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

% Reserved on: 19th OCTOBER, 2020
Decided on: 10th NOVEMBER, 2020

+ **CRL.M.C. 574/2020, CRL.M.A. 2364/2020, CRL.M.A. 2365/2020, CRL.M.A. 4751/2020, CRL.M.A. 7150/2020, AND CRL.M.A.No.13177/2020**

SARA CARRIERE DUBEY Petitioner

Through: Ms.Priya Hingorani, Sr Advocate
with Dr.Aman Hingorani and
Mr.Himanshu Yadav, Advocates.

versus

ASHISH DUBEY Respondent

Through: Mr.Tanmaya Mehta, and
Ms.Vandna Kejriwal, Advocates.

CORAM:
HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J. (*Through Video Conferencing*)

1. The petition challenges an order dated 13.01.2020 passed in Criminal Appeal No.232/2019 by the learned Additional Session's Court, Saket, New Delhi.
2. The petitioner and respondent were married on 07.06.2006. Two children were born from their wedlock, a daughter in the year 2009 and a son in the year 2011. The property in dispute is 299, *Asiad Village Games Complex, New Delhi*, jointly purchased in the year 2008. Both the parties are co-owners of the said property to an extent of 50% share each.
3. Allegations and counter-allegations are made by either parties.

4. The petitioner alleges *a)* the respondent is in extra marital affair with one Ms.Ruchika Dua, a *blatant cause* for matrimonial dispute/domestic violence; *b)* the petitioner herein made her first complaint dated 24.05.2017 at PS Hauz Khas alleging infidelity of respondent and fear for her life. She has attached MLC of Jai Prakash Narayan Apex Hospital dated 24.05.2017 showing a *soft tissue injury* to her allegedly *caused* by her husband/respondent herein; *c)* subsequently a complaint under Section 12 read with Sections 17 to 23 of The Protection of Women from Domestic Violence Act 2005 (herein after referred to as “*DV Act*”) was filed before the learned Magistrate, Saket Court, Delhi; and *d)* On 06.06.2019 the learned Magistrate while noting several allegations in its order dated 24.04.2019, appointed a Protection Officer who files a report dated 21.05.2019 noting, interalia, *alleged repetition of acts of violence upon the petitioner and her children*. Such incidents are detailed in paras 4 to 8 of an early hearing application which was disposed of vide order dated 06.06.2019 wherein the learned Magistrate notes:-

*“15. It may be prudent to note that immediately after cameras were installed in the house on the 17th morning, the complaints filed thereafter refer to alleged thefts from the car and not from the house.” The respondent has alleged that the complainant has been harassing him and has unnecessarily dragged their children in the court case(s) and the complaints made by the complainant are all false. It is pleaded on behalf of the respondent that some more time be granted to the respondent to file his reply and put forth his defense to the main petition under Section 12 of the D.V. Act. The respondent is residing together with the complainant and the children in the same shared household. The complainant has already filed an application under Section 31 of the D.V. Act for alleged breach of the interim protection orders dated 24.04.2019 and 27.04.2019, which is already listed for pre-summoning evidence. The interim protection order had already been passed by the court in favour of the complainant and despite which she has alleged that the respondent continued to harass her. **What appears from the record***

is that the complainant is not at all feeling secure in the same house with the respondent, who is allegedly continuing to be violent and abusive. It, seems that if the respondent is permitted to continue to reside in the same shared household, his presence may instill fear in the minds of the children, who are of impressionable age. It can be traumatic for the children to live in fear of their father and for the complainant to be constantly on her toes for a lookout against any possible future alleged misbehavior by the respondent. The school of the children is closed for summer vacations, which would certainly mean more time for them to spend at home. At this stage, there appears to be an apparent animosity' between the parties and it would be best for ah the parties to be given time to cool their minds and think clearly the best course of action for their children, who are caught amidst the litigation squabbles of the ' parties. No prejudice would he caused to the respondent, if he is directed to reside at some other place for the time being. Therefore, in the interest of the young children and for complainant's sense of safety for herself and her children, till the next date of hearing the respondent is directed to remove himself from shared household. Accordingly, the present application is disposed of."

e) It is alleged despite the order dated 06.06.2019 of the learned MM, the respondent refused to vacate the subject premises and rather on 07.06.2019 had filed CRL.A.232/2019 under Section 29 of DV Act wherein the learned Additional Session's Judge granted an ex-parte stay against the order dated 06.06.2019 of the learned Magistrate.

