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

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Reserved on: 20.11.2025
Pronounced on: 09.02.2026

+ CRL.M.C. 8722/2024

....Petitioner

Through: Mr. Suhail Sehgal, Mr. Prashant
Drolia, Advocates.

versus

.....Respondents

Through: Ms. Sudershani Ray and Ms.
Poonam Prajapati, Advocates.**CORAM:****HON'BLE MR. JUSTICE RAVINDER DUDEJA****JUDGMENT****RAVINDER DUDEJA, J.**

1. This petition has been filed by the petitioner, challenging the impugned order date 29th February 2024, passed by learned Metropolitan Magistrate [“MM”]-03, South District, Saket Court, New Delhi in Complaint Case No. 1511/2023, in the matter titled and order dated 07th September 2024, passed by the learned Additional Sessions Judge-05, South District, Saket Courts, New Delhi [“ASJ”] on the ground that the said orders are illegal, perverse, bad in law and suffer from infirmity and illegality and therefore liable to be set aside.

Factual Background:



2. The facts, as succinctly captured in the judgment passed by the learned ASJ are that petitioner/wife got married with respondent No. 1 in the year 1964, and since then, she had been residing in the matrimonial home at C-7, Green Park, South Delhi. Three children were born out of the said wedlock, two sons and one daughter. Respondents were not ready to give any share in property to the daughter. In her complaint filed under Section 12 of the Protection of Women from Domestic Violence [“DV Act”], petitioner alleged infliction of emotional, mental and economic abuse at the hands of the respondents. On 13th April 2024, petitioner moved to her daughter’s house, located in Safdarjung Enclave. She along with her baggage shifted to her daughter’s house considering that for post-care treatment, she would be requiring the same. Since the petitioner’s health started improving, on 08th July 2023, petitioner tried to re-enter her matrimonial home at C-7, Green Park, but was denied re-entry. She claimed that she has lived at her matrimonial home for more than 30 years and therefore cannot be denied entry into her matrimonial home.

3. Petitioner accordingly filed an application under Section 19 read with Section 23 DV Act before the court of MM, which has been dismissed vide order dated 29th February 2024, observing that the petitioner was currently residing at Safdarjung property, which also belongs to respondent No. 1. The learned Magistrate did not agree with the argument of the petitioner that as respondent No. 1 himself



was not in possession of the said property, he cannot be considered to have provided that accommodation to the petitioner for her residence. The learned court was of the view that respondent No. 1 might not be in actual possession of the property, however, he certainly was in constructive possession, being the owner of the property. The learned trial court also repelled the argument of the petitioner that her daughter is residing in that property and therefore the said property cannot be provided to the petitioner as an alternate accommodation. The learned trial court took the view that petitioner cannot insist on residing in Green Park property when her husband has already offered a suitable accommodation, and therefore in order to provide further acrimony between the parties and multiplicity of proceedings, deemed it appropriate that petitioner continues to reside at Safdarjung property of respondent No. 1.

4. The appeal under Section 29 of the DV Act against the order dated 29th February 2024, passed by the learned MM, has also been dismissed vide order 07th September 2024. The learned Appellate Court observed that petitioner has levelled allegations of domestic violence not only against her husband but also against her son and grandson, who all are residing in the Green Park house in which residence order has been sought and therefore considering such circumstances, observed that it would be highly inappropriate to permit the petitioner to go and reside in the shared household as it will simply result in further litigation and dispute between the parties. The



learned Appellate Court also found that there was nothing on record for the trial court to come to a conclusion that the complainant has shifted to Gurgaon from Safdarjung Enclave and thus found no reason to take a view different from what the trial court had taken.

Submissions on behalf of the Petitioner:

5. The learned counsel for the petitioner submitted that petitioner is an elderly lady, aged about 81 years and has been deprived of right to reside in the shared household at C-7, Green Park, New Delhi by the respondents herein for more than two years where she resided uninterruptedly for 60 years. She had to go for the proposed surgery and treatment, and accordingly for the purpose of preparing for the surgery and recuperation, she left from the shared household on 13th April, 2023 and went to her daughter's house in Safdarjung Enclave, New Delhi. When she sought to return, on 08th July 2023, the respondents forcibly prevented her from entering and did not allow to come inside her house and she was left shelter-less. The petitioner has since then been staying with her daughter and thereafter now with her grandson at Gurugram.

