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

Reserved on: 29th August, 2019

Date of decision: 29th November, 2019

\+ **CM (M) 1582/2018 & CM APPL. 53645/2018**

VINAY VARMA ..... Petitioner

Through: Mr. Arun Kumar Varma, Sr. Advocate with Mr. Deepak Bashta & Ms. Vandini, Advocates (M-9999149022)

versus

KANIKA PASRICHA & ANR. ..... Respondents

Through: Mr. Harsh Jaidka, Advocate for R-1 (M-9811145052)

CORAM:
JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

1. The classic *Saas-Bahu* imbroglio, has now transformed into disputes between parents/in-laws and their children. These disputes have raised complex legal issues as to the interpretation of and balance between two legislations i.e. The Protection of Women from Domestic Violence Act, 2005 (*hereinafter 'DV Act'*) and The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (*hereinafter 'PSC Act'*).

2. Since the time that the DV Act has been enacted, the concepts of *`shared household'* and *`matrimonial home'* have been considered in a large number of judgments. The judgment of the Supreme Court in ***S. R. Batra and Anr. v. Taruna Batra, (2007) 3 SCC 169*** had considered the issue of 'shared household' and laid down various principles to determine whether there was a 'shared household' and what the rights of the daughter-in-law

were. The question as to whether the daughter-in-law would be entitled as a matter of right to live in the home of her in-laws has, thereafter, been dealt in several judgments of this Court. Subsequent to ***Taruna Batra (supra)***, there have been decisions where some Courts have held that irrespective of whether the property belongs to the in-laws or not, so long as the daughter-in-law was living in the said home and no alternate accommodation had been made available to her by her husband, she could continue to live and any attempt to evict her would constitute domestic violence. On the other hand, there have been decisions where it has been held that if the house of the in-laws belongs exclusively to them, the same would not constitute a `shared household' under Section 2(s) of the DV Act. The only right of the woman in such cases would be to seek maintenance from the husband or children.

3. The conundrum gets more complex with the enactment of the PSC Act which permits senior citizens and parents to take proceedings for removal of their children from the house which exclusively belongs to them under the definition of `maintenance'.

4. There are several categories of disputes which have arisen between parents/in-laws/children. The first category of cases are ones in which the parents/in-laws have developed acrimony either with the son and daughter-in-law jointly and/or individually resulting in the parents/in-laws seeking the right of exclusive residence either in the form of possession and injunction or seeking eviction of the son/ daughter-in-law. The second category of cases are also those where there is a rift between the son and the daughter-in-law and either in collusion with the son or otherwise, an attempt is made to evict the daughter-in-law. In most cases, the son i.e. the husband either

simply does not appear in the proceedings or refuses/fails to provide maintenance to the wife. Further, in some cases it is noticed that the son is in collusion with the parents and leaves the residence of the parents only in order to enable his parents to evict the daughter-in-law. In the third category of cases, the son has actually moved out of the residence and lives in a different residence. However, the daughter-in-law refuses to move from the residence of the in-laws due to a lack of alternate accommodation or otherwise.

5. Disputes are pending either in the criminal courts, under the DV Act, in the Family Courts, before the Special Tribunal constituted under the PSC Act, Civil Courts and Writ Courts where possession and eviction is sought. Though, there is no doubt that the decision in each case depends upon the facts and circumstances, the overarching pattern is very clear that the parents/in-laws rely on their rights under the PSC Act and the daughter-in-law relies on the DV Act. Even in proceedings which are not filed under the PSC Act, the same is cited to seek protection and enforcement of rights recognised therein, in civil and criminal proceedings.

Facts of the present case

6. In the present case, the Plaintiff is the father in law and the Defendant no.1 is the daughter in law and the Defendant No.2 – Sh. U.K. Verma is the son. The suit property is A-1/156, Safdarjung Enclave, New Delhi, purportedly belongs to one Shri K. A. Sethi. He is the father-in-law of the Plaintiff i.e. Shri Vinay Verma. As per the plaint, Shri Vinay Verma and his family including his wife, Ritu Verma, their son Shri U.K. Verma and daughter Prea Vani Verma all resided in the suit property. However,

acrimony occurred between the son and daughter-in-law resulting in the son leaving the house and allegedly staying with his grand-parents at E-1, Saket, New Delhi. This fact is disputed by the daughter-in-law, who states that the son is colluding with his parents and, in fact, lives in the same house i.e. the suit property.

7. The suit for mandatory injunction was filed by Sh. Vinay Varma, before the Senior Civil Judge with the following relief:

> "*It is, therefore, respectfully prayed that this Hon'ble Court may be pleased to pass a decree of Mandatory Perpetual Injunction, directing the first defendant to vacate the home and household of the plaintiff, at A-1/156, Safdarjung Enclave, New Delhi, and to restrain the first defendant from entering the home or personal space of the plaintiff.*"

8. In her written statement, the daughter-in-law avers that after her marriage on 30th January, 2015 which was solemnized in Delhi she had moved into the suit property. In the written statement, she does not dispute the contents of paragraph 12 of the Plaint that the property is owned by the father-in-law of the Plaintiff. She merely states in paragraph 12 that the Plaintiff has not placed any documents to show the ownership or the arrangement with the father-in-law.

9. According to the Plaintiff, the Defendant, therefore, admits that the property does not belong to her or to her father-in-law. Thus, under Order XII Rule 6 Civil Procedure Code ("CPC") since the ownership by Shri K. A. Sethi is admitted and the suit property cannot be treated as `shared household' as per the judgment in ***Taruna Batra (supra)*** under the DV Act, a decree on admission is prayed.

10. In reply to the application under Order XII Rule 6 CPC, the daughter-in-law denies that she had ever admitted ownership of Shri K. A. Sethi. In reply to paragraphs 4 and 5 where it is specifically contended that Shri K. A. Sethi is the owner that she has admitted this fact in DV proceedings, she pleads that since the admitted case of the Plaintiff itself is that he is not the owner, there is no admission by her.

11. Under these circumstances, the application was heard by the ld. Trial Court and was dismissed vide order dated 20th August, 2018. The trial judge observed in the impugned order as under:

> "*7. It is pertinent to mention herein that vide order dated 18.07.2016, Ld. Predecessor had dismissed the application of plaintiff U/o XXXIX Rule 1 and 2 CPC after giving detailed reasoning. Thereafter, plaintiff filed application u/o XII Rule 6 CPC. It seems that plaintiff is trying to seek the same relief vide this application U/o XII Rule 6 CPC which was denied to him at the time of dismissal of his application U/o XXXIX Rule 1 and 2 CPC. Moreover, perusal of written statement and its comparison with plaint reveals that there are no clear admissions on behalf of defendant no.1 to enable the plaintiff to get the suit decreed U/o XII Rule 6 CPC.*
>
> *8. Defendant no.1 has merely admitted the factum of her marriage with defendant no.2 and the fact that she is residing in the suit premises. However, she has clearly stated that she is residing in the suit premises in her legal right as it is a matrimonial home of defendant no.1. Moreover, plaintiff had himself admitted that he is not the absolute owner of the suit property, therefore, it cannot be said that defendant no.1 has no right to reside in the suit property. The suit property is the matrimonial house of defendant no.1 and she has right to reside in the matrimonial home till*

> *the subsistence of marriage with defendant no.2. Defendant no.2 has not appeared in Court and not put forth his stand. Therefore, in this case, he cannot be compelled to provide any alternate accommodation to defendant no.1 to reside in it, in lieu of the matrimonial home. Matrimonial home is the only place where defendant no.1 can reside till the subsistence of her marriage with defendant no.2. Therefore, no ground for allowing application U/o XII Rule 6 CPC is made out. Application of plaintiff U/o XII Rule 6 CPC stands dismissed.*
>
> *9. Application of plaintiff U/o XII Rule 6 CPC r/w Section 151 CPC stands disposed off accordingly."*

12. The Trial Court came to the conclusion that similar orders were prayed for in the application under Order XXXIX Rules 1 and 2 CPC which was rejected. The Trial Court held that since the suit property is the matrimonial house, the Defendant No.1/ Respondent No.1(daughter–in-law) has a right to reside in the same till the subsistence of the marriage.

