

Delhi High Court

Mr. Barun Kumar Nahar vs Parul Nahar & Anr. on 5 February, 2013

Author: Kailash Gambhir

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CS(05) 2795/2011

Judgment delivered on: 05.02.2013

MR. BARUN KUMAR NAHAR

..... PLAINTIFF

Through

Mr. Amit Sibal, with Ms. Prachi Vasisht, Adv.

versus

PARUL NAHAR & ANR.

..... DEFENDANTS

Through

Mr. Medhanshu Tripathi for D-1

Ms. Geeta Luthra, Sr. Adv. with

Mr. S.K. Arora, Mr. Atin Rastogi & Mr. Gautam

Bajaj for D-2

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

IA No. 17986/11 (O. 39 Rule 1 & 2 of CPC)

1.

By this order I propose to decide the application moved by the plaintiff under Order 39 Rules 1&2 read with Section 151 of CPC.

2. Before I deal with the rival contentions raised by the counsel for the parties, it would be appropriate to give brief summary of the facts of the present case. The plaintiff herein is a father-in-law of the defendant no.1 and father of defendant no.2. The plaintiff has filed the present suit for permanent and mandatory injunction. A decree of mandatory injunction has been sought by the plaintiff to direct the defendant no.1 to vacate the premises bearing No. B-197, Greater Kailash, Part-I, New Delhi, while a decree of permanent injunction has been sought by the plaintiff so as to restrain the defendant no.1, her parents, agents, representatives, assignees, associates etc. from creating disturbance in the peaceful possession and occupation of the plaintiff's self-acquired property bearing no. B-197, Greater Kailash, Part-1, New Delhi. In prayer Para (b) instead of claiming permanent injunction the plaintiff has wrongly claimed mandatory injunction and such inadvertent mistake on the part of the plaintiff can be ignored.

3. The main allegation of the plaintiff in the present suit is that he is the sole and absolute owner of the property bearing no. B-197, Greater Kailash, Part-1, New Delhi consisting of ground and first floor. It is also the case of the plaintiff that the said property was purchased by him vide sale deed dated 10.8.1971 through his own funds and since then the plaintiff and his wife are residing in the same property. It is also the case of the plaintiff that he and his wife aged around 80 years and 74 years respectively are suffering from various old age ailments. It is also the case of the plaintiff that the defendant no.1 is of a very violent nature and she has made the life of the plaintiff and his wife a living hell. It is also the case of the plaintiff that the defendant no.1 is having matrimonial discord with her husband, defendant no.2, herein and the plaintiff and his wife are being subjected to suffer

at the hands of the defendant no.1 because of such matrimonial dispute between the spouses. It is also the case of the plaintiff that he and his wife are living on the ground floor premises and the defendant no.2 being the son of the plaintiff was occupying the first floor of the premises as a licensee. It is also the case of the plaintiff that the defendant no.1 being the wife of defendant no.2 was also using the first floor until the relations between the defendant no.1 and defendant no.2 became edgy. It is also the case of the plaintiff that the defendant no.1 was having extra marital affair with servant Shambhu and the relationship between the defendant no.1 and defendant no.2 turned embittered after the discovery of the said extra marital affair . It is also the case of the plaintiff that the defendant no.1 left the house and she had also executed an affidavit stating her separation from her husband, i.e. defendant no. 2 herein. It is also the case of the plaintiff that the right of the defendant no.1 to live as wife of defendant no.2 got terminated in terms of the affidavit dated 18.10.2010. It is also the case of the plaintiff that the temporary stay of the defendant no.1 as a guest on the first floor of the premises since March 2011 does not give her any right to occupy the said premises as her statutory right to occupy the premises was by virtue of her being a wife of defendant no.2 with whom her relationship is claimed to be terminated w.e.f. 18.10.2010. It is also the case of the plaintiff that in the first week of August 2011, defendant no.1 had assaulted and pushed the wife of the plaintiff after which she fell on the floor and injured herself. It is also the case of the plaintiff that defendant no.1 misbehaves, beats and abuses the domestic staff and because of such demeanor by the defendant no.1, the domestic staff left the said premises leaving the plaintiff and his wife with no option but to take care of the entire household work themselves. It is also the case of the plaintiff that the defendant no.1 and her father have continuously blackmailed the plaintiff and his family members to give crores of rupees or else they would implicate the plaintiff and his family members in false and frivolous cases. It is also the case of the plaintiff that on 22.9.2011, the defendant no.1 abused the plaintiff and as a result whereof the plaintiff had to be rushed to the Doctor and he was strictly advised by the Doctor to avoid any kind of stress and similarly on 28.9.2011 the defendant no.1 had abused the wife of the plaintiff with filthy language , consequently she was rushed to the Doctor and the Doctor advised that the environment of the plaintiff's wife should be changed. Similar incident as per the plaintiff had also taken place on 31.10.2011. It is also the case of the plaintiff that the wife of the plaintiff has been diagnosed to be suffering from a serious heart problem and because of the extreme stress her sugar level had also shot up to an alarming proportion. With these allegations, the plaintiff prayed that the defendant no. 1 be directed to vacate the suit property so that the plaintiff and his wife are able to lead the evenings of their lives peacefully without any stress or trauma.

