IN THE HIGH COURT OF DELHI AT NEW DELHI

RESERVED ON : 03.12.2020
DECIDED ON: 20.12.2010

I.A. Nos.8479/2010 (O-XXXIX, R-1&2, CPC) & 8480/2010 in CS (OS) 1307/2010

EVENEET SINGH ..... Plaintiff

Through: Mr. Y.P. Narula, Sr. Advocate with Ms. Shobhna Takiar and Mr. Aniruddha Choudhury, Advocates.

versus

PRASHANT CHAUDHRI & ORS ..... Defendants

Through: Ms. Geeta Luthra, Sr. Advocate with Mr. Jatin Sehgal, Advocate.
Mr. Ankur Mahindroo, Advocate for D-2.

\+ **I.A. No.3577/2010 (O-XXXIX, R-1&2, CPC)in CS (OS) 505/2010**

KAVITA CHAUDHRI ..... Plaintiff

Through: Mr. Ankur Mahindroo, Advocate.

versus

EVENEET SINGH AND ANR. ..... Defendants

Through: Mr. Y.P. Narula, Sr. Advocate with Ms. Shobhna Takiar and Mr. Aniruddha Choudhury, Advocates.
Ms. Geeta Luthra, Sr. Advocate with Mr. Jatin Sehgal, Advocate.

CORAM:
MR. JUSTICE S. RAVINDRA BHAT

1. Whether the Reporters of local papers may be allowed to see the judgment? YES

2. To be referred to Reporter or not? YES

3. Whether the judgment should be reported in the Digest? YES

MR. JUSTICE S.RAVINDRA BHAT

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1. This judgment will dispose of applications in two suits. The plaintiff in CS (OS) 505/2010 (hereafter "Kavita", and "eviction suit") seeks mandatory injunction against her son, Prashant and daughter-in-law, Eveneet (referred to hereafter by their names) to prohibit them from occupying the premises located at D-32, South Extension Part II, New Delhi, (referred to as "the suit premises", in the eviction suit, as well as in the other suit CS(OS) 1307/2010, - which would be called "the maintenance suit") on the ground that she is its sole owner and that they are merely licensees. Eveneet instituted the maintenance suit, under the Hindu Adoption and Maintenance Act, 1956 (Hereinafter, "Maintenance Act"), against Prashant and mother-in-law, Kavita Chaudhari seeking maintenance and right of residence in the suit premises.

2. Prashant and Eveneet got married on 27.04.2009. Eveneet alleges that the defendants in the maintenance suit, Prashant and Kavita, were unhappy with the gifts they received and were pressurizing her for a greater amount of dowry. A complaint under the Protection of Women from Domestic Violence Act, 2005 (Hereinafter, "the Domestic Violence Act"), was also filed by Eveneet, against the said defendants, on 17.03.2010. Eveneet contends that suit premises not solely owned by Kavita, and that it is HUF property as per the will of her (Kavita's) deceased father. According to the probate petition too, she only claimed half of the property. It is also alleged by her that the eviction suit was filed by Kavita in collusion with Prashant, to put up a façade of her ownership, to oust her (Eveneet) from it. She also alleges that Prashant started living in rented premises in Defence Colony, New Delhi in order to show that the suit premises belong solely to Kavita. Eveneet seeks a right of residence in the property, which she states, is the "shared household" under Section 2(s) of the Domestic Violence Act. She also seeks maintenance, including *ad-interim maintenance,* of ₹200000/- (Rupees Two Lakhs) per month, commensurate with the means of Prashant, and the lifestyle she is accustomed to. She asserts that Prashant has concealed his actual means from the Court and that she is actually entitled to a higher amount of compensation.

3. Kavita and Prashant, in their written statement (in the maintenance suit) contend that the suit premises are exclusively owned by the former, and are not HUF or Joint Family property; it was bequeathed to Kavita by her father. They refute allegations of collusion between themselves, in the filing of the eviction suit. It is stated that Eveneet and Prashant stayed in the suit premises, as permissive licensees, and that Prashant was asked to move out with his wife, Eveneet, by Kavita, when their matrimonial relations became acrimonious. This revocation of license was legal and justified, as Kavita is owner of the property, and is aged, infirm and unable to bear the daily acrimony between her son and daughter-in-law. Pursuant to such revocation, Prashant moved out of the property and started living in rented premises in Defence Colony, New Delhi, but Eveneet refused to move in with him. The defendants in the maintenance suit (Kavita and Prashant) also point out that no modification or change was made to the documents pertaining to the title of the property in any way, during of before the proceedings and therefore, taking rented premises does not indicate any collusion on their part. They rely upon the Supreme Court judgment in *S.R. Batra v. Taruna Batra*, (2007) 3 SCC 169 (hereinafter *"Batra"*) for the proposition that the plaintiff Eveneet does not have any right to residence in the property, as her mother-in-law, Kavita is its sole owner, and her husband, Prashant, has no right, share, title or interest in it. They further state that the plaintiff has sufficient means and has suppressed facts as to her income and assets from the Court.

