

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on : 29.04.2011

+ CS (OS) 1307/2010

EVEENEET SINGH Plaintiff Through : Sh. Y.P. Narula, Sr. Advocate with Ms. Shobhana

Takiar, Advocate.

Versus

PRASHANT CHAUDHRI AND ORS. Defendants Through : Ms. Geeta Luthra, Sr. Advocate with Sh. Jatin Sehgal, Advocate, for Defendant No. 1.

Sh. Ankur Mahindro, Advocate, for Defendant No.2.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

1. Whether the Reporters of local papers YES

may be allowed to see the judgment?

2. To be referred to Reporter or not? YES

3. Whether the judgment should be YES

reported in the Digest?

MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT)

I.A. No. 1401/2011 (Under Section 151 CPC) in CS (OS) 1307/2010

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1. This Court had by its judgment and order dated 20.12.2010 disposed of certain applications in the two pending suits.

2. By the directions contained in that judgment, the Court had upheld the right of the plaintiff in one of the suits, (hereafter referred to as "Eveneet") to residence in terms of Section 17 of The Protection of Women from Domestic Violence Act, 2005 (hereafter referred to as "the Domestic Violence Act"). However, the Court, on a consideration of the other materials on record formed the opinion that it would be in the best interest of the parties that Eveneet should

I.A. NO. 1401/2011 IN CS (OS) 1307/2010 Page 1 not continue to reside in the shared household, drawing inspiration from the judgment in Shumita Didi Sandhu v. Sanjay Singh Sandhu and Ors. FAO (OS) 341/2007 (decided on 26.10.2010), as well as Section 19(1)(f) of the Domestic Violence Act, and instead directed that she ought to be given alternative accommodation. As an interim measure, she was held entitled to ` 30,000/- per month (towards rent) over and above the monthly maintenance amount determined at ` 45,000/-.

3. The operative portion of the Court's directions contained in paras 19 to 21 are as follows: "XXXXXX
XXXXXX XXXXXX

19. In the present case, Eveneet and Prashant were living together. No doubt, the suit premises are not owned by either of them; the documents on record prima facie disclose that exclusive title and right is of Kavita, the mother-in-law. Yet, having regard to the previous discussion, Kavita is undoubtedly a "respondent" in whose household, the couple lived together. The Court here cannot be oblivious of the circumstance that Prashant moved out when the relationship became stormy; the possibility of the eviction suit having been filed as a pre-emptive move, to bring it within the Batra formulation cannot be ruled out at this stage. In the context, the Court holds that what cannot be done directly, cannot be achieved indirectly through stratagem. If the Court can look beyond the facts, and in a given case, conclude that the overall conspectus of circumstances, suggests manipulation by the husband or his relatives, to defeat a right inhering in the wife, to any order under Section 19, such "lifting of the veil" should be resorted to. Therefore, the plaintiff indeed has a right of residence under the Domestic Violence Act.

20. Now the question is what should be the order that the Court should make. As held earlier, though Eveneet has made a complaint under the Domestic Violence Act, in which orders have not been made, yet this Court also has concurrent jurisdiction under Section 26 to make appropriate orders in this regard, and mould the relief. The documentary evidence also suggests that Kavita is suffering from an acute cardiac condition; though Eveneet's counsel submitted that the illness has been exaggerated, the Court cannot rule out aggravation, if the daughter-in-law continues in the premises, under a Court order, or the Court mandate. In this context, it has been observed by a division bench of this Court in Shumita Didi Sandhu v. Sanjay Singh Sandhu and Ors., (F.A.O. (OS) 341/2007, Decided On: 26.10.2010) that

"the right of residence which a wife undoubtedly has does not mean the right to reside in a particular property. It may, of course, mean the right to reside in a commensurate property."

The above approach is consistent with the power under Section 19 (1) (f), which enables the Court to direct "the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require". The

I.A. NO. 1401/2011 IN CS (OS) 1307/2010 Page 2 plaintiff is thus, entitled to residence in a property commensurate with her lifestyle and her current residence, keeping in mind Kavita's health condition.