4. In the original suit the plaintiff did not seek the relief of mandatory injunction so as to seek vacation of defendant No.1 from the subject premises. But later on, the plaintiff incorporated the said relief of grant of mandatory injunction through an amendment. Along with the amended suit the plaintiff also filed a fresh application under Order 39 Rule 1 & 2, CPC for the grant of interim mandatory injunction to seek a direction to the defendant No.1 to vacate the subject premises till the final disposal of the suit.

5. Defendant No.1, the daughter-in-law of the plaintiff has mainly contested the said stay application while defendant No.2 who is the son of the plaintiff has come in support of the said application.

6. Counsel for the plaintiff very strongly contended that the suit property in question is a self-acquired property of the plaintiff who had purchased the same by way of registered Sale Deed dated 10.8.1971 and therefore he is fully entitled to peacefully reside in the said property along with his old wife without any sort of interference or disturbance at the hands of defendant No.1. Counsel also submitted that plaintiff and his wife are senior citizens aged about 80 and 74 years respectively, suffering from various ailments and because of continuous and unabated torture at the hands of defendant No.1, the life of the petitioner and his wife has become miserable and they can collapse at any time if defendant No.1 continues to reside in the said property. Counsel further submitted that defendant No.2 has already shifted from the said premises to reside in a rented accommodation and instead of shifting with her husband, the defendant No.1 has continued residing at the suit property and has been harassing the plaintiff and his wife by abusing and humiliating them daily and also calling the police every now and then on false pretexts so as to further embarrass them in the presence of their neighbors. Counsel also submitted that due to the marital discord, defendant No.1 had left the said premises permanently on 18.10.2010 and she had also signed an affidavit dated 18.10.2010 to that effect but again she had illegally occupied the guest room on the ground floor of the said premises. Counsel also submitted that defendant No.1 had no legal right to stay in the said premises and her occupation was permissive only when she was residing in the suit property with her husband, defendant No.2 herein and once defendant No.2 has shifted to some other accommodation, the defendant No.1 cannot force her to stay in the premises which is exclusively owned by the plaintiff. It was also submitted that defendant No.2 had given many proposals to defendant No.1 to reside with him at the rented accommodation or to reside in some other alternative accommodation at par with the rented accommodation of defendant No.2 or to accept an amount to the tune of Rs.30,000 towards the monthly rent for an accommodation to be selected by her but none of these offers have been accepted by defendant No.1. Counsel further submitted that the legal position is now well settled that daughter-in-law has no legal right whatsoever to reside in the property owned by her parents-in-law and parents- in-law have no obligation to provide a residence to their daughter-in-law. In support of his arguments counsel for the plaintiff has placed reliance on the following judgments:-

1. S.R. Batra and Anr. v. Taruna Batra, (2007) 3 SCC
2. Kavita Chaudhari v. Evenet Singh and Anr., 2012 (130) DRJ 83
3. Neetu Mittal v. Kanta Mittal, 152 (2008) DLT 691
4. Umesh Sharma v. State, 2010 (115) DRJ 88
5. Kulwant Singh v. Laljee Kent( DR.) and ors., 162 (2009) DLT 625
6. Shumita Didi Sandhu v. Sanjay Singh Sandhu and ors., 174 (2010) DLT 79 (DB)

7. Counsel for the plaintiff also submitted that defendant No.1 had earlier obtained an ex-parte injunction from the court of Ld. MM, Saket in a petition filed by her under the Domestic Violence Act by suppressing the fact of filing of the present suit by the plaintiff. Counsel further informed this

court that the said ex-parte order dated 20.12.2011 already stands vacated vide order dated 11.1.2012.