13. The present petition has been filed challenging the impugned order dismissing the application under Order XII Rule 6. The submission of Mr. Arun Verma, ld. Senior Counsel for the Petitioner is that the application has been wrongly rejected as the daughter-in-law does not dispute the fact that the property does not belong to her husband and in fact also does not belong to her in-laws. Since the husband of the Defendant No.1 does not have any rights in the property, the application ought to have been allowed. According to ld. Senior Counsel, there is no triable issue in the present case. He relies upon the judgment of the Supreme Court in ***Taruna Batra (supra)***.

14. On the other hand, ld. Counsel for the Respondent Mr. Harsh Jaidka, submits that the son is in collusion with the parents. It has been wrongly

projected in the plaint that he does not live in the suit property. However, in reality he continues to live with the parents and, thus, the suit property continues to be her matrimonial home. He relies upon the judgment of the Supreme Court in ***Hiral P. Harsora & Ors. v. Kusum Narottamdas Harsora & Ors., (2017) CRI.L.J. 509*** which has interpreted the DV Act. He further submits that similar reliefs sought in the injunction application have also been rejected. He relies upon the order passed in the injunction application wherein the Trial Court has observed as under:

> "*10. In the present case,, it is undisputed that the defendant no.1 after her marriage to the defendant no.2 resided at the suit property along with her husband and his parents and it is her matrimonial home, where she is still residing, though her husband has temporarily shifted with his grandparents, admittedly to avoid her company. It is also undisputed that in view of "**S.R. Batra Vs. Taruna Batra and Neetu Mittal, 136 (2007) DLT 1 (SC) =I (2007) SLT 1=1(2007) DMC 1(SC)=2007(3) SCC 169**, the suit property is not the shared household of the defendant no.1 as her husband has no right, title or interest in the same.*
>
> *11. Having, said so, it is noteworthy that even the plaintiff has no right, title or share in the suit property which is owned by father-in-law of the plaintiff and the latter is residing therein gratuitiously along with his family members, merely as permissive user thereof. Further, it is not the case of the plaintiff that he has been asked to vacate the suit property by his father-in-law for any reason. Moreover, the husband of the defendant no.1 is stated to have temporarily shifted to his grandparents' house. <u>In such circumstances, the defendant no. 1, his wife has no place to go and her matrimonial home, where she was residing with her husband after her marriage appears to be the most</u>*

suitable residence for her till the time her husband provides her with an alternative accommodation or allowance for the same. As such, plaintiff has failed to establish any prima facie legal case in his favour to remove his daughter-in-law from the suit premises.

12. As regards the ingredient of irreparable loss, the plaintiff has alleged that due to erratic timings of defendant no.1 as well as persistent threats by her, the plaintiff feels harassed and also feels that her safety and security may be at risk, for which he may be held responsible. In my considered opinion, defendant no.1 being a lady cannot be rendered roofless at the instance of her father-in-law who apprehends false complaints at her behest or feels indirectly responsible for the safety and security of his daughter-in-law if she is residing at her matrimonial house. On the contrary, in the given facts and circumstances, when the defendant no.1's husband has shifted out, and she has not been provided with any alternative accommodation, irreparable loss in terms of safety and security, which cannot be compensated in terms of money shall be caused to her in case she is removed therefrom. Similarly, balance of convenience also tilts in favour of the plaintiff who requires the safety and security of her matrimonial home till the final disposal of the case on merits.

13. In view of the aforesaid discussion, I conclude that the plaintiff has failed to establish any of the three ingredients required for granting relief of interim mandatory injunction as expected in Dorab Cawasji Warden's case (supra).
Accordingly, application U/o XXXIX Rule 1 and 2 CPC stands dismissed."

15. Mr. Jaidka, ld. counsel also submits that in the suit, issues have been framed and evidence by way of affidavit has also been filed. The case is at

the stage of cross-examination of the Plaintiff. Thus, he submits that this is not a fit case for passing of decree under Order XII Rule 6 CPC.

Analysis and Findings

16. The Court has considered the rival submissions of the parties. Before coming to the merits of the dispute, it is necessary to review the various decisions dealing with the two statutes at hand.

Supreme Court judgments

17. The lead decision which is also relied upon by the Petitioner is ***Taruna Batra (supra),*** wherein the Supreme Court observed as under:

> "*24. Learned counsel for the respondent Smt. Taruna Batra stated that the definition of shared household includes a household where the person aggrieved lives or at any stage had lived in a domestic relationship. He contended that since admittedly the respondent had lived in the property in question in the past, hence the said property is her shared household.*
>
> *25. We cannot agree with this submission.*
>
> *26. If the aforesaid submission is accepted, then it will mean that wherever the husband and wife lived together in the past that property becomes a shared household. It is quite possible that the husband and wife may have lived together in dozens of places e.g. with the husband's father, husband's paternal grand parents, his maternal parents, uncles, aunts, brothers, sisters, nephews, nieces, etc. <u>If the interpretation canvassed by the learned counsel for the respondent is accepted, all these houses of the husband's relatives will be shared households and the wife can well insist in living in the all these houses of her husband's relatives merely because she had stayed with her husband for some time in those houses in the past. Such a view would lead to chaos and would be absurd.</u>*

27. It is well settled that any interpretation which leads to absurdity should not be accepted.

28. Learned counsel for the respondent Smt Taruna Batra has relied upon Section 19(1)(f) of the Act and claimed that she should be given an alternative accommodation. In our opinion, the claim for alternative accommodation can only be made against the husband and not against the husband's (sic) in-laws or other relatives.

29. As regards Section 17(1) of the Act, in our opinion the 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 property in question in the present case neither belongs to Amit Batra nor was it taken on rent by him nor is it a joint family property of which the husband Amit Batra is a member. It is the exclusive property of appellant No.2, mother of Amit Batra. Hence it cannot be called a "shared household".

30. No doubt, the definition of "shared household" in Section 2(s) of the Act is not very happily worded, and appears to be the result of clumsy drafting, but we have to give it an interpretation which is sensible and which does not lead to chaos in society."

The above judgment was rendered by the Supreme Court in 2007.

