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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Date of decision: 06<sup>th</sup> August, 2026*

# CNR No. DLHC010033672022

+ RFA 16/2022, CM APPL. 9302/2024 & CM APPL. 34101/2026

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

.....Appellant

Through: Mr. Shivek Rai Kapoor, Advocate

versus

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

.....Respondents

Through: Mr. Ateev Mathur, Mr. Amol Sharma  
and Mr. Sanjay Gupta, Advocates

**CORAM:**

**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA**

**J U D G M E N T (oral)**

1. The present Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) has been filed by the Appellant/Defendant No. 1, against the Judgment and Decree dated 01.12.2021 passed by the learned Additional District Judge, New Delhi whereby **the Application under Order XII Rule 6 CPC** filed by the Respondent No. 1/Plaintiff, was



**allowed** and ***the Suit for possession*** of the suit property, was decreed.

2. Respondent No. 1, Ashok Nigam who is a senior citizen, filed **Civil Suit No. CS DJ 6024/2016** for *Permanent, Mandatory and Prohibitory Injunction, Possession and Recovery of Damages for Use and Occupation against the Appellant (Defendant No. 1) and Respondent No. 2 (Defendant No. 2), inter alia praying for:*

(i) a decree of mandatory injunction permanently restraining the Appellant from entering the suit premises;

(ii) handing over of possession of the portion used and occupied by the Appellant; and

(iii) recovery of damages and mesne profits @ Rs. 5,000/- per month, from the date of filing of the Suit till the date of vacation.

3. **To state briefly**, the facts as they emerge from **the Plaint**, are that the Appellant, Kavita Nigam is the daughter-in-law of Respondent No. 1 and the estranged wife of Respondent No. 2, who is the son of Respondent No. 1.

4. The property bearing No. Q-2A, Hauz Khas Enclave, New Delhi-110016, (*hereinafter referred to as suit property*) was originally purchased by Shri Man Mohan Lal Nigam, father of Respondent No. 1, *vide* sale deed dated 19.02.1955. The father of Respondent No. 1 passed away on 29.08.1960, leaving behind *five daughters and one minor son, i.e., the Respondent No. 1 herein*. A Will dated 01.03.1955 was executed by his father. Thereafter, upon obtaining No-Objection Certificates from all his sisters, *the suit property was mutated in favour of Respondent No. 1 by way of Mutation Letter dated 07.10.1976 by the MCD*. Respondent No. 1 thus, became the absolute owner of the suit property and has been paying property tax in respect thereof.



5. Pertinently, one of the sisters of **Respondent No. 1, namely Ms. Kusum Lata Nigam**, filed a Suit for Partition bearing No. CS(OS) No. 89/2006 titled “*Kusum Lata Nigam Vs Ashok Nigam*” before this Court, seeking partition of the suit property on the ground that the same had devolved in favour of Respondent No. 1 and his five sisters, after the demise of their father. It is significant that one of the issues framed in the said Partition Suit, vide order dated 08.08.2008, was whether the Will dated 01.03.1955 was genuine and whether it had been validly executed. Thus, the question of ownership and title over the suit property was pending adjudication before this Court.

6. The marriage of the Appellant with Respondent No. 2 was solemnized on 30.05.2009, in accordance with Hindu rites and rituals at Delhi. Since the solemnization of her marriage, the Appellant started residing at the suit property, which according to her, is her matrimonial home.

7. Meanwhile, the Appellant’s marriage with Respondent No. 2 turned sour, and the parties have been embroiled in multiple litigations, since 2011. The Appellant filed a Complaint Case No. 216/2011 under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (DV Act) before the learned Metropolitan Magistrate (Mahila Court), against Respondent No. 2 (husband), Respondent No. 1 (father-in-law), and other family members. The Appellant left the matrimonial home on 15.04.2011 and started residing at her parental home. However, she returned to the suit property on 11.11.2012, during the pendency of the DV proceedings. Respondent No. 2, on the other hand, shifted to rented accommodation.

8. The Respondent No. 1 asserted that the Appellant and Respondent No. 2 were permissive users/licensees in the suit property, that he had



withdrawn the licence granted to them to reside under his roof, and that the Appellant was accordingly liable to be evicted. It is not in dispute that Respondent No. 2 shifted out of the suit property to a rented accommodation, a Rent Agreement in respect of a flat at Malviya Nagar at a monthly rent of Rs. 20,000/- having been executed on 14.11.2012.

