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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.910 OF 2014
WITH
CIVIL APPLICATION NO.1095 OF 2014
IN
APPEAL FROM ORDER NO.910 OF 2014.

Mrs. Sarika Mahendra Sureka age: adult, Indian inhabitant residing at A/5 Model Town Co-op. Hsg. Soc. Gulmohar Cross Road No.7, J.V.P.D. Scheme, Mumbai 400 049	]]]]]	Appellant Original defendant No.1.
V/s.		
1. Mr. Mahendra s/o Rajkumar Sureka residing at: A/5, Model Town Co.op Hsg. Soc. Gulmohar Cross Road No.7, J.V.P.D. Scheme Mumbai 400 049	]]]]	Respondent No.1 Original Defendant No.1.
2. Mrs. Kusumlata w/o Rajkumar Sureka, residing at: A/5, Model Town Co.op Hsg. Soc. Gulmohar Cross Road No.7, J.V.P.D. Scheme Mumbai 400 049	]]]]	Respondent No.2 Original plaintiff.

Ms. Jai Kanade, I/by Sumit S. Kothari, for the Appellant.
Mr. Hemant Mehta, i/by Mehta & Co. for the Respondent No.2.
Mr. Ajit Kocharekar, for respondent No.1.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

CLOSED FOR ORDER ON : 29TH AUGUST, 2016.

PRONOUNCED ON : 19th SEPTEMBER, 2016

JUDGMENT :

1. This appeal takes an exception to the order dated 19.07.2014, passed by City Civil Court, Dindoshi, Mumbai, in Notice of Motion No.1959 of 2011, filed in S. C. Suit No.1560 of 2011. The said Notice of Motion was preferred by respondent No.2, seeking relief of interim injunction restraining appellant and respondent No.1 herein from entering upon and remaining in the suit premises, situate at A/5, Model Town Co-op Hsg. Soc. Gulmohar Cross Road No.7, J.V.P.D. Scheme, Mumbai and/or not to disturb her peaceful use and occupation of the suit premises in any manner whatsoever.

2. Brief facts of the appeal can be stated as under:-

The appellant is the daughter-in-law of respondent No.2 and wife of respondent No.1. The marriage of appellant with respondent No.1 took place on 22.5.1991 and since then appellant is continuously residing alongwith respondent Nos. 1 and 2, with other family members, in the suit flat being her matrimonial home. The appellant is also having one major son, born within the wedlock, who is 21 years of age and his name is Abhishek.

3. It is the case of appellant that her father-in-law Rajkumar Sureka was having joint ancestral property at 96/A, Darya Mahal, 80 Nepean Sea Road, Mumbai, where he was residing alongwith the

family members till the year 1985. On 8.12.1985, said property was sold by Rajkumar Sureka and from the sale proceeds of the said property, suit flat was purchased in the name of respondent No.2.

4. It is further case of appellant that on account of marital discord between respondent No.1 and her, , respondent No.1 had filed divorce petition No. A.1270 of 2011, against her on various grounds, in May, 2011. In the said petition, respondent No.1 had moved an application for interim injunction restraining her from entering matrimonial home till disposal of the divorce petition. In that application, respondent No.1 had categorically averred that the matrimonial home was his premises. As respondent Nos. 1 and 2 and other family members were trying to oust the appellant from her matrimonial home by adopting various devious methods, appellant was constrained to file Interim application bearing No.23 of 2011, in the said divorce petition for restraining respondent No.1 from dispossessing her from the matrimonial home. The Family Court vide its order dated 04.07.2011, was pleased to allow the appellant's application for interim injunction, thereby restraining respondent No.1, her husband, from ousting her from the possession of the suit flat without following due process of law. As despite the said order, respondent No.1 and his family members were obstructing appellant's entry to the suit flat, the appellant filed Interim Application No.47 of 2012 in the said Divorce

Petition, seeking one set of keys of the suit flat. Respondent No.2, intervened in the said application on the ground that she is the sole owner of the suit flat. The Family Court, by its order dated 18.10.2012, rejected the contention of respondent No.2 herein, and allowed appellant's application directing respondent No.1 to provide a set of keys of the suit flat to her.

5. It is the contention of the appellant that as respondent No.1 failed to get any favourable orders from the Family Court, conversely as the Family Court passed order in favour of appellant, respondent No.1 colluded with his mother, respondent No.2 and taking advantage of the fact that the agreement of sale of the suit flat stands in the name of respondent No.2 alone, the present suit bearing No.1560 of 2011 was filed by respondent No.2 against appellant, impleading therein respondent No.1, seeking relief of permanent injunction to restrain appellant and respondent No.1 from entering in or remaining in possession of suit flat.

6. In this suit, respondent No.2 filed Notice of Motion No.1959 of 2011, seeking relief of interim mandatory injunction restraining appellant from entering or remaining in the suit flat during pendency of the suit. The appellant herein resisted the said Notice of Motion, vide her affidavit-in-reply, contending inter alia that the suit was collusive and filed with malafide intention of dispossessing the

appellant from her matrimonial home, by abusing process of law. It was specifically pleaded therein that the matrimonial home, although standing in the name of respondent No.2 alone, it being purchased out of the sale proceeds of the ancestral joint family property, the appellant and respondent No.1, both are having equal right to remain in possession of the said flat.

7. In the said Notice of Motion, respondent No.1 did not file any reply, for opposing grant of interim relief.

8. In the said suit, appellant filed Notice of Motion No.2088 of 2011, raising preliminary issue as to jurisdiction of the Court under Section 9-A of the Code of Civil Procedure contending inter alia that, from the averments made by respondent No.2, herself, appellant appeared to be in possession of the suit flat as gratuitous licencee and therefore, only the Court of Small Causes at Mumbai can have jurisdiction to adjudicate the subject matter of the suit. Respondent No.2 opposed the said Notice of Motion and ultimately the said Notice of Motion came to be dismissed by the trial Court, which order was upheld by this Court also.

9. In the backdrop of these facts, the present Notice of Motion came to be allowed by the trial Court, vide its impugned order dated 19.7.2014, thereby restraining the appellant from entering or remaining in the suit premises. According to learned counsel for

appellant, the trial Court failed to take note of the fact that the present suit is filed by respondent No.2, in collusion with respondent No.1. It is urged that respondent No.1 failed to get any relief from the Family Court. Conversely the Family Court was in fact pleased to pass the order protecting appellant's right of residence in the matrimonial home. Hence respondent No.1, in connivance with his mother, has succeeded in filing the present suit in which he has impleaded himself as party defendant. According to learned counsel for the appellant, the suit and the Notice of Motion filed therein, is clearly an attempt to circumvent the order passed by the Family Court, in favour of the appellant and thereby evicting the appellant from matrimonial home in which she was admittedly residing continuously since the date of her marriage in the year 1991.

10. It is urged that prima facie also, respondent No.2 has not made out a case that she is the sole owner of the suit premises. It is urged that respondent No.2 has no independent source of income to purchase the suit flat. The suit flat was purchased from the sale proceeds of the ancestral property, in which respondent No.1 was having share and therefore, appellant is having every right to reside therein.