f) On 07.06.2020 *allegedly* the respondent became furious and gave beatings to the petitioner. She was taken to Jai Prakash Narayan Apex Trauma Centre by the police and her MLC revealed yet again a *soft tissue injury*. As the pain persisted she went to Max Hospital, Saket where she got stitches. The photographs of the petitioner bleeding is annexed at page no.134 and medical documents of Max Hospital are at page no.141 of the paper book. The appeal was ultimately decided on 13.01.2020. The relevant portion of the impugned order dated 13.01.2020 is as under:

"14. On the very first date i.e. 07.06.2019, execution of order dated 06.06.2019 passed by Ld. MM was stayed. Since then, number of applications were filed on behalf of the respondent in this regard for vacating the stay before this court and Vacation Judge. The Hon'ble

High Court however in the connected matters referred the dispute to the mediation centre on various occasions. Number of hearings were given to the parties. Even children were directed by the Hon'ble High Court to be produced before the Hon'ble Division Bench. Despite repeated efforts, no settlement could be arrived at between parties. Thereafter, arguments were heard on the present petition on various dates. It is indeed clear that there is animosity between parties due to which, children were caught amidst the litigation squabbles of the parents. The relationship has gone so; sour that the wife is not feeling secure in the same house with the husband. They are not cooling down despite repeated efforts of settlement made by various courts. The allegations and counter allegations required to be finally decided on after trial. The children were not produced in this court despite oral directions for the same during the entire period of pendency of this appeal. The safety and security of the children is of utmost importance. It is a marriage of 13 years. It has come up on record, previously, there were no complaints of any violent behaviour against the appellant/husband.

18. In the facts and circumstances of the case, appellant is hereby directed to provide an alternative accommodation to respondent/wife and her children in the same locality which shall be similar to the shared household with similar facilities at the earliest preferably within one week from the date of order and also to continue paying Rs. 50,000/- per month towards the expenses alongwith all expenses towards children as already undertaken by him till further orders. The impugned order passed by Ld. MM accordingly stands modified to the same extent. In case however any dispute arises in the course of providing alternative accommodation, both parties will be at liberty to approach the Ld. Trial Court which shall pass appropriate order after considering the facts and circumstances.”

g) It is alleged as the respondent refused to remove himself, the petitioner, left with no choice, moved in a hotel, but since respondent did not pay hotel expenses she then moved at her friend's place with her two children and is presently staying there at her friend's mercy.

h) It is the submission of the learned counsel for the petitioner that wrong facts and admissions are being noted in the impugned order. The learned Additional Session's Judge had directed the petitioner to choose from alternative accommodation but whereas she never shifted on her own from her house and it was only because of the circumstances so

created by the respondent she had to leave with children as was left with no other choice.

i) The reference is also made to various *emails* of Ms.Ruchika Dua; hotel bills of Taj Mahal Hotel New Delhi where the respondent allegedly stayed with Ms.Ruchika Dua from 16.10.2015 to 20.10.2015; hotel bills of Sarovar Portico New Delhi where he stayed from 18.08.2018 to 28.08.2018 with Ms.Ruchika Dua; the air tickets he had purchased for his alleged girlfriend to Dubai.

j) Some of the Whatsapp messages allegedly sent to petitioner by Ms.Ruchika Dua are as under:

“if you have given two kids to the respondent then she also had got pregnant twice and had abort, xxx and if you want take some classes how he likes to be treated in bed? xxx Do u want me to share some pictures or videos which are worth seeing”

It is alleged even on 04.07.2020 and 11.07.2020 when petitioner had visited her matrimonial home to take her belongings she saw Ms.Ruchika Dua staying in her bedroom. She clicked photographs of Ms.Ruchika in her shared household from a mobile during her visit.

k) It is thus argued in the grab of impugned order the respondent is enjoying in the subject house with his girlfriend and whereas the petitioner/wife alongwith her children is paddling between hotels and her friend’s house(s) seeking their help. The maintenance orders though were referred, but are not relevant for the issues involved.

5.(i) The respondent on the other hand has alleged the shared household was purchased in the year 2008, though in the *joint names* but the entire

payment was made by respondent, admittedly, *from the bank account of the petitioner*, for tax purposes.