8. Counsel further argued that there are no fetters on the powers of this court to grant interim mandatory injunction in favour of the plaintiff and against the defendant no. 1, keeping in view the facts of the present case where the life of the plaintiff and his wife have become hell because of the continuous nuisance, torture and harassment being caused by defendant No.1. To support his arguments counsel for the plaintiff placed reliance on judgments of the Hon'ble Apex court in the case of Sant Lal Jain. Vs. Avtar Singh (1985) 2 SCC 332 and Dorab Cawashji Warden v. Coomi Sorab Warden, (1990) 2 SCC 117.

9. On the other hand Counsel for the defendant No.1, strongly opposed the grant of the said relief of mandatory injunction at the interim stage. Counsel submitted that the relief of temporary injunction is a purely equitable relief and the same cannot be granted to a person who has played fraud upon the court by suppressing material and vital facts from the court. Counsel submitted that the plaintiff is a permanent resident of Calcutta and came to Delhi in the year 2010 in connivance and conspiracy with defendant No.2 with the sole objective to ouster the defendant No.1 from the suit property. Inviting attention of this court to the documents like voter ID card, passport , certified copy of the application dated 23.4.2012 moved before the family court of Saket, counsel submitted that these documents squarely goes on to show that the plaintiff is a permanent resident of Calcutta and not of Delhi. Counsel also submitted that the plaintiff has played serious fraud upon the court by not disclosing this very fact thereby violating, Section 17 of the Representation of People Act, 1951.

10. The next limb of argument taken by counsel for defendant No.1 was that grant of interim mandatory injunction by this court in favour of the plaintiff would amount to finally decreeing the present suit in favour of the plaintiff and therefore the said relief at the interim stage is impermissible in terms of the settled legal position.

11. The next argument advanced by counsel for defendant No.1 was that the suit property is an ancestral property and being ancestral property it falls in the category of 'shared household' in terms of Section 2(s) of the Domestic Violence Act, 2005. Counsel also submitted that the children of the defendants have every right to reside in the suit property under the Hindu Mitakshara Law.

12. Counsel further argued that the allegations levelled by the plaintiff in the present suit are infact reproduction of the allegations levelled by the husband-defendant No.2 in other proceedings i.e. divorce case and a petition filed by him under Guardianship and Wards Act.

13. Counsel also argued that the amended application under Order 39 Rule 1 & 2 CPC is not maintainable in the eyes of law as the amendment envisaged under Order 6 Rule 17, CPC relates to the amendment of pleadings, which includes the plaint and the written statement, and not the amendment of applications under Order 39 Rule 1 and 2 filed by the parties.

14. Counsel further argued that the present suit is bad for non-joinder of children of the defendants as the necessary parties, as the children of the defendants who are also residing in the said property along with defendant No.1, are the ones whose rights would be equally affected by the decision of the court.

15. Counsel further argued that as per the settled principles for the grant of interim injunction, the plaintiff is not entitled for the grant of any interim relief of mandatory injunction.

16. In support of his arguments counsel for the defendant placed reliance on the following judgments:-

1. S.P. Chengalvaraya Naidu (Dead) by L.R.s v. Jaggannath (Dead) by L.R.s and others, (1994) 1 SCC 1

2. Indore Development Authority v. Mangal Amusement Private Limited, (2010) 12 SCC 514

3. Bharat Sanchar Nigam Ltd. and others v. Prem Chand Premi and another, (2005) 13 SCC 505

4. Purshottam Vishandas Raheja and another v. Shrichand Vishandas Raheja, (2011) 6 SCC 73

5. Davender Lal Mehta v. Sh. Dharmender Mehta and Anr., AIR 2009 DELHI 189

6. Ramachandra Tanwar v. Ram Rakhmal Amichand and another, AIR 1971 RAJASTHAN 292

7. Nandan Pictures Ltd. v. Art Pictures Ltd. and others, 1956 CALCUTTA 428

8. B.P. Achala Anand v. S. Appi Reddy and another, (2005) 3 SCC 313

9. S. R. Batra and anr. v. Smt. Taruna Batra, 2006 (4) Crimes 433 (SC)

17. During the course of arguments counsel for defendant No.1 also gave a proposal that defendant No.1 would shift along with her two minor children to the first floor of the suit property so that the plaintiff and his wife and defendant No.1 with her children can peacefully reside in separate portions of the said property and there is no face-off between the plaintiff and defendant No.1. Counsel also submitted that defendant No.1 is prepared to give an undertaking not to enter in the ground floor of the premises occupied by the plaintiff but will allow the plaintiff and his wife to enter the first floor so that they can meet their grand children.