18. In ***Vimalben Ajitbhai Patel and Ors. vs Vatslabeen Ashokbhai Patel and Ors.*** *(decided on 14th March, 2008)* ***AIR 2008 SC 2675,*** the Supreme Court considered a petition filed by the in-laws where it noticed that both the in-laws were very old and the daughter in law was permitted to pursue her remedies against her husband. The Court held as under:

"24.The Domestic Violence Act provides for a higher right in favour of a wife. She not only acquires a right to be maintained but also there under acquires a right of residence. The right of residence is a higher right. The said right as per the legislation extends to joint properties in which the husband has a share.

25. Interpreting the provisions of the Domestic Violence Act this Court in S.R. Batra v. Taruna Batra (2007)3SCC169 held that even a wife could not claim a right of residence in the property belonging to her mother-in-law, stating:

> *17. There is no such law in India like the British Matrimonial Homes Act, 1967, and in any case, the rights which may be available under any law can only be as against the husband and not against the father-in- law or motherin-law.*
>
> *18. Here, the house in question belongs to the mother- in-law of Smt Taruna Batra and it does not belong to her husband Amit Batra. Hence, Smt Taruna Batra cannot claim any right to live in the said house.*
>
> *19. Appellant 2, the mother-in-law of Smt Taruna Batra has stated that she had taken a loan for acquiring the house and it is not a joint family property. We see no reason to disbelieve this statement.*

....

28. The said orders might have been passed only on consideration that Sonalben is a harassed lady, but the fact that the appellant is also a much harassed lady was lost sight of. She has more sinned than sinning. Appellant and her husband are old. They suffer from various diseases. They have been able to show before the Court that they had to go to the United States of America for obtaining medical treatment. They, we

would assume, have violated the conditions of grant of bail but the consequence therefore must be kept confined to the four corners of the statutes.

....

43. Having regard to the facts and circumstances of this Court we are of the opinion that the interest of justice shall be subserved if the impugned judgments are set aside with the following directions:

i) The property in question shall be released from attachment.

ii) The 3 rd respondent shall refund the sum of Rs. 1 lakhs to the respondent with interest @ 6% per annum.

iii) The amount of Rs. 4 lakhs deposited by the 1st respondent shall be refunded to him immediately with interest accrued thereon.

iv) The 3 rd respondent should be entitled to pursue her remedies against her husband in accordance with law.

v) The Learned Magistrate before whom the cases filed by the 3d respondent are pending should bestow serious consideration of disposing of the same, as expeditiously as possible.

vi) The 3 rd respondent shall bear the costs of the appellant which is quantified at Rs. 50,000/- (Rupees fifty thousand) consolidated.

44. The appeals are allowed with the aforesaid directions."

19. Recently, In ***Hiral P. Harsora & Ors. v. Kusum Narottamdas Harsora & Ors., (supra)***, the Supreme Court analyzed the purpose of the DV Act including the Statement of Objects and Reasons. The Supreme Court struck down Section 2 (q) of the DV Act in view of the definition of 'shared household' in Section 2 (s) and held that Section 2 (q) was restrictive in nature. The Supreme Court considered the scheme of the DV

Act and in respect of `shared household' observed as under:

> "*18. It will be noticed that the definition of "domestic relationship" contained in Section 2(f) is a very wide one. It is a relationship between persons who live or have lived together in a shared household and are related in any one of four ways - blood, marriage or a relationship in the nature of marriage, adoption, or family members of a joint family. A reading of these definitions makes it clear that domestic relationships involve persons belonging to both sexes and includes persons related by blood or marriage. This necessarily brings within such domestic relationships male as well as female in-laws, quite apart from male and female members of a family related by blood. Equally, a shared household includes a household which belongs to a joint family of which the respondent is a member. As has been rightly pointed out by Ms. Arora, even before the 2005 Act was brought into force on 26.10.2006, the Hindu Succession Act, 1956 was amended, by which Section 6 was amended, with effect from 9.9.2005, to make females coparceners of a joint Hindu family and so have a right by birth in the property of such joint family. This being the case, when a member of a joint Hindu family will now include a female coparcener as well, the restricted definition contained in Section 2(q) has necessarily to be given a relook, given that the definition of 'shared household' in Section 2(s) of the Act would include a household which may belong to a joint family of which the respondent is a member. The aggrieved person can therefore make, after 2006, her sister, for example, a respondent, if the Hindu Succession Act amendment is to be looked at. But such is not the case under Section 2(q) of the 2005 Act, as the main part of Section 2(q) continues to read "adult male person", while Section 2(s) would include such female coparcener as a respondent, being a member of a joint family. This is one glaring anomaly which we have to address in the*

course of our judgment."

Thus, the Supreme Court held that a household of a joint family would be a 'shared household'. But, the question as to the title of the in-laws to the suit property did not arise.

Delhi High Court judgments

20. Post the judgment in ***Taruna Batra (supra)*** and ***Vimal Ben (supra)*** rendered by the Supreme Court there have been various decisions rendered by the Delhi High Court.

21. In ***Neetu Mittal v. Kanta Mittal & Ors., 2008 (106) DRJ 623,*** a Ld. Single Judge held that the parents/ in-laws have a right to turn the son and daughter-in-law out of the house if the property belongs to them. Only if it is an ancestral house, the son can enforce partition. The right of the woman to seek maintenance is only against the husband or her children but she cannot thrust herself against the parents of the husband. The Court observed as under:-

> "*8. As observed by the Supreme Court, 'Matrimonial home' is not defined in any of the statutory provisions. However, phrase "Matrimonial home" refers to the place which is dwelling house used by the parties, i.e., husband and wife or a place which was being used by husband and wife as the family residence. Matrimonial home is not necessarily the house of the parents of the husband. In fact the parents of the husband may allow him to live with them so long as their relations with the son (husband) are cordial and full of love and affection. But if the relations of the son or daughter-in-law with the parents of husband turn sour and are not cordial, the parents can turn them out of their house. The son can live in the house of parents as a matter of right only if the house is an ancestral house in which the son has a share and he can enforce the partition.*

Where the house is self-acquired house of the parents, son, whether married or unmarried, has no legal right to live in that house and he can live in that house only at the mercy of his parents upto the time the parents allow. Merely because the parents have allowed him to live in the house so long as his relations with the parents were cordial, does not mean that the parents have to bear his burden throughout the life.

9. Once a person gains majority, he becomes independent and parents have no liability to maintain him. It is different thing that out of love and affection, the parents may continue to support him even when he becomes financially independent or continue to help him even after his marriage. This help and support of parents to the son is available only out of their love and affection and out of mutual trust and understanding. There is no legal liability on the parents to continue to support a dis-obedient son or a son which becomes liability on them or a son who dis-respects or dis-regards them or becomes a source of nuisance for them or trouble for them. The parents can always forsake such a son and daughter-in-law and tell them to leave their house and lead their own life and let them live in peace. It is because of love, affection, mutual trust, respect and support that members of a joint family gain from each other that the parents keep supporting their sons and families of sons. In turn, the parents get equal support, love, affection and care. Where this mutual relationship of love, care, trust and support goes, the parents cannot be forced to keep a son or daughter in law with them nor there is any statutory provision which compels parents to suffer because of the acts of residence and his son or daughter in law. A woman has her rights of maintenance against her husband or sons/daughters. She can assert her rights, if any, against the property of her husband, but she cannot thrust herself against the parents of her husband, nor can claim a right to

live in the house of parents of her husband, against their consult and wishes."

