DV Act, ***she is provided with an alternate accommodation as per Section 19(1)(f) of the DV Act, which will continue to be provided to her till the subsistence of her matrimonial relationship****.*

(iii) In cases where the appellant specifically disputes the exclusive ownership rights of the respondents over the suit premises notwithstanding the title documents in their favour, the Trial Court, while granting her an opportunity to lead evidence in support of her claim, will be entitled to pass interim orders on applications moved by the respondents, directing the appellant to vacate the suit premises subject to the provision of a suitable alternate accommodation to her under Section 19(1)(f) of the DV Act, which direction would also be subject to the final outcome of the suit.

(iv) While determining as to whether the appellant's husband or the in-laws bears the responsibility of providing such alternate accommodation to the appellant, if any, the Trial Court may be guided by paragraph 46 of the decision in Vinay Verma (supra).

(v) The Trial Court shall ensure that adequate safeguards are put in place to ensure that the direction for alternate accommodation is not rendered meaningless and that a shelter is duly secured for the appellant, during the subsistence of her matrimonial relationship.

(vi) This exercise of directing the appellant to vacate the suit premises by granting her alternate accommodation will be completed expeditiously and not later than 6 months from today.

…… 90. Before we close out 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 the 2005 Act or in any civil proceedings, the Court has to balance the rights of both the parties. The directions issued by the High Court in para 56 adequately balance the rights of both the parties."

19. Further in *Madalsa Sood vs Maunicks Makkar & Another* CS(OS)93/2021 per order dated 10.12.2021 the Co-ordinate Bench of this Court while dealing with such application under Order *XII* Rule *6* CPC, in similar circumstances, held as under:

"12. However, the mere fact that the title of the plaintiff has not been shaken by the defence of the defendants will not suffice to grant her a decree, as the defendant No.1 has raised the plea that the suit premises constituted her shared household which needs to be looked into. There is no dispute that the defendant No.1 had come into the suit premises after her marriage on 27th August, 2014 with the son of the plaintiff, as repeatedly noticed hereinabove. In fact the plaintiff herself does not dispute the fact that the suit premises formed the shared household. Of course, this is not a case, unlike Satish Chander Ahuja (supra), where the son of the plaintiff and his wife were having a marital discord. Unfortunately, in the present case the defendant No.1 has lost her husband. Nevertheless, ***the plaintiff has admitted that the premises formed the shared household of the defendant No.1. Thus, no further evidence or proof may be required to establish this fact.***

15. Nor does the right of residence allowed to aggrieved person extend to her insisting on the right of residence in a particular premises. *Section 19 of the DV Act provides for an alternate accommodation being given to the aggrieved person of the* ***same level*** *in certain circumstances. In fact even in Satish Chander Ahuja (supra) relied upon by the learned counsel for the defendants, the judgment of a Division Bench of this Court in Eveneet Singh Vs. Prashant Chaudhari 2011 SCC OnLine Del 4651 in para 14 was quoted with approval as under:*

"14. It is apparent that clause (f) of sub-section (1) of Section 19 of the Act is intended ***to strike a balance between the rights of a daughter-in-law and her in-laws****, if a claim to a shared residence by the daughter-in-law pertains to a building in which the matrimonial home was set up belongs to her mother-in-law or father-in-law."*

16. The Supreme Court in para 90 of its judgment in Satish Chander Ahuja (supra) further observed as under:

"90. Before we close out 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 the 2005 Act or in any civil proceedings, the Court has to balance the rights of both the parties. The directions issued by the High Court in para 56 adequately balance the rights of both the parties."

17. Thus, it is clear that ***even where a residence is clearly a shared household, it does not bar the owner****, the plaintiff herein,* ***from claiming eviction against her daughter-in-law****, if the circumstances call for it.*

19. It now has to be seen whether the plaintiff must be put to the rigours of a trial to determine whether she has made out a case for reclaiming possession of the suit premises or whether the facts as set out in the written statement and the plaint would be sufficient to come to a conclusion. Reference is once again made to the pleadings. ***A strained or frictional relationship between the parties, would be relevant to decide whether grounds for eviction exist****.*

20. A perusal of the written statement would reveal that the relationship between the parties is far from cordial. xxxxx

22. But is it clear that the defendant No.1 ***in order to wrest a settlement from the plaintiff, has made efforts to pressurise her while staying in her premises****. The defendants have admitted in their written statement that the plaintiff has one bedroom in her possession whereas the defendants had two bedrooms in their possession with kitchen, drawing and dinning being common portions. By inducting her mother and for a short time her sister, the defendant No.1 seems to have made an attempt to assert rights in respect of the suit property, clearly causing distress to the plaintiff. The averments in the written statement are sufficient to establish a justification for the plaintiff to seek the eviction of the defendants.* ***There is no need to put the plaintiff to proof of the admitted stand of the defendants as expressed in their joint written statement****. The Supreme Court in S. Vanitha Vs. Deputy Commissioner, Bengaluru urban District and Others 2020 SCC OnLine SC 1023 held that* ***when faced with competing claims of the parties****, one constituting a shared household and the other the right of the senior citizen to live peacefully in the twilight of their life, appropriate reliefs must be given. In view of the clear facts and circumstances, the plaintiff is clearly entitled to seek possession of the suit premises from the two defendants without the rigors of an unnecessary and prolonged trial at her age."*