(ii) It is argued between the years 2013 to 2019 there was never any complaint by the complainant/petitioner. He rather referred to various emails exchanged between the parties where the petitioner herself is seen to be apologetic and promising to mend her ways. However, it is admitted the dispute started in the year 2016-17 when the petitioner started suspecting his alleged affair and started collecting evidence to put up a case of domestic violence. It is alleged on 24.05.2017 for the first time she made a complaint but thereafter they all went to France, USA etc (photographs annexed) to enjoy holidays.

iii) The respondent also referred to various emails exchanged between the parties till January, 2019 with no whisper of any alleged violence committed by respondent and rather had purchased two properties in favour of the petitioner, including a flat, fetching rental income for petitioner.

iv) It is argued on 27.04.2019 the learned Magistrate, had denied relief of removal of respondent from the house at that stage and gave an opportunity to respondent to put forth his defence, but the petitioner from 14.05.2019 to 18.05.2019 went on filing complaints against the respondent alleging kidnapping her children; inclined to kill her; took her laptop to delete the alleged emails; stolen her passport/Rs.50,000/- stolen from her car etc to make her case strong, however, without any allegation of physical violence and/or abuse. On 21.05.2019 the protection officer

also filed a report and it did not contain any observation of violence, *physical or otherwise*, allegedly committed by the respondent.

v) It is argued on 27.05.2019 the petitioner filed an application for early hearing and though its short reply was filed by the respondent, but without there being any reply to the main application under Section 23 DV Act or the main petition, the learned Magistrate had passed the order dated 06.06.2019 directing removal of the respondent from the matrimonial house, despite an earlier order dated 27.04.2019 giving respondent an opportunity to put forth his defence prior to a residence order.

vi) It is alleged the order dated 06.06.2019 was passed unexpectedly on an application for early hearing; without there being any prayer of such kind and without taking any replies on record and was in complete derogation of his own observation, the learned MM in her earlier order dated 27.04.2019, and such order was rather bad in law per *Adalat Prasad vs. Roop Lal Jindal & Others (2004) 7 SCC 338*, as it amounts to review.

vii) The respondent then preferred CRL.A.232/2019 on 07.06.2019 and the order dated 06.06.2019 of learned Magistrate was stayed *ex parte*. In the evening at about 9 PM, the petitioner created a chaos in the house in the presence of a lady constable and even had threatened and pushed the respondent, thereby injuring herself. Both were taken to hospital where the MLC of respondent also revealed *soft tissue injury* and abrasion on his forehead. Thereafter the petitioner on her own had left the shared house with her children in the wake of an adverse order dated

07.06.2019 passed by the learned ASJ and went to Max Hospital to create further record.

viii) Reference was also made to W.P.(CRL.)1757/2019 for custody of his children.

ix) It is alleged the proposal(s) for alternative accommodation were submitted on 24.06.2019 before the learned Session's Court where the counsel for the petitioner sought time to consider the same but later the petitioner refused and the learned ASJ rather noted the submissions qua her voluntarily leaving the house and shifting in a guest house/hotel and passed the impugned order.

x) It is argued vide impugned order dated 13.01.2020, the learned ASJ had set aside the order dated 06.06.2019 of the learned Magistrate and had directed the respondent to provide an alternative accommodation to petitioner and her children in the same vicinity, similar to the shared household and with similar facilities. It is argued the respondent had identified ten of such properties in South Delhi itself, but deliberately declined by the petitioner.

6. Thus a bare perusal of above, show both the parties are in severe dispute(s) and had refused to budge an inch. The petitioner prays for restoration of order dated 06.06.2019 of the learned Magistrate and to set aside the impugned order dated 13.01.2020 passed by learned Session's Court and whereas the respondent claims dismissal of this petition.

7. Admittedly, the Protection of Women from Domestic Violence Act, 2005 was enacted to protect women from domestic violence. The

definition of “domestic violence” is broad and includes not only physical but also other forms of violence such as *emotional*, verbal, sexual and economic abuse. An application regarding domestic violence can be presented to the Magistrate by an aggrieved person and while disposing of such application the learned Magistrate may take into consideration any domestic incident report from the protection officer and may also issue a residence order or an order of payment/compensation or damages, without prejudice to the rights of such person to institute suit for compensation of damages for the injuries caused by the Act of domestic violence.