4. Kavita contends, besides, that the suit property is not HUF property, as it was bequeathed by her father. It is argued that any reference to joint family was a mistake since it is well-known that a daughter and her father do not constitute an HUF. It is submitted that the suit, to the extent it alleges that the property is HUF property is with a view to enable Eveneet to get a toe-hold in the premises, over which she has no right under the circumstances of the case. Kavita and Prashant urge through their counsel that once the latter moved out of the premises and set-up house independently, Eveneet could not claim the suit property to be her matrimonial home or shared household as it ceased to be so. Besides reliance on *Batra*, they also cited the decision in *Neetu Mittal v. Kanta Mittal and Ors.,* AIR 2009 (Del) 72. Similarly, reliance is placed on the judgment *Umesh Sharma v. State*, 2010 (115) DRJ 88.

5. Eveneet, in her arguments, refers to the affidavit of Prashant, filed in these proceedings on 18.11.2010. It discloses that till 2008, Prashant was working in the United States as an

Analyst Developer, and later as Commodities Trader. Prashant has deposed about his income which was US$ 74418/- in 2005; US$ 88108/- in 2006; US$ 116142/- in 2007 and US$ 106676/- in 2008. He also alleges to having paid annual rent of approximately US$ 16,000/-, US$ 25,000/- and US$ 32,000/- for three corresponding years of 2005 to 2007, and mentions about high cost of living in New York, which was in the range of US$ 20,000/- to US$ 30,000/-; he mentions having purchased a flat on 155, East 38th Street, New York for total cost of almost US$ 800,000/- (including brokerage), of which he paid US$ 159,000/-. It is stated that the monthly outgoings towards interest and maintenance are to the tune of US$ 4,000/- and that other costs work-out to almost US$ 500/- per month. He mentions that there is a shortfall of US$ 1,300/- per month, which he has to bear and refers to savings valued at ₹19,44,458.79/- as on 31.03.2010. Prashant had deposed about spending around ₹27,000/- per month as rental towards premises and furnishing, of which he was entitled to 50% deduction towards office expenses. It is submitted that these facts lead one to safely assume that Prashant is earning not less than ₹5,00,000/- a month and that he has concealed these facts from the Court. It is stated that in these circumstances, the Court ought to grant both an appropriate order directing suitable maintenance, (having regard to Eveneet's status), as well as the right to reside in the suit property.

6. Besides the above facts and contentions, it was highlighted on behalf of Kavita that she is suffering from an acute heart condition and that if Eveneet is permitted to continue in the premises, it would tell adversely upon her health. During the course of hearing, learned counsel for Prashant had offered that having regard to the circumstances, a sum of ₹20,000/- per month could be paid to Eveneet towards rent, and that the trial in the suits could go on expeditiously.

7. This Court is concerned with two applications by Eveneet – one for *ad interim* maintenance where she claims a monthly amount of ₹2,00,000/- and the other a restraint order against Prashant and Kavita, directing them not to disturb her continued possession of part of the suit premises, where she is residing. This Court has noticed the rival contentions of the parties, as well as the other facts. It may be noted that the materials on record show that Eveneet is a post-graduate in Business Studies (MBA), and claims to be drawing monthly take-home salary of approximately ₹50,000/- and that her outgoings are to the tune of ₹30,000/- to 35,000/- per month, thus leaving her with ₹15,000/- for fulfilling her basic needs.

8. The documentary evidence by way of probate petition of the Will of late Dr. Kishori Lal Choudhary, Kavita's father, would disclose that the suit property was bequeathed to Kavita. Undoubtedly, the probate petition claims a half-share of the property. However, neither the probate granted by the Court nor any other material would disclose the existence of any other heir of the said Dr. Kishori Lal Choudhary. In the circumstances, *prima facie,* the suit property is owned by Kavita. The first question in these circumstances is whether, in the light of the suit filed by her, and the surrounding circumstances, Eveneet can claim a right to continue in the said property on the ground that it is a shared household. At this stage, it would be relevant to notice a few provisions of the Domestic Violence Act. These are as follows:

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Section 2

(a) "aggrieved person" means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent;

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(f) "domestic relationship" means 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 are family members living together as a joint family;

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(q) "respondent" means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act:
Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner.
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(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.

