

Non-reportable

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 417-418 OF 2020

(Arising out of Special Leave Petition (Criminal) Nos.4044-4045 of 2019)

NEELAM GUPTA

...APPELLANTS

VERSUS

MAHIPAL SHARAN GUPTA AND ANOTHER

...RESPONDENT

ORDER

Uday Umesh Lalit, J.

1. Leave granted.
2. These appeals arise out of the common Judgment and Order dated 15.11.2018 passed by the High Court of Delhi at New Delhi in Criminal M.C. No.3391 of 2017 and in Criminal M.A. No.13845 of 2017, by which the High Court affirmed (i) the order dated 26.10.2016 passed by Mahila Court in proceedings initiated by the appellant under Section 12 of the DV Act¹ and (ii)

¹ The Protection of Women from Domestic Violence Act, 2005

the order dated 15.04.2017 passed by Additional Sessions Judge-2, (North), Rohini Courts, Delhi in Criminal Appeal No.30 of 2016.

3. The facts leading to the passing of the order dated 26.10.2016, as captured in the aforementioned order dated 15.04.2017 are as under:-

“The short history of the litigation between the appellant and the respondents, as brought on record, is that Sh. Mahipal Gupta (respondent No.1 herein) was married to one Ms. Geeta Gupta and two issues, one son namely Arnav Gupta and a daughter Garima were born out of their wedlock and after the demise of Ms. Geeta Gupta on October 10, 2004, the respondent No.1 married the appellant Mrs. Neelam Gupta and both were residing in the premises in question that basically was owned by Ms. Geeta Gupta, the first wife of the respondent No.1.

After some time of the marriage of the appellant, Ms. Neelam Gupta with her second husband Sh. Mahipal Gupta turned sour and parties were before the courts of law as Ms. Neelam Gupta, the appellant had filed a petition for protection of her rights of her residence etc., under the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred as the DV Act) and claimed a right of residence claiming such property as shared household and vide order dated 17-06-2008, the Ld. Trial Court had passed a protection order of the residence to the appellant in such premises. The appellant has also filed a civil suit No.295/2009 qua such premises and she had obtained an interim injunction against her husband from her dispossession from the premises in question.

Thus, the appellant had two protective orders qua the property in question, one under the DV Act and another under the injunction suit.

Sh. Arnav Gupta, respondent No.2, the son of the first wife of respondent No.1 (the husband of the appellant herein) filed the partition suit qua the premises in question that got decreed and even the final decree was made

executable vide orders dated 03-04-2013 of the Hon'ble High Court, in the Chamber Appeal against the orders dated 06-08-2011, vide which the application of the appellant (Ms. Neelam Gupta) seeking impleadment in the suit of partition under Order 1 Rule 10 CPC was dismissed and such appeal was also dismissed thereby the final decree passed in the CS (OS) 858/2010, made executable, subject to the vacation/variation of order dated 17-06-2008 in DV Act.

The appellant herein, had also preferred an RFA (OS)/96/2013 against the final decree that was also dismissed vide order dated 19-02-2014 passed by the two judges' bench of HMJs Sh. Pradeep Nandrajog and Jayant Nath, J.J. of Hon'ble High Court, with the observations:

'Under the Protection of Women from Domestic Violence Act, 2005 the appellant would certainly be entitled to a shared residence being her matrimonial home or in lieu thereof her husband to provide her with a suitable reasonable accommodation in accordance with law.

The vacation/variation contemplated by the impugned order would mean the appellant's possessory rights cannot be disturbed with respect to the flat in question unless the husband obtains an order from the learned Metropolitan Magistrate to offer an alternative accommodation to the appellant in accordance with law'._

3. In the above-noted brief history and the relevant facts of the case, the respondent No.2 Sh.Arnab Gupta, (the Decree Holder) filed an application for variation of the protection orders dated 17-06-2008 that was disposed of vide orders dated 26-10-2016, against which the appeal has been preferred by the appellant.”

4. The application for variation of the protection order dated 17.06.2008

was disposed of by Mahila Court with following observations:-

“It is seen that petition suit has already decreed and property at Hudson Lines has been ordered by Hon’ble High Court subject to variation of order dated 17.06.2008. Further, it is seen that respondent has offered to complainant the premises at the place where she is not comfortable. It is settled law that complainant is entitled to same standard of living as she had during her marriage at the time when she was living at her matrimonial home. Keeping in view the above facts respondent is directed to provide similar accommodation in the same locality where complainant is presently living or rent of Rs.15000/- p.m. in lieu of same. Accordingly, application stands disposed of.”