22. In ***Sardar Malkiat Singh v. Kanwaljit Kaur & Ors., 2010 (116) DRJ 295,*** the Ld. Single Judge held that the father-in-law has no obligation to maintain his daughter-in-law. In this judgment, the ld. Single Judge, following ***Taruna Batra (supra)***, observed in paragraph 17 as under:

> *"…… The appellant is the sole and absolute owner of the suit property and at best the possession of the respondent No.1 during the subsistence of her marriage with the appellant's son could be said to be permissive in nature. This by itself cannot entitle the respondent No.1 to claim a right of residence against her father-in-law, who has no legal obligation to maintain his daughter-in-law during the lifetime of her husband, more so when the respondent No.1 has parted the company with her husband and is admittedly residing in Chandigarh since the year 1992."*

23. In ***Shumita Didi Sandhu v. Sanjay Singh Sandhu & Ors. (2010) 174 DLT 79(DB),*** the ld. Division Bench was considering a judgment of the Single Judge which had followed ***Taruna Batra (supra)*** and held that the in-laws home cannot be a 'shared household' or the 'matrimonial home' and hence the daughter in law has no legal right to stay in the house belonging to her parents in law. The ld. Division then approved the view of the Single Judge and followed ***Taruna Batra (supra).*** It concluded that the right of residence of the wife does not mean the right to reside in a particular property but would mean the right to reside in a commensurate property. The right of residence is not the same thing as a right to reside in a particular property which the appellant refers to as her 'matrimonial home'. The Single

Judge's judgment was upheld and it was observed that the learned single Judge had amply protected the plaintiff by directing that she would not be evicted from the premises in question without following the due process of law.

24. In ***Smt Preeti Satija v.Smt. Raj Kumari & Anr., 2014 SCC Online Del 188***, however, another ld. Division Bench of the Delhi High Court held that even a tenanted property of the in-laws where the husband has no share, right, interest or title would constitute 'shared household'. The ld. Division Bench held that the right of residence would exist irrespective of whether the house is owned by the in-laws or is merely tenanted. Even if they are tenants, the Court observed that the DV Act is a secular legislation. The Court also considered the judgment in ***Taruna Batra*** *(supra)* and finally concluded as under:

> "*20. Crucially, Parliament's intention by the 2005 Act was to secure the rights of aggrieved persons in the shared household, which could be tenanted by the Respondent (including relative of the husband) or in respect of which the Respondent had jointly or singly any right, title, interest, or "equity". For instance, a widow (or as in this case, a daughter in law, estranged from her husband) living with a mother-in- law, in premises owned by the latter, falls within a "domestic relationship". The obligation not to disturb the right to residence in the shared household would continue even if the mother- in-law does not have any right, title or interest, but is a tenant, or entitled to "equity" (such as an equitable right to possession) in those premises. This is because the premises would be a "shared household". The daughter-in-law, in these circumstances is entitled to protection from dispossession, though her husband never had any ownership rights in the premises. The right is not*

dependent on title, but the mere factum of residence. Thus, even if the mother-in-law is a tenant, then, on that ground, or someone having equity, she can be injuncted from dispossessing the daughter in law. In case the mother in law is the owner, the obligation to allow the daughter in law to live in the shared household, as long as the matrimonial relationship between her and the husband subsists, continues. The only exception is the proviso to 19(1)(b), which exempts women from being directed to remove themselves from the shared household. No such exception has been carved out for the other reliefs under Section 19, especially in respect of protection orders. Had the Parliament intended to create another exception in favor of women, it would have done so. This omission was deliberate and in consonance with the rest of the scheme of the Act. There can be other cases of domestic relationships such as an orphaned sister, or widowed mother, living in her brother's or son's house. Both are covered by the definition of domestic relationship, as the brother is clearly a Respondent. In such a case too, if the widowed mother or sister is threatened with dispossession, they can secure reliefs under the Act, notwithstanding exclusive ownership of the property by the son or brother. Thus, excluding the right of residence against properties where the husband has no right, share, interest or title, would severely curtail the extent of the usefulness of the right to residence.

21. The other aspect, which this Court wishes to highlight, is that the 2005 Act applies to all communities, and was enacted "to provide more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family". The right to residence and creation of mechanism to enforce is a ground breaking measure, which Courts should be alive to. Restricting the scope of the remedies,

> *including in respect of the right to reside in shared household, would undermine the purpose of this enactment. It is, therefore, contrary to the scheme and the objects of the Act, as also the unambiguous text of Section 2(s), to restrict the application of the 2005 Act to only such cases where the husband alone owns some property or has a share in it. Crucially, the mother-in-law (or a father-in-law, or for that matter, "a relative of the husband") can also be a Respondent in the proceedings under the 2005 Act and remedies available under the same Act would necessarily need to be enforced against them."*

The Court thus held that under circumstances such as these, the decree under Order XII Rule 6 CPC would not be liable to be passed and that irrespective of status of the in-laws qua the house i.e. whether they are owners, tenants, the right of residence for the daughter-in-law would still continue.

25. Thereafter, in ***Navneet Arora v. Surender Kaur and Ors , 2014 SCC Online Del 7617,*** the ld. Division Bench considered ***Taruna Batra (supra)*** and ***Preeti Satija (supra)*** and recognized the daughter-in-law's right to residence. This judgment distinguished ***Taruna Batra (supra)*** by holding that ***Taruna Batra*** would be applicable only in a fact situation where she has lived with the husband separately but not as a member of the joint family. It was held that the DV Act gives statutory protection to the right of the wife for a roof. Since the parties were living together with their parents and were conducting joint business, the property would be 'shared household'. The observations of the Division Bench are as under:

> *"106. The Protection of Women from Domestic Violence Act, 2005 gives statutory recognition to the salutary principle that was sought to be advanced through judge made laws in the vacuum of legislative*

prescription. The ideological framework which underscores the enactment is that a husband is bound to provide his wife a roof over her head and that she has a right to live in that house without the fear of violence.

……

118. Reverting back to the facts of the instant case, before Navneet Arora married Gurpreet Singh, he was living as one family with his parents Harpal Singh and Surinder Kaur. His brother Raman Pal Singh and his sister Sherry were also residing in the same house. The kitchen was one. The two sons and their father were joint in business and the kitchen used to be run from the income of the joint business. They were all living on the ground floor. Sherry got married and left the house. Navneet married Gurpreet. Raman Pal married Neetu. The two daughter-in-laws joined the company not only of their husbands but even of their in-laws in the same joint family house i.e. the ground floor of B-44, Vishal Enclave, Rajouri Garden, New Delhi. All lived in commensality. Navneet never left the joint family house. She was residing in the house when her husband died. She continued to reside there even till today. Under the circumstances her right to residence in the suit property cannot be denied, and as regards issues of title, we have already observed that the right of residence under the Protection of Women from Domestic Violence Act, 2005, the same would have no bearing. She may enforce it in civil proceedings. But her right of residence in the shared household cannot be negated."

