



2025:DHC:8177



\$~62

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

Date of decision: 15.09.2025

+ RFA 868/2025
PRITI SARAF

.....Petitioner

Through: Mr. Mudit Jain, Ms. Mahima Malhotra & Mr. Rudraksh Nakra, Advs. along with appellant in person & her son, Devesh Saraf, Director of R-2.

versus

AJAY SHARMA & ORS.

.....Respondents

Through: Mr. Sudhir Nandrajog, Sr. Adv. with Mr. Aman Panwar, Mr. Harsh Gattani & Ms. Ankita Singh, Advs. for R-1 along with R-1 in person.

Mr. Attin Rastogi, Adv. for R1
Mr. Harish Malik, Adv. for R-2
Ms. Geeta Luthra, Sr. Adv., Ms. Kamakshi Agrawal & Mr. Rishabh Dahiya, Advs.

CORAM:

HON'BLE MS. JUSTICE RENU BHATNAGAR

RENU BHATNAGAR, J. (Oral)

CM APPL. 58061/2025 (Exemption)

1. Allowed, subject to all just exceptions.

RFA 868/2025 & CM APPL. 58060/2025 (stay)

2. The present regular first appeal under Section 96 read with Order XLI of the Code of Civil Procedure, 1908 (hereinafter referred to as, 'CPC') has been filed by the appellant against the Final Judgment and Decree dated 26.04.2025 (hereinafter referred to as,



2025:DHC:8177



‘Impugned Judgment’) and Order dated 29.03.2025 passed by the learned District Judge, Patiala House Courts, New Delhi, in CS 4285/2024 titled *Ajay Sharma v. M/s Asian Hotels (East) and Anr.*

3. *Vide* Order dated 29.03.2025, the application preferred by the appellant under Order I Rule 10 CPC seeking her impleadment in the eviction suit filed by Respondent No. 1 against Respondent Nos. 2 and 3 was dismissed.

4. *Vide* the impugned Final Judgment dated 26.04.2025, the above captioned civil suit, filed by Respondent No. 1 was decreed in his favour under Order XII Rule 6 CPC, without impleading the appellant herein as a necessary party.

5. After decreeing of the suit *vide* impugned judgement and decree, Respondent No.1 filed an execution petition before the learned execution court wherein the learned court had issued warrants of possession of the tenanted premise (suit property) against the judgement debtor therein *vide* Order dated 10.09.2025.

6. Aggrieved thereof, the appellant has filed the present regular first appeal.

7. To give a brief background of the facts in which the present appeal arises, the appellant, who is the legally wedded wife of the Respondent No. 3, has been living in the tenanted premises (suit property) along with Respondent No. 3 in joint family.

8. The suit property was taken on lease from respondent no.1 under a registered lease deed dated 15.02.2019, executed for a period of five years with respondent no.2/company, wherein respondent no.3 is stated to be the Joint Managing Director.



2025:DHC:8177



9. The aforesaid registered lease deed allegedly expired on 31.01.2023. Allegedly, it is stated by learned counsel for the appellant that the lease deed is being continued orally as per an understanding between Respondent No. 1 and Respondent No. 2, on Respondent no. 3 making the continued payment of rent on his own and residing therein along with the appellant .

10. Admittedly, the appellant and Respondent No. 3 are having multiple litigation including a litigation under Domestic Violence Act, 2005 (hereinafter referred to as, 'DV Act'), which was filed on 07.02.2023 by the appellant against Respondent No. 3.

11. *Vide* Order dated 29.10.2024, this Court in Crl. Rev. P. 1246/2024, wherein the Respondent No. 3 had assailed the Order dated 14.02.2024 passed by the learned Mahila Court in said DV Act proceedings filed by the appellant, had granted interim protection to the appellant to reside in the shared household, which at the time being was the tenanted premise (suit property) in the present appeal.

12. The learned counsel for the appellant submits that the appellant is the wife of Respondent No.3, who is the Joint Managing Director of Respondent No.2 company, to whom the tenanted premise (suit property) had been given by respondent no.2/tenant, for residential purposes. It is urged that Respondent No.1 and respondent no.3/husband are acting in collusion with the object of evicting the appellant from the suit property and shifting her to an accommodation of a lower standard. Reliance is placed upon the order passed by the learned Sessions Court in the domestic violence proceedings instituted by the appellant, wherein such concerns were noted.



2025:DHC:8177



13. It is further contended that respondent no.1 instituted the eviction suit without impleading the appellant as a party, even though her rights are directly affected as she resides in the suit premises along with the respondent no.3 as the shared household. Learned counsel for the appellant relies upon the judgment of the Supreme Court in ***B.P. Achala Anand v. S. Appi Reddy & Anr.***, (2005) 3 SCC 313, to contend that the wife has a right to contest eviction proceedings filed against the husband in his capacity as tenant, where her residence in a shared household is at stake.

