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

Reserved on: 16.12.2013
Pronounced on: 15.01.2014

\+ **RFA (OS) 24/2012, C.M. APPL.4236/2012, 4237/2012 & 5451/2013**

SMT. PREETI SATIJA .....Appellant
Through: Sh. Sudhir Mendiratta, Advocate.

Versus

SMT. RAJ KUMARI AND ANR. .....Respondents
Through: Sh. Nishant Datta and Ms. Garima Hooda, Advocates, for Resp. No.1.

**CORAM:**
**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**
**HON'BLE MR. JUSTICE NAJMI WAZIRI**

**MR. JUSTICE S. RAVINDRA BHAT**

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1. The defendant appeals the judgment and order of a learned Single Judge, who decreed the suit preferred by the respondent-plaintiff, her mother in law, on admission, by invoking Order XII Rule 6, Code of Civil Procedure (CPC). The plaintiff had sought a decree for possession/eviction of the defendant/daughter-in-law.

2. The plaintiff had filed the suit for possession, permanent injunction and *mesne* profits against the defendants, her son and mother in-law, in respect of a portion of property bearing No.2245, Hudson Lane, GTB Nagar, Kingsway Camp, Delhi – 110 009 (hereafter referred to as "the suit property"). The first defendant is the

plaintiff's daughter-in-law and wife of her disowned son. The son was also arrayed as the second defendant. The suit property belonged to the plaintiff's husband (Shri Tek Chand), who he died on 30.06.2008 leaving behind a registered Will dated 20.11.2006 by which he bequeathed the suit property to her. The plaintiff alleged that after her husband's death, she became the sole and absolute owner of that property. The plaintiff claimed that the back portion of the suit property consisting of one bedroom, a bathroom and a small kitchen is in occupation of the defendants. She alleged that since the relationship between her and the defendants became estranged, she wanted them to vacate the property. During the pendency of the suit, the plaintiff filed an application alleging her entitlement to a decree on alleged admission.

3. The appellant's position in her reply to the application for decree on admission was that the plaintiff was not the absolute owner of the suit property as the Will had not been granted probate and was as yet untested in law and that without it being probated, the Will cannot come into force.

4. The learned Single Judge was of the opinion that since the defendant/appellant had not disputed the due execution of the Will, and had merely contested that it had no legal effect because it had not been probated, there was in effect an admission. Further, he concluded that it is inessential to seek a probate, and thus, the Will, being admitted, remains operative between the parties. The impugned order also mentioned the two notices issued on behalf of the plaintiff to the

defendants and her allegation that they were harassing her and continuing to live in the suit premises. The Court also noticed that the appellant had filed a suit, before the Civil Judge, North West, Rohini Courts, Delhi (Suit No.16/2010) which is still pending. Importantly, the Single Judge was also aware of the fact that the appellant had relied on provisions of the Protection of Women from Domestic Violence Act, 2005 (hereafter "2005 Act").

5. In the impugned judgment, the learned Single Judge rejected the arguments of the appellant with respect to applicability of the provisions of the 2005 Act. It was held that the suit property could not be considered to be "shared household". In view of this conclusion, the Single Judge decreed the suit in part, holding that the defendant was liable to be evicted.

6. The appellant argued that the learned Single Judge failed to consider that there was no unambiguous admission of the kind that warranted exercise of discretion under Order 12, Rule 6. In this regard, it was contended that the written statement had alleged collusion between the plaintiff and her son, the second defendant; it had not admitted due execution of the Will and stated that such circumstances would have to be tested in probate proceedings. In these circumstances, the court should have not exercised its discretion in granting a decree on admission. It was further argued that the Single Judge fell into error in relying on the decision of the Supreme Court in *S.R. Batra &Anr* v. *Smt. Taruna Batra,* (2007) 3 SCC169 and the ruling of this Court in *Shumita Didi Sandhu* v. *Sanjay Singh Sandhu*,