**9. Therefore, the Plaintiff filed the Suit, seeking possession, Recovery of Damages for Use and Occupation and injunction.**

**10.** The Appellant, in her **Written Statement**, averred that the suit property is not the self-acquired property of Respondent No. 1, *but is an ancestral property*. She contended that the suit property falls within the *statutory definition of “shared household” as defined under Section 2(s) of the DV Act, and that she has the right to reside therein, till the subsistence of her marriage*. She further contended that Respondent No. 1 was in collusion with Respondent No. 2, *to evict her from her matrimonial home*.

**11.** During the pendency of the Suit, the DV complaint filed by the Appellant was decided *vide* Judgment dated 17.07.2020 by the learned Metropolitan Magistrate ('MM') , Mahila Court, wherein she was granted monthly maintenance of Rs. 1,00,000/-, payable by Respondent No. 2. **However, no relief was granted to the Appellant under Section 19 of the DV Act, qua the right of residence in the suit property.** The said quantum came to be reduced to Rs. 70,000/- per month by the learned Additional Sessions Judge ASJ, South District, Saket Courts *vide* Order dated 17.05.2023.

**12. The Appellant, thus, asserted that she has a right of residence and cannot be evicted from the suit premises.**

**13. The Plaintiff/Respondent No.1 filed an Application under Order**



**XII Rule 6 read with Section 151 CPC, seeking a partial decree of ownership and possession.**

14. Respondent No. 1 claimed that the Appellant had, in her pleadings, admitted the Mutation Letter dated 07.10.1976, the No-Objection Certificates of the legal heirs, and his ownership of the suit property. These admissions were said to be contained in two documents, namely, the Written Statement filed by the Appellant, and her Affidavit of Admission and Denial of Documents. Respondent No. 1 thus, contended that no triable issue survived on the question of title, *and that the Suit was liable to be decreed on admissions.*

15. The **Appellant filed a detailed Reply dated 18.01.2021** opposing the Application, stating that the case of the Respondent No. 1 did not stand on its own footing and that the averments raised serious triable issues. It was contended that the admissions were not clear, unambiguous and unconditional, which are essential prerequisites before passing a judgment under Order XII Rule 6 CPC. It was further contended that the Partition Suit bearing No. CS(OS) 89/2006 was pending before this Court, and the question of ownership and title, was yet to be adjudicated.

16. The **learned Additional District Judge**, observed that the Appellant, during her Affidavit of Admission/Denial, had admitted all the documents filed by Respondent No. 1, including the Mutation Letter dated 07.10.1976, the NOCs of the legal heirs, and the affidavits given by the sisters on the basis of the Will of the father. Moreover, she had admitted the averments of the Plaint regarding the ownership of Respondent No. 1, in her Written Statement.

17. The learned **Additional District Judge**, concluded that there was no



dispute regarding the ownership of the Respondent No. 1 qua the suit property, and that the Appellant and Respondent No. 2, being the daughter-in-law and the son of Respondent No. 1 respectively, could be said to be licensees in the suit property.

**18. Respondent No. 2 filed an Affidavit dated 08.07.2021 in the Suit, expressing his willingness to pay a sum of Rs. 25,000/- per month to the Appellant towards rented accommodation, in the event of her eviction from the suit property.**

**19. Learned Additional District Judge vide the Impugned Judgment/Order dated 01.12.2021, allowed the Application under Order XII Rule 6 CPC and decreed the Suit for possession of the suit property, against the Appellant.**

**20. Aggrieved by the said Judgment/Decree, the Appellant preferred the present Regular First Appeal, under Section 96 CPC.**

**21. The grounds of challenge** against the Impugned Judgment/Order, are manifold. It was contended that the Impugned Judgment/Order is prima facie perverse, inasmuch as it is premature and does not establish that the relief of ownership and possession had accrued in favour of the Respondent No. 1, on the strength of merely a Mutation Letter dated 07.10.1976 and “No-Objection Certificates” from his siblings. It is no more res integra that a mutation entry does not confer any right, title or interest in favour of any party and is only rendered for "fiscal purposes".