The ld. Division Bench in Navneet Arora distinguishes the judgment of the Supreme Court in ***Taruna Batra*** (supra) in the following manner.

"*40. The submission of the learned Senior Counsel appearing on behalf of the Ms. Taruna Batra, as noted in paragraph 24 of the judgment, that merely because*

Ms. Taruna Batra had lived in the property in question in the past, it fell within the ambit of 'shared household' was rejected by the Supreme Court, which was of the considered opinion that such a view would lead to chaos in the society since the wife may insist on claiming 'right of residence' in virtually any property in which she may have resided together with her husband in the past.

41. Furthermore, the Supreme Court also observed that in view of the admitted fact that Ms. Taruna Batra had shifted to the residence of her parents owing to matrimonial disputes with her husband and was thus no longer in possession of the said portion of suit property, the question of protecting her possession could not arise. The very foundation of her claim for injunction restraining the in-laws from dispossessing her was thus wholly misconceived.

42. In light of the foregoing discussion, we are of the view that Taruna Batra's case (Supra) is only an authority for the proposition that a wife is precluded under the law from claiming 'right of residence' in a premises, owned by the relatives of the husband, wherein she has lived with her husband separately, but not as a member of the 'joint family' along with the relatives of the husband who own the premises.

43. However, in the later eventuality, if a couple live as members of 'joint family' in a domestic relationship with the relatives of the husband in a premises owned by such relatives of the husband, statutory prescription would indeed enable the wife to claim 'right of residence' since it would fall within the realm of 'shared household' as contemplated under Section 2(s) of the Act irrespective of whether she or her husband has any right, title or interest in the "shared household".

……

48. We are of the view that the plain language of the Act viz. Section 2(s) read in conjunction with Section 19 (1)(a) is unambiguous and enables an aggrieved person to claim 'right of residence' in a household even though the aggrieved person or the respondent may have no right, title or interest in the said household, if the aggrieved person and the respondent have lived therein by establishing a domestic relationship with the joint family of which the respondent is a member and to which such household belongs."

Thus, the Court recognized the daughter-in-law's rights to residence. In an SLP against the above judgement titled ***Surender Kaur v. Navneet Arora*** (*SLP no. 14416/2015* decided on 4th July, 2016), it was recorded that the matter has been settled between the parties and the SLP was dismissed as withdrawn.

26. In ***Ekta Arora v. Ajay Arora & Anr., AIR 2015 Del 180,*** the mother-in-law was held to be the absolute owner of the property and hence the property could not be a 'shared household'. The Court held that the property belongs to the mother-in-law and accordingly, observed as under:

"21. Considering the facts noted above, it is clear that during the lifetime of respondent No.2, she is the absolute owner of the property in question and till then, said property cannot be held as a 'shared household'.

22. In view of the above discussion and on the basis of the 'Will', the petitioner has no right in the property during the lifetime of her mother- in-law, i.e., respondent No.2 herein. The property will devolve upon respondent No.1 only after her death. Before that, the petitioner cannot claim any right or title in the

property. Therefore, I am of the considered opinion that the order dated 25.08.2008 passed by the learned ASJ, whereby the order on residence dated 29.09.2007 passed by the learned Trial Court was set aside, does not suffer from any illegality or perversity."

27. In ***Shilpa Tandon v. Harish Chand Tandon & Anr., [in RFA (OS) 113/2015 decided on 15th November, 2016]*** - the Court followed the judgment in ***Navneet Arora (supra)*** and held that the daughter in law had a right of residence in the 'shared household', though the property belonged to the father-in-law. However, the Court also observed that a workable solution needs to be found in order to ensure that everyday acrimony between the in-laws and the daughter-in-law does not continue. Thus, the Court modified the impugned decree and order and directed as under:

"*12. In light of its findings, the Division Bench held that since Navneet Kaur stayed with her husband and his parents in commensality sharing a common kitchen, that is, as a joint family, in the ground floor of B-44, Vishal Enclave, Rajouri Garden, New Delhi, she had a right to reside in such 'shared household' under the Protection of Women from Domestic Violence Act, 2005.*

13. In the instant case the pleading by the first respondent in the plaint, in paragraph 3, is an admission that after the appellant and respondent No.2 were married they shared a common kitchen with him on the ground floor; though they slept on the barsati/first floor. That is to say, the shared residence would be the barsati/first floor of his property. As per his pleadings they shifted their kitchen on the barsati/first floor. Therefore, the barsati/first floor of the property owned by the first respondent would be the shared residence and the appellant would have a right of residence therein notwithstanding said fact.

14. The impugned judgment is overruled.

15. But that is not the end of the matter.

16. Workable solutions have been found out by Courts where the estranged daughter-in-law and her in-laws are under threat of violence from each other.

……

27. We dispose of the appeal modifying the impugned decree and dispose of the suit filed by the first respondent; decreeing that the appellant would vacate the barsati/first floor of property bearing Municipal No.D-3, Green Park Extension, New Delhi on or before the midnight of December 31, 2016, provided the first respondent deposits in this Court, under intimation to appellant's counsel ₹1,20,000/- being advance payment for four months commencing from the month of January, 2017. Thereafter, advance payment for the month of May, 2017 and ensuing months would be deposited in this Court on or before the 20th day of each preceding month with intimation to the appellant's counsel – with direction to the Registry that within two days of the deposit the deposited money would be paid over to the appellant by means of a cheque without any application filed by her. Learned counsel for the appellant would identify the appellant before the concerned officer of the Registry when the cheque would be handed over to her. We are constrained to make the payment a little onerous and cumbersome because there is complete lack of communication between the appellant and the respondent No.1. If however, the appellant were to provide her bank account to learned counsel for respondent No.1 within a period of four weeks from today, the respondent No.1 would transfer the money by RTGS i.e. instructing his banker to transmit the money to the account of the appellant. The first respondent would be bound by the statement made by

his counsel regarding sale of his house and the said statement would form part of the decree including the undertaking as per para 25 above."

The ld. Division Bench of the Delhi High Court followed ***Navneet Arora (supra)*** and held that since the daughter-in-law had a shared kitchen she would have a right of residence as a 'shared household'.

28. In ***Anita Barreja v. Jagdish Lal Barreja [CM(M) No. 1043/2016 decided on 26.09.2017]***, a Ld. Single Judge of the Delhi High Court was concerned with the PSC Act and an order passed by the maintenance tribunal under the said Act and upheld the order by which the tribunal had directed the daughter-in-law to vacate the property.