2007 (96) DRJ 697. It was contended that those decisions overlooked the crucial definition of "shared household" and that the respondent, was an expression not limited to male relatives of the applicant, but also female relatives, by virtue of proviso to Section 2 (q) and Section 19 (1) (f). It was argued that in the present case the husband had not been served and had not entered appearance; there were matrimonial disputes between him and the first defendant, i.e. the appellant. Counsel urged that the plaintiff and the second defendant colluded; the son disappeared. At the same time, the plaintiff "disowned" him after the matrimonial disputes started, and proceeded to file the suit. Counsel emphasized that it was precisely to overcome these strategies and devices that "shared household" was defined widely, and the wife, under the 2005 Act, was given the right to reside in such premises, by virtue of Section 17. It was also pointed out that by virtue of Section 26, the provisions of the 2005 Act could be invoked before any court in any stage of the proceeding. It was argued that the appellant is in a pitiable plight, because she has to maintain two school going children, who have been left untended and uncared by her husband and the orders of maintenance granted in her favour by the concerned magistrate have not been implemented. It was also pointed out that the wife has initiated criminal proceedings alleging that the husband had committed offences punishable under Sections 406 and 498-A of the Indian Penal Code (IPC).

7. Counsel for the plaintiff justified the impugned order. He argued that the appellant had made an unambiguous admission

entitling the plaintiff to a decree under Order 12 Rule 6. Counsel submitted that the decisions in *Shumita Didi Sandhu* and *S.R. Batra* were conclusive as to the limits of the right to residence of the wife in a shared household. Here, the suit premises belonged to the plaintiff and the appellant could not claim the right to reside in it, since her husband had no right – ownership or otherwise in respect of those premises.

8. The first question which this court has to consider is whether there were admissions in the pleadings of the type to enable the court to draw a decree for possession on admission. The suit records were called for and have been gone into by this Court. In the written statement, the appellant had claimed that the suit was not maintainable because the suit premises were her matrimonial home where she was entitled to reside. At more than one place, (especially in reply to the plea that the plaintiff is "absolute owner" of the property), the appellant unequivocally denied the plaintiff's title and stated that she was put to strict proof of the claim of sole ownership. In respect of the allegation that the ownership was on account of testamentary devolution by virtue of late Tek Chand's registered Will, the appellant denied them, stating that such was not the case "*as per her knowledge*". Since she had no knowledge and the plaintiff was put to strict proof, the appellant went on to state that this could be done by obtaining probate – a course which had not as yet been resorted to. The gist of these averments, therefore, was that the appellant denied the plaintiff's title. She did not admit the Will, and the clear admission

that the written statement contained was as to the relationship of the parties.

9. The question here is whether the pleadings taken as a whole point to an unambiguous and clear admission contemplated by law. The standard spelt out in *Uttam Singh Duggal & Co.* v. *United Bank of India & Ors* 2000 (7) SCC 120 and *Jeevan Diesel & Electricals Limited* v. *Jasbir Singh Chadha & Another,* (2010) 6 SCC 601 that the Courts have to adopt, while considering pleadings and considering if a decree on admission is to be drawn, is whether there is a *"clear and unequivocal admission of the case"* (of the plaintiff, by the party defending the application). It is also not in dispute that there is no golden rule about what constitute as *"clear and unequivocal admission"*. The Court has to proceed on a case fact dependent approach having due regard to the overall effect of the pleadings and documents. This is clear from the decision in *Gilbert* v. *Smith,* 1875-76 (2) Ch 686, which was relied upon by the Supreme Court in *Jeevan Diesel* (supra). The question was amplified in *Western Coalfields Ltd.* v. *M/s Swati Industires,* AIR 2003 Bom 369. In *Jeevan Diesel* (supra), it was held that :

> "*whether or not there is a clear, unambiguous admission by one party of the case of the other party is essentially a question of fact and the decision on this question depends on the facts of the case. This question, namely whether there is a clear admission or not cannot be decided on the basis of a judicial precedent."*

10. Courts cannot therefore base their decision to decree (or not to grant a decree) in a suit in terms of Order XII Rule 6 CPC only on the

basis of a particular pleading or admission. Rather, the overall effect of the pleadings and documents of the concerned parties are to be weighed. The Court has to be mindful that what seems plainly an admission could well be explained by the litigant making it, during the course of the trial. Moreover, the controlling expression under Order 12 Rule 6 is that Court *"may*" grant a decree on admissions. It is important to analyze this aspect because admissions either in the pleadings or in a document or in the course of a statement cannot be viewed in isolation.