**22. Reliance was placed on Jitendra Singh Vs State of M.P. (2021 SCC OnLine SC 802) and Prahlad Pradhan & Ors. Vs Sonu Kumhar & Ors. (2019) 10 SCC 259.**

**23. It was submitted that there was deliberate concealment of material**



facts on behalf of the Respondent No. 1, in not disclosing the actual status of the Partition Suit bearing No. CS(OS) 89/2006 titled "*Kusum Lata Nigam Vs Ashok Nigam*" pending adjudication before this Court, wherein the genuineness of the Will dated 01.03.1955, is one of the pertinent issues pending adjudication. It was thus, submitted that the issue of the right of ownership and possession was itself pending and could not be countenanced by the Impugned Judgment/Order till the final adjudication of the said Suit.

24. Furthermore, that the Impugned Judgment/Order does not pass the muster of "*Judgment on Admissions*" inasmuch as the admissions are not clear, unambiguous and unconditional, which are the essential ingredients before the passing of a judgment under Order XII Rule 6 CPC. It is trite law that the discretionary power conferred under Order XII Rule 6, is to be exercised only when there are clear admissions. Reliance was placed on *Himani Alloys Ltd. Vs Tata Steel Ltd.* (2011) 15 SCC 273 and *S.M. Asif Vs Virender Kumar Bajaj* (2015) 9 SCC 287.

25. It was contended that the learned ADJ could not decree the ownership at such an anterior stage in favour of the Respondent No. 1, when the rights of the parties needed to be adjudicated upon after holding a full-fledged trial as per the procedure established in law. It was further urged that the suit property is well within the meaning of "*shared household*" as defined under Section 2(s) of the Protection of Women from Domestic Violence Act, 2005, and the Appellant has the right to reside in her matrimonial house till the subsistence of her marriage. Reliance was placed on *Satish Chander Ahuja Vs Sneha Ahuja* (2021) 1 SCC 414.

26. It is further contended that the Appellant was not afforded a proper opportunity of being heard, which is a blatant violation of the principles of



natural justice, equity and fair play.

27. This Court, on 17.01.2022, issued notice to the Respondents. It was noted that there was no dispute regarding the ownership of Respondent No. 1 qua the suit property between the parties to the Suit, and that the Appellant and Respondent No. 2, being the son of Respondent No. 1 and the wife of Respondent No. 2, could be said to be licensees in the suit property. The Appellant filed stay applications being CM APPL. 2951/2022, CM APPL. 7442/2022 and CM APPL. 13744/2022.

28. The matter was thereafter, being adjourned from time to time to enable the parties to arrive at an amicable settlement so that the Appellant could be provided with some alternate accommodation on rent by Respondent No. 2 during the pendency of the *inter se* matrimonial proceedings between them.

29. On 22.03.2022, this Court, upon considering the submissions of the Appellant, noted that the Appellant had been residing in the suit property at Hauz Khas, Delhi since her marriage with Respondent No. 2 in the year 2009, and that the amount of Rs. 25,000/- offered by Respondent No. 2 before the learned ADJ would not be adequate to enable her to shift to a suitable alternative accommodation. In these circumstances, Respondent No. 2 had to ensure that the Appellant was not left shelter-less and that the Appellant could be evicted only upon providing some reasonable accommodation.

30. On 27.07.2022, Respondent No. 2 made a statement that to bring quietus to the matter, till the pendency of the *inter se* matrimonial proceedings, he was willing to pay Rs. 35,000/- to the Appellant towards her rent and accommodation, in this Court.



31. Accordingly, this Court, *vide* Order dated 08.08.2022, without disturbing the Impugned Judgment and Decree dated 01.12.2021, regulated the execution thereof by granting the Appellant four weeks' time to vacate the suit premises, such time to run from the date of deposit by Respondent No. 2 of advance rent for one year @ Rs. 35,000/- per month. Respondent No. 2 was further directed to file an undertaking before this Court to continue to pay the Appellant a monthly sum of Rs. 35,000/- towards rent, till the disposal of the *inter se* matrimonial proceedings.

32. The Appellant, at that stage, submitted that she was willing to amicably resolve all her disputes including her claim for arrears of maintenance, in case she was paid a lump sum amount of Rs. 70 lakh by Respondent No. 2. However, the parties could not arrive at any settlement.