6. It is submitted that respondent No. 1 filed a case for eviction against his daughter from the house situated in Safdarjung Enclave, and consequently, the daughter of the petitioner asked her to vacate the said house and go back to the house of respondent No. 1 to reside with him. Since respondent No. 1 was not allowing the same, petitioner had to move to the house of her grandson (daughter's son)



in Gurugram. It is submitted that if respondent No. 1, who has filed eviction suit against his daughter was himself not in the possession of Safdarjung house, he could not have discharged his obligation to provide shelter to his wife in the shared household by putting the petitioner in a house which was not in his possession.

7. It is argued that petitioner left the matrimonial home only temporarily for the purpose of her treatment. She had no intention of not returning back. It is argued that the impugned order dated 29th February 2024, passed by the learned MM holding that respondent No. 1 was in constructive possession of the house at Safdarjung Enclave and that the daughter of the petitioner has taken the possession illegally, amounts to pre-judging the proceedings pending in the other courts.

8. It is argued that the learned MM failed to consider the written arguments filed in the matter or even note the fact that petitioner was not staying in Safdarjung Enclave house at the time of passing of the impugned order and such written arguments cannot be ignored and have to be dealt with. It is further argued that both the courts below failed to appreciate that even if it is to be assumed that respondent No. 1 was in constructive possession, he could at best put the petitioner in constructive possession and not actual possession. Both the courts ignored the fact that petitioner was not staying at Safdarjung Enclave house but in Gurugram with her grandson. It is also argued that respondent No. 1, in one of the suits filed by him, has claimed that



Safdarjung Enclave property is occupied by another tenant and if that is so, the direction of the learned Magistrate to direct the petitioner to stay there, would be absurd.

9. It is thus argued that the property situated in Green Park is the shared household of the petitioner and therefore the impugned orders be set aside and the petitioner be directed to re-enter her shared household situated at Green Park.

Submissions on behalf of the Respondents:

10. The learned counsel for the respondents submitted that the present litigation in substance is a property dispute between the parties, which has been filed under the DV Act. It is submitted that there are two properties namely C-7, Green Park and B-5/204, Safdarjung Enclave, both admittedly belonging to respondent No. 1, but respondent No. 1 is residing at Safdarjung Enclave. It has been submitted that the petitioner voluntarily left the Green Park house in April 2003 and shifted to the Safdarjung property with her daughter, where she still continues to reside. It is asserted that there was no act of domestic violence or forcible dispossession and that the material on record including the photographs and the following communication do not support the petitioner's allegations of forceful eviction.

11. It is further submitted that petitioner has taken contradictory stands before different forums regarding her place of residence, thereby, attempted to mislead the court. While in her affidavit and police complaints, she admitted that she was residing at Safdarjung



Enclave property, while before this Court, she has sought to project herself as shelter-less, which is demonstrably false. Reliance is placed on pleadings, affidavits and orders passed in eviction and civil proceedings, wherein, it was categorically admitted that both the petitioner and her daughter reside at B-5/204, Safdarjung Enclave.

12. The learned counsel further submits that both the courts below have correctly appreciated the facts and have rightly held that petitioner was not without shelter and was residing in Safdarjung property, owned by respondent No. 1. It has been further submitted that DV Act is being misused to advance the interest of petitioner's daughter in an ongoing property dispute, pending before this Court, rather than for protection against domestic abuse. It was further emphasized that permissive use of the Safdarjung property was granted by the respondent/husband to the petitioner and her daughter and such possession continues even today.

13. Upon facts, it has been further submitted that respondent No. 1 permitted his daughter to stay in the Safdarjung property only as a licensee. However, later respondents came to know that the house was illegally occupied by a tenant and that his daughter was illegally receiving the rent in cash from the said property without any lease agreement. In January 2023, the said property became vacant. Respondent No. 1 wanted to lease the said premises or himself enter therein. However, petitioner insisted respondent No. 1 to gift the property to the daughter. When respondent No. 1 did not succumb to



the demand of the petitioner, she on 13th April 2023, left C-7, Green Park with all her belongings and shifted to B-5/204, Safdarjung Enclave so as to take possession of the property and had put her name plate outside the house. In July 2023, respondent No. 1 filed a civil suit in respect of Safdarjung Enclave property against his daughter and son in law seeking restraint order against creating any third party interest. The learned counsel submits that the said case was not filed against the petitioner, even though, she was living there from 13th April, 2023 and was in actual possession of the house as respondent No. 1 had no issue or objection to respondent No. 1 living in the said property.