5. In Criminal Appeal No.30 of 2016 arising therefrom the relevant

issues were considered as under:-

“9. On going through the records, in the light of contentions of both the parties & the law referred above during the course of arguments and the settled legal propositions of law as settled by the higher courts including the Hon’ble Apex Court in catena of judgments, for the ‘shared household’ for providing interim protection to the appellant under the Act, in the above-noted history of the case in hand, it is observed that admittedly the premises in question in which the interim protection of right of residence has been granted vide orders dated 07-06-2008, was belonging to and was in absolute ownership of one Ms. Geeta Gupta, the first wife of respondent No.1 and the respondent No.1 as husband of his demised wife, in the partition suit filed by his son born out of the wedlock of his first wife, had been awarded only a $\frac{1}{3}$ rd share of sale proceeds of the proposed sale of the premises in question and in no stretch of imagination, such premises could be assumed to be a ‘shared household’ within the definition, as prescribed within the Act.”

10. The right of protection for residence available to the appellant is only against the respondent No.1, her husband and in the light of observations made by Hon'ble High Court in orders dated 19-02-2014, her husband, the respondent No.1 was "to provide her with a suitable, reasonable accommodation in accordance with law."

...

13. Also, if the alternative accommodation offered by the respondent No.1, her husband, is not acceptable then the appellant may move an appropriate leave/application before the Ld. Court thereby rejecting such offers and offering/proposing such kind of accommodation available in the area of 'her choice' and if the rent ordered within the impugned orders is not sufficient then appropriate application/leave may be moved before such court within the provisions of the Act, seeking modification of such orders qua the quantum of rent.

It is observed that certain available accommodation with the limits of rent @ Rs.15,000/- have been shown through a website & other websites can also be visited to fetch an alternative accommodation of her choice."

6. In further challenge raised at the instance of the appellant, the aforesaid orders dated 26.10.2016 and 15.04.2017 were affirmed by the High Court. The present appeals were being entertained by this Court principally to explore the possibilities of settlement between the appellant and the respondent No.1. The rival submissions on the point were noted in the order dated 18.11.2019 as under:-

"It is submitted by the petitioner that she is willing to move into a smaller apartment (one bed room set) either in the locality where she is presently residing or in or around Lajpat Nagar III where her brother is presently residing.

Let options in that behalf be given by the respondent-husband within a day to the petitioner who shall thereafter exercise her choice within 10 days.

Alternatively, it is suggested by Mr. Gogia that $\frac{1}{3}$ rd value of the apartment where the petitioner is residing (equal to the share of the respondent-husband in said apartment) can be made over to the petitioner by way of permanent settlement. In order to effectuate this part, the apartment will be required to be sold whereafter $\frac{1}{3}$ rd share of the value will be handed over to the petitioner.

The aforesaid options are given by the respondent-husband subject to the petitioner agreeing to the annulment of the marital relationship between the parties and to a decree for divorce.”

7. Certain options about rented accommodation were given by the respondent No.1 which were not accepted by the appellant and as such while reserving the matter for orders, it was observed by this Court in its order dated 21.1.2020 as under:-

“The petitioner is at liberty to place on record such options as she considers appropriate where a tenement having one bedroom apartment could be provided on rental basis. The petitioner may give all the details including the component of rent per month as well as the amount of security, if any required to be kept in deposit with the landlord along with any reasonable brokerage, if so required. The details may be provided within a week’s time. The respondent may respond within 3 days thereafter.”

8. Accordingly, an affidavit has been filed by the appellant on 01.02.2010. The affidavit states that despite best efforts on part of the appellant, she was not able to find any suitable accommodation on rental basis

and as such she was willing to accept the suggestion made on behalf of the respondent No.1 on the previous occasion with regard to $\frac{1}{3}$ rd share in the value of the apartment. The affidavit further indicates that the market value of the apartment would be in the region of Rs. 1.85 to 2.25 crores and the appellant be granted at least Rs.65 lakhs as $\frac{1}{3}$ rd share by way of settlement as offered by the respondent No.1. The affidavit asserts as under:-

“19. That the petitioner expresses her reasonable apprehensions that the respondent no.1 may utilize his professional and personal contacts to obtain quotations for very low sale consideration against the actual prevailing market price and monetary receipts for the said apartment, and offer a lesser amount of compensation to the petitioner against her final settlement. Therefore, in view of the prevailing market price of the said apartment, the petitioner humbly submits that a minimum threshold of Rs.65 lakhs as the $\frac{1}{3}$ rd share of the sale proceedings may kindly be guaranteed to the petitioner by the respondent No.1. The said amount should be absolute in nature and free from any deductions on any account.

20. That having no other income of her own, the petitioner will have to put the said money in a fixed deposit in the bank and utilize the monthly interest to make payment of her monthly rentals and bare survival for the remaining period of her life. Hence, the petitioner humbly prays that her permanent settlement amount may kindly be fixed after due consideration of all the facts & circumstances of petitioner as explained in the above paragraphs.”

9. No response has been filed by the respondent No.1 either disputing the market value of the apartment as stated by the appellant or traversing the

submission that the appellant be granted at least Rs.65,00,000/- (sixty-five lakhs) by way of permanent settlement. In any case, the respondent No.1 had shown willingness to make over to the appellant 1/3rd value of the apartment by way of permanent settlement. This order is, therefore, premised on such willingness and the assumption that the other sharers, namely, the son and the daughter of the respondent No.1 from his first wife are also willing and agreeable to the sale of the apartment.