14. It is further submitted that the appellant's application under Order I Rule 10 CPC seeking impleadment was erroneously rejected on the ground that, once the matter had been reserved for judgment under Order XII Rule 6 CPC and as such she had no locus to seek impleadment. Learned counsel states that this reasoning is untenable, as the appellant's independent rights are being prejudiced. Reliance is again placed on ***B.P. Achala Anand*** (supra) to urge that, where the husband does not contest the eviction suit, the wife whose rights are affected is entitled to contest in his stead.

15. It is urged that the eviction notices issued are mala fide and intended solely to oust the appellant. Even after expiry of the written lease deed, it is submitted that an oral tenancy continues between respondent no.1 and respondent no.2 company. Further, it is submitted by the learned counsel for the appellant that before the learned trial court, no board resolution authorising admission of liability was produced by respondent no.2 company, and the decree on admission under Order XII Rule 6 has been obtained only due to collusion



2025:DHC:8177



between the respondents herein .

16. Learned counsel further places reliance on Order dated 29.10.2024 passed by a Coordinate Bench of this Court in Crl. Rev. P. No.1246/2024, arising from the domestic violence proceedings, directing respondent no.2 to permit the appellant to reside in the suit property, which at the time was the shared household of the appellant and respondent no.3. It is argued that this Order recognises her vested right of residence in the suit premises and, therefore, the eviction proceedings could not have been decided without impleading her as a necessary party. Reliance is also placed on the decision of the Supreme Court in *Satish Chander Ahuja v. Sneha Ahuja*, (2021) 1 SCC 414, to contend that a woman residing in a shared household has rights akin to those of a tenant or licensee and is entitled to defend her residence in eviction proceedings.

17. It is further submitted that the learned trial court erred in rejecting the impleadment application under Order I Rule 10 moved by the appellant by observing that the appellant could seek alternate remedies with respect to the suitable accommodation under the Domestic Violence Act. According to learned counsel, such reasoning is unsustainable, since the eviction suit under the Transfer of Property Act cannot be adjudicated behind the back of a person whose right of residence is directly affected.

18. It is further contended that both defendants in the suit/Respondent Nos. 2 and 3 herein, failed to contest the eviction proceedings effectively and did not even file a reply to the application under Order XII Rule 6 CPC filed by respondent no.1, which



2025:DHC:8177



demonstrates collusion to oust the appellant. It is further submitted that warrants of possession have now been issued by the learned execution court directing vacation of the tenanted premises by 17.09.2025, thereby rendering the appellant remediless unless this Court intervenes.

19. It is argued that the appellant cannot be compelled to move into accommodation of a lower standard under the garb of the present eviction decree. Learned counsel for the appellant refers to the application filed by respondent no.3 for modification of the interim maintenance Order dated 29.10.2024 and 14.11.2024, in the domestic violence proceedings wherein it was admitted that the rent of the suit premises is about Rs.7 lakhs per month, but respondent no.3 sought to shift the appellant to an accommodation of up to Rs.3.30 lakhs per month due to the marital discord.

20. Learned counsel submits that such a course of action is impermissible, as under the DV Act, as the estranged wife cannot be evicted from the shared household except by procedure established by law. Reliance is again placed on *Satish Chander Ahuja* (supra) to reiterate the said principle.

21. Lastly, it is submitted that the appellant is ready and willing to demonstrate her bona fides by depositing rent at the rate of Rs.7,50,000/- per month, as noted by the learned Trial Court in the impugned judgement and decree, for the next six months within a period of three days, subject to further orders of this Court.

22. Learned senior counsel for respondent no.1 submits that the entire submissions advanced by learned counsel for the appellant go



2025:DHC:8177



passed by the learned Mahila Court and this Court in proceedings under the Domestic Violence Act is misplaced, as those orders operate inter se between respondent no.3 and the appellant. They cannot be construed in a manner so as to curtail or exhaust the independent rights of respondent no.1 as landlord.

27. It is further submitted that the contractual relationship was solely between respondent no.1 and respondent no.2. In the present case, respondent no.3/husband had the locus to contest the eviction proceedings. The appellant cannot claim any rights greater than those of respondent no.3, through whom she claims her own right of residence. Once the tenancy has come to an end, there can be no occasion for the wife to claim locus to contest the eviction suit, since she cannot assert rights superior to those of her husband. It is stated that it is also the mandate in the Judgment of ***B.P. Achala Anand*** (surpa), which is not correctly interpreted by the learned counsel for the appellant.