33. *Vide* Order dated 01.09.2022, the parties jointly submitted that they had not been able to amicably resolve their disputes, as the Appellant was no longer interested in receiving any lump sum amount from Respondent No. 2 or for dissolution of the marriage by mutual consent. In the light of the aforesaid stand, the Appeal was required to be heard on merits. *The aforesaid Order dated 08.08.2022 was made absolute, and it was clarified that the payment of rent by Respondent No. 2 was subject to the Appellant vacating the subject premises. Respondent No. 2, complying with the said Order, deposited advance rent of one year @ Rs. 35,000/- per month.*

34. *Vide* Order dated 27.09.2023, it was noted that the one-year period for advance rent deposited by Respondent No. 2, was expiring on 30.09.2023, and the Appellant submitted that a direction be made to Respondent No. 2 to continue to pay the amount of Rs. 35,000/- per month, by the first day of each succeeding month. Respondent No. 1's counsel was requested to



endeavour to arrive at an acceptable arrangement which would comply with the direction dated 01.09.2022.

**35. It is the case of the Appellant in CM APPL. 9302/2024 and CM APPL. 34101/2026** that the period of one year for which the advance rent was deposited by Respondent No. 2, expired on 30.09.2023 and since then, no further amount whatsoever has been deposited by Respondent No. 2 towards the rental accommodation in compliance of the Orders dated 08.08.2022 and 01.09.2022, leaving the Appellant in a precarious and destitute condition. The Appellant has further contended that the conduct of Respondent No. 2 clearly reflects deliberate and wilful non-compliance with the directions of this Court, without any rhyme or reason.

**36.** It has been further submitted by the Appellant that Respondent No. 2 has, on several occasions, attempted to mislead the executing Court by contending that the rent amount has been stayed, which stand was clarified to be false, *vide* Orders dated 10.01.2025 and 03.04.2025. Moreover, Respondent No. 1, after the eviction of the Appellant from the matrimonial home/suit property, has rented out the ground floor of the suit premises where the Appellant used to stay, which conduct is malicious and reflects the collusion between the Respondents.

**37.** It has been further submitted that a Divorce Decree obtained by Respondent No. 2, has been challenged by the Appellant and the appeal has been placed in the regular matters list, thereby indicating that the matrimonial proceedings are still pending between the parties. It was urged that till the final disposal of the *inter se* matrimonial proceedings, the Appellant has a right to accommodation as directed by this Court, and Respondent No. 2 is bound to comply with the Orders dated 08.08.2022 and



01.09.2022 in letter and spirit.

38. The Respondent No. 2 has filed objections therein under *Order VII Rule 11 r/w Sections 47 and 151 CPC*, seeking rejection of the *Execution Petition*. The said objections remain pending adjudication.

**Submissions heard and record perused.**

39. The primary question which arises for consideration in the present Appeal is: *whether the Impugned Judgment/Order dated 01.12.2021 passed by the learned ADJ under Order XII Rule 6 CPC, decreeing the Suit for possession in favour of Respondent No. 1, was justified in the facts and circumstances of the case.*

40. The facts of the present case, are that the Appellant, upon her marriage on 30.05.2009, came to reside in the suit property along with Respondent No. 2 and the family of Respondent No. 1, which is a shared household. The Respondent No.1 Sh. Ashok Nigam, the father in law had acquired this property from his father, by virtue of a Will, as established through the Mutation Letter, the NOCs, and the admissions made by the Appellant. The Appellant, on her own showing, claims no independent right in the suit property, her entry as well as her continued occupation therein being referable solely to her relationship with Respondent No. 2, her husband.

41. Considering the totality of facts and circumstances, the learned Trial *Court's finding that the Appellant had admitted the ownership of Respondent No. 1 over the suit property, cannot be said to be perverse.*

42. Furthermore, the contention that the Impugned Judgment/Order rests upon nothing more than a Mutation Letter dated 07.10.1976 and the No-Objection Certificates obtained from the siblings of Respondent No. 1, does



not bear scrutiny. It is undoubtedly well settled, and indeed no more *res integra*, that a mutation entry is effected for fiscal purposes alone and does not by itself create, confer or extinguish any right, title or interest in immovable property. Had the decree rested upon mutation *simpliciter*, the grievance may well have merited consideration. That, however, is not the case at hand.