14. It is argued that DV Act is meant for the benefit of the genuine sufferers and not for misusers thereof. Petitioner is already living in the property belonging to respondent No. 1. It is submitted that the petitioner has deliberately not placed the correct facts and tried to mislead the court. The daughter of the petitioner had filed a suit for partition. However, in the said suit, in the prayer clause, there is no mention of B-5/204, Safdarjung Enclave and thus she is not seeking partition with respect to the said property. The present complaint has been filed by petitioner only with a view to help her daughter in the civil suit. It was further emphasized that permissive use of Safdarjung property was granted by respondent No. 1 to the petitioner and her daughter and such possession continues even today.

Analysis & Conclusion:



15. Upon careful consideration of record and the rival submissions made by both the parties, this Court is of the *prima facie* view that the present proceedings predominantly arise out of an *inter se* property dispute between the parties rather than a case warranting interference under the protective framework of DV Act. The material on record demonstrates that the petitioner is not without shelter and has been residing in the property bearing No. B-5/204, Safdarjung Enclave, New Delhi. The consistent stand of respondent No. 1 as also recorded in the impugned order dated 29th February, 2024 is that he has no objection to the petitioner residing in the said Safdarjung property.

16. Section 19 of the DV Act empowers the Magistrate to pass residence orders to ensure that an aggrieved woman is not rendered roofless or left without a safe place of residence. The object of the statute is protective and remedial and not to confer an indefeasible right upon the aggrieved person to insist upon residence in a particular property when suitable alternate accommodation of the same standard is available and offered.

17. The preamble of DV Act indicates that the said legislation has been enacted for providing more effective protection of the rights of women guaranteed under the constitution who are the victims of violence of any kind occurring with the family and for the matters connected thereto or incidental thereto.

18. The phrase “domestic relationship” has been defined under Section 2 (f) of the DV Act to mean 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 family members living together as joint family. Similarly, the word “shared household” has been defined under Section 2 (s) of the DV Act, which reads as under:-

“2. Definitions.—In this Act, unless the context otherwise requires,—

.....

(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.”

19. Section 17 of the Act provides that 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 beneficially interest in the same. The Section further provides that aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent except in accordance with the procedure established by law. The Act confers powers upon the Court under Section 19 of the Act to restrain dispossession, direct restoration of the possession or provide alternate accommodation if restoration is



impractical. The court generally grants restoration when household was genuinely shared in a domestic relationship, her shifting was not voluntary, permanent separation and there is no serious safety risk in returning and the request is bona fide. The court should ordinarily consider restoration unless she has permanently settled somewhere by choice, there are safety concerns or restoration is impracticable. Otherwise, denial of entry is justified by Section 19 of the residence order.

20. The case of the petitioner is that she previously resided at Green Park property since after marriage and the same constitutes a shared household. It has been contended that she later shifted to another accommodation owned situated at Safdarjung Enclave for the purpose of undertaking treatment and that upon attempted return, she was denied entry, which is alleged to constitute domestic violence in the nature of economic abuse.

21. On the contrary, the stand of the respondents is that petitioner voluntarily left the disputed premises and established a separate residence at Safdarjung Enclave. Her relocation was not temporary but a conscious and permanent decision. The Green Park property is presently occupied by respondent No. 1, his son, grandson and his family and there is no subsisting domestic relationship in the said premises.



22. The points for determination in the present matter are as under:-

- i) Whether the premises situated at Green Park qualify as a shared household under Section 2 (s) of the Act;
- ii) Whether denial of entry in the facts of the case constitute domestic violence; and
- iii) Whether the petitioner is entitled to a residence order under Section 19.

23. It is not disputed that petitioner resided in the disputed premises at Green Park for a long period since after her marriage. It is the stand of the petitioner herself in Paragraph Nos. 20 & 21 of the complaint that she was advised surgery and therefore on 13th April 2023, she moved to her daughter's house located at Safdarjung Enclave. She along with her baggage shifted to her daughter's house. Undoubtedly, a mere fleeting or casual living at a different place would not constitute a shared household and therefore it is important to consider the intention of the parties, nature of living and nature of the household to determine whether the premises is share-hold. In her complaint filed before the learned Chief Metropolitan Magistrate, in the memo of parties, petitioner herself categorically mentioned her current residence as B-5/204, Safdarjung Enclave. The affidavit in support of the complaint also mentions her present address as B-5/204, Safdarjung Enclave. The Court takes note of a police complaint made by the petitioner on 17th April 2023, wherein also, she stated that on account of mental harassment, she had to move to B-5/204, Safdarjung