28. It is also submitted by the learned senior counsel for Respondent No. 1 that the learned Trial Court while passing the impugned Judgment dated 26.04.2025 has rightly considered the locus/right of the wife to contest the proceedings in eviction case and rightly relied upon the Order of the Supreme Court in ***Archana Goindi Khandelwal v. Rajesh Balkrishnan Menon***, in SLP (C) 2939/2022 dated 04.03.2022, wherein the Apex Court has held that disputes between a husband and wife under the Domestic Violence Act cannot curtail or defeat the rights of a landlord to recover possession of the premises, if otherwise entitled in law. It was further



2025:DHC:8177



clarified that any grievance of the wife with respect to her right of residence in the shared household, or claim for alternative accommodation, must be adjudicated within the framework of proceedings under the Domestic Violence Act.

29. The learned senior counsel for Respondent No. 1 has further submitted that neither any oral tenancy was executed between Respondent No. 1 and Respondent No. 2 nor does the Respondent No. 1 intend to grant any oral tenancy or execute any lease deed in future in favour of Respondent No. 2.

30. Learned counsel for respondent no.2 submits that the suit property was taken on lease by respondent no.2/company from respondent no.1/landlord, and respondent no.3 resides therein along with his family, including the appellant. However, it is urged that such residence does not confer any locus upon either the appellant or respondent no.3 to contest the eviction proceedings, as the lessee is respondent no.2 alone and not respondent no.3.

31. It is stated on behalf of Respondent No. 2 that even as per the mandate of the judgement of the Supreme Court in the case of ***B P Achala Anand*** (supra), as relied upon by the appellant, also mentions that the appellant cannot assert the rights greater than those of her husband and since her husband/respondent no. 3 is also not the lessee and having no right to contest the eviction proceedings, the appellant is also not having any right to become a party in the eviction proceedings before the learned Trial Court and as such her application seeking impleadment under Order I Rule 10 CPC was rightly dismissed and the suit was rightly decreed.



2025:DHC:8177



32. It is stated by the learned counsel for Respondent No. 2 that the lease deed executed between the Respondent No. 1 and Respondent No. 2/Company has already come to an end by efflux of time and as such no right of respondent no. 3 or the appellant exists to continue to reside in those tenanted premises.

33. It is stated that all the facts were correctly pleaded before the learned Trial Court by filing a separate written statements by Respondent No. 2 and 3. Hence, it is prayed that the appellant has no *locus standi* to contest the eviction proceedings.

34. It is argued by the learned senior counsel for the respondent no. 3/husband that it is correct that the premises were taken by the company/Respondent No. 2 only, which premises are occupied for residence by Respondent No. 3 along with his family, in the capacity of the Managing Director of the Respondent No. 2/Company.

35. It is stated that the lease deed has already been expired on 31.01.2023. It is further stated that the same has never been continued orally and the rent is being paid only because till date, Respondent No. 3 has continued to occupy the suit premises. It is stated that the appellant has wrongly pleaded that Respondent No. 3 is in collusion with Respondent No. 1/landlord. It is further stated that on 14.03.2023, when the Respondent No. 3/husband had received the eviction notice from the side of the Respondent No. 1, the intimation of the same was immediately given to the appellant. Again on 01.08.2023, another notice for eviction was received by the Respondent No.2 and 3, intimation thereof was also given to the appellant. It is further submitted that even an application was moved



2025:DHC:8177



before 31.01.2026, in order to search a reasonable suitable accommodation, without prejudice to her rights and contentions in the proceedings under the DV Act or in any other proceedings between her and Respondent No. 3.

38. The appellant is also willing to pay the monthly rent to respondent no. 1 for the aforesaid occupation of the premises till the time she vacates the premises i.e. on or before 31.01.2026.

39. On instructions from respondent no.1/landlord, who is present in Court, learned senior counsel for respondent no.1 submits that respondent no.1 is agreeable to grant time to the appellant till 31.01.2026 to vacate the suit premises, subject to the appellant filing an undertaking to vacate the same within the aforesaid period. It is stated that in such an event, the Respondent No. 1 undertakes not to press for the immediate execution of the Impugned Judgment and Decree, subject to the appellant paying the rent for the aforesaid period.

40. The appellant also undertakes not to challenge, question or assail the Impugned Judgement dated 26.04.2025 or Order dated 29.03.2025 passed by the learned Trial Court in respect of the Suit property and also undertakes not to claim any right or interest in the said tenanted premises, either directly or indirectly.

41. The abovesaid undertaking be given in the form of an affidavit by the appellant, within a period of one week from today.

42. Respondent no. 1 on his part also undertakes not to press for the execution of the impugned judgement until 31.01.2026, subject to the compliance of the terms by the appellant. In the event of non-