43. The learned ADJ decreed the Suit not upon the strength of the Mutation Letter, but upon the admissions of the Appellant herself. In her Affidavit of Admission and Denial of Documents, the Appellant admitted the Mutation Letter dated 07.10.1976, the No-Objection Certificates executed by the legal heirs, and the affidavits furnished by the sisters of Respondent No. 1 on the basis of the Will of their father; and in her Written Statement, she admitted the averments of the Plaint touching upon the ownership of Respondent No. 1. The Mutation Letter thus, operated not as a source of title, but as a document the contents whereof stood admitted. It is the admission, and not the document, which furnished the foundation for the decree, and the *Authorities* pressed into service by the Appellant on the effect of mutation entries are therefore, of no assistance to her.

44. It is equally trite that the discretionary power conferred by Order XII Rule 6 CPC is to be exercised only where the admissions are clear, unambiguous and unconditional, and that a Court would justly decline to invoke the provision where an admission is qualified, or is capable of more than one construction, or where triable issues yet survive for adjudication. Tested on that touchstone, the admissions in the present case suffer from no such infirmity. They are not admissions gathered by implication, or spelt out by a strained construction of ambiguous pleadings; they are express



admissions made in a solemn Affidavit filed in the course of admission and denial of documents, the very object of which exercise is to narrow the field of controversy and to relieve the parties of the burden of proving that which is not in dispute.

45. An admission so made, upon which the opposite party has acted and the Court has proceeded, cannot be resiled from at the appellate stage by the expedient of characterising it, after the event, as conditional. Nor can it be said that any triable issue survived on the question of title as between the parties to the Suit, once the Appellant had admitted the ownership of Respondent No. 1 in terms.

46. There may be a Partition Suit CS(OS) 89/2006 pending between the Plaintiff and his siblings, but that by itself, does not negate the ownership of Respondent No. 1. Whatever may be the *inter se* disputes between the plaintiff and his siblings, but admittedly the appellant came into the premises of the plaintiff, upon her marriage with his son; she cannot question the title of the plaintiff, in the given scenario.

47. Pertinently, the suit property answers the description of a "*shared household*" is well within the meaning of Section 2(s) of the DV Act.

48. In Satish Chander Ahuja v. Sneha Ahuja, (2021) 1 SCC 414, the Apex Court held in paragraph 53 that the definition of "*shared household*" in Section 2(s) is exhaustive; the first limb employing the expression "*means*" and the second limb, employing "*includes*", being explanatory of the first. It was observed that the words "*lives or at any stage has lived in a domestic relationship*" must be given their normal and purposeful meaning, and that the living of a woman in a household must refer to a living which has some permanency; a mere fleeting or casual living at different places would not



constitute a shared household.

49. These observations establish that the suit property is indeed, the shared household of the Appellant. The pertinent question is whether the Appellant has an *indefeasible right of residence in the house of father-in-law or it is circumscribed by some limitations*.

50. Before considering the rights of the Appellant, it would be relevant to refer to the observations in S. Vanitha v. Deputy Commissioner, Bengaluru Urban District, (2021) 15 SCC 730, wherein it was held that the competing rights under the DV Act and under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 must be harmonised, and that the right of senior citizens to live in peace, is a recognised statutory right to which the Courts must give due weight.

51. There is no denying that her right of residence in *shared household*, finds recognition in S.17 DV Act. It would thus, be relevant to refer to S.17 DV Act, relevant part of which, reads as under:

**"17. Right to reside in a shared household.** — (1) *Notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same.*

(2) *The aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law."*

52. Respondent No. 1 is a senior citizen who acquired the suit property from his father, in whose favour it stood mutated as far back as on 07.10.1976, and who has been paying property tax in respect thereof throughout. His son, Respondent No. 2, has himself shifted to rented



accommodation and has not resided in the suit property since the year 2012. What subsists in the suit property, therefore, is not a functioning matrimonial household at all, but the residence of the Appellant alone in the house of a father-in-law with whom she has been in continuous litigation since the year 2011. Where the marital relationship has irretrievably broken down and the husband has long departed, the continued presence of the daughter-in-law in the household of the aged owner is apt to render the evening of his life a period of unremitting discord. The harmonisation, which the law enjoins, does not require that the right of residence be extinguished; what it requires is that the right be secured in a manner, which does not visit the entire burden upon a senior citizen being the father-in-law, who owes the Appellant no obligation, whatsoever.