11. In this case, the appellant's consistent stand in the written statement as well as in the reply to the application under Order 12 Rule 6 CPC was of denial *of the plaintiff's claim of absolute ownership.* This denial was unequivocal. The appellant also claimed that the plaintiff and her husband had colluded and the suit was a step to achieve the object of that collusion. She relies on the copies of the complaint, criminal proceedings and the orders made towards her maintenance, in support of those submissions. That she added that the plaintiff ought to obtain probate, is a matter of detail, in the written statement, which – with respect to the learned Single judge – was plucked out from the pleadings. Whether a will is probated or not, it requires to be proved, once the ownership of the property is disputed and the claim to such title is solely based on a will. This aspect gains importance because in the event of a trial it would have been necessary for the plaintiff to prove due execution of the will, in tune with provisions of the Indian Succession Act and the Evidence Act.

That part of the written statement and reply to the plaintiff's application dealing with the plaintiff's obligation to obtain probate, should not, in our view with respect to the impugned judgment, have been the exclusive basis for holding that the plaintiff was entitled to a decree on admissions. The impugned judgment in effect assumes plaintiff's title to the suit premises on the basis of due execution of the Will, which was not proved. This court, therefore, is of opinion that the appellant's pleadings cannot be considered as unequivocal or unqualified, and admissions, necessitating a decree on admissions.

12. The next question is whether the learned single judge was right in holding that the provisions of the 2005 Act did not aid the appellant and that she could not claim the suit premises to be "shared household".

13. The question has to be examined in view of provisions of the 2005 Act. Section 2(a)of the Act states:

> *"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;"*

Section 2(f) states that:

> *"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;"*

Section 2(s) defines shared household as follows:

*"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 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"*

Section 2 (q) defines who is a respondent: "*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*"

Section 3(a) states that an act will constitute domestic violence in case it

*"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*

*(emphasis supplied)*

The expression "economic abuse" has been defined to include:

*"(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her*

*children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance."*

An aggrieved person under the Act can approach the Magistrate under Section 12 for the relief mentioned in Section 12(2). Under Section 20(1)(d) the Magistrate can grant maintenance while disposing of the application under Section 12(1). Section 26(1) provides that the relief mentioned in Section 20 may also be sought in any legal proceeding, before a civil court, family court or a criminal court.

14. There are some decisions which have preferred the view that since the ruling in *S.R. Batra* held that when the premises are not owned by the husband, the applicant/wife cannot claim it to be a shared household (for example, *Neetu Mittal* v. *Kanta Mittal*, (2008) DLT 691, which held that self-acquired property of the husband's parents are not shared household).

15. These decisions, with respect, proceeded on an erroneous understanding of the statute. For this, it would be useful to recollect the decision in *Eveneet Singh* v. *Prashant Chaudhari*, 177(2011) DLT 124 where it was held that:

*"11. The key to an understanding of the rights flowing from the Domestic Violence Act, are concepts such as "domestic relationship'- which inter alia, is "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..."; who is a " Respondent"- a term*

*not confined only to males who had lived with the aggrieved person, i.e. the complainant female, but also - by virtue of proviso to Section 2(q) to "a relative of the husband..." (in the case where the domestic relationship is or was a marriage). This aspect has been noticed, and clarified in several rulings by various High Courts (Ref Afzalunnisa Begum v. The State of A.P., MANU/AP/0206/2009 : 2009 Cri.L.J. 4191; Archana Hemant Naik v. Urmilaben Naik, MANU/MH/0994/2009 : 2010 Cri.L.J. 751 and Varsha Kapoor v. Union of India, WP (Crl.) No. 638 of 2010, Decided on: 03.06.2010, by a Division Bench of this High Court). It has been held that when a law uses the same word in different parts of the same statute, there is a presumption that that it is used in the same sense throughout (Suresh Chand v. Gulam Chisti, : (1990) 1 SCC 593), unless the context indicates otherwise (Bhogilal Chunnilal Pandya v. State of Bombay, 1959 Supp (1) SCC 593). Now, the relevant part of Section 19 reads as follows:*