29. In ***Darshna v.Govt. of NCT of Delhi & Ors.,[LPA 537/2018 decided on 03rd October, 2018] and Sunny Paul v. State of NCT of Delhi and Ors.253 (2018) DLT 410,*** the ld. Division Benches of this Court again considered the provisions of the PSC Act. In both these cases, the rights of the in-laws to seek eviction of the son or daughter-in-law from their own property was upheld on an interpretation of the PSC Act and the Rules of 2017 enacted in Delhi under the said Act. The ld. Division Bench of this Court considered a case arising under the PSC Act wherein the District Magistrate, in proceedings arising under the said Act, had directed the eviction of the daughter-in-law. The writ petition was dismissed and the ld. Division Bench was considering the LPA. In the said judgment, the ld. Division Bench held that in view of the Rule 22(3)(1)(i) of Delhi Maintenance and Welfare of Parents and Senior Citizens (Amendment) Rules, 2017, the son and the daughter-in-law could not claim any right in

the property. The ld. Division Bench observed as under:

> *"8. On perusal of Rule 22(3)(1)(i) as incorporated in the Delhi Maintenance and Welfare of Parents and Senior Citizens Rules 2017 and noting the fact that the property in question had devolved on him by way of a registered Will executed by his mother, surely it follows that Dhani Ram's son or for that matter his daughter-in-law can claim no right in the same. In any case, under the Rules, a senior citizen / parent can seek eviction of son, daughter or legal heir from an ancestral or self-acquired property, the vires of which Rule has not been challenged by the appellant in these proceedings nor before the learned Single Judge. As long as the said Rules exist, the order of the Tribunal giving impugned directions cannot be faulted.*
>
> *9. In so far as the plea of the appellant before the learned Single Judge that Rule 22(3)(1)(i) applies to son, daughter and legal heir and not to the daughter-in-law is concerned, the same was also rejected by the learned Single Judge by holding that the said Rule cannot be interpreted in a restrictive manner; he relied upon the Judgment of the Division Bench in the case of the* ***Shadab Khairi and Anr. V. The State and Ors, LPA 783/2017*** *decided on 22nd February, 2018 wherein it was held that the Act, being a welfare legislation was required to be interpreted liberally. We concur with the said conclusion....."*

Finally, the ld. Division Bench observed as under:

> "*13. Keeping in view the objective of the Act and it is high-time that senior citizens / parents are allowed to live in peace and tranquility, the orders passed by the Maintenance Tribunal and the learned Single Judge cannot be faulted. The Appeal is dismissed."*

Thus, the ld. Division Bench upheld the rights of the parents/in-laws to evict

the children under Rule 22(3)(1)(i).

30. Recently, two ld. Single Judges in ***Dr. Rachna Khanna Singh v. Santosh S. P. Singh & Ors. (2019) SCC OnLine Del 8696*** and ***Shachi Mahajan v. Santosh Mahajan, 257 (2019) DLT 152*** considered the provisions of the DV Act. In ***Dr. Rachna Khana Singh (supra)*** the facts involved the grandson and grand daughter-in-law through the daughter of Ms. Santosh S. P. Singh. The question was whether the grand daughter-in-law could claim the right of residence. Following ***Taruna Batra (supra)*** it was held that the property is not a 'shared household'. However, the Court permitted the daughter-in-law to avail of her remedies under the DV Act. The observations of the Ld. Single Judge are as under:

> *"19. A catena of verdicts has been relied upon on behalf of the appellant in support of the contentions that there being collusion between her spouse and the plaintiff/ respondent no.1, she cannot be deprived of her rights to reside in the premises in suit which form her matrimonial home and fall within the category of "shared household" in terms of Section 2 (s) of the Protection of Women from Domestic Violence Act, 2005.*
>
> *20. Reliance has been placed on behalf of the appellant on the verdict of this Court in Kavita Gambhir vs. Hari Chand Gambhir 162 (2009) DLT 459, on the verdict of the Hon'ble High Court of Bombay in Sarika Mahendra Sureka vs. Mahendra 2016 (6) ABR 161, Eveneet Singh vs. Prashant Chaudhri 177 (2011) DLT 124, on the verdict of the Hon'ble Supreme Court in B.P. Achala Anand vs. S. Appi Reddy (2005) 3SCC 313 : AIR 2005 SC 986 and on the verdict of the Hon'ble High Court of Allahabad in Neetu Rana vs. State of U.P. 2016 (2) Appellate Court Record 1797.*

21. Reliance was also placed on behalf of the appellant on the verdict of this Court in Shilpa Tandon vs. Harish Chand Tandon in RFA (OS) 113/2015, Navneet Arora vs. Surender Kaur in FAO (OS) 196/2014.

22. Reliance was also placed on behalf of the appellant on the verdict of this Court in Smt. Preeti Satija vs. Smt. Raj Kumari in CM APP.4236/2012, 4237/2012, 5451/2013 decided on 15.01.2014, on the verdict of the Hon'ble High Court of Bombay in Beryl Murzello vs. Ramchandra Bhairo Mane 2007 (4) Bom CR 397, on the verdict of the Hon'ble Supreme Court in S.M. Asif vs. Virender Kumar Bajaj in Civil Appeal No.6106-6108/2015 to contend that the decree under Order 12 Rule 6 of the CPC which is a discretionary relief ought not to have been granted by the learned trial Court in favour of the respondent no.1 and the same ought not to have been upheld by the First Appellate Court in as much as all the issues which have been raised were required to be gone into at the time of trial and adjudication in relation thereto was essential.

ANALYSIS

23. On a consideration of the observations of the Hon'ble Supreme Court in S.R. Batra vs. Taruna Batra (2007) 3 SCC 169, on the verdict of this Court in Eveneet Singh vs. Prashant Chaudhri 177 (2011) DLT 124, on the verdict of the Hon'ble High Court of Bombay in Rama Rajesh Tiwari vs. Rajesh Dinanath Tiwari in Writ Petition No.10696/2017, it being apparent through the pleadings on the record that the premises in suit do not fall within the category of a shared household in terms of Section 2 (s) of the Protection of Women from Domestic Violence Act, 2005, the substantial questions of law sought to be urged by the appellant as referred to in para 18 hereinabove do not arise for consideration in the instant case in as much as the rights of the appellant

and her daughter to live in the premises belonging to the respondent no.1 i.e. the plaintiff did not exist beyond the mere licence given to the parents of Aveka to live in the same, which has already been terminated.

24. However, as rightly observed by the First Appellate Court, the appellant being the wife of the defendant no.2/respondent no.2 herein is entitled to live in accommodation commensurate to that in which she lives presently with her child for which she may avail of appropriate civil legal remedy in relation thereto or under the Protection of Women from Domestic Violence Act, 2005 for which there is no embargo."

Thus, the ld. Single Judge was of the opinion that the premises in the case would not constitute a 'shared household' but the Court gave her permission to avail of proceedings for alternate accommodation. ***Dr. Rachna Khanna Singh's(supra)*** case arose out of a civil suit for possession.

31. In ***Shachi Mahajan (supra)*** the ld. Single Judge of this Court held that documents on record showed that the daughter-in-law was sharing the kitchen and common areas. However, since the suit property has been sold during the pendency of the proceedings, various directions including the directions for procuring an alternate residence for the daughter-in-law along with some amount to be deposited was passed by the Court.

Bombay High Court judgments

32. In ***Mrs. Sarika Mahendra Sureka v. Mr. Mahendra & Anr. [Appeal from order No.910 of 2014 decided on 19th September 2016],*** the divorce proceedings between the son and daughter-in-law were pending. The Family Court had granted interim protection to the daughter-in-law, thus, at the interim stage the Bombay High Court had thought it appropriate not to

protect her possession. The Bombay High Court distinguished ***Taruna Batra (supra)*** in this case and followed ***Preeti Satija (supra)*** of the Delhi High Court.

