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

+ **W.P.(C) 9607/2022**

SMT PROMILA DEVI

..... Petitioner

Through: Mr.Bharat Malhotra, Adv. along with
petitioner in person

versus

SMT SANTRA DEVI & ORS.

..... Respondents

Through: Mr.Anupam Srivastava, ASC for
GNCTD with Mr.Ujjawal Malhotra,
Adv. for R2&3.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

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24.06.2022

CM APPL. 28677/2022 (Exemption)

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

W.P.(C) 9607/2022

This is a petition seeking quashing and setting aside the order dated 25.04.2022 passed by the respondent No.2 in the case of '*Promila vs. Santara*' bearing No.PA/Div/Comm./Appeal No.166/2019/964-966.

It is submitted by Mr. Bharat Malhotra, learned counsel appearing for the petitioner states that respondent nos.1 and 4 in collusion have mis-stated facts and obtained an order dated 02.09.2019 from respondent No.3. In appeal, the said order has been confirmed by the respondent no.2.

Learned counsel appearing for the petitioner has stated that the



question which thus arises for consideration is balancing the rights of the petitioner under Protection of Women from Domestic Violence Act, 2005 and the rights of respondent no.1 under Maintenance & Welfare of Parents & Senior Citizens Welfare Act, 2007. He submits that the petitioner had filed a case under the Protection of Women from Domestic Violence Act, 2005 but on account of poor financial condition, she was unable to pursue the remedy and the application has been dismissed in default. She is taking measures to get the same restored.

Learned counsel for the petitioner has also drawn my attention to the judgment ***S. Vanitha vs. Dy. Commissioner, Bengaluru Urban District & Ors. 2020 SCC SC Online 1023*** and more particularly, paragraph 40 which reads as under:-

“40. The fact that specific proceedings under the PWDV Act 2005 had not been instituted when the application under the Senior Citizens Act, 2007 was filed, should not lead to a situation where the enforcement of an order of eviction deprives her from pursuing her claim of entitlement under the law. The inability of a woman to access judicial remedies may, as this case exemplifies, be a consequence of destitution, ignorance or lack of resources. Even otherwise, we are clearly of the view that recourse to the summary procedure contemplated by the Senior Citizen Act, 2007 was not available for the purpose of facilitating strategies that are designed to defeat the claim of the appellant in respect of a shared household. A shared household would have to be interpreted to include the residence where the appellant had been jointly residing with her husband. Merely because the ownership of the property has been subsequently transferred to her-in-laws (Second and Third Respondents) or that her estranged spouse (Forth respondent) is now residing separately, is no ground to deprive the appellant of the protection, that was envisaged under the PWDV Act, 2005.

41. *For the above reasons, we have come to the conclusion*



that the claim of the appellant that the premises constitute a shared household within the meaning of the PWDV Act 2005 would have to be determined by the appropriate forum. The claim cannot simply be obviated by evicting the appellant in exercise of the summary powers entrusted by the Senior Citizens Act 2007. The Second and Third Respondents are at liberty to make a subsequent application under Section 10 of the Senior Citizens Act 2007 for alteration of the maintenance allowance, before the appropriate forum. For the above reasons, while allowing the appeal, we issue the following directions:

(i) The impugned judgment and order of the Division Bench of the High Court of Karnataka dated 17 September 2019 affirming the order of eviction against the appellant shall stand set aside with the consequence that the order of the Assistant Commissioner ordering and directing the appellant to vacate the suit premises shall stand set aside;

(ii) We leave it open to the appellant to pursue her remedies under the PWDV Act 2005. For that purpose, it would be open to the appellant to seek the help of the District Legal Services Authorities and if the appellant does so, all necessary aid and assistance shall be furnished to her in pursuing her legal remedies and rights;

(iii) IA 111352/2020 for restoration of the electricity connection is allowed by directing the Fourth respondent to take all necessary steps for restoration of the electricity connection to the premises within a period of two weeks from the receipt of a certified copy of this judgment. The Fourth respondent shall also continue to pay the electricity dues in future; and

(iv) In order to enable the appellant to pursue her remedies under the PWDV Act 2005, there shall be an order and direction restraining the respondents from forcibly dispossessing the appellant, disposing of the premises or from creating any right, title and interest in favor of any third party in any manner whatsoever for a period of one year, to enable the appellant to pursue her remedies in accordance with law. The appellant is at liberty to move the Court to espouse her remedies under the PWDV Act 2005 for appropriate orders, including interim protections.



43. The Appeal is allowed in the above terms. The appellant is entitled to costs quantified at Rs. 25,000 from the private respondents.”

Issue notice. Mr.Ujjawal Malhotra, Advocate for respondent Nos.2 and 3 accepts notice.

Let notice be issued to respondent Nos.1 and 4 through all modes including electronics, returnable before the Roster Bench on 22.08.2022.

Let the respondents file their counter affidavits before the next date.

CM APPL. 28678/2022 (seeking stay of the order dated 25.04.2022)

For the reasons stated above, and in order to enable the petitioner to pursue her remedies under PWDV Act, it is directed that the order dated 25.04.2022 shall remain stayed till the next date of hearing.

List on 22.08.2022.

**JASMEET SINGH, J.
(VACATION JUDGE)**

JUNE 24, 2022
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