11. It is urged that the appellant has no alternate accommodation. Although on paper, respondent No.1 has stated that

he has acquired some premises on leave and licence at Goregaon, in reality it is not true. Respondent No.1 continues to reside in the suit premises. Even summons of the suit and the notice was received by respondent No.1 on the address of suit premises. According to learned counsel for the appellant, the trial Court has failed to consider these aspects and especially the appellant's right of residence in her matrimonial home, which is recognized under the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as, "D.V. Act"). As a result, the impugned order of the trial Court has resulted into miscarriage and failure of justice to the appellant. It is further urged by learned counsel for appellant that at the interim stage itself, the trial Court has granted relief of mandatory injunction without respondent No.2 making out any prima facie case, much less strong prima facie case and therefore on this count also, the impugned order passed by the trial Court needs to be quashed and set aside.

12. Per contra, learned counsel for respondent No.2 has strongly supported the impugned order of the trial Court, by submitting that the suit premises are exclusively owned by respondent No.2 and stands in her name. Respondent No.2 has right to decide whether appellant, who is her daughter-in-law, can reside in the said house or not. By placing reliance on the judgment of Apex Court, in the case of **S.R. Batra and another -vs- Taruna Batra (Smt)[1],** and various other

1 (2007) 3 SCC 169

judgments like judgment of this Court in **Conrad Dias of Bombay -vs- Joseph Dias of Bombay,[2],** it is submitted by learned counsel for respondent No.2 that the appellant has no independent right to reside in the suit premises, as suit premises is exclusively owned by respondent No.2. The said premises cannot be called as "shared household", entitling the appellant to reside therein. It is urged that the conduct of the appellant is causing tremendous mental harassment and torture to respondent No.2, who is already suffering from various ailments like high blood pressure and diabetes. Therefore, the trial Court was fully justified in granting relief of interim injunction, as sought by respondent No.2, restraining appellant from entering into or remaining in possession of the suit premises. According to learned counsel for respondent No.2, once the trial Court has exercised its discretion in granting equitable relief of interim injunction, no interference is warranted in the same, within the limited scope of jurisdiction of this Court.

13. Learned counsel for respondent No.1, has also supported the impugned order of the trial Court, by submitting that the suit premises can ever be called as "matrimonial home" or "shared household" of appellant, but said premises is exclusively owned and stands in the name of respondent No.2. Hence respondent No.1 himself is also residing in the separate premises at Goregaon which

2 AIR 1995 Bom.210

he has taken on leave and license. In such situation, the appellant cannot insist to remain in possession of the suit premises. Learned counsel for respondent No.1 has further submitted that respondent No.1 has offered to take alternate premises on leave and licence basis and is still ready and willing to take such alternate premises for residence of the appellant. The appellant is not ready for the same. Therefore, the appellant cannot insist on remaining in occupation of the suit premises, especially when her conduct is a cause of nuisance, annoyance and mental torture to his mother-respondent No.2. Learned counsel for respondent No.1 has, thus, fully supported the case of respondent No.2 and prayed for dismissal of this appeal.

14. Having heard learned counsel for appellant and respondents at some length and after going through the impugned order, passed by the trial Court, it has to be stated that some facts in this case are undisputed. Those facts are to the effect that the marriage of appellant and respondent No.1 has taken place in the year 1991. Since the date of their marriage, they are residing jointly alongwith respondent No.2 and other family members, in the suit premises as members of joint family. Appellant's occupation, in the suit premises, is thus, that of family member of respondent No.2, being wife of respondent No.1. Till today, the said possession or occupation is not at all disturbed. When there was some apprehension of disturbance to

the said possession, the Family Court has vide its order dated 04.07.2011 protected the possession of appellant in the suit premises. As a result of it, respondent Nos. 1 and 2 were restrained from ousting her from possession of the suit premises or from disturbing her occupation therein. Thus, appellant is in occupation of the suit premises as her matrimonial home since last more than 25 years as on today. She is also having one major son born within the wedlock with respondent No.1, who is also residing therein.

15. It is also undisputed that on account of marital discord between appellant and respondent No.1, respondent No.1 has approached the Family Court, in the year 2011 for seeking a decree of divorce. The said petition No.A.1270 of 2011 is pending in the Family Court. Thus, marriage of appellant and respondent No.1 is still subsisting and yet not dissolved. As stated above, in the said petition, appellant had got the order of protecting her possession in the suit premises thereby restraining respondents from causing obstruction to her possession.

16. It is also a matter of record that in this suit, which is filed by respondent No.1 in the trial Court, appellant raised plea of being in possession of the suit premises as gratuitous licencee. Said plea came to be rejected by the trial Court and said order was confirmed by this Court also. Hence her contention to that effect having attained finality,

in this proceeding her right to occupy the suit premises has to be considered independently *dehors* to her plea of being *gratuitous licencee.*

17. It is also common ground between the parties that only after the Family Court passed the order protecting possession of the appellant in the suit premises despite intervention and resistance by respondent No.2, respondent No.2 has filed this suit seeking relief of injunction restraining appellant from remaining in the suit premises. It is also common ground between the parties that only subsequent thereto, respondent No.1 husband of appellant has obtained some alternate premises at 39/B, Vallabh Apartment, Sejal Park, New Link Road, Goregaon (W), Mumbai -14. According to respondent No.1, he has shifted his residence there whereas according to appellant, respondent No.1 still continues to remain in suit premises, but only to deny her right of residence in the suit premises, respondent No.1 has created the documents to show that he has acquired some alternate premises.

18. It is also a matter of record that at the time of hearing of this appeal, a suggestion was made by this Court to know whether respondent No.1 can make provision for alternate accommodation to the appellant and accordingly respondent Nos. 1 and 2, by their letter dated 10th August, 2016 have listed about 6 premises wherein it was suggested that alternate arrangement can be made for the appellant.

After taking inspection of these premises, which are situated in the area of Goregaon and Andheri, the appellant has conveyed her disapproval for those premises. As a result thereto, as possibility of having overall amicable settlement between the parties failed to achieve results, the matter has to be proceeded for final hearing.

19. The first and foremost submission advanced by learned counsel for appellant is that, by the impugned order, the trial Court has decreed the suit, at the interim stage itself. It is submitted that the relief which respondent No.2 is claiming in the suit before the trial Court is only of permanent injunction, restraining the appellant from remaining or entering upon the suit premises. By granting the impugned order of interim mandatory injunction, the trial Court has restrained the appellant at the interim stage itself from entering or remaining in possession of the suit premises. The submission of learned counsel for appellant is that as per settled position of law, the order of interim mandatory injunction can be granted in very rare cases, that too only when strong prima facie case is made out and further only to restore *status-quo ante,* and not to oust someone from settled possession

20. In support of her submission, learned counsel for appellant has relied upon the landmark decision of Apex Court, in **Dorab Cawasji Warden -vs- Coomi Sorab Warden and others[3].** In this decision, after taking review of its earlier decisions, the Apex Court

3 (1990) 2 SCC 117

was pleased to lay down certain guidelines in the matter of grant of interim mandatory injunction, in paragraph Nos.16 and 17 of its judgment as under:-

> "*16. The relief of interlocutory mandatory injunction is thus granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm, courts have evolved certain guidelines. Generally stated these guidelines are:*
>
> 1. *The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction.*
> 2. *It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.*
> 3. *The balance of convenience is in favour of the one seeking such relief.*
>
> *17. Being essentially an equitable relief the grant or refusal of an interlocutory mandatory injunction shall ultimately rest in the sound judicial discretion of the court to be exercised*