10. In the circumstances, we direct: -

A) The respondent No.1 shall within four weeks from today deposit a sum of Rs.5,00,000/- towards interim payment of consideration of 1/3rd value of his share in the apartment as well as Rs.1,00,000/- (being rent for six months at the rate of Rs. 15,000/- per month as directed by the Courts below and Rs.10,000/- towards out of pocket expenses of the appellant) in the Registry of this Court.

B) Within two weeks of such deposit, the appellant and the respondent No.1 shall file an appropriate application under Section 13B of the Hindu Marriage Act, 1955 (“the Act” for short) seeking divorce by mutual consent in

pending proceedings by way of necessary amendment or initiate fresh proceeding in that behalf.

C) Within eight weeks of filing of such application, the appellant shall vacate and hand over peaceful possession of the apartment to the respondent No.1, whereafter the aforesaid sum of Rs.6,00,000/- deposited in the Registry of this Court shall be handed over to the appellant. It will be entirely upto the appellant to re-locate herself at such place as she deems appropriate.

D) The respondent No.1 may thereafter cause such minor repair works including painting of the apartment, if necessary. The apartment shall then be put up for sale. The sale shall be completed within three months of the appellant vacating the same. All the sale proceeds shall be deposited in the Registry of this Court.

E) After the sale is effected and the proceeds are deposited as stated above, a sum of Rs.60,00,000/- shall be set apart to be handed over to the appellant after the stage of second motion in the proceeding under Section 13B of the Act is undertaken as stated hereafter. After setting apart said sum of Rs.60,00,000/- rest of the amount shall be handed over by the Registry to

the son and daughter of the respondent No.1 from his first wife, in equal shares.

F) The appellant and the respondent No.1 shall appear before the concerned Court for second motion stage in the proceeding under Section 13B of the Act in order to dissolve the marriage by mutual consent. As an integral part of such dissolution, Rs. 65,00,000/- by way of permanent alimony shall be provided to the appellant, in the manner indicated in these directions.

G) After the decree for dissolution as aforesaid is passed by mutual consent, the balance sum of Rs.60,00,000/- shall be made over to the appellant by the Registry of this Court.

H) It is made clear that in case the sale consideration of the apartment is greater than 1,95,00,000/- and consequently $1/3^{\text{rd}}$ share of the respondent No.1 is greater than Rs. 65,00,000/-, the appropriate amount representing $1/3^{\text{rd}}$ share of the respondent No.1 in the additional sum shall be made over to the appellant. It is further made clear that even if the sale consideration is less than Rs.1,95,00,000/-, the respondent No.1 shall still be liable to make over Rs.65,00,000/- by way of permanent alimony to the appellant.

Upon such payment of 1/3rd share of the respondent No.1 in the apartment or Rs.65,00,000/- (whichever is higher) and passing of the decree for dissolution of marriage as stated above, nothing further need be done by the respondent No.1 towards maintenance, upkeep and residence of the appellant and such payment shall be in full discharge of all the obligations on part of the respondent No.1.

I) If for any reason, the apartment is not sold by the respondent No.1, the appellant shall be entitled to retain the sum of Rs.6,00,000/- and shall also be entitled to re-enter the apartment in question. Her re-entry shall be facilitated by the respondent No.1 within seven days of the expression of intent to re-enter on part of the appellant. To effectuate this, a communication shall be sent by the respondent No.1 to the appellant within two weeks of the expiry of period for completion of sale as contemplated by clause (D) of these directions. In case the appellant chooses not to re-enter, the respondent No.1 shall be obliged to pay to her Rs.30,000/- per month towards rent. Needless to state that in either of such eventualities, the application preferred by the parties under Section 13B of the Act shall stand dismissed. However, such dismissal shall not affect any other proceedings between the appellant and the respondent No.1.

J) Except for the sale of the apartment to be effected in the manner set out hereinabove, the respondent No.1 shall not create any third party rights in respect of the apartment nor shall he deal with the apartment in a manner which may prejudice the interest of the appellant.

K) It shall however be open to the respondent No.1 and his son and daughter to decide not to sell the apartment and retain it unto themselves; in which event the respondent No.1 shall make over to the appellant a sum of Rs.70,00,000/- instead of 1/3rd value of the apartment as stated above and rest of the terms indicated above shall apply, *mutatis mutandis*. In other words, in case such decision is taken, the appellant shall be paid Rs.65,00,000/- over and above the sums indicated in clause (A) of these directions.

L) In case the respondent No.1 fails to deposit the sum of Rs.6,00,000/- within the time stipulated in clause (A) of these directions, this Appeal shall stand allowed and the Orders under appeal will stand set aside. Consequently, the application preferred by the appellant under Section 12 of the DV Act shall stand allowed.

M) Any violation of these directions shall invite action in Contempt.

11. With the aforesaid directions this appeal is disposed of. No order as to costs.

.....J.
(Uday Umesh Lalit)

.....J.
(Indu Malhotra)

.....J.
(Krishna Murari)

New Delhi,
April 29, 2020