8. Such an order need to be passed by the learned Magistrate if he is satisfied the application *prima facie* disclose the respondent is *committing* or has *committed* an act of domestic violence or there is *likelihood* of such violence and he may grant an ex-parte orders against the respondent on the basis of an affidavit of aggrieved person.

9. The learned Magistrate, if satisfied, that domestic violence has taken place he can pass residence orders restraining the respondent from dispossessing the aggrieved person or in any manner disturbing her peaceful household; direct the respondent to remove himself from the shared household; or directing the respondent to secure same level of alternative accommodation for the aggrieved person as enjoyed by her or to pay rent for the same, if the circumstances so required. However, *no order shall be made against women under Section 19(1)(b)*. The learned Magistrate may impose additional conditions and may pass any other order to protect the safety of an aggrieved person or her child.

10. The relevant sections of the DV Act are as below :

“2. Definitions.—In this Act, unless the context otherwise requires,—
(g) “domestic violence” has the same meaning as assigned to it in section 3;
(p) “residence order” means an order granted in terms of sub-section (1) of section 19;
(s) “shared household” means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with 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 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.

3. Definition of domestic violence.—For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it—
(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or
(b)–(d) xxxxxx

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.

23. Power to grant interim and ex parte orders.—

(1) In any proceeding before him under this Act, the Magistrate may pass such interim order as he deems just and proper.

(2) If the Magistrate is satisfied that an application *prima facie* discloses that the respondent is committing, or has committed an act of domestic violence or that there is a **likelihood** that the respondent may commit an act of domestic violence, he may grant an *ex parte* order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under section 18, section 19, section 20, section 21 or, as the case may be, section 22 against the respondent.”

11. To invoke the jurisdiction of this Act the petitioner/wife must *prima facie* disclose the husband/respondent has *committed* or is *committing* or there is *likelihood* of committing domestic violence. What Section 19 and 23 requires to pass is an interim order, upon satisfaction of the learned Magistrate, where the application *prima facie* discloses the respondent having committed or is committing the acts of domestic violence or there is likelihood he may commit any act of domestic violence.

12. The learned Magistrate though on 27.04.2019 had directed the defence of the respondent may be placed before him to pass a residence order, but it is also not denied that an opportunity to file replies was given for 06.05.2019 but the respondent failed to avail such opportunity. It was only then an application for early hearing was moved. Even in her application for early hearing, the petitioner had alleged repeated acts of domestic violence against her and sought an early hearing. It was only then the learned MM after taking reply to application went on to hear arguments and finding contents of application sufficient, formed a *prima facie* opinion order dated 06.06.2019 under Section 19 (1) (b) of the DV Act was passed by the learned Magistrate.

13. Nevertheless here we are more concerned with the impugned order under Section 19 (1) (f) passed by the learned Session's Court in appeal.

14. The question raised by the learned counsel for the respondent is once the Court has exercised its power under Section 19(1)(f) and if the order is a reasoned one, then can such an order be set aside under Section 482 Cr.P.C. simply because the High Court believes there could be some other possibility. It is argued it can only be set aside if it is perverse.

15. The learned counsel for the respondent in support of his argument under Section 19(1)(f) has referred to *Shumita Didi Sandhu vs. Sanjay Singh Sandhu and Ors.* (2010) 174 DLT 79 (DB) wherein the Court held:

"55. We must emphasize once again that the right of residence which a wife undoubtedly has does not mean the right to reside in a particular property. It may, of course, mean the right to reside in a commensurate property. But it can certainly not translate into a right to reside in a particular property. In order to illustrate this proposition, we may take an example of a house being allotted to a high functionary, say a Minister in the Central Cabinet and who resides in the same house along with his wife, son and daughter-in-law. It is obvious that since the daughter-in-law and son reside in the said house, which otherwise is a Government accommodation allotted to the father-in-law, the same could be regarded as the house where the son and daughter-in-law live in matrimony. Can the daughter-in-law claim that she has a right to live in that particular property irrespective of the fact that the father in law subsequently is no longer a Minister and the property reverts entirely to the Government? Certainly not. It is only in that property in which the husband has a right, title or interest that the wife can claim residence and that, too, if no commensurate alternative is provided by the husband."

16. In *Shilpa Tandon vs. Harish Chand Tandon and Another* (2016) 160 DRJ 315 the Court held:

"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.