> *in the light of the facts and circumstances in each case. Though the above guidelines are neither exhaustive nor complete or absolute rules, and there may be exceptional circumstances needing action, applying them as prerequisite for the grant or refusal of such injunctions would be a sound exercise of a judicial discretion".*

21. Learned counsel for respondent No.2 has, however, relied upon the decision of **Barun Kumar Nahar -vs- Parul Nahar and anr[4],** to counter the argument that at the interim stage, mandatory injunction cannot be granted to oust a person in possession of the suit property. In this authority, it was held that expression "generally" in the observations made in the case of **Dorab Cawasji Warden (supra),** gives clear indication that this is not a water tight decision that in no case such relief of interim mandatory injunction can be granted. Delhi High Court in case of **Barun Kumar Nahar (supra), i**n paragraph No.32 has observed thus :-

> *"Considering well known fact that civil litigation takes years to conclude and by not granting interim stay in favour of aged parents-in-law for all these years until the date of final decision of the case, they would be unnecessarily compelled to spend far end of their lives in a formulated, non consensual and woeful environment".*

22. In the light of these facts, grant of interim mandatory

4 2013 (135) DRJ 307

injunction ousting daughter-in-law from the possession of the premises was held to be justified, especially considering that husband has already offered to the wife to reside with him in a rented accommodation or in the alternative he has also offered a sum of Rs.30,000/- to the wife to reside in some other rented accommodation.

23. As said by the Apex Court itself, though the guidelines laid down by it in *Dorab Cawasji Warden (supra)* are essentially general in nature, they make the legal position clear that such relief of interim mandatory injunction is not to be granted as a matter of routine, but only in exceptional circumstances, needing the action like, when it is necessary to preserve or restore status-quo of the last non-contested status, which preceded the pending controversy or to compel the undoing of those acts that have been illegally done or restoration of that, which was wrongfully taken from the party complaining. Other undisputed legal position which emerges from this decision is that plaintiff seeking such interim mandatory injunction, has to make out a strong case for trial and strong case means it has to be of a higher standard than mere prima facie case which is normally required for the grant of interim prohibitory injunction.

24. On the touchstone of this legal position laid down in this decision by the Apex Court, one has to consider whether the impugned order of interim mandatory injunction passed by the trial

Court satisfy these conditions.

25. Here in the case, admittedly appellant is continuously in possession of the suit premises since the time of her marriage in the year 1991, which possession is protected by the order of Family Court also. The impugned order of interim mandatory injunction is disturbing the said possession, as it has effect of ousting her from the suit premises and therefore, impugned order is not in the nature of preserving or restoring status quo ante or to compel undoing of any act, done illegally, but it has the opposite effect of disturbing the settled possession of appellant in her matrimonial home, which possession was protected by the judicial order of the Family Court. Therefore, the impugned order, as passed by the trial Court is not satisfying the first condition laid down in the above said decision of ***Dorab Cawasji Warden*** *(supra). C*onversely it is against the express terms of legal position laid down therein.

26. Second test for consideration is, whether respondent No.2 has made out such a strong prima facie case, that at the interim stage itself, the trial Court thought it fit to disturb settled possession of appellant in the suit premises? For this purpose it has to be seen whether the case of respondent No.2, which is accepted by the trial Court, that of she being the exclusive and sole owner of the suit premises and hence the appellant cannot reside in the suit premises

without the consent of respondent No.2, can be prima facie upheld. The trial Court has accepted the contention of respondent No.2 that she is the exclusive owner on the basis of share certificate of the suit premises, standing in her name and ascertaining the fact that agreement to sale which was yet to be registered, is also executed in her name. Hence the trial Court held that apparently prima facie respondent No.2 is the exclusive owner of the suit premises. While doing so, the trial Court has not considered the fact that the appellant has challenged this claim of respondent No.2 to be exclusive owner of the suit premises by contending inter alia that respondent No.2 has admittedly no independent source of income and the suit property was purchased from the sale proceeds of joint family property. This contention raised by the appellant is yet to be decided. It is not seriously disputed that the husband of respondent No.2 Rajkumar Sureka, who was the father-in-law of the appellant was initially residing jointly with respondents and other family members in the premises situate at 96/A, Darya Mahal, 80 Nepean Sea Road, Mumbai, which was the ancestral property. As per case of appellant, the said property was sold and from sale proceeds thereof, suit premises were purchased. It is undisputed that respondent No.2 has no independent source of income. Hence it follows that at this prima facie stage, it was incumbent on the respondent No.2 to show from where she raised

funds for purchasing the suit premises, if not from the sale proceeds of the ancestral joint family property at Nepean Sea Road. Respondent No.2 has, however, not discharged this initial burden.

27. Learned counsel for respondent No.2, has however, by relying upon the decision in case of **Vimlaben Ajitbhai Patel -vs- Ajitbhai Revandas Patel and anr [5],** submitted that it is not for owner of the property to establish that it is self acquired property and onus would be on the one who pleads contrary. In this context, it is urged that if appellant wants to challenge the title of respondent No.2, over the suit property, the burden was on the appellant to establish contrary. However, appellant has not done so. Mere averment that suit premises were purchased out of sale proceeds of the ancestral property is not sufficient, unless documentary evidence to that effect is produced. It is urged that as appellant has not produced any such documentary evidence, this Court has to proceed on the prevailing state of affairs that respondent No.2 is the owner of the property, as the agreement of sale and share certificate of the Co-operative Housing Society stand in her name.

28. As to the reliance placed on this authority of *Vimlaben Ajitbhai Patel (supra),* said case pertains to recovery of arrears of maintenance in which property standing in the name of mother-in-law, came to be attached and in the light of the same, it was observed that

5 (2008) 4 SCC 649

the decree holder, daughter-in-law, has not produced any evidence contrary to prove that the property was not owned by the mother-in-law. This observation was also made in the light of the fact that obligation to pay maintenance to married wife during subsistence of marriage is on the husband and it being his personal obligation, such obligation cannot be met from the properties of the mother-in-law.

29. Learned counsel for respondent No.2 has then placed reliance on the judgment of Delhi High Court in case of **Shumita Didi Sandhu -vs- Sanjay Singh Sandhu and ors[6],** wherein it was observed by Delhi High Court that when alternate premises has been offered to the wife, but she refuses to accept the same and insists on retaining premises where her parents-in-law reside, claiming it to be her matrimonial home, she cannot do so, because the right of residence which a wife undoubtedly has, does not mean the right to reside in a particular property only. It was held that right of residence which a wife undoubtedly has, mean the right to reside in commensurate property, but it can certainly not translate into a right to reside in a particular property.

30. It is urged by learned counsel for appellant that in this case when offer was made to the appellant of selecting the premises from several premises in the locality, which offer she is not ready to accept,

6 (2010) 174 DLT 79

even she is not ready to reside in the premises, which are taken on leave and licence by her husband -respondent No.1, she cannot have any right to insist on residing in the suit premises only on the ground that it being her matrimonial home, especially when the evidence on record shows that the suit premises belong to her mother-in-law and her husband has no right therein. It is also in the backdrop of the fact that conduct of appellant is causing mental torture and harassment to respondent No.2.