> *"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, <u>whether or not the Respondent has a legal or equitable interest in the shared household</u>...."*
> *(Emphasis supplied)*

*The broad and expansive nature of the Court's power to make a residence order is also underlined by the amplitude of the definition of "shared household", which is "where the person aggrieved lives or at any stage has lived-*

*(i) in a domestic relationship*
*(ii) either singly or along with the Respondent and includes such a household*
*(a) whether owned or tenanted either jointly by the aggrieved person and the Respondent, or*
*(b) owned or tenanted by either of them*

*(iii) 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*
*(iv) 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.*

*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 a 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 proviso 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 favor of women, it could 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 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. This was noted by the Bombay High Court in Archana Hemant Naik (supra) 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 of her husband or male partner, as the case may be, the order under Section19 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 shared household."*
>
> *(Emphasis supplied)*

*12. The Domestic Violence Act is a secular legislation, akin to Section 125 of the Code of Criminal Procedure, 1973. It 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 introduction of the remedy of right to residence is a revolutionary and path breaking step, taken to further the objects of the Act, and any attempt at restricting the scope of the remedy would reduce the effectiveness of the Act itself. Therefore, it would be contrary to the scheme and the objects of the Act to restrict its application to only such cases where the husband owns some property or has a share in it, as the mother-in-law can also be a Respondent in the proceedings under the Domestic Violence Act and remedies available under the same Act would necessarily need to be enforced against her.*

*13. Again, to confine the reference to "joint" family property by bringing in the concept of a HUF would be to restrict the application of the provision, to a point which is contrary to Parliamentary intention that the law is a non-sectarian one. The "joint" status of a family here obviously is in a generic sense, and importing notions of HUF would unwittingly give greater benefits to one section of the community, which was never the intention of Parliament. In a generic sense, it refers to a group of people, related either by blood or marriage, residing in the same house and instances of that can be found in almost all parts of India. The general practice in India is that the son and his wife reside in the house of the (husband's) parents after marriage. Even though a legal obligation to maintain a child ceases as soon as he attains majority, the jural relationship between the parents and the child continues. The concept of a "joint family" in law is peculiar to Hindu law. No concept of a "joint family' similar to that of an HUF can be found in Muslim Law, Christian Law or any other personal law.*

*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 HU Fs (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 (Emphasis supplied).*

*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(q).*" (emphasis supplied)

16. The above decision of a single judge was approved by the Division Bench in *Eveneet Singh* v. *Prashant Chaudhari* (DB, FAO (OS) 71-72/2011, decided on 08.11.2011)

*"12. Thus, at best it can be urged that while deciding an issue pertaining to a wife's claim for residence in the shared household the discussion must start with a presumption in favour of the wife that law leans in her favour to continue to reside in the shared household and only upon adequate circumstances being manifestly and objectively disclosed by the opposite party, could an order contemplated by clause (f) of sub-section 1 of Section 10 of the Act be passed.*

*13. In the instant case the circumstance to take recourse to clause (f) of sub-section 1 of Section 19 of the Act would be the extreme ill health of the mother-in-law of the appellant;*

*medical documents pertaining to whom would show that she suffers from 'tachycardia' with heart muscles functioning at about 20%. The constant strife with the newly married daughter-in-law in her house would certainly have an adverse effect on the mother-in-law. Besides, the husband of the appellant is currently in Hyderabad and not at Delhi.*