20. Since this Court cannot force the appellant to opt for a particular property, we take on record the statement made by learned counsel for the first respondent that in lieu of the accommodation currently occupied by the appellant he would pay her Rs. 30,000/- per month as rent for her to

take on lease a one bedroom plus living room accommodation as per her choice.

23. In the present appeal we are not to go into the allegations and counter allegations concerning acts of cruelty or false FIRs lodged. But suffice would it be to highlight that keeping in view the allegations made against each other, the appellant must move out from the property which she is occupying.”

17. In line of the above, it is argued the respondent has offered various alternative accommodation(s) viz. in Safadarjug Development Area, Green Park etc. but all were ignored by the petitioner, thus she is not entitled to subject house and / or restoration of the order dated 06.06.2019 passed by the learned Magistrate.

18. In judgments cited, *admittedly*, the aggrieved person/wife was residing in a house belonging to her in laws, where she had no legal right to stay, *except* for her right created under Section 2(s) and Section 19(1) above. However, the facts of case in hand are slightly different. The petitioner here is a *co-owner* of the premises in dispute. Further she has filed sufficient record viz. emails of Ruchika Dua, though presently are denied by the respondent on a plea *Ruchika Dua is not before this Court hence cannot comment on the same*, but he did not deny he has an acquaintance with Ruchika Dua or had booked her air tickets to Dubai or her hotel accommodation; she being his friend. Infidelity, of course, is denied.

19. The petitioner/wife has not only filed emails, whatsapp messages sent by Ruchika Dua but also photographs where Ruchika Dua is seen in shared household after the petitioner had left her matrimonial house to stay in a hotel. If such allegations are later found true; then putting the

petitioner and minor children at the mercy of her friends would, *prima facie*, be an emotional abuse.

20. The emails, the allegations of infidelity, the whatsapp messages being on record, there was no reason for the learned Additional Session's Judge to set aside the order dated 06.06.2019 of the learned Magistrate, which order, even otherwise, was only till disposal of the main application. The *inconvenience caused to a wife who left her house with her children was more than the inconvenience caused to respondent/husband*. The respondent though alleged that after the petitioner had left the house he has brought his ailing sister to stay with him but we need to look and decide the application on the basis of facts available on record on the day the order dated 06.06.2019 was passed to find if the order of learned Magistrate was perverse to be set aside by the learned Additional Session's Judge. The answer is emphatic no.

21. Now, if the order dated 13.01.2020 of the learned Session's Court is not perverse, then I fail to understand how the order dated 06.06.2019 passed by the learned Magistrate under Section 19(1)(b) of the DV Act was perverse. Admittedly, it too was also a jurisdictional exercise of power by the learned MM under Section 19 of the DV Act and ought not to have been set aside, unless *perverse*. The order dated 06.06.2019 rather noted *what appears from the record is the petitioner is not at all feeling secure in the same house with the respondent who is allegedly continuing to be violent and abusive*. Thus the learned Magistrate had satisfied itself *per* Section 19(1) of the DV Act and directed the respondent to remove himself. It cannot be denied learned Magistrate has

a power to pass such an *ex-parte* interim order, once he is satisfied there is *even a likelihood* of act of violence, per Section 23 (2) (*supra*).

22. Further, *proviso* to Section 19(1) cannot be ignored where it says such an order cannot be passed against a woman.

23. Moreso Section 2(s) viz. definition of *shared household*, categorizes aggrieved person viz. *a*) where she has a *title* in her matrimonial house and *b*) where she is residing in the subject house as a *wife* or as a *member* of joint family of her husband. The learned MM, admittedly, had proceeded to pass an order under Section 19(1)(b) as the petitioner fell within the ambit of category (*a*), viz has a *title* in the shared property, hence, *per proviso*, to Section 19, could not have been asked to remove herself from such shared household: Her case, admittedly, stood on a better footing than that of an aggrieved person in category (*b*) above.

24. As the petitioner jointly own the subject property, she *prima facie* had a better case for an order under Section 19(1)(b) rather than under Section 19(1)(f) of the DV Act. The facts gets stronger per *Samir Vidyasagar Bhardawaj vs. Nandita Samir Bhardwaj* 2017 (14) SCC 583 wherein a wife was a *joint owner* of the property and the Court held:

“8. The only issue to be addressed in this case is whether the order directing appellant-husband to remove himself from the matrimonial home of which he is a co-owner warrants interference.