31. Further, learned counsel for respondent has placed reliance on the decision of this Court in *Conrad Dias (supra)* wherein relief of interim mandatory injunction, ousting married son from the premises owned by his father, was upheld by this Court, considering the fact that owner of the premises i.e. father has right to decide who will stay with him and no one can stay in his premises without his consent, even if he is son or other family member.

32. Learned counsel for respondent No.2 has then mainly placed reliance on the landmark decision of Apex Court in *S. R. Batra (supra);* wherein Apex Court has categorically held that “the house which is owned and exclusively belongs to mother-in-law of a woman, wherein she had lived with her husband, only for some time in the past after their marriage cannot be considered as, “shared household” within the meaning of section 2(s) of D.V. Act and hence wife is not

entitled to claim her right to live therein under Section 17 of the D.V. Act. It was held that in order to claim such right, property should belong to her husband or it should have been taken on rent by her husband or it should have been a joint family property in which her husband was a member. But wife cannot claim any right of residence in the property exclusively belonging to her mother-in-law. At the most she can seek direction against her husband for providing alternate accommodation to her, but not against her husband's relatives.

33. As a matter of fact, this very decision of *S.R. Batra***,** has paved the way for the above referred decision of Supreme Court, namely i) *Vimlaben Patel -vs- Vatsalaben Patel, and of Delhi High Court in ii) Barun Nahar -vs-Parul Nahar,* and *iii) Shumita Sandhu -vs-Sanjay Sandhu.* Therefore, the crux of controversy in this case revolves around the decision of the Apex Court in the case of *S.R. Batra (supra),* which in some decisions of this Court and other High Courts, is followed fully, thereby upholding relief of interim mandatory injunction, directing ousting of daughter-in-law from the premises owned by the mother-in-law; whereas in some decisions, which are relied upon by learned counsel for appellant, it is distinguished on facts. Those decisions are of Delhi High Court, in **Mrs. Preeti Satija -vs- Mrs. Raj Kumari & anr,**[7] and **Navnath Arora -vs- Surendar Kaur**[8].

7 2014 (1) Crimes 571
8 2014 (213) DLT 611

34**.** To understand and appreciate the legal position as laid down in the decision of *S.R. Batra (Supra)***,** one has to understand the facts of the said case. In that case, respondent Taruna started living with her husband Amit at the second floor of the premises belonging to her mother-in-law; whereas the in-laws resided separately on the ground floor of the said property. Thus, it is apparent that Taruna or her husband were not living as a members of the "joint family" with her in-laws to attract the legal concept of "shared household". Most importantly, in the said case, it was not disputed that the said house belonged to the mother-in-law of Taruna and not to Taruna's husband Amit. Amit has filed Divorce Petition against Taruna. As a counter blast thereto, Taruna had filed F.I.R. under Sections 406, 498A, 506 read with Section 34 of the Indian Penal Code; and her father-in-law, mother-in-law, husband and married sister-in-law were arrested by the police. They were granted bail only after three days. It was also admitted therein that Taruna had already shifted to her parent's residence because of dispute with her husband. Only after lodging of the complaint and arrest of her in-laws, when she tried to forcibly enter into the house of appellant-mother-in-law, Taruna filed suit for mandatory injunction to enable her to enter in the house of her mother-in-law. Even before any order could be passed in the said suit, Taruna alongwith her parents forcibly broke open the lock of the house of

appellant and started staying there. There was also allegation that appellant and other family members had been terrorized by the daughter-in-law and for some time they had to stay in their office. It was also undisputed that Taruna's husband Amit had shifted to his own flat in Mohannagar, Ghaziabad, even before the litigation between the parties had started.

35. It is in these facts and circumstances of the said case, the trial Court granted relief of interim injunction restraining the appellant from interfering with the possession of Taruna. Against the said order, appeal was preferred by appellant; wherein it was held that as neither Taruna nor her husband were residing in the suit premises, which belong to the appellant mother-in-law, Taruna had no right to reside in the said house and accordingly, her application for interim injunction came to be dismissed. Aggrieved by the said said order, Taruna filed Writ Petition under Article 227 of the Constitution of of India, which came to be allowed by Single Judge of Delhi High Court, holding that the property in question was matrimonial home of Taruna and mere change of residence of Taruna's husband would not restrain Taruna from residing in matrimonial home. Accordingly it was held that Taruna was entitled to reside in the suit premises and her application for interim injunction was allowed.

36. It was this order of the Single Judge of Delhi High Court

which was challenged before the Hon'ble Supreme Court in this decision, by contending inter alia that the concept of matrimonial home which is recognized under British Law, is alien to the Indian Laws. Moreover, in the instant case, house does not belong to the husband of Taruna, but it was the absolute property of her mother-in-law and in such situation when it was also not a joint family property, Taruna cannot claim any right of residence therein. The Hon'ble Supreme Court after making reference to the provisions of section 2(s) of D.V. Act, relating to definition of **"shared household"** and provisions of Sections 17 and 19 of the said Act, pertaining to the wife's right of residence in the shared household, rejected the contention raised by Taruna's counsel that the definition of "shared household" includes "household" where person aggrieved lives or at any stage had lived in domestic relationship. It was observed by Hon'ble Supreme Court in paragraph No.26 and 27 of this judgment that:-

> *"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 grandparents, his maternal parents, uncles, aunts, brothers, sisters, nephews, nieces, etc. 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 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.

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

37. The Hon'ble Apex Court, in this decision was further pleased to reject Taruna's claim of alternate accommodation, under Section 19(1)(f) of the D.V. Act, by opining that such claim can be made only against husband and not against in-laws or the relatives. As regards section 17(1) of the D.V. Act, the Hon'ble Supreme Court was pleased to opine that the wife is only entitled to claim a right of residence in a **"shared household"** and shared household would only mean the house belonging to or taken on rent by the husband or house which belongs to the joint family, of which the husband is a member.

38. Thus, from the perusal of the facts of that case, it is apparent that, in the said case admittedly the property in question neither belonged to husband's parents nor it was taken on rent nor it was alleged to be joint family property of her husband. Conversely, it was admitted as a factual position that it was the exclusive property of appellant mother-in-law. Moreover, in that case Taruna and her husband were living separately on second floor having separate kitchen and household as such whereas in-laws resided separately on

the ground floor. Hence apparently they were not residing together as members in the joint family in a "**shared household".** In addition to that in that case Taruna and her husband had stayed in that house only for some period and not continuously, since time of marriage till filing of suit, most importantly Taruna has already left that house and shifted to her parent's house because of dispute with her husband. Only after lodging complaint, she has made forcible entry therein. Hence in view of all these facts Apex Court vide it's order of interim mandatory injunction restored status quo ante by calling upon her to vacate the flat thereby rejecting her claim to remain in possession of the flat where she obtained forcible entry and which admittedly belonged to her mother-in-law. In the light of these admitted facts, it was held that it cannot be called as **"shared household"**. While doing so, Apex Court was, also pleased to observe that the definition of **"shared household"** under Section 2(s) of the D.V. Act, is not very happily worded and appears to be result of clumsy drafting, but the Court has to give an interpretation which is sensible and which does not lead to chaos in society.