18. In his rejoinder arguments, counsel for the plaintiff stated that the plaintiff has not played any kind of fraud upon the court by not disclosing about his residential property in Calcutta. He stated

that he has been residing in the suit property since the year 1971 and to support his stay in the Delhi Property, the plaintiff has also placed on record various documents viz. voter ID card and electricity bills etc. Counsel further submitted that in the given facts of the present case this court has abundant power to grant the relief of interim mandatory injunction. Counsel also submitted that the grant of interim mandatory injunction cannot be confined only to restore the last uncontested status quo of the property. Counsel also argued that the proposal given by defendant No.1 to permit her to reside on the first floor of the property is not a workable solution as the two floors of the suit property are inextricably inter-connected through a common entrance, internal staircase and the common kitchen which is located at the ground floor and even with such an arrangement the verbal and physical abuse and harassment at the hands of the defendant no. 1 would still be persistent.

19. I have heard learned counsel for the parties at considerable length and given my anxious consideration to the arguments advanced by them. I have also carefully perused the material placed on record by them.

20. Through the present application the plaintiff by way of interim mandatory injunction is seeking direction to the defendant no. 1 to vacate the premises bearing number B-197, Greater Kailash, Part-I, New Delhi. Plaintiff has claimed that he is residing in the said property along with his aged wife of 74 years. It is also the case of the plaintiff that he and his wife are suffering from various ailments and in support thereof he has placed on record some medical documents as well. The age of the plaintiff and his wife is not in dispute and so far as the ownership of the property is concerned, the plaintiff has placed on record the photocopy of the Sale Deed dated 10.8.1971 and therefore the title of the plaintiff to the subject property also cannot be of any dispute. It is also not in dispute that defendant No.2 who is the son of the plaintiff has already walked out from the said accommodation to reside in a rented accommodation while his wife, defendant No.1 along with two children continued to live in the subject property. It is also a matter of record that the plaintiff and defendant No.1 have been lodging several complaints to the police against each other and the kind of allegations leveled by them demonstrates the extent of hatred and venomous they have against each other.

21. Ld. counsel for defendant No.1 heavily placed reliance on the proposition that grant of interim mandatory injunction in favour of the plaintiff would result in granting final relief to the plaintiff and secondly that the grant of interim mandatory injunction can be granted only to restore the status quo ante. To support his argument counsel for defendant No.1 placed reliance on the case of *Dorab Cawasji Warden v. Coomi Sorab Warden & Ors.* (supra). Counsel for the plaintiff also placed reliance on the same case to counter the argument of counsel for defendant No. 1. The Apex Court in this case observed that the relief of interlocutory and mandatory injunction is generally granted to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. The following paras from the said judgment would further amplify the legal position.

"15. In one of the earliest cases in *Rasul Karim A Anr. v. Pirubhai AMrbhm*, ILR 1914 38 Bom. 381, Beaman, J. was of the view that the court's in India have no power to issue a temporary injunction in a mandatory form but Shah, J. who constituted a Bench in that case did not agree with Beaman, J. in this view. However, in a later Division Bench judgment in *Champsey Bhimji & Co. v. The Jamna Flour Mills Co. Ltd.*, two learned Judges of the Bombay High Court took a different view from Beaman, J. and this view is now the prevailing view in the Bombay High Court. In *M. Kandaswami Chetty v. F. Subramania Chetty*, a Division Bench of the Madras High Court held that court's in India have the power by virtue of Order 39 Rule 2 of the CPC to issue temporary injunction in a mandatory form and differed from Beaman's view accepting the view in *Champsey Bhimji & Co. v. Jamna Flour Mills Co.* (supra). In *Israil v. Shamser Rahman*, it was held that the High Court was competent to issue an interim injunction in a mandatory form. It was further held in this case that in granting an interim injunction what the Court had to determine was whether there was a fair and substantial question to be decided as to what the rights of the parties were and whether the nature and difficulty of the questions was such that it was proper that the injunction should be granted until the time for deciding them should arrive. It was further held that the Court should consider as to where the balance of convenience lie and whether it is desirable that the status quo should be maintained. While accepting that it is not possible to say that in no circumstances will the Courts in India have any jurisdiction to issue an ad interim injunction of a mandatory character, in *Nandan Pictures Ltd. v. Art. Pictures Ltd. and Ors.*, AIR 1956 Cal 428, a Division Bench was of the view that if the mandatory injunction is granted at all on an interlocutory application it is granted only to restore the status quo and not granted to establish a new state of things differing from the state which existed at the date when the suit was instituted.