*14. It is apparent that clause (f) of sub-section 1 of Section 19 of the Act is intended to strike a balance between the rights of a daughter-in-law and her in-laws, if a claim to a shared residence by the daughter-in-law pertains to a building in which the matrimonial home was set up belongs to her mother-in-law or father-in-law."*

17. In an earlier decision, *Varsha Kapoor v. UOI & Ors.* 2010 VI AD (Delhi) 472 another Division Bench interpreted Section 2(q) of the Act also concluded that "respondent" can include female relatives of the husband. The Division Bench held as under:

*"15. Having regard to the purpose which the DV Act seeks to achieve and when we read Section 2(q) along with other provisions, out task is quite simple, which may in first blush appear to be somewhat tricky. We are of the considered view that the manner in which definition of "respondent" is given under Section 2(q) of DV Act, it has to be segregated into two independent and mutually exclusive parts, not treating proviso as adjunct to the main provision. These two parts are:*

*a) Main enacting part which deals with those aggrieved persons, who are "in a domestic relationship". Thus, in those cases where aggrieved person is in a domestic relationship with other person against whom she has sought any relief under the DV Act, in that case, such person as Respondent has to be an adult male person. Given that aggrieved person has to be a female, such aggrieved person in a domestic relationship can be a mother, a sister, a daughter, sister-in-law, etc.*

*b) Proviso, on the other hand, deals with limited and specific class of aggrieved person, viz. a wife or a female living in*

*relationship in the nature of marriage. First time by this legislation, the legislator has accepted live in relationship by giving those female who are not formally married, but are living with a male person in a relationship, which is in the nature of marriage, also akin to wife, though not equivalent to wife. This proviso, therefore, caters for wife or a female in a live in relationship. In their case, the definition of "respondent" is widened by not limiting it to "adult male person" only, but also including "a relative of husband or the male partner", as the case may be.*

*What follows is that on the one hand, aggrieved persons other than wife or a female living in a relationship in the nature of marriage, viz., sister, mother, daughter or sister-in-law as aggrieved person can file application against adult male person only. But on the other hand, wife or female living in a relationship in the nature of marriage is given right to file complaint not only against husband or male partner, but also against his relatives.*

*16. Having dissected definition into two parts, the rationale for including a female/woman under the expression "relative of the husband or male partner" is not difficult to fathom. It is common knowledge that in case a wife is harassed by husband, other family members may also join husband in treating the wife cruelty and such family members would invariably include female relatives as well. If restricted interpretation is given, as contended by the Petitioner, the very purpose for which this Act is enacted would be defeated. It would be very easy for the husband or other male members to frustrate the remedy by ensuring that the violence on the wife is perpetrated by female members. Even when Protection Order under Section 18 or Residence Order under Section 19 is passed, the same can easily be defeated by violating the said orders at the hands of the female relatives of the husband.*

*19. It is also well-recognized principle of law that while interpreting a provision in statute, it is the duty of the Court to give effect to all provisions. When aforesaid provisions are read conjointly keeping the scheme of the DV Act, it becomes abundantly clear that the legislator intended female relatives*

*also to be Respondents in the proceedings initiated by wife or female living in relationship in the nature of marriage, the same can easily be defeated by violating the said orders at the hands of the female relatives of the husband.*

*19. It is also well-recognized principle of law that while interpreting a provision in statute, it is the duty of the Court to give effect to all provisions. When aforesaid provisions are read conjointly keeping the scheme of the DV Act, it becomes abundantly clear that the legislator intended female relatives also to be Respondents in the proceedings initiated by wife or female living in relationship in the nature of marriage."*

18. This interpretation has been approved in *Sandhya Manoj Wankhade* v. *Manoj Bhimrao Wankhade*, [2011] 2 SCR 261 by the Supreme Court. The learned Single Judge of the High Court had, in that case, disposed off the writ petition with a direction to the Appellant to vacate her matrimonial house, which was in the name of the second Respondent and also directed the Trial Court to expedite the hearing of the wife's miscellaneous criminal application within six months. A further direction was given confirming the order relating to deletion of the names of the 'other members' from the complaint filed by the Appellant. The judgment of the High Court was challenged before the Supreme Court. Allowing the appeal, the Supreme Court held:

*"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 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.*

*15. In our view, both the Sessions Judge and the High Court went wrong in holding otherwise, possibly being influenced by the definition of the expression "respondent" in the main body of Section 2(q) of the aforesaid Act."*

19. The ruling in *Shumita Didi Sandhu*, in this Court's opinion, with due respect, did not analyze the entirety of the definition of "shared household". Nor did it link the concept and the right to residence granted by the 2005 Act with the definition of "respondent" which includes female relatives of the husband, and not just the male relatives. That decision was rendered much before the ruling in *Varsha Kapoor*, and the Supreme Court decision in *Sandhya Manoj Wankhede.* Its absence of any discussion on the rights of women as against female relatives of the *husband regardless of whether the respondent had any right, or interest* in the property, in this Court's opinion, results in limiting it to deciding the facts of that case. It would be also necessary to notice a decision of the Supreme Court in *Vimalben Ajitbhai Patel* v. *Vatslabeen Ashokbhai Patel and Ors.*, 2008(4) SCC 649. There, the wife was beneficiary of a maintenance order, which was sought to be enforced through execution, against her mother in law's property. The wife claimed that since it was a "*shared household*", the property could be attached. Repelling the argument, the Supreme Court held that the obligation to provide

maintenance was of the husband and any order in that regard could be enforced against him, by attachment of his personal assets or properties. It was in this context that the Court held that a shared household belonging to the mother in law could not be subject matter of attachment. The context of that decision was different as the Supreme Court, in this Court's opinion, did not decide that despite the definition of "*shared household*" enabling a wife the right of residence in premises not owned by the husband, she could not claim to live there. Rather, in proceedings for maintenance, the claim may not lie against the mother-in-law's property – a domain that the present case does not touch upon.

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

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

21. The other aspect, which this Court wishes to highlight, is that the 2005 Act applies to all communities, and was enacted *"to provide more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring*

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

22. Likewise, the interpretation preferred by some learned single judges that where the husband has some rights (as a member of the HUF, i.e. the Hindu Undivided Family) and if those premises were the shared household, the wife can enforce her right to residence, also constitutes an internally incoherent and restrictive interpretation of the Act. As explained in *Evneet Singh*, such a construction is contrary to Parliamentary intention that the law is a non-sectarian one. Indeed, the "joint" status of a family referred to under Section 2 (s) is in a generic sense. To equate it with a HUF would result in unintended benefits to one set of respondents, who are Hindus. Speaking generically, "joint family" refers to a group of people, related either by blood or marriage, residing in the same house. Instances of that can be found in almost all parts of India. The general practice in India is that the son and his wife reside in the house of the (husband's)

parents after marriage, though the legal obligation to maintain a child ceases as soon as she or he attains majority, the jural relationship between the parents and the child continues. The concept of a "joint family" in law is peculiar to Hindu law. No concept of a "joint family" similar to that of an HUF can be found in Muslim law, Christian law or any other personal law. Therefore, a restrictive interpretation of "joint family" by equating it to a HUF would result in implicit discrimination, because women living in a shared household belonging to an HUF (and therefore, Hindus) would have more security, by reason of their professing the Hindu faith than others who are not Hindus. In fact, 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, while the latter would not. This inequity was addressed by the Parliament which stated in no uncertain terms that irrespective of title of the "Respondent" to the "shared household", a protection order can be made under Section 19(1)(a).

23. 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 has it been proved in

probate proceedings. 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.

24. In view of the above discussion, the impugned judgment and decree of the learned single judge is hereby set aside; parties are directed to present themselves before the concerned single judge as per roster allocation, on 6th February, 2014 for directions toward further proceedings in the suit. The appeal is allowed, under the above circumstances, without any order as to costs.

**S. RAVINDRA BHAT**
**(JUDGE)**

**NAJMI WAZIRI**
**(JUDGE)**

**JANUARY 15, 2014**