39. In the case of *Vimlaben Patel (supra)***,** judgment in case of *S. R. Batra (supra)* was followed and the claim of maintenance of the deserted wife against the property of her mother-in-law was rejected. In the case of *Barun Kumar Nahar (supra),* as stated above, the

daughter-in-law's claim to reside in the property owned by her father-in-law, when admittedly her husband was residing separately in rented premises, was rejected by the Delhi High Court, again following judgment in the case of *S.R. Batra (supra)*. In the case *Shumita Didi Sandhu (supra)* also, Delhi High Court followed the judgment in case of *S.R. Batra (supra)* and allowed the claim for interim injunction in favour of in-laws restraining wife from entering into the suit premises.

40. Learned counsel for respondent No.2 has also relied on the unreported judgment of this Court in **Bharati Rajesh Bhave -vs-Vijay Shankar Bhave and ors, dated 3rd December, 2015, in Appeal From Order (ST) No.31217 of 2015,** wherein also by placing reliance on the judgment of *S.R. Batra (supra),* this Court has confirmed the interim mandatory injunction order passed by the trial Court, directing daughter-in-law to quit from the suit flat alongwith son and her belongings and dismissed the appeal on the ground that flat was admittedly belonging to the mother-in-law -respondent No.2 exclusively. However, as pointed out by learned counsel for appellant, the Hon'ble Supreme Court has stayed the impugned order in Special Leave Petition preferred by the daughter-in-law.

41. In the case of *Mrs. Preeti Satija (supra)* and in case of *Barun Kumar Nahar (supra)***,** two Division Benches of Delhi High Court have, however, distinguished the judgment of Hon'ble Supreme Court,

in *S.R. Batra (supra)* and rejected the relief of interim mandatory injunction, as claimed by the mother-in-law for ousting the daughter-in-law from the possession of the suit premises. In both these judgments, Delhi High Court has dealt with all the relevant provisions of D.V. Act and found that under the provisions of the D. V. Act, especially section 19(1) of the Act, daughter-in-law is entitled to such protection, even if the house may or may not belong to her husband and it may exclusively belong to mother-in-law.

42. Now in order to effectively answer the controversy raised in this appeal, in the light of conflicting decisions of the various High Courts and in the light of decision of Apex Court in case of *S.R. Batra (supra)*, it would be necessary to refer to the various provisions of D.V. Act, especially the object and reasons for which the said Act was brought on statute book. It is significant to note that the statement of object and reasons of the said Act, expresses concern about the phenomenon of domestic violence for being widely prevalent but has remained largely invisible in the public domain. The Statement then refers to the various Declarations like Vienna Accord of 1994, and Beijing Declaration and the Platform for Action (1995) which have acknowledged this fact. The Statement of Objects and Reasons, then also places reliance on the United Nations Committee on Convention of Elimination of all Forms of Discrimination Against Women (CEDAW)

particularly its General Recommendation No.XII (1989). Having regard to the fact that India is signatory to the convention, it was observed that it becomes duty of the Government to protect women against violence of any kind especially that occurring within the Family. It was observed that, presently where woman is subjected to cruelty by her husband or his relatives, it is an offence under Section 498-A of the Indian Penal Code. The Civil Law, however, does not address this phenomenon in its entirety. Hence keeping in view the rights guaranteed under Article 14, 15, and 21 of the Constitution of India and in order to provide for a remedy under the Civil law, for the protection of women from being victims of domestic violence and to prevent the occurrence of domestic violence in the society, the Act was enacted to provide her various reliefs.

43. In order to achieve these objects and the reasons, the Act provides for the comprehensive definitions of the “Domestic Violence”, “shared household”, “Respondent” and “the aggrieved person” etc. in Section 2 of the Act. The definitions, which are relevant for the purpose of deciding this appeal can be reproduced as under :

> *“2(a) “**aggrieved person”** means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent;*
>
> *“2(f) **“domestic relationship”** means a relationship between*

two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family".

*"2(q) **"respondent"** means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act:*

Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner".

*"2(s) **"shared household"** means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or alongwith the respondent and includes such a household, whether owned or tenanted, either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest, or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household".*

44. Section 17 of the D.V. Act, secures right of **"aggrieved woman"** to reside in a shared household as under:-

"S.17 ***Right to reside in a shared household:-***

(1) Notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same.

(2) The aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law".

45. Section 18 of the Act deals with "Protection Orders" which the Magistrate may, after giving an opportunity of hearing to the aggrieved person, and the respondent, pass from time to time. in favour of the aggrieved person thereby prohibiting respondent from committing act of domestic violence, as laid down in the said Section.

46. Section 19 of the D.V. Act, which is more relevant for the purpose of this appeal, deals with the **"Residence Orders"** which the Magistrate may pass, while disposing of an application under Sub section (1) of section 12 of the Act.

"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;*

(a) restraining the respondent from dispossessing or in any other

manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household.

(b) directing the respondent to remove himself from the shared household;

(c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;

(d) restraining the respondent from alienating or disposing off the shared household or encumbering the same;

(e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or

(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".

47. If all these provisions are read conjointly, then they make it clear that they aim to protect aggrieved person like appellant, from being evicted from matrimonial home or driven out of the matrimonial home.

48. Thus the perusal of the Objects and Reasons of the Act and its various provisions makes it clear that the Legislature has taken the cognizance of the fact that women suffer immense hardship when they are driven out of their marital home. In most cases they suffer pain

and humiliation mutely for the fear of being rendered homeless. Thus, her crucial entitlement to remain in the house and not to be dispossessed from her marital home was sought to be recognized and given legal statutory right by making definitions of **"shared household"** and **"domestic relationship"** quite comprehensive. The Act has, thus, given statutory recognition to the salutary protection granted to aggrieved woman by the Judge made laws, like decision of the Apex Court, in case of **B.P. Achala Anand -vs- S. Appi Reddy and anr**[9] wherein Supreme Court recognized the right of wife to reside in her matrimonial home and laid a principle hitherto unknown in law that deserted wife would be entitled to remain in possession of the matrimonial home and to contest suit for eviction against her husband. In the said decision, cognizance was taken of the Matrimonial Homes Act, 1967 enacted in England to secure the rights of married woman. Even the deserted wife's equity to reside in the matrimonial home and not to be dispossessed automatically from the same which was laid down by Lord Denning was also recognized. Thus, D.V. Act is enacted with a very laudable object of providing full protection to a deserted married woman in respect of her residence in the matrimonial home and not to be dispossessed or driven out therefrom.