16. The relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm, courts have evolved certain guidelines. Generally stated these guidelines are:

- (1) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction.
- (2) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.

(3) The balance of convenience is in favour of the one seeking such relief.

17. Being essentially an equitable relief the grant or refusal of an interlocutory mandatory injunction shall ultimately rest in the sound judicial discretion of the Court to be exercised in the light of the facts and circumstances in each case. Though the above guidelines are neither exhaustive or complete or absolute rules, and there may be exceptional circumstances needing action, applying them as prerequisite for the grant or refusal of such injunctions would be a sound exercise of a judicial discretion."

22. It would be seen from the aforesaid observation of the Apex Court in the said case that the relief of interlocutory mandatory injunction is granted generally to preserve or restore the status quo of the last contested status. The expression 'generally' in the above observation gives a clear indication that the grant of interim mandatory injunction does not only confine to restore the status quo of the last contested status. The Apex Court in the said judgment further observed that being essentially an equitable relief the grant or refusal of an interlocutory mandatory injunction shall ultimately rest on the sound judicial discretion of the Court to be exercised in the light of the facts and circumstances of each case. The Court also observed that there may exist exceptional circumstances for the grant or refusal of such injunction and it would ultimately depend on the facts of each case for the Court to exercise the equitable jurisdiction in favour of one party in preference to the other party.

23. Testing the present case in the light of aforesaid discussion, the court is of the view that the plaintiff has been able to establish a very strong prima- facie case in his favour. The defendant No.1 being a daughter-in-law has no right to reside in the subject property which belongs to her father-in-law as the said property is not covered by the definition of 'shared household', the same being neither a joint family property in which her husband is a member, nor it belongs to the defendant no. 2 and is not even a rented accommodation owned by the defendant No.2.

24. Referring to the decision of the Apex court in the case of S. R. Batra and Anr. v. Taruna Batra, (2007) 3 SCC 169, which has extensively dealt with the legal position regarding the right of a daughter-in-law in a shared household under Section 17(1) of the DV Act, it was held as under:-

"16. There is no such law in India, like British Matrimonial Homes Act, 1967 and in any case, the rights which may be available under any law can only be as against the husband and not against the father-in-law or mother-in-law.

29. As regards Section 17(1) of the Act, in our opinion the wife is only entitled to claim a right to residence in a shared household, and a shared household would only mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member...

30. No doubt, the definition of "shared household" in section 2(s) of the Act is not happily worded, and appears to be the result of clumsy drafting, but we have to give it an interpretation which is sensible and which does not lead to chaos in the society."



25. In S.R. Batra case (supra), the property in question belonged to the mother-in-law and there also the defence taken by the daughter-in-law was that the said property was a joint family property and therefore she enjoyed a protection under Section 17(1) of Domestic Violence Act, 2005. However, the court took a view that daughter-in-law cannot claim any right in an accommodation which belongs to mother-in-law or the father-in-law as such an accommodation does not satisfy the test of share household accommodation as envisaged under Section 2(s) of the Domestic Violence Act, 2005.

26. The aforesaid view was reiterated by this court in the case of Neetu Mittal v. Kanta Mittal reported in 152 (2008) DLT 691 and the relevant Paras of the same are reproduced as under:-

"8. ... 'Matrimonial home' is not defined in any of the statutory provisions. However, phrase "Matrimonial home" refers to the place which is dwelling house used by the parties, i.e., husband and wife or a place which was being used by husband and wife as the family residence. Matrimonial home is not necessarily the house of the parents of the husband. In fact the parents of the husband may allow him to live with them so long as their relations with the son (husband) are cordial and full of love and affection. But if the relations of the son or daughter-in-law with the parents of husband turn sour and are not cordial, the parents can turn them out of their house. The son can live in the house of parents as a matter of right only if the house is an ancestral house in which the son has a share and he can enforce the partition. Where the house is self-acquired house of the parents, son, whether married or unmarried, has no legal right to live in that house and he can live in that house only at the mercy of his parents upto the time the parents allow. Merely because the parents have allowed him to live in the house so long as his relations with the parents were cordial, does not mean that the parents have to bear his burden throughout the life.