33. In ***Roma Rajesh Tiwari v. Rajesh Dinanath Tiwari, [Writ Pet. No.10696 of 2017 decided on 12th October, 2017]***, again the Bombay High Court held that the title or right in property is not of relevance in the DV Act as the wife's right to reside in the matrimonial home cannot be defeated if the same does not belong to the husband. It further held once it is a 'shared household' and they were in a matrimonial relationship, the wife gets a right to reside. The Bombay High Court held that the shifting of the son from the residence was a ploy. The house where the daughter-in-law resides would have to be considered as matrimonial home or 'shared household' under Section 2(s) of the DV Act. The Court observed as under:

> "18...
> *The question of title or proprietary right in the property is not at all of relevance, when the provisions of the DV Act; especially Section 19 thereof, are to be considered. As a matter of fact, it needs to be emphasized that, as the wife's right to reside in the matrimonial home was being defeated on this very ground that the house does not belong to the husband or does not stand in his name, this DV Act was brought in the Statute Book with the specific and clear language and the unequivocal Clause that the 'title of the husband or that of the family members to the said flat', is totally irrelevant. It is also irrelevant whether the Respondent has a legal or equitable interest in the shared household. The moment it is proved that it was a shared household, as both of them had, in their matrimonial relationship, i.e. domestic relationship, resided together there and in this case, upto the disputes arose, it follows that the Petitioner-wife gets*

right to reside therein and, therefore, to get the order of interim injunction, restraining Respondent-husband from dispossessing her, or, in any other manner, disturbing her possession from the said flat."

These two cases arose out of a civil suit and notice of motion seeking injunction and a petition for divorce, respectively.

34. In ***Dattatrey Shivaji Mane v. Lilabai Shivaji Mane and Ors. AIR 2018 Bom 229,*** the Bombay High Court was considering an order passed by the maintenance tribunal under the PSC Act, in a writ petition. The Court observed therein that the petition of the daughter-in-law under the DV Act was dismissed for default. The Court then considered the decision of the Delhi High Court in ***Sunny Paul (Supra)*** and held that once the senior citizen is the owner of the property, the possession of the senior citizen cannot be interfered with. Thus, the tribunal's order directing the son and his family to vacate the property was upheld. In this judgment the objects and reasons of the PSC Act were considered in detail by the Court. Thus, the view of the Bombay High Court is that the question of title or proprietary right is of no relevance.

Kerala High Court

35. In ***Hashir v. Shima ILR 2015 (2) Kerala 855,*** the Kerala High Court was considering the provisions of the DV Act and the definition of 'shared household' and followed the judgment of the Supreme Court in ***Taruna Batra (supra)*** to hold that a residence belonging to the in-laws would not be a 'shared household'.

Punjab and Haryana High Court

36. In two judgments, i.e., ***Major Harmohinder Singh v. State of Punjab***

& Ors. *(LPA No. 1588 of 2014 decided on 14.10.2014) and* ***Hamina Kang v. District Magistrate (U.T.) and Ors 2016(2) Crimes 517 (P&H),*** the Punjab and Haryana High Court considered the DV Act and the PSC Act. In ***Harmohinder Singh (supra),*** the Court observed as under:

> *"The provisions of the Act of 2007 and the Act of 2005, referred to above, cannot be used for cross purposes, one annihilating the other. A parent who invokes the provisions of the Act of 2007 cannot create a situation that makes irrelevant the right of a female for securing a protection which is guaranteed under the Act of 2005. The provisons of the protection which is contemplated under Chapter V is an empowering provision for the welfare of a senior citizen that must be read cohesively that the right of a woman to be protected which is guaranteed under the Act of 2005."*

The Court upheld the right of the divorced wife who was given protection under the DV act. Thus, the rights of the in-laws to invoke the PSC Act was recognised.

37. However, subsequently, in ***Hamina Kang(supra)*** an order of the tribunal under the PSC Act was considered in the context of the daughter-in-law who had filed a petition under the DV Act. The Court considered the objects and purposes of the 2007 Act. The Single Judge of the Punjab and Haryana High Court reviewed various judgments including ***Taruna Batra (supra), Vimal Ben(supra), Navneet Arora (supra), Preeti Satija (supra)*** and ***Hashir (supra)*** of the Kerala High Court. The provisions of the PSC and the DV Act were considered. The Court finally agreed with the view of the Kerala High Court and differed from the view of the Delhi High Court. It concluded that a house owned by a father-in-law is not a 'shared household' in which the daughter-in-law has a right of residence. The Court

observed that no right of the 2005 DV Act is sought to be nullified by the PSC Act. A *status quo* order had been passed in the DV Act. However, finally, the Court directed the in-laws to pay a sum of Rs. 25,000 /- per month to their daughter-in-law for a period of one year and permitted her to seek remedies against her husband.

Gujarat High Court

38. In ***Jayantram Vallabhdas Meswania v. Vallabhdas Govindram Meswania AIR 2013 Guj 160,*** the tribunal under the PSC Act had directed the son to hand over possession to his father. The Court again considered the provisions of the PSC Act and held that a father who is not earning and has no money to sustain can make an application under Section 5 of the Act to claim maintenance since the son is in possession of the property of the father and is not taking sufficient care and not providing sufficient maintenance. Thus, the father is entitled to have his own income from the property and the order of eviction from the son was upheld.

Analysis of case law

39. The analysis of the decisions by various High Courts shows that after the judgment of ***Taruna Batra (supra)*** by the Supreme Court which dealt with the DV Act, there have been divergent views taken in the manner in which ***Taruna Batra*** is to be applied. The Delhi High Court in ***Navneet Arora (supra)*** distinguished ***Taruna Batra*** and held that ***Taruna Batra*** would be applicable only in the facts where the son and daughter in law were not residing as members of the `shared household' since the residence and kitchen were separated. Similar view is taken in ***Preeti Satija (supra)*** by the Division Bench of Delhi High Court. However, in ***Shumita Didi Sandhu*** (supra) it was held that in-laws home would not be a 'shared household.

40. The Kerala High Court in ***Hashir (supra)*** held that the manner in which the Delhi High Court distinguishes ***Taruna Batra (supra)*** would not be correct inasmuch as the Supreme Court has clearly laid down the principles of defining `shared household' in ***Taruna Batra (supra)***. The Punjab and Haryana High Court in ***Hamina Kang v. District Magistrate (U.T.) and Ors (supra)*** agreed with the view of the Kerala High Court in ***Hashir (supra)*** and followed the view of the Supreme Court in ***Taruna Batra (supra)***.

The Provisions of the two Acts

41. The judgments and decisions of various Courts discussed above are not exhaustive in nature.

42. The DV Act was enacted in 2005 and has been the subject matter of innumerable decisions. One of the objects of the DV Act is to provide for the rights of women to reside in their 'matrimonial home' or 'shared household' irrespective of whether their husband or the in-laws have a title to the property. The DV Act, thus, protects one of the three basic necessities of human life – viz. shelter, for the woman. Thus, in several proceedings, the right of the daughter-in-law to reside in her 'matrimonial home' or 'shared household' has been recognised.