49. It also need not be stated that Domestic Violence Act is Secular Legislation, akin to Section 125 of the Code of Criminal

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Procedure. It was enacted to provide more effective protection to the rights of women, irrespective of their religion, caste or creed which rights are guaranteed under the Constitution and to those women who are victims of violence of any kind occurring within the family. The introduction of remedy of right to residence in matrimonial home, protection against eviction therefrom, granted by this Act, is to say the least, revolutionary and path breaking step taken to further Objects of the Act. Hence as observed by Delhi High Court, in case of *Preeti Satija (supra),*

> **"***Any attempt at restricting of the scope of remedy would reduce the effectiveness of the Act itself. Therefore, it would be contrary to the scheme and objects of the Act to restrict its application to only such cases, where the husband owns some property or has a share in it".*

50. It was further held in this authority that in the light of provisions of Section 19(1) of the said Act*;*

> *"as the mother-in-law can also be respondent in the proceedings under the Domestic Act, and remedies available under the said Act would necessarily need to be enforced against the mother-in-law also"*

51. In this case, Delhi High Court has elaborately dealt with the Objects and Reasons of the Act, in the light of definitions and also

in the light of its decision in case of **Eveneet Singh v. Prashant Choudhary**[10] and was pleased to observe as follows :

> *"It is thus apparent that Parliamentary intention 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 living with mother-in-law, in premises owned by the latter, falls within a "domestic relationship", even if the mother-in-law does not have any right, title or interest, but is a tenant, or entitled to "equity" in those premises, the same would be a "shared household". In such circumstances, the widowed daughter-in-law, can well claim protection from dispossession, notwithstanding that her husband never had any ownership rights, in the premises, because she lived in it; if the mother-in-law, is a tenant, then, on the ground that she is tenant, or someone having equity. It may, however, be noticed here that Section 19, while referring to a "Respondent" lays down a limited exception under the provision to 19(1)(b), exempting women from being directed to remove themselves from the shared household. However, no such exception has been carved out for the other reliefs under Section 19, especially in respect of protection orders. Clearly, if the legislature had wanted to create another exception in favour of women, it would have done so. The omission here, seems deliberate and in consonance with the rest of the scheme of the Act. Another instance of a domestic relationship may be an orphaned sister, or widowed mother, living in her brother's or son's house; it falls within the definition of domestic relationship, (which is one*

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where the parties are related by consanguinity, or marriage) constitutes a shared household, 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".

52. This legal recognition of aggrieved person's right of residence against mother-in-law is noted by our own High Court in **Archana Hemant Naik -vs- Urmilaben Naik**[11] in the following terms:-

"If a wife or a woman to whom the proviso is applicable is compelled to seek residence order in respect of a shared household only as against the male relatives or her husband or male partner, as the case may be, the order under Section 19 of the said Act will be completely ineffective in as much as the female relatives of the husband or the male partner occupying the shared household will continue to disturb possession of such wife or such female of the shared household, or may continue to prevent entry of such aggrieved wife or female to the share household"

53. Division bench of Delhi High Court, has in the the case of *Preeti Satija (supra)* dealt with concept of joint family and came to

11 2010 Cri L.J. 751

conclusion that when the Act refers to the joint family property, it would not be proper to import notions of Hindu Undivided Family under the said provision, as it would unwittingly give greater benefits to one section of the community, which was never the intention of the Parliament, as no concept of joint family similar to that of Hindu Undivided Family can be found in Muslim Law, Christian Law or any other personal Law. In paragraph Nos. 14, 15 & 16, it was held that :-

> *"14. The danger of accepting a restricted interpretation of joint family by equating it to a HUF would result in discrimination, because women living in a shared household belonging to HUFs (and therefore Hindus) would have more security, by reason of their professing the Hindu faith than others who are not Hindus. Also, even among Hindus, women who are married into or live in HUFs, as compared with those living with husbands, whose parents own the property – on an application of Batra – would have the protection of the Act; the latter would not have any protection. It is precisely to avoid this anomaly that Parliament clarified that irrespective of title of the "Respondent" to the "shared household" a protection order can be made under Section 19(1) (a).*
>
> *15. The definition of "shared household" emphasizes the factum of a domestic relationship and no investigation into the ownership of the said household is necessary, as per the definition. Even if an inquiry is made into the aspect of ownership of the household, the definition casts a wide enough net. It is couched in inclusive terms and is not in any way, exhaustive. (S. Prabhakaran v. State of Kerala, 2009 (2) RCR 883). It states that, …..includes such a household whether owned or tenanted either jointly by the aggrieved person and the Respondent or owned or tenanted by*

either of them in respect of which either the aggrieved person or the Respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the Respondent is a member, irrespective of whether the Respondent or the aggrieved person has any right, title or interest in the shared household"

16. It would not be out of place to notice here that the use of the term, "Respondent" is unqualified in the definition nor is there any qualification to it under Sections, 12, 17 or 19. Therefore, there is no reason to conclude that the definition does not extend to a house which is owned by a mother-in-law or any other female relative, since they are encompassed under the definition of "Respondent" under Section 2(a)".

(emphasis supplied)

54. While doing so, Delhi High Court, in this decision also referred to a decision of the Apex Court in case of **Sandhya Manoj Wankhade -vs- Manoj Bhimrao Wankhade**[12] **;** wherein it was held that

"13.It is true that the expression "female" has not been used in the proviso to section 2(q) also, but, on the other hand, if the Legislature intended to exclude females from the ambit of the complaint, which can be filed by an aggrieved wife, females would have been specifically excluded, instead of it being provided in the proviso that a complaint could also be filed against a relative of the husband or the male partner. No restrictive meaning has been given to the expression "relative", nor has the said expression been specifically defined in the

12 (2011) 2 SCR 261

Domestic Violence Act, 2005, to make it specific to males only".

14. In such circumstances, it is clear that the legislature never intended to exclude female relatives of the husband or male partner from the ambit of a complaint that can be made under the provisions of the Domestic Violence Act, 2005."

55. In this authority, Delhi High Court also distinguished not only it's own decision in case of *Shumita Didi Sandhu (supra)*, but also decision of the Supreme Court in case of *Vimlaben Ajitbhai Patel (supra)* and having regard to the intention of the Legislature, observed as follows :

"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. <u>The right is not dependent on</u>

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.

(emphasis supplied)

56. Division bench of Delhi High Court, in the case of *Mrs. Preeti Satija ((supra)* further took note of current scenario; as under;-

"The facts of this case contain the classic elements of a husband seeking to evade his responsibilities upon marital discord breaking out. He allegedly disappeared and was "disowned" by his mother. The appellant's mother-in-law then instituted the suit, to dispossess the daughter-in-law and her grand children, claiming that she no longer has any relationship with her son or her daughter-in-law. She based her claim to ownership of the suit property on a will. The daughter in law has not admitted the will. Nor it has been proved in probate proceeding. Often, sons move out, or transfer properties or ownership rights, or shares in immovable properties, at the hint of trouble or discord with their wives, in favour of their relatives. Likewise, the parents of the husband often in such cases "disown" them after the son moves out from the common or "joint" premises owned

by either or both his parents, when there is outbreak of marital discord. Courts have to be cautious in their approach, while entertaining and short circuiting suits for possession, which are in effect directed against the plaintiffs' daughter-in law, or else the right of residence in shared households would be a mere chimera, a teasing illusion which the law grandly promises, but is seldom, if ever, able to enforce. In fact, the strategy of "disowning" sons, through public notices or advertisement, is not to be taken lightly. For example, even if a son is disowned by either parent, the death of that parent would, if intestate, still lead to devolution of property upon that son. Indeed, a mere proclamation does not have a dispositive legal effect, breaking all legally relevant familial ties. Thus, absent a deed of relinquishment or other formal deed of partition of the family or separation between the members, the Court must be cautious in denying statutory rights to wives, as against members of the husband's family, on the basis of such tentative facts. To the contrary, if the Court is to place reliance on such acts, benefits enacted by the 2005 Act in favour of the wife would be bypassed on account of alleged, and possibly fleeting, discords between the husband and his family. Indeed, such an approach is neither legally tenable, nor viable given the scheme of the Act".