9. Once a person gains majority, he becomes independent and parents have no liability to maintain him. It is different thing that out of love and affection, the parents may continue to support him even when he becomes financially independent or continue to help him even after his marriage. This help and support of parents to the son is available only out of their love and affection and out of mutual trust and understanding. There is no legal liability on the parents to continue to support a dis-obedient son or a son which becomes liability on them or a son who dis-respects or dis- regards them or becomes a source of nuisance for them or trouble for them. The parents can always forsake such a son and daughter-in-law and tell them to leave their house and lead their own life and let them live in peace. It is because of love, affection, mutual trust, respect and support that members of a joint family gain from each other that the parents keep supporting their sons and families of sons. In turn, the parents get equal support, love, affection and care. Where this mutual relationship of love, care, trust and support goes, the parents cannot be forced to keep a son or daughter in law with them nor there is any statutory provision which compels parents to suffer because of the acts of residence and his son or daughter in law. A woman has her rights of maintenance against her husband or sons/daughters.

She can assert her rights, if any, against the property of her husband, but she cannot thrust herself against the parents of her husband, nor can claim a right to live in the house of parents of her husband, against their consult and wishes.

27. In yet another case *Shumita Didi Sandhu v. Sanjay Singh Sandhu & Ors.* reported in 174 (2010) DLT 79 (DB), the Division Bench of this Court took a view that a property which neither belongs to husband nor is taken on rent by him, nor is a joint family property in which husband is a member, cannot be regarded as shared household and, therefore, the daughter-in-law has no right to claim right to stay in such a property, which belongs to either the father-in-law or mother-in-law. The Hon'ble Division Bench also held that the right of residence which a wife undoubtedly has does not mean right to reside in a particular property and it is only in that property in which the husband has a right, title or interest that wife can claim residence and that too if no other commensurate accommodation is provided by the husband. The following paragraphs from the said judgment are reproduced as under:-

"40. ...the concept of maintenance, insofar as a Hindu lady is concerned, necessarily encompasses the provision for residence. Furthermore, the provision for residence may be made either by giving a lump sum in money or property in lieu thereof. It may also be made by providing, for the course of the lady's life, a residence and money for other necessary expenditure. Insofar as Section 17 of the said Act is concerned, a wife would only be entitled to claim a right of residence in a "shared household" and such a household would only mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member. The property which neither belongs to the husband nor is taken on rent by him, nor is it a joint family property in which the husband is a member, cannot be regarded as a "shared household". Clearly, the property which exclusively belongs to the father-in-law or the mother-in-law or to them both, in which the husband has no right, title or interest, cannot be called a "shared household". The concept of matrimonial home, as would be applicable in England under the Matrimonial Homes Act, 1967, has no relevance in India.

41. In the light of the aforesaid principles, the appellant/plaintiff would certainly have a right of residence whether as a part of maintenance or as a separate right under the said Act. The right of residence, in our view, is not the same thing as a right to reside in a particular property which the appellant refers to as her 'matrimonial home'. The said Act was introduced, inter alia, to provide for the rights of women to secure housing and to provide for the right of the women to reside in a shared household, whether or not she had any right, title or interest in such a household."

28. I have also had occasion to deal with some-what similar situation in the case of *Kavita Chaudhari v. Evenet Singh and Anr.*, reported in 2012 (130) DRJ 83, wherein the civil suit was filed by the mother-in-law seeking a decree of mandatory and permanent injunction against her son and daughter-in-law and in violation of the interim order passed by the court, the daughter-in-law failed to hand over the possession of the suit premises to the mother-in-law, thereby necessitating

the Decree Holder i.e mother-in-law to file an execution petition. Following the principles laid down by the Apex Court in the case of S.R. Batra(supra), it was held as under in the following paras:-

"The property which neither belongs to the husband nor is taken on rent by him, nor is it a joint family property in which the husband is a member, cannot be regarded as a „shared household . Clearly, the property which exclusively belongs to the father-in-law or the mother-in-law or to both of them in which the husband has no right, title or interest, cannot be called a „share household . The Hon'ble Division Bench in Sumita Didi (supra) also observed that the right of residence which a wife undoubtedly has does not mean her right to reside in a particular property although such a right in terms of Section 17 of The Protection of Women from Domestic Violence Act is a right to reside in a commensurate property.