43. The PSC Act of 2007 was not the subject matter of the Supreme Court decisions either in ***Taruna Batra (supra)*** or in ***Vimal Ben (supra)***. The said Act has been enacted to provide maintenance to parents and senior citizens. The purpose of this Act is to ensure that parents and senior citizens are not subjected to harassment by their children in any manner. An obligation has been cast on the children to maintain senior citizens if the said children are

in possession of the property of the parent or lay claims to inherit the property of the parents. This is clear from a reading of Section 4(4) of the PSC Act which reads as under:

> *"(4) Any person being a relative of a senior citizen and having sufficient means shall maintain such senior citizen provided he is in possession of the property of such senior citizen or he would inherit the property of such senior citizen:*
>
> *Provided that where more than one relatives are entitled to inherit the property of a senior citizen, the maintenance shall be payable by such relative in the proportion in which they would inherit his property."*

A specific maintenance tribunal has also been constituted under Section 7 for senior citizens to make applications for maintenance. The whole purpose of this Act is to ensure that children do not simply take control of the assets of their parents while ignoring their well-being. In Delhi, the Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2009 has also been enacted which permits impleadment of children and relatives. Standards have been set out in the rules for payment of maintenance. These Rules have been amended from time to time.

44. The question, however, is as to how the objectives and provisions of these two Acts are to operate, considering the overlapping nature of the relationships which they seek to govern. Both are special statutes. While, the daughter-in-law's right to residence and a roof over her head is extremely important, the parent's right to enjoy their own property and earn income from the same is also equally important. There can be multitudinal situations which may arise before Courts wherein a view would have to be taken as to which rights are to be preferred over the other. This is so

because as captured in paragraph 4 above there are various categories of cases and various fact situations wherein these disputes would arise.

45. Though, in ***Taruna Batra (supra)*** the Supreme Court did not have the occasion to consider the later enacted PSC Act, 2007, the Court struck a balance between the rights of the parents/ in-laws and the rights of the daughter-in-law by holding that the 'shared household' would not include property belonging to the relatives of the husband namely, the in-laws.

46. However, later decisions of various High Courts have, while giving divergent opinions on the concept of `shared household', followed one uniform pattern in order to protect the daughter-in-law and to provide for a dignified roof/ shelter for her. The question then arises as to whether the obligation of providing the shelter or roof is upon the in-laws or upon the husband of the daughter-in-law i.e., the son. Some broad guidelines as set out below, can be followed by Courts in order to strike a balance between the PSC Act and the DV Act:

1. The court/tribunal has to first ascertain the nature of the relationship between the parties and the son's/ daughter's family.

2. If the case involves eviction of a daughter in law, the court has to also ascertain whether the daughter-in-law was living as part of a joint family.

3. If the relationship is acrimonious, then the parents ought to be permitted to seek eviction of the son/daughter-in-law or daughter/son-in-law from their premises. In such circumstances, the obligation of the husband to maintain the wife would continue in terms of the principles under the DV Act.

4. If the relationship between the parents and the son are peaceful or if

the parents are seen colluding with their son, then, an obligation to maintain and to provide for the shelter for the daughter-in-law would remain both upon the in-laws and the husband especially if they were living as part of a joint family. In such a situation, while parents would be entitled to seek eviction of the daughter-in-law from their property, an alternative reasonable accommodation would have to be provided to her.

5. In case the son or his family is ill-treating the parents then the parents would be entitled to seek unconditional eviction from their property so that they can live a peaceful life and also put the property to use for their generating income and for their own expenses for daily living.

6. If the son has abandoned both the parents and his own wife/children, then if the son's family was living as part of a joint family prior to the breakdown of relationships, the parents would be entitled to seek possession from their daughter-in-law, however, for a reasonable period they would have to provide some shelter to the daughter-in-law during which time she is able to seek her remedies against her husband.

On facts of the present case

47. The present suit does not specifically arise out of any proceedings under the DV Act nor under the PSC. Act. It is a civil suit for mandatory injunction, wherein, the relief being sought is in effect for eviction of the daughter-in-law. There is a dispute as to whether the son is actually living with the parents or not. The property does not even belong to the parents/ in-laws and in fact belongs to the maternal grand parent *(Nana)* of the

husband of the Defendant i.e., the father-in-law of the Plaintiff Shri Vinay Varma. By any stretch of imagination, this property cannot constitute `shared household' under Section 2 (s) of the DV Act. Insofar as the question of admission under Order XII Rule 6 CPC is concerned, this Court holds that there has been no admission by the daughter-in-law who has clearly challenged the rights of the father-in-law to maintain the suit.

48. Keeping in mind the provisions of the PSC Act as well, the Plaintiff does have a right to secure a peaceful life for himself and his wife. However, there is no doubt that the son is now living with his grandparents which is the best case of the Plaintiff. Thus, the relationship between the in-laws and the parents and the son does not seem to be acrimonious. The daughter-in-law was clearly living with her in-laws and her husband till disputes arose between her and her husband.

49. Under these circumstances, I am of the opinion that a mechanism would have to be devised to ensure that both the in-laws and the daughter-in-law live peacefully while the matrimonial disputes are resolved. The property in which the daughter-in-law has been residing is located in a posh South Delhi Colony of Safdarjung Enclave. She is occupying the property and she has no children. The relationship between the parties is not congenial. Considering this factual background, the following directions are issued;

1. The Plaintiff - Mr. Vinay Varma/ his son Mr. U.K. Varma shall jointly or severally pay a total sum of Rs.50,000/- per month to the daughter-in-law in order to enable her to identify a commensurate residence for herself.

2. The said sum shall be paid to the daughter-in-law on a monthly basis on or before the tenth of every month directly into her bank

account.

3. Upon the said payment being commenced, the daughter-in-law – Defendant would vacate the suit property within a period of three months.

50. Though the present is a civil suit, this Court observes that the said two statutes i.e., the DV Act and the PSC Act, would have to be borne in mind while passing orders, maintaining the balance between two warring parties, namely the parents/in-laws and children/their families. The conflict between the rights of the parents and the rights of the daughter-in-law which have arisen out of the DV Act and the PSC Act requires to be resolved. The facts of each case are different as there could be cases where the parents or senior citizens do not wish to permit their son and daughter-in-law to continue in their property due to issues of acrimony and misunderstanding. In such cases also, the provisions of the DV Act may be invoked by the son/daughter-in-law subjecting the parents to enormous suffering and frustration. While the right of residence of the daughter-in-law is to be recognized, the same also needs to be balanced depending upon the facts of each case with the right of the peaceful living of the parents as well. In several cases, these rights have conflicted with each other and they have flooded the Criminal and Civil Courts in abundance.

51. The judgment of the Division Bench of this Court in ***Preeti Satija (supra)*** has been challenged before the Supreme Court in Civil Appeal No.9723/2014. Thereafter, ***in Shabnam Ahmed v. Union of India & Ors. in Writ Petition (Crl.) No.228/2019,*** the Supreme Court is also considering the same issue. Considering that the issues are now pending adjudication before the Supreme Court, in the present case, certificate of fitness to appeal

under Articles 133(1)(a) and 134A of the Constitution of India, is granted.

52. The petition is allowed in the above terms and all pending applications are also disposed of. No order as to costs.

PRATHIBA M. SINGH
JUDGE

NOVEMBER, 29/ 2019/*dk/dj*