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Section 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.

Section 19 - Residence orders

(1) While disposing of an application under sub-section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order -

(a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;

(b) directing the respondent to remove himself from the shared household;

(c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;

(d) restraining the respondent from alienating or disposing off the shared household or encumbering the same;

(e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or

(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.

(2) The Magistrate may impose any additional conditions or pass any other direction which he may deem reasonably necessary to protect or to provide for the safety of the aggrieved person or any child of such aggrieved person.

(3) The Magistrate may require from the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence.

(4) An order under sub-section (3) shall be deemed to be an order under Chapter VIII of the Code of Criminal Procedure, 1973(2 of 1974) and shall be dealt with accordingly.

(5) While passing an order under sub-section (1), sub-section (2) or sub-section (3), the court may also pass an order directing the officer in charge of the nearest

police station to give protection to the aggrieved person or to assist her or the person making an application on her behalf in the implementation of the order.
(6) While making an order under sub-section (1), the Magistrate may impose on the respondent obligations relating to the discharge of rent and other payments, having regard to the financial needs and resources of the parties.
(7) The Magistrate may direct the officer in-charge of the police station in whose jurisdiction the Magistrate has been approached to assist in the implementation of the protection order.
(8) The Magistrate may direct the respondent to return to the possession of the aggrieved person her stridhan or any other property or valuable security to which she is entitled to.

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9. The primary intention in enacting the Act apparently was to secure to a woman living in matrimony or in a relationship akin to matrimony, or any domestic relationship, various rights. Domestic violence, interestingly is, *per se*, not a criminal offence but is defined extensively and comprehensively to include various conditions. The woman exposed to such domestic violence is given the right to move the Court for any of the reliefs outlined in Section 12 through either a comprehensive proceeding, claiming maintenance, the right to residence, compensation etc. or even move the Court seized of any other pending proceeding, such as divorce and maintenance etc. (Section 26). Section 17 has, for the first time, enacted a right to residence in favor of such women. The enactment being a beneficial one, the approach of the Court always has to be to uphold the parliamentary intention and give it a liberal interpretation rather than confining it, which would inevitably lead to defeating the object of the law. Significantly, as noticed earlier, domestic violence is *per se* not an offence but its incidence or occurrence enables a woman to approach the Court for multifarious reliefs. Now the Court is empowered to grant *ex-parte* relief and ensure its compliance, including by directing the police authorities to implement the order, particularly those relating to residence etc. If such an order is violated, by the respondent (which is defined in the widest possible terms, to include female relatives of the husband or the male partner etc), such action would constitute a punishable offence, which can be tried in a summary manner under Section 31 of the Act.

10. The facts narrated previously do not show any dispute that Eveneet married Prashant; the latter claims to have given-up his job in the United States sometime in 2008-09 and he moved into the suit property. The couple got married on 27.04.2009; Prashant claims that on account of

his mother's ill health and her wishes that they ought to move out, he took-up separate residence in January 2010. The kingpin of Kavita's arguments – as also of Prashant, and indeed the entire basis for Suit No. 505/2010 is that the suit premises are exclusively owned by Kavita and that it is not a shared household. The further argument is that Prashant and consequently Eveneet being mere licensees, (although related to Kavita, as son and daughter-in-law), have no legal right to live in the premises even though it might have been their matrimonial home at some point of time but was never their shared household. Heavy reliance is placed upon *Batra (supra)*; it would be, therefore, first necessary to analyze that ruling and then proceed to see whether Eveneet has any rights under the Act, as claimed by her and to what extent she would be entitled. In *Batra* the marriage between the parties had been solemnized in April 2000; somewhere in 2002-03, the husband filed a divorce petition; the wife claimed to have been treated cruelly by him and complained of offence having been committed under Section 498A IPC. She also filed a suit in 2003 for mandatory injunction to enable her to enter the house, which was allegedly locked. In a temporary injunction application, the trial Court held that the wife was in possession of a portion of the property, and restrained the husband and the mother-in-law from interfering with the possession. In the interlocutory appeal, the appellate Court held that the wife was not residing in the premises and that the husband too was not living in the property. He further held that the wife could not claim any right in the property. The wife further petitioned under Article 227 to the High Court; its judgment was appealed against by the mother-in-law. This much is evident from a reading of paras 4 to 10 of the judgment. It is evident, therefore, that the wife had never claimed that the parties rights were regulated by the Domestic Violence Act, which was not enacted at the time when the cause of action had arisen. The Court went to observe that the wife, under the circumstances, could not claim possession since the ownership was of her mother-in-law, in paras 11 to 14 of the judgment. The *ratio* of the judgment is discernable in para 13 which states that there is no law in India, like the British Matrimonial Homes Act, 1967, enabling the wife to claim rights in the property belonging to the property of another. The analysis of various provisions of the Domestic Violence Act, therefore, did not arise for consideration for judgment by the Supreme Court. Nevertheless, at the invitation of wife's counsel and on the basis of submissions, the Court proceeded to analyze the provisions and observed as it did, particularly in the context of Sections 2(s) and 17 and 19, that mere sharing of a household in the sense of the parties living together in same premises would not constitute such property as a shared