17. At omega, this Court would like to observe that with a view to mitigate the oppression and inequality suffered by the fairer sex in this country from times immemorial; various woman friendly laws have been enacted so as to empower the women. It is a bitter truth that where on one hand these progressive laws have led to amelioration and advancement of the cause of the woman in this country, at the same time on the other hand these liberalized statutes have been flagrantly misused. The right of the woman to her matrimonial home is one such right which has been brought on the statute book to protect the woman from being left in lurch at the hands of the in-laws. However one cannot or may I say should not shy away from the hard hitting reality that it is not always the daughter in law who is berated but at times the in laws who are at the receiving end of the daughter in law's cantankerousness. It should not be for a moment consigned to oblivion that the parents in law have every right to live in peace in their own property and the right to property vested in them cannot be snatched away and used as a tool to harass them. In the facts of the case at hand, it is not in dispute before this Court that the said property bearing No. D-32, South Extension, New Delhi is the property owned by the mother-in-law which property was bequeathed in her favour by her father and therefore the said property cannot be treated as a joint family property. The daughter-in-law has no right to stay in the said property and with the exit of her husband from the same the judgment debtor has also lost the right to the said premises as well."

29. One can also not lose sight of the fact that none of the statutes which deal with the rights of a married woman in India, be it The Hindu Marriage Act, 1955; The Hindu Succession Act, 1956; The Hindu Adoption and Maintenance Act, 1956; The Protection Of Women From Domestic Violence Act, 2005 or The Code Criminal Procedure, 1973 confer any right of maintenance including residence for the married woman as against the parents of the husband. To illustrate, Sections 24 and 25 of The Hindu Marriage Act, 1955 provides for the wife's right to pendent lite maintenance and Permanent Alimony only against her husband. Section 17 (1) of Domestic Violence Act, 2005 gives protection to the wife where the wife is only entitled to claim a right to residence in a shared household, and a shared household would only mean the house belonging to or taken on rent by the

husband, or the house which belongs to the joint family of which the husband is a member within the meaning of Section 2(s) of the said Act. Section 18 of The Hindu Adoption and Maintenance Act, 1956 enumerates the right of a Hindu wife to be maintained by her husband during her life time. Section 125 of the Criminal Procedure Code, 1973 provides for monthly maintenance to wife, irrespective of her religion, if she has no source of income or means to maintain herself against her husband. The wife's right to maintenance which includes her residence in a commensurate property is, thus, only against the husband. Marriage is a social union of two persons called spouses that establishes rights and obligations between them. The concept of Matrimonial Home has evolved with the passage of time. The concept hails from the law of England under the Matrimonial Homes Act, 1967. There is no such absolute statute in India, like the British Matrimonial Homes Act, 1967, which clearly stipulates that the rights which may be available under marriage laws can only be as against the husband and not against the father-in-law or mother-in-law. However, it is quite discernible that the spouses in wedlock, are obliged to take care of each other and in case of any inter-se dispute; one can claim his right with respect to maintenance only against the other and not against the other family members. With the transient course it has been observed that with the advent of various women friendly laws, empowering the women with equal rights as that of a man/ husband, the remedy of women to ask for maintenance or to claim her right in the residence in a commensurate property is only restricted to her husband and not against her parents in law. A woman is only entitled to claim a right to residence in a shared household, and a shared household would only mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member. This means that she can assert her rights, if any, only against the property of her husband and cannot claim a right to live in the house of her husband's parents without their wishes and caprice. Law permits a married woman to claim maintenance against her in-laws only in a situation covered under section 19 of The Hindu Adoption and Maintenance Act, 1956. i.e. after the death of the husband and that too when she is unable to maintain herself out of her own earnings etc. It would not be abominable to say that even the parents/ parents in law at the fag-end of their lives, deserve to live a blissful, happy and a peaceful life, away from any tautness or worries.

30. In the light of the aforesaid legal position the defendant No.1, being a daughter-in-law of the plaintiff, has no right as against the plaintiff i.e. her father-in-law, to occupy any portion of the subject property, which is his self- acquired property.