57. Thus, Division Bench of Delhi High Court, in this case was pleased to set aside judgment and order of the learned Single Judge, directing appellant daughter-in-law to vacate the premises on the count that the premises were owned by the mother-in-law.

58. In the case of *Navneet Arora (supra)*, Division Bench of Delhi High Court, being faced again with similar fact situation wherein

mother-in-law has sought ouster of daughter-in-law from the matrimonial home on the count that matrimonial home belongs to her exclusively, again took review of the relevant provisions of the Domestic Violence Act, particularly definition of **"shared household"** and that of **"domestic relationship"** and in the light of section 19(1) of the Act., came to the conclusion that the daughter-in-law is entitled to protection of her right of residence even against mother-in-law, irrespective of the fact that the premises stand in the name of mother-in-law. In this case also, the dictum laid down by the Apex Court in the case of *S.R. Batra (supra),* was distinguished on facts as well as law. It was held that the right of widowed daughter-in-law to residence in the suit property cannot be denied as issue of title had no bearing so far as her right of residence in the shared household is concerned.

59. Thus, having considered the decisions, taking the view of protecting the right of the married woman in the shared household, irrespective of the fact that shared household is owned by the mother-in-law and those decisions which took contrary view and in the light of decision in *S.R. Batra (supra)***,** now this Court has to decide in the facts of the present case, which view becomes more applicable. It is needless to state that what is binding law in the earlier decision is only ratio decidendi and not the conclusion arrived at any previous decision.

As held by the Apex Court in case of **S.P. Gupta -vs- President of India**[13]**,**

> "case is thus, only an authority on what it actually decides and not what may come to follow logically from it, hence it is stated that judgment of Courts are not to be construed as statute".

The following observations made by Supreme Court in **Mumbai Kamgar Sabha -vs- Abdulbhai Faizullabhai**[14] may be useful in this respect:

> "*It is trite, going by Anglophonic principles, that a ruling of a superior court is binding law. It is not of scriptural sanctity but is of ratio-wise luminousity within the edifice of facts where the judicial lamp plays the legal flame. Beyond those walls and de hors the milieu, we cannot impart eternal vernal value to the decision, exalting the doctrine of precedents into a prison-house of bigotry, regardless of varying circumstances and myriad developments. Realism dictates that judgment has to be read, subject to the facts directly presented for consideration and not affecting those matters which may lurk in the record. Whatever be the position, superior court's casual observations must be judiciously read by courts of co-ordinate jurisdiction."*

60. This position has been made further clear by the Hon'ble Supreme Court in a decision its **CIT -vs- Sun Engineering Works Pvt.Ltd**[15]

13 1982 SCC 149
14 (1976) 3 SCC 832
15 (1992) 198 ITR 297

> *"It is neither desirable nor permissible to pick out a word or a sentence from the judgment of this Court, divorced from the context of the question under consideration and treat it to be the complete 'law' declared by this Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before this Court. A decision of this Court takes its colour from the questions involved in the case in which it is rendered and, while applying the decision to a later case, the courts must carefully try to ascertain the true principle laid down by the decision of this Court and not to pick out words or sentences from the judgment, divorced from the context of the questions under consideration by this Court, to support their reasonings".*
>
> *(emphasis supplied)*

61. In the above decision, the Supreme Court, also quoted with approval the following note of caution given by it earlier in **Madhav Rao Jivaji Rao Scindia Bahadur -vs- Union of India**[16] that,

> *"It is not proper to regard a word, a clause or a sentence occurring in a judgment of the Supreme Court, divorced from its context, as containing a full exposition of the law on a question when the question did not even fall to be answered in that judgment".*

16 (1971) 1 SCC 85

62. In the light of this legal position, if one considers the observations made by the Apex Court, in the case of *S.R. Batra (supra)***,** it is clear that the said judgment must be read as applicable to the particular facts of that case, which are already discussed above. Those observations cannot be made applicable in each and every case, irrespective of the differences in the facts. For example in the case of *S.R. Batra (supra)***,** daughter-in-law Taruna had shifted to the house of her parents because of dispute with her husband. Thereafter she obtained forcible entry in the said house by breaking open the locks. As against it, in this case, appellant has since the date of her marriage in 1991, till today is residing in the house of respondent No.2 mother-in-law. She has never left that house nor shifted anywhere. Her entry therein is also legal. Her possession is also continuous fr more than 25 years. Her residence therein when threatened, was secured by the order of Family Court restraining both respondents from dispossessing her from the said premises and further directing respondents to hand over one set of key of the house to her. Most importantly in the case of *S. R. Batra (supra)*, there was no evidence to show that since date of her marriage, she had continuously resided in the shared household with her mother-in-law. Conversely the evidence showed that only for some period she had stayed there, that too on the second floor of the property in question and not jointly with her mother-

in-law. In view thereof the observations came to be made in paragraph No.24 as stated above that "**shared household**" cannot include **"household**" where person aggrieved lived or at any stage had lived. The argument advanced in that case, was that as Taruna had lived in that property in the past, hence the said property is her shared household. While rejecting such submission, it was held that if the aforesaid submission is accepted, it will mean that wherever husband and wife may have lived together in the past, that property can become shared household and wife may insist in living in all those houses of her husband's relatives merely because she has stayed with her husband for some time in those houses in the past and such a view would then lead to chaos and would be absurd.

63. As against it, in the present case, it is undisputed position that since the date of her marriage in the year 1991, appellant has resided jointly with respondents in the shared household for this continuous period of more than 25 years. It is also not the case that in the said house, she was residing separately, as in the case of *S. R. Batra (supra),* where Taruna was residing with her husband on second floor of the house; whereas in-laws were residing on the ground floor. In the present case as the appellant, as on today also, is residing jointly alongwith respondent No.1 in the said house, using common kitchen and enjoying common facilities. Hence unlike in the case of *S.R.Batra*

(supra) the suit flat is "**shared household"** of appellant within the definition of Section 2(s) of the Act. Therefore, she becomes entitled for protection of her residence in the shared household. To dispossess her therefrom would be against the very scheme, object and purport of the D. V. Act. It would be as good as playing in the hands of her husband, who has put forth his mother to evict appellant when his own efforts to do so failed.