53. The learned ADJ held that the suit property being the matrimonial/shared household of the Appellant, she has the right to reside therein in view of Section 17(1) of the DV Act. The decree of possession was passed on the footing that under Section 17(2) of the DV Act, an aggrieved person may be evicted from the shared household, *in accordance with the procedure established by law*.

54. That approach calls for closer examination. The right conferred by Section 17(1) is a right of residence *simpliciter*. It is conferred expressly irrespective of whether the woman has any right, title or beneficial interest in the shared household, and it therefore neither creates nor enlarges any proprietary interest in her favour. It is a right to reside, and not a right to own, to hold adversely to the owner, or to put the owner's title in issue.

55. The Appellant entered the suit property upon her marriage, by the permission of Respondent No. 1 and in the company of his son, and was



thus at best a permissive user, whose licence stood withdrawn by the owner. The character of her occupation is not transformed merely because the premises answer the description of a shared household; what the Act safeguards is the fact of her residence, and not the foundation upon which she came to reside.

56. In this context, it would be relevant to refer to Satish Chander Ahuja (*supra*), wherein the Apex Court observed in paragraph 117, that where the *shared household* is an accommodation held under a tenancy, allotment or licence, the DV Act does not operate against the landlord, lessor or licensor in initiating appropriate proceedings for eviction, qua the shared household. It was further observed that senior citizens, in the evening of their lives, are entitled to live peacefully and not to be haunted by the marital discord between their son and daughter-in-law. ***A duly instituted civil suit for possession is itself, the procedure established by law***, as contemplated by Section 17(2).

57. It would be pertinent to note that the right of residence conferred by Section 17(1) of the DV Act does not, in its very conception, translate into an inflexible entitlement to remain in the shared household itself. Section 19(1)(f) of the DV Act reads as under:

**"19. Residence orders. - (1) ...**

**(a)....**

**(f) directing 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:**

***Provided that no order under clause (b) shall be passed against any person who is a woman."***



58. A bare perusal of the aforesaid provision makes it evident that the Legislature has itself contemplated that the right of residence may, in an appropriate case, be worked out otherwise than by continued occupation of the shared household. What Section 19(1)(f) secures to the aggrieved person is accommodation of the same level as that which she enjoyed in the shared household, or rent in lieu thereof, and the obligation to provide the same is cast upon the respondent from whom her entitlement flows.

59. The provision is thus, a clear legislative recognition that what the Act guarantees to a woman is shelter commensurate with that which she enjoyed, and not the specific premises in which she happened to reside. Where the marriage has broken down, where the husband has himself long since departed from the shared household, and where the premises belong to an aged father-in-law who owes the Appellant no matrimonial obligation whatsoever, it is precisely this mode of securing the right which the circumstances require.

60. This Court is conscious that the Appellant cannot be rendered shelterless, and it is with that consideration foremost that the interim arrangement came to be made. *Vide* Order dated 22.03.2022, it was noted that the sum of Rs. 25,000/- per month offered by Respondent No. 2 before the learned Trial Court would not be adequate to enable the Appellant to shift to a suitable alternative accommodation, and that she could be evicted only upon being provided reasonable accommodation.

61. It was upon that footing that Respondent No. 2 came forward on 27.07.2022 with an enhanced offer of Rs. 35,000/- per month, and that this Court, *vide* Orders dated 08.08.2022 and 01.09.2022, directed him to pay rent at that rate and to file an undertaking to continue such payment till the



disposal of the inter se matrimonial proceedings.

**62.** The arrangement so made was in substance the very relief which Section 19(1)(f) contemplates, namely, the securing of alternate accommodation of a comparable level, or the payment of rent in lieu thereof, at the hands of the husband. The Appellant is therefore, not being turned out on the street; she is being relegated to the mode of securing her residence which the statute itself prescribes, and the decree of possession in favour of Respondent No. 1 operates subject to, and not in derogation of, that protection.

**63.** It is significant to note the precise terms in which the learned MM, Mahila Court dealt with the claim of the Appellant under Section 19 of the DV Act. The Appellant had prayed that the respondents therein be directed to secure for her the same level of alternate accommodation as she enjoyed in the shared household, or to pay rent in lieu thereof.