31. The next thing to be seen in the present case is whether grant of such an interim mandatory injunction in favour of the plaintiff is imperative to prevent any irreparable loss or serious injury to the plaintiff which normally could not be compensated in terms of money.

32. In the facts of the present case, the plaintiff is aged about 80 years and his wife is aged about 74 years and they are suffering from various old age and other ailments. It is also an admitted position that the defendant No.1 left the subject premises on 20.10.2010 but again entered the said premises later although her husband started residing in a rented accommodation. Without going into the veracity of the complaints and counter complaints filed by the plaintiff and the daughter-in-law, one thing clearly emerges that the relation between the parties are highly embittered and they are on a complete war path. In my view, in such a scenario, while also considering the effect that such

environment would have on the minor children, it would be preposterous for both the parties to stay under the same roof. Consideration may also be given to the well-known fact that the civil litigation takes years to conclude and by not granting interim stay in favour of the aged parents-in-law for all these years until the date of final decision of the case, they would be unnecessarily compelled to spend far end of their lives in a formulated, non- consensual and woeful environment. The court can also not lose sight of the fact that the defendant no. 1 has already been offered by the defendant no. 2 to reside with him in his rented accommodation or in the alternate has also been offered a sum of Rs. 30,000 to reside in some other rented accommodation. The defendant no. 1, being herself not happy with the conduct of her in-laws and husband, can avail this facility and shift to another equally good accommodation for which her husband is ready to bear the monthly rental expenses. By such an arrangement, in my opinion, interest of both the parties would be secured at such an interim stage.

33. Counsel for the defendant also raised a plea that plaintiff has played serious fraud upon the Court by not disclosing about having a residential house at Calcutta. Counsel also placed reliance on documents placed on record which clearly prove that the residence of the plaintiff is at Calcutta. Counsel also submitted that the plaintiff by having his residential address at two places has violated the relevant provisions of Representation of Peoples Act, 1951. Undeniably, it would have been better, had the plaintiff disclosed about having his residence at the Calcutta property too, as for claiming equitable discretionary relief one must place all the material and relevant facts before the court. Nevertheless, it has not been denied by defendant No.1 that plaintiff has been residing in the property bearing number B-197, Greater Kailash, Part-I, New Delhi since 2010. The court is of the view that the right of plaintiff has to be considered vis-a-vis Delhi property and not Calcutta property. The mere fact that plaintiff has another property at Calcutta cannot deprive him from residing in his Delhi property and therefore non-disclosure of a residential property at Calcutta in the present suit cannot be taken as a suppression of a material fact so as to dis-entitle the plaintiff from the grant of discretionary relief. There is thus no merit in this plea raised by defendant No.1.

34. Counsel for defendant No.1 also argued that there is an apparent collusion between the plaintiff and defendant No. 2 to throw out defendant No.1 from the alleged matrimonial home. This argument of counsel for defendant No.1 is also devoid of any merit as the Court has to prima-facie consider the right of defendant No.1 to reside in the property owned by her father-in-law and as discussed above, defendant No.1 has no legitimate right to stay in the self-acquired property of her parents-in-law unless permitted by the parents- in-law themselves.

35. In the light of the above discussion, the balance of convenience strongly lies in favour of the plaintiff as against defendant No.1. The non- grant of the interim mandatory injunction will result in causing more prejudice to the rights of the plaintiff in comparison with the alleged rights of the defendant No.1 to stay in an accommodation which is neither a matrimonial home nor a shared household accommodation.

36. Interim mandatory injunction is therefore granted in favour of the petitioner and against the defendant no. 1. Defendant No.1 is accordingly directed to vacate the subject property bearing No. B-197, Greater Kailash, Part-I, New Delhi and hand over peaceful possession of the same to the

plaintiff within a period of one month from the date of this order. It is further directed that concerned Court seized with the petition filed by defendant No.1 under Domestic Violence Act shall decide the interim application of defendant No.1 for the grant of maintenance, which will include her right to a residence in the commensurate property as per the financial status of defendant No.2, within a period of one month from the date of this order. Defendant No.1 in the meanwhile is also set at liberty to shift to the rented accommodation as offered by defendant No.2 for her exclusive residence along with her children or to accept an amount of Rs.30,000 towards the amount of rent, pending disposal of her maintenance application before the concerned Metropolitan Magistrate/ Mahila Court .

37. With the above directions the present application stands disposed of.

38. It is ordered accordingly.

KAILASH GAMBHIR 05 February, 2013