64. The most important distinguishing factor with the facts of *S.R. Batra (supra)*, is that in the said case mother-in-law was admittedly and indisputably the owner of the suit premises. Though it is apart that the concept of ownership of title practically has nothing to do when one considers the definition of "**shared household**", in the case of *S.R. Batra (supra)*, it was not at all disputed by the daughter-in-law that the suit house belongs exclusively to the mother-in-law as she has taken loan for acquiring the said house. No plea was raised by Taruna that it is a joint family property. As against it, in the instant case, appellant has unequivocally denied the fact that the suit premises belong exclusively to her mother-in-law. Conversely, she has specifically pleaded that the suit premises were purchased out of sale proceeds of the ancestral joint family property at Darya Mahal, Napean Sea Road, Mumbai. It may be true that at this interim stage she has not been able to produce any documentary evidence on record to that

effect, but then she may be able to produce such evidence at the time of trial. It is pertinent to note that respondent No.2 has not disputed the fact that she has no source of income. In her affidavit in rejoinder also, she has not disclosed the resources from which she purchased the suit flat. Moreover, unlike in the above said decision of Delhi High Court, in *Preeti Satija (supra),* respondent No.2 mother-in-law has not yet disowned her son, respondent No.1. Though it is contended that he is residing separately at some other place, appellant has seriously challenged the said contention and it is stated that it is merely a ruse to deprive the appellant from her right of residence in the suit premises. Thus, the relationship between Respondent No. 1 & 2 still remains and secondly the property will ultimately revert to respondent No.1, in case of death of respondent No.2, there being no deed of relinquishment or other deed of partition or separation between respondent Nos. 1 & 2. Hence on the mere showing that as respondent No.2 has started residing separately, calling upon appellant also to leave the suit premises is, as good as denying the statutory right of residence to the appellant. On the face of such tentative facts, it would be making the right of appellant illusory, which right, law has granted to her. It is common knowledge that once there is marital discord, then the parents disowning the son or the son leaving the house of parents and residing separately from the parents or the usual tactics adopted in such cases

and therefore, Court has to be cautious while denying rights of the appellant.

65. In the facts of the present case, even after filing of Divorce petition, respondent No.1 was very much residing in the suit premises alongwith his parents and the appellant. However, as his attempt to oust the appellant from suit premises could not succeed, on account of the order passed by the Family Court, protecting her possession therein, it is clear prima facie at this stage that, now by joining hands with respondent No.2, the present suit is filed for eviction of the appellant from the suit premises, on the pretext that Respondent No.2 is following due process of law to do so. It is significant to note that respondent No.2 also could not succeed to intervene in the divorce petition in the Family Court, to deny appellant's right to remain in possession of the suit premises. Therefore, here at this interim stage at least it appears that respondent Nos. 1 and 2 are acting in collusion by joining hands so as to deprive the appellant from her right of remaining in residence of the suit premises. Thus, in the facts of the present case, the law laid down by the Apex Court, in the case of *S.R. Batra(supra)* being in the particular facts of that case, can be clearly distinguished.

66. In addition to and apart from it, as held by the Apex Court, in the case *Sandhya Wankhede (supra)* and by Delhi High Court, in above referred decisions of *Navneet Arora and Mrs. Preeti Satija*, the

broad and inclusive definitions of the term, "**respondent**" as given in section 2(q) and that of **"shared household"** in section 2(s) of the D. V. Act leave no manner of doubt that the term, "**respondent**" not only includes adult male person, like husband but also female family member. Section 19(1) of the D.V. Act, which deals with "Residence Order", therefore, leaves no manner of doubt that such right of residence can be enforced even in respect of the house which is owned by the mother-in-law or any other family relatives, since they are also covered in the definition of "**respondent**". There is no qualification to the word "**respondent**" as used in sections 12, 17 and 19 of the Act to restrict the said definition of "respondent" or even to restrict the right of the married woman to reside in the shared household on the ground that the property does not belong to joint family. To import the concept of **"HUF"** in the definition of **"shared household"** is as good as rejection of the protection given to a deserted woman by the statutory law, especially when the statutory law does not even contemplate that the Court should enquire into the title of "**shared household**", in which right of residence is claimed. The very definition of "**shared household**" makes it abundantly clear. It only contemplates that aggrieved woman was residing in the said household as member of the family, irrespective of the fact whether such household belongs to the joint family or whether she herself or respondent No.1 have any right,

title or interest in the said household, whether it was owned or tenanted. This position is expressly made clear by our own High Court in the decision of ***Ishpal Singh Kahai -vs- Ramanjeet Kahai,***[17], wherein while dealing with the case under the provisions of D.V. Act, this Court was pleased to observe that "it is not material to consider in whose name matrimonial home stands". *In this decision also, this Court extensively discussed legislature history and noticed that prior to Domestic Violence Act, the title of parties was often considered in grant or refusal of relief of injunction. Hence the Domestic Violence Act came to be enacted essentially to grant statutory protection to victims of violence in the domestic sector, who had no proprietary rights owing to which Civil Law protection could not be availed by them. This Court also took into consideration in the said decision various provisions of the Act including section 2(s), 17 and Section 19(1)(a) to conclude that "there was no place for proprietary rights in the scheme of Domestic Violence Act as it was an extension of the deeper and profounder principle of women's right as concomitant of human rights".*

(emphasis supplied)

67. Thus, when the very object of enactment of D.V. Act is to protect the right of married woman in the "shared household" irrespective of to whom such house belongs and when the very

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concept of her right of residence being linked to title or ownership of the house being alien and kept away from the scheme of the Act, as due to the very absence of right, title or interest in the matrimonial home, she was thrown out therefrom, to import again the very same concept of title and ownership is defeating the very object of the Act, setting at naught the legislative efforts and most importantly depriving the woman of her human rights, which are given statutory recognition under D.V. Act.

68. Thus, in my considered opinion, looking at it from any angle and from each and every perspective, in the facts of the present case, the conclusion is inevitable that, at this prima facie stage when the appellant, is undisputably in settled possession of the suit premises, which are her shared household, for a period of more than 25 years, to dispossess her or to oust her from the suit premises, that too by way of interim mandatory injunction, thereby decreeing the suit in its entirety at this interim stage itself, when the right and title of respondent No.2 mother-in-law as exclusive owner of the suit property is in dispute, when marital discord between appellant and respondent No.1 is yet pending adjudication in Divorce Petition before the Family Court and thereby defeating the interim protection granted to the appellant by the Family Court by detailed order, cannot be justified. In any way, definitely, prima facie case lies in favour of the appellant to

protect her possession at the interim stage. The balance of convenience also lies in her favour and she will suffer irreparable loss and hardship if she is ousted from the possession, especially when the dispute is yet subjudice and the questions of facts are not yet decided finally.

69. As a result, the impugned order of granting interim mandatory as passed by the trial Court, cannot be sustained and needs interference, so as to set aside the same.

70. As to the offer of alternate premises given by the respondent No.1 to the appellant, appellant is still at liberty to consider the said offer. Respondent No.1 may also give offer of some more premises in addition to the premises, already offered. Parties may, for the sake of mutual piece and harmony, consider said proposal. Appellant may also, if she finds alternate premises to be suitable, consider shifting to those premises. Those doors are yet always open to both the parties. However, till such amicable solution is found out, it would not be just and legal in the light of the Objects, Reasons, Purpose and Provisions of Domestic Violence Act, to oust the appellant from possession of the suit premises.

71. As an upshot of above discussion, the appeal is allowed. The impugned order of interim mandatory injunction as passed by the trial Court of directing appellant to quit from the possession of suit

premises, is hereby quashed and set aside. Accordingly Notice of Motion filed by Respondent No.2 before the trial Court stands dismissed.

72. In the circumstances of the case, parties to bear their own costs.

73. In view of disposal of appeal itself, Civil Application does not survive and the same stands disposed of accordingly.

74. At this stage, learned counsel for respondent No.2 requests the Court to expedite the hearing of the suit pending before the Trial Court. Learned counsel for the appellant and respondent No.1 have no objection to do so. In view thereof, the Trial Court is directed to decide the suit as expeditiously as possible preferably within one year from today.

[DR. SHALINI PHANSALKAR-JOSHI, J.]