**64.** The **learned MM** observed that the Appellant was at liberty to leave the matrimonial house and shift to a rented accommodation, and that upon her doing so, her husband would be liable to pay the rent; relief was, however, declined *at that stage*, for the reason that the Appellant had neither expressed any intention to shift nor produced any lease agreement or other documentary proof to that effect. The claim was thus, not rejected upon merits; what the learned MM did was to affirm the liability of the husband, while deferring the relief until the contingency of the Appellant's shifting should arise. That contingency has since arisen.

**65.** It may therefore, be summarized that S.17 read with S.19 (1)(f) DV Act does not give an absolute right, but states that the aggrieved person shall not be evicted or excluded from the shared household save in accordance



with the procedure established by law. The embargo is thus not upon eviction, but *upon eviction otherwise than by due process*. Sub-section (2) of S.17 is a procedural safeguard against dispossession by high-handedness, and not a charter of indefeasible occupation; it neither confers title upon the aggrieved person nor immunises her from a lawfully obtained decree. Pertinently, the embargo operates against "the respondent", and its purpose is to ensure that the aggrieved person is put out only by recourse to law, and not otherwise. Where, as here, the owner has approached a Civil Court, pleaded his case, and obtained a decree upon the admissions of the Appellant herself, the procedure established by law stands satisfied in full measure.

**66.** The right of the Appellant to residence and to maintenance arises out of the marital bond and is primarily enforceable against her husband. Such right flows from the marriage and is enforceable against the husband, and not against the parents-in-law. Respondent No. 2 is the person from whom the Appellant's entitlement flows, and it is against him that the reliefs of residence and maintenance properly lie.

**67.** The significant fact is that Respondent No. 2, the husband, does not himself reside in the suit property, having shifted to a rented accommodation. Pertinently, the learned ADJ while decreeing the Suit, had itself directed Respondent No. 2 to pay a sum of Rs. 25,000/- per month to the Appellant towards her accommodation, and it is that very direction which came to be enhanced by this Court to Rs. 35,000/- per month *vide* Order dated 08.08.2022. The Appellant herself, at one stage, expressed willingness to shift to alternate accommodation, subject to the rent being paid by Respondent No. 2.



**68.** Before parting, this Court considers it appropriate to observe that the dismissal of the present Appeal does not, and is not intended to, disturb the arrangement made vide Orders dated 08.08.2022 and 01.09.2022, which were passed precisely to ensure that the Appellant is not rendered shelterless upon her eviction from the suit property.

**69.** The record discloses that Respondent No. 2 deposited advance rent for one year only, the period whereof expired on 30.09.2023, and that since then, no amount whatsoever has been deposited by him towards the rental accommodation of the Appellant, though he continues to make payment of maintenance in terms of the Orders passed in the proceedings under the DV Act.

**70.** Respondent No. 2, Sh. Aditya Mohan Nigam, was already paying a sum of Rs. 35,000/- per month in lieu of accommodation, in terms of the Orders dated 08.08.2022 and 01.09.2022, which is consistent with the mandate of Section 19(1)(f) of the DV Act. The arrears accrued since 30.09.2023 be cleared by him expeditiously, and in any event within four weeks of the Appellant vacating the suit property. Respondent No. 2 shall continue to pay Rs. 35,000/- per month towards rent, till the disposal of the *inter se* matrimonial proceedings.

**71.** It is, however, clarified that this Court has not quantified the amount of arrears payable, the Execution Petition Ex. 230/24 being pending before the learned Additional District Judge, wherein the objections filed by Respondent No. 2 await adjudication. The Appellant shall be at liberty to pursue her remedies in the said proceedings, which shall be decided on their own merits and uninfluenced by any observation made herein.

**72.** The Plaintiff having followed due process of law by instituting the



Suit for possession, was thus, rightly granted the decree of possession, by *balancing the equities between the parties and accordingly the decree of possession warrants no interference.*

73. The Impugned Judgment/Order dated 01.12.2021 passed by the learned ADJ under Order XII Rule 6 CPC, *does not suffer from any illegality or perversity warranting interference by this Court.*

74. In view of the aforesaid discussion, the Appeal is found to be without merit and is hereby, **dismissed** against the Respondent No.1/Plaintiff Sh. Ashok Nigam. However, Respondent No. 2, Sh. Aditya Mohan Nigam, shall remain bound to comply with the directions contained in paragraph 70 above. Pending Applications, if any, are also disposed of.

(NEENA BANSAL KRISHNA)  
JUDGE

AUGUST 06, 2026/VA