household. The observations of the Supreme Court in *Batra (supra)* to the extent relevant are extracted below:

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15. Learned Counsel for the respondent then relied upon the Protection of Women from Domestic Violence Act, 2005. He stated that in view of the said Act respondent Smt. Taruna Batra cannot be dispossessed from the second floor of the property in question.

16. It may be noticed that the finding of the learned Senior Civil Judge that in fact Smt. Taruna Batra was not residing in the premises in question is a finding of fact which cannot be interfered with either under Article 226 or 227 of the Constitution. Hence, Smt. Taruna Batra cannot claim any injunction restraining the appellants from dispossessing her from the property in question for the simple reason that she was not in possession at all of the said property and hence the question of dispossession does not arise.

17. Apart from the above, we are of the opinion that the house in question cannot be said to be a 'shared household' within the meaning of Section 2(s) of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the 'Act').

Section 2(s) states:

"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. Learned Counsel for the respondent Smt. Taruna Batra stated that the definition of shared household includes a household where the person aggrieved lives or at any stage had lived in a domestic relationship. He contended that since admittedly the respondent had lived in the property in question in the past, hence the said property is her shared household

We cannot agree with this submission

20. If the aforesaid submission is accepted, then it will mean that wherever the husband and wife lived together in the past that property becomes a shared

household. It is quite possible that the husband and wife may have lived together in dozens of places e.g. with the husband's father, husband's paternal grand parents, his maternal parents, uncles, aunts, brothers, sisters, nephews, nieces etc. If the interpretation canvassed by the learned Counsel for the respondent is accepted, all these houses of the husband's relatives will be shared households and the wife can well insist in living in the all these houses of her husband's relatives merely because she had stayed with her husband for some time in those houses in the past. Such a view would lead to chaos and would be absurd.

It is well settled that any interpretation which leads to absurdity should not be accepted.

21. Learned Counsel for the respondent Smt. Taruna Batra has relied upon Section 19(1)(f) of the Act and claimed that she should be given an alternative accommodation. In our opinion, the claim for alternative accommodation can only be made against the husband and not against the husband's in-laws or other relatives.

22. 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. The property in question in the present case neither belongs to Amit Batra nor was it taken on rent by him nor is it a joint family property of which the husband Amit Batra is a member, it is the exclusive property of appellant No. 2, mother of Amit Batra. Hence it cannot be called a 'shared household'.

23. No doubt, the definition of 'shared household' in Section 2(s) of the Act is not very 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 society.

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11. The key to an understanding of the rights flowing from the Domestic Violence Act, are concepts such as 'domestic relationship' – which *inter alia*, is *"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…";* who is a 'respondent' – a term not confined only to males who had lived with the aggrieved person, i.e. the complainant female, but also – by virtue of proviso to Section 2(q) to *"a relative of the husband…"* (in the case where the domestic relationship is or was a marriage). This aspect has been noticed, and clarified in several rulings by various High Courts (Ref *Afzalunnisa Begum v. The State of A.P.*, 2009 Cri.L.J. 4191;