20. Now, a bare perusal of record *viz*. the conveyance deed dated

03.08.2000 of the New Friends Colony's property being in favour of respondent and Surender Singh; the sale deed dated 15.12.2004 executed by the respondent of his share in New Friends Colony's property and the sale deed dated 27.09.2004 qua the purchase of the subject property viz. the front portion of second floor along with roof terrace right with one bath room on terrace area of the flat admeasuring 1800 square feet approximately comprising of three bed rooms with three attached bath rooms, drawing room, balcony room, lobby and kitchen etc. in favour of the respondent, all leads to a conclusion, the subject property exclusively belong to the respondent. The appellant, on the contrary, did not file any document to show the existence of any HUF in the name of S.Kesar Singh and sons or the property *viz.* New Friends Colony was ever an ancestral property or allegedly purchased from ancestral funds. The documents filed on record by the respondent do show it was a *self acquired property* of S.Kesar Singh and not an HUF property or an ancestral property. The submissions of the appellant are thus merely assertions without basis and without any *prima facie proof*.

21. Admittedly, the house is *a shared household* wherein the appellant has been residing after her marriage with the son of the respondent. Though an argument is raised the husband of the appellant has not been made a party to the suit but admittedly the husband is not residing in the premises since prior to the filing of the suit, probably because of the acrimonious relations between him and his wife – appellant. On record there are various complaints filed by the appellant against her in-laws including the Non-Cognizable Reports (*NCRs*) amongst the parties. Many of them are placed on record and goes on to show the relations between the parties are far from

cordial. Even on record there is a complaint made by her husband namely Guneet Dhingra, who lives in a rental accommodation, against his wife, the appellant herein.

22. Moreso, the son of the respondent has not claimed any right in the subject property. Thus, where shared household is *admitted* by the respondent, there was no need for the learned Trial Court to implead the husband of the appellant.

23. Admittedly, in *Sneha Ahuja (supra)* the premises in occupation of the wife was *separate* from the premises in occupation of the respondents, but whereas in the present case the parties are residing in the same premises.

24. Admittedly where the parties are residing is a flat, having only three bed rooms, a drawing room and the appellant is in possession of a room in the said flat, then considering there are various complaints filed by them against each other; their relations being not cordial, would it in such circumstances, be appropriate for them to stay together and fight every minute of their existence. I*n Satish Chander Ahuja (supra)* in para N*o.90* the Court had observ*e*d we need to strike a *balance* between the rights of daughter-in-law and her in-laws.

25. Admittedly, the right of residence under Section *19* of the DV Act 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. In this case, both being senior citizens of aged about *74* and *69* years and being in the evening of their life, are entitled to live peacefully and not to be haunted by the marital discord between their son and daughter-in-law.

26. The decision in *S. Vanitha vs. Deputy Commissioner, Bengaluru Urban District and Others 2020 SCC OnLine SC 1023* is also a judgment in this context which too talk of balancing of rights.

27. Thus, where the residence is a *shared household*, it does not create any embargo upon the owner to claim eviction against his daughter-in-law. A strained frictional relationship between the parties would be relevant to decide whether the grounds of eviction exist. I am of the considered opinion, since there exist a frictional relationship between the parties, then at the fag end of their lives it would *not* be advisable for old parents to stay with appellant and hence it would be appropriate if an alternative accommodation is provided to the appellant as is directed in the impugned order *per* Section *19(1)(f)* of the Protection of Women from Domestic Violence Act which read as under:

> *"**19**. Residence orders.—**(1)** While disposing of an application under sub-section (1) of section 12, the*
>
> *Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order—*
>
> ***(f)** directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require:*
> *Provided that no order under clause (b) shall be passed against any person who is a woman."*

28. Thus, there is no force in the appeal and accordingly it is dismissed. The undertaking made at Bar to provide an alternative accommodation to the appellant till her matrimony exists be filed in the form of an affidavit of the respondent within two weeks from today before the learned Trial Court. The execution of decree be postponed till such suitable alternative accommodation is found and the applicant is conveniently shifted therein.

The learned Trial Court to impose conditions in case of non-payment of rental including electricity /water charges etc by respondent.

29. Nothing opined herein above shall be treated as an observation on the merits of the litigation pending.

30. The pending application, if any, also stands disposed of.

YOGESH KHANNA, J.

FEBRUARY 24, 2022
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