Enclave with her daughter and her family. In such complaint, she mentioned her address to be that of B-5/204, Safdarjung Enclave. In her complaint dated 08th July 2024 made to the police, she again mentions her address to be that of B-5/204, Safdarjung Enclave. The learned Appellate Court did not find anything on record to come to the conclusion that petitioner has shifted to Gurugram from Safdarjung Enclave. With regard to the passing of the *status quo* order, the learned Appellate Court rightly observed that the said order in no way affects the Appellant's right of the residence as she had already shifted at Safdarjung house on 13th April, 2023, that is prior to the passing of such *status quo* order. Both the courts below, on appreciation of material on record, concluded that petitioner voluntarily shifted from Green Park premises to Safdarjung Enclave house, owned by respondent No. 1.

24. In ***Satish Chander Ahuja v. Sneha Ahuja*** (2021) 1 SCC 414, the Supreme Court held that the definition of “shared household” must receive a broad interpretation, but it remains a fact sensitive determination. The said judgment does not lay down that any premises where the wife resided at any point of time becomes a shared household for perpetuity. The statutory scheme is aimed to protect dispossession and not to revive residential arrangements consciously given up. A shared household must be a subsisting sharehood in *praesenti*, not one surviving merely in historical memory.



25. In the case of *Ajay Kumar Jain Vs. Baljeet Kaur Jain, 160(2009) DLJ 401 (DB)*, the Court observed that the wife cannot have the right to live in a particular property and the same cannot become a clog on the property denying the right of the husband to deal with the property when he is willing to provide an alternative matrimonial home to her. It was also held that she cannot insist on residing in the suit property alone when the husband had offered a suitable alternative arrangement for her. The petitioner, as per her own complaint, has been residing at Safdarjung house and not at the Gurugram residence, as claimed in the arguments. Her intent to shift, is also evident from the photograph placed on record showing the name of the petitioner on the name plate fixed outside the property.

26. It is a settled law that where the wife voluntarily establishes a separate residence or has access to alternate accommodation, a direction or restoration to a previously occupied premises is not automatic and may be declined. The DV Act secures protection against dispossession, it does not compel reinstatement into a residence abandoned by choice.

27. From the material on record, it is apparent that petitioner shifted from Green Park to alternate accommodation at Safdarjung, owned by respondent No. 1. Such shifting is not shown to be compelled by violence or coercion, inasmuch as, petitioner herself in her complaint states that she had shifted there for the purpose of treatment. If the shifting was only temporary, she would not have affixed the name



plate showing her name outside property No. B-5/204, Safdarjung Enclave. These factors collectively indicate conscious place of residence, not a temporary displacement. The relief under Section 19 is discretionary and equitable. The DV Act balances the rights of the aggrieved woman with the rights of other occupants and owners. Compelling the restoration in the present case would disturb the settled possession of the current occupants and convert a protective statute into a rule for re-entry to any past residence and thus would amount to travelling beyond the legislative intent.

28. Applying the above facts and law, the premises at Green Park, though previously occupied by the petitioner after marriage, do not qualify as a “shared household” in *presenti* under Section 2(s) of the DV Act, as the petitioner voluntarily and consciously shifted in April 2023 to an alternate residence at Safdarjung Enclave, where she has since established her settled residence and continues to have shelter. Consequently, the alleged denial of re-entry into the Green Park premises does not, in the facts of the case, constitute domestic violence in the nature of economic abuse, since there was no forcible dispossession, coercion, or rendering of the petitioner roofless. Therefore, in view of the availability of suitable alternate accommodation of the same standard and the discretionary and protective nature of relief under Section 19, the petitioner is not entitled to a residence order directing restoration or re-entry into the Green Park property.



29. It is a well settled law that jurisdiction under Section 482 Cr. PC is to be exercised by the High Court in cases of apparent perversity and illegality. In *R.K. Vijayasathy Vs. Sudha Seetharam*, (2019) 16 SCC 739, the Supreme Court held that the inherent powers under Section 482 Cr. PC must be exercised with great caution to prevent misuse of criminal proceedings.

30. In view of the above, this Court finds no perversity, infirmity or jurisdictional error in the impugned orders dated 29th February, 2024 and 07th September, 2024 warranting interference in exercise of its jurisdiction. Petitioner is not roofless, the statutory object of the DV Act stands satisfied and the relief sought would effectively convert a property dispute into a domestic violence proceeding, which is impermissible.

31. The petition is accordingly dismissed.

RAVINDER DUDEJA, J.

09th February, 2026/na