Archana Hemant Naik v. Urmilaben Naik, 2010 Cri.L.J. 751 and *Varsha Kapoor v. Union of India*, WP (Crl.) No. 638 of 2010, Decided on: 03.06.2010, by a Division Bench of this High Court). It has been held that when a law uses the same word in different parts of the same statute, there is a presumption that that it is used in the same sense throughout (*Suresh Chand v. Gulam Chisti*, (1990) 1 SCC 593), unless the context indicates otherwise (*Bhogilal Chunnilal Pandya v. State of Bombay*, 1959 Supp (1) SCC 593). Now, the relevant part of Section 19 reads as follows:

> *"19. Residence orders.-(1) While disposing of an application under sub-section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order -*
>
> *(a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household...."*

(emphasis supplied)

The broad and expansive nature of the Court's power to make a residence order is also underlined by the amplitude of the definition of "shared household", which is *"where the person aggrieved lives or at any stage has lived*

(i) in a domestic relationship

(ii) either singly or along with the respondent and includes such a household

- *(a) whether owned or tenanted either jointly by the aggrieved person and the respondent, or*
- *(b) owned or tenanted by either of them*

(iii) 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

(iv) 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."

It is thus apparent that Parliamentary intention was to secure the rights of aggrieved persons in the shared household, which could be tenanted by the respondent (including relative of the husband) or in respect of which the respondent had jointly or singly any right, title, interest, or "equity". For instance, a widow living with a mother-in-law, in premises owned by the latter,

falls within a "domestic relationship"; even if the mother-in-law does not have any right, title or interest, but is a tenant, or entitled to "equity" in those premises, the same would be a "shared household". In such circumstances, the widowed daughter-in-law, can well claim protection from dispossession, notwithstanding that her husband never had any ownership rights, in the premises, because she lived in it; if the mother-in-law, is a tenant, then, on the ground that she is tenant, or someone having equity. It may, however, be noticed here that Section 19, while referring to a 'respondent', lays down a limited exception under the proviso to 19(1)(b), exempting women from being directed to remove themselves from the shared household. However, no such exception has been carved out for the other reliefs under Section 19, especially in respect of protection orders. Clearly, if the legislature had wanted to create another exception in favor of women, it could have done so. The omission here, seems deliberate and in consonance with the rest of the scheme of the Act. Another instance of a domestic relationship may be an orphaned sister, or widowed mother, living in her brother's or son's house; it falls within the definition of domestic relationship, (which is one where the parties are related by consanguinity, or marriage) constitutes a shared household, as the brother is clearly a respondent. In such a case too, if the widowed mother or sister is threatened with dispossession, they can secure reliefs under the Act, notwithstanding exclusive ownership of the property, by the son or brother. Thus, excluding the right of residence against properties where the husband has no right, share, interest or title, would severely curtail the extent of the usefulness of the right to residence. This was noted by the Bombay High Court in *Archana Hemant Naik* (supra) in the following terms:

> *" If a wife or a woman to whom the proviso is applicable is compelled to seek residence order in respect of a shared household only as against the male relatives of her husband or male partner, as the case may be, the order under Section 19 of the said Act will be completely ineffective in as much as the female relatives of the husband or the male partner occupying the shared household will continue to disturb possession of such wife or such female of the shared household, or may continue to prevent entry of such aggrieved wife or female to the shared household." (emphasis supplied)*

12. The Domestic Violence Act is a secular legislation, akin to Section 125 of the Code of Criminal Procedure, 1973. It was enacted *"to provide more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family"*. The introduction of the remedy of right to residence is a revolutionary and path breaking step, taken to further the objects of the Act, and any attempt at restricting the scope of the remedy would reduce the effectiveness of the Act itself. Therefore, it would be contrary to

the scheme and the objects of the Act to restrict its application to only such cases where the husband owns some property or has a share in it, as the mother-in-law can also be a respondent in the proceedings under the Domestic Violence Act and remedies available under the same Act would necessarily need to be enforced against her.

13. Again, to confine the reference to "joint" family property by bringing in the concept of a HUF would be to restrict the application of the provision, to a point which is contrary to Parliamentary intention that the law is a non-sectarian one. The "joint" status of a family here obviously is in a generic sense, and importing notions of HUF would unwittingly give greater benefits to one section of the community, which was never the intention of Parliament. In a generic sense, it refers to a group of people, related either by blood or marriage, residing in the same house and instances of that can be found in almost all parts of India. The general practice in India is that the son and his wife reside in the house of the (husband's) parents after marriage. Even though a legal obligation to maintain a child ceases as soon as he attains majority, the jural relationship between the parents and the child continues. The concept of a "joint family" in law is peculiar to Hindu law. No concept of a 'joint family' similar to that of an HUF can be found in Muslim Law, Christian Law or any other personal law.