11. The Family Court arrived at a finding that prima facie material was available on record to accept the allegation of the respondent-wife on domestic violence wherein the concerned Judge had exercised his discretion under Section 19(1)(b) of the Domestic Violence Act which provides that the Magistrate on being satisfied that domestic violence has taken place can remove the spouse from the shared household which in our opinion he has rightly done. Exercise of discretion by Family Court cannot be said to be perverse warranting interference.

The High Court while declining to interfere with the order has also considered the factual and legal position."

25. Though the learned counsel for respondent argued the learned MM in Samir's case (supra) had rather formed a *prima facie* opinion of violence because of affidavits of respondent's daughters supporting their mother, but here too the learned MM had gone through the allegations made in early hearing application and otherwise, to form such an opinion and thus per Section 23(2) of the Act had passed a removal order considering *likelihood* of violence. Thus, on facts the order of learned MM was not a perverse order to be set aside by the impugned order.

26. In his order dated 27.04.2019, the learned MM also *inter alia* noted:-

".....Considering the photographs on record and that the parties are residing together, the respondent for the time being is restrained from committing any act of domestic violence upon the complainant and the minor children till further orders. "

27. Even the impugned order dated 13.01.2020 notes:

".....it is indeed very clear that there is animosity between the parties due to which the children were caught amidst the litigation squabbles of the parents. The relationship has gone so sour that the wife is not feeling secure in the same household with the husband....."

28. Hence, the record available before the learned MM was sufficient to form a *prima facie* opinion. Qua video recordings dated 06.07.2019 it was argued that it was prepared by a cousin of respondent and he deliberately did not cover the entire incident where the petitioner was allegedly beaten. Admittedly, there are two MLCs (supra) of petitioner herein dated 07.06.2019 and 24.05.2017 on record.

29. Lastly in *Satish Chander Ahuja vs. Sneha Ahuja*, CA No.2483/2020 decided on 15.10.2020 the Supreme Court observed in

para No.32 of the judgment; the statements of objects and reasons of the DV Act *interalia*:

“xxxxxx

(iii) It provides for the rights of women to secure housing. It also provides for the right of a woman to reside in her matrimonial home or shared household, whether or not she has any title or rights in such home or household. This right is secured by a residence order, which is passed by the Magistrate.

Further, the Supreme Court observed:-

63. As noted above, Act 2005 was enacted to give a higher right in favour of woman. The Act, 2005 has been enacted to provide for more effective protection of the rights of the woman who are victims of violence of any kind occurring within the family. The Act has to be interpreted in a manner to effectuate the very purpose and object of the Act. Section 2(s) read with Sections 17 and 19 of Act, 2005 grants an entitlement in favour of the woman of the right of residence under the shared household irrespective of her having any legal interest in the same or not.”

30. In view of the facts discussed above the impugned order is set aside and the order dated 06.06.2019 of the learned MM is restored. The respondent is given ten days’ time from today to remove himself from the property in dispute. Needless to say in case of any failure on the part of the respondent, the learned MM shall proceed in accordance with law.

31. The respective right(s) in the subject property and/or disputes *interse qua* harassment etc, may be raised before the appropriate forum. The observations made above shall not influence the Courts below and allegations/counter allegations be dealt purely on merits.

32. Both the parties are directed to appear before the learned Trial Court/Successor Court on 26.11.2020 for further directions.

33. Petition is disposed of. Pending application(s) if any, also stands disposed of. No orders as to cost.

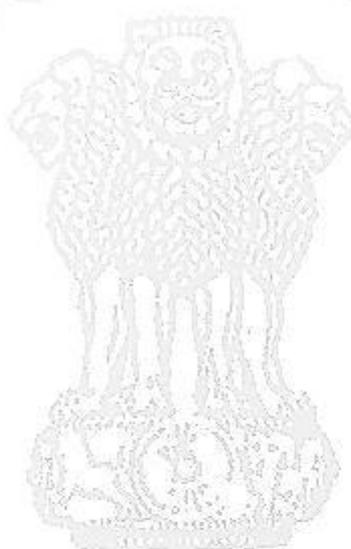
34. Copy of this order be communicated electronically to the learned Trial Court/Successor Court for information and compliance.

YOGESH KHANNA, J.

NOVEMBER 10, 2020

M/DU

HIGH COURT OF DELHI



भारत्यमेव जयते