21. The documentary evidence and pleadings suggest that Prashant's monthly outgoings in respect of the New York property are US\$ 4500/-, which works out to Rs.2,05,000/-. He is also paying rent to the tune of Rs.27,000/- per month. With this expenditure, the Court can safely incur that his personal expenses would not be less than about Rs. 40,000/- per month. In these circumstances, to support this kind of lifestyle, Prashant's average monthly income would not be less than Rs.450,000/- to Rs. 500,000/-. On the other hand, Eveneet's income is about Rs. 50,000/- per

month; Prashant alleges it to be more. Having regard to his offer to pay Rs. 20,000/- per month towards alternative accommodation, the Court is of opinion that she should be entitled to an amount of Rs. 30,000/- per month towards rent, for alternative accommodation, and an amount of Rs. 45,000/- per month maintenance. In order to facilitate and effectuate this order, the parties are directed to appear before the Court handling the complaint under the Domestic Violence Act, on 4th January, 2011, which shall oversee that Prashant complies with Section 19 (1)(f), within ten weeks from today. Till such alternative accommodation is made available, Eveneet would be entitled to continue in the suit premises, and also entitled to receive Rs. 45,000/- per month. The application for maintenance is allowed with effect from the date it was filed; arrears shall be paid within six weeks.

4. It appears that both Eveneet and her husband Prashant have carried the said matter in appeal. Eveneet contests the operative portions, contending that she has the right to reside in the shared household whereas Prashant's grievance in respect of the order apparently is that Eveneet is not entitled to the amounts or the alternative accommodation, as directed by the Court. Learned senior counsel for the parties have also brought to the notice of this Court that by an order dated 11.02.2011, the Division Bench had left it open to Eveneet to shift into the flat leased by Prashant which was then being used by him.

5. Learned senior counsel for Eveneet contends that since the appeals are pending, it would not be appropriate for this Court to make any determination or clarification as is being sought by Prashant in this case. It is pointed-out that Eveneet's rights having been declared in Para 19 of the judgment, and the matter has to be relegated for appropriate effectuation by the Magistrate dealing with the complaint under the Domestic Violence Act. It is also argued that even though the Division Bench by its order of 11.02.2011 gave an option to Eveneet to shift to the premises in Defence Colony, it was just that (only an option), which she was free to accept or reject.

6. Learned senior counsel for Prashant argues that this Court ought to clarify explicitly

I.A. NO. 1401/2011 IN CS (OS) 1307/2010 Page 3 having regard to the directions in paras 20 and 21 that once alternative accommodation is made available or offered to Eveneet and she chooses not to accept it, her right to reside in the premises would not continue. It is submitted that this follows from a fair reading of paras 20 and 21, particularly latter portion of para 21 where even the time limit of 10 weeks has been specified.

7. This Court has considered the submissions of parties. Whilst there can be no two views on the issue that the Court upheld Eveneet's right to shared household, equally the Court had given due consideration to Kavita's (i.e. the mother-in-law) cardiac condition, and therefore, required that Eveneet should be given alternative accommodation within the specified time. As an interregnum, the Court had mandated that she would be entitled to ` 45,000/- per month. The reference to the Court dealing with the complaint under the Domestic Violence Act was purely a facilitating mechanism. If the rights of the parties as spelt-out in the order are understood in this perspective, it is clear that Eveneet's right to continue in the premises was for a period of 10 weeks. Prashant is no doubt under an obligation to offer alternative accommodation this process was to be monitored by the Court dealing with the complaint under the Domestic Violence Act.

8. This Court is conscious of the further events which took place by way of an order of the Division Bench dated 11.02.2011, when Eveneet was given yet another option to move into premises leased by Prashant. Apparently, that option is still open even though she has chosen not to exercise it. Having regard to the overall circumstances, the Court clarifies that the judgment and order necessarily implied that in the event of alternative accommodation being offered "made available" to Eveneet before the concerned Court, her right to continue in the premises would cease.

9. In the light of the above clarification, the parties are relegated to the concerned Magistrate Ms. Priya Mahindra, learned MM (Saket), who is dealing with the Complaint No. 98/1. The said Court shall consider the option furnished by Prashant to Eveneet in line with this Court's order, and make suitable orders as to whether Eveneet accepts the same or not. In the event of the Court's determination of any premises to be appropriate or suitable, Eveneet shall be given reasonable time of two weeks to shift to the same. In the event of her failing to do so, it is open to the Defendant No. 2 to take appropriate proceedings for the implementation of the order of Court. The parties are directed to be present before the concerned Magistrate on 02.05.2011.

I.A. NO. 1401/2011 IN CS (OS) 1307/2010 Page 4 The said officer shall endeavor to complete the proceedings within four weeks. I.A. No. 1401/2011 is disposed of in the above terms. Order Dasti.

S. RAVINDRA BHAT

(JUDGE)

APRIL 29, 2011

'ajk'

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