14. The danger of accepting a restricted interpretation of joint family by equating it to a HUF would result in discrimination, because women living in a shared household belonging to HUFs (and therefore Hindus) would have more security, by reason of their professing the Hindu faith than others who are not Hindus. Also, even among Hindus, women who are married into or live in HUFs, as compared with those living with husbands, whose parents own the property – on an application of *Batra* - would have the protection of the Act; the latter would not have any protection. It is precisely to avoid this anomaly that Parliament clarified that irrespective of title of the "respondent" to the "shared household", a protection order can be made under Section 19 (1) (a).

15. The definition of "shared household" emphasizes the factum of a domestic relationship and no investigation into the ownership of the said household is necessary, as per the definition. Even if an inquiry is made into the aspect of ownership of the household, the definition casts a wide enough net. It is couched in inclusive terms and is not in any way, exhaustive (*S. Prabhakaran v State of Kerala,* 2009 (2) RCR (Civil) 883). It states that *"…<u>includes</u> 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" (emphasis supplied).

16. It would not be out of place to notice here that the use of the term "respondent" is unqualified in the definition nor is there any qualification to it under Sections 12, 17 or 19. Therefore, there is no reason to conclude that the definition does not extend to a house which is owned by a mother-in-law or any other female relative, since they are encompassed under the definition of 'respondent' under Section 2(q).

17. Decisions of the Supreme Court are authoritative, more so when High Courts have to deal with the same statute. Equally, it is settled law that a decision is authority for what it says, and the contextual setting, as well as the statutory provisions, and their interpretation, as emerging from the ruling, which invests it with precedential value. For this reason, it has been ruled by the Supreme Court, in several judgments, that a judgment is not to be read as a statute, since the factual matrix is also important (Ref. to *Sarat Chandra Mishra v State of Orissa*, (2006) 1 SCC 638, *Ramesh Chand Daga v Rameshwari Bai*, (2005) 4 SCC 772, *P.S. Sathappan v Andhra Bank Ltd.*, (2004) 11 SCC 672). In *Batra*, the dispute did not emerge or emanate from any provisions of the Domestic Violence Act; indeed, the cause of action preceded the coming into force of the enactment. Secondly, the wife was not in possession or an occupant of the property, which is a crucial factual aspect that distinguishes it from the facts of this case. Thirdly, the Court did not have the benefit (or the occasion) to consider the definition of "respondent"; "domestic relationship" and explore the link between those two vital concepts, on the one hand, and the definition of "shared household", as well as the remedy under Section 19 - both of which reinforce the irrelevance of the respondent's title or interest in the shared household property (in Section 2(s) it is *"irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household…"*; in Section 19 it is articulated as *"whether or not the respondent has a legal or equitable interest in the shared household…."*

18. This Court notices further that *Batra* has been distinguished by the Madras High Court in *P. Babu Venkatesh v. Rani*, (Crl. R.C. Nos. 48 and 148 of 2008 and M.P. Nos. 1 of 2008, Decided On: 25.03.2008, Madras High Court); the petitioner there alienated his property, in which the aggrieved person had sought residence, in favor of his mother, in order to fall within the ambit of the *Batra* dictum.

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 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 ₹2,05,000/-. He is also paying rent to the tune of ₹-27,000/- per month. With this expenditure, the Court can safely incur that his personal expenses would not be less than about ₹40,000/- per month. In these circumstances, to support this kind of lifestyle, Prashant's average monthly income would not be less than ₹450,000/- to ₹500,000/-. On the other hand, Eveneet's income is about ₹50,000/- per month; Prashant alleges it to be more. Having regard to his offer to pay ₹20,000/- per month towards alternative accommodation, the Court is of opinion that she should be entitled to an amount of ₹30,000/- per month towards rent, for alternative accommodation, and an amount of ₹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 ₹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.

22. IA Nos. 8479/2010, 8480/2010 in CS (OS) 1307/2010 are allowed in the above terms and I.A. No.3577/2010 in CS (OS) 505/2010 is disposed of in the above terms. In the circumstances, there shall be no order as to costs.

CS(OS) Nos.1307/2010 and 505/2010

List before Joint Registrar on 15.02.2011 to enable the parties to admit/deny the documents.

List before the Court on 01.08.2011 for framing of issues.

December 20, 2010 **(S.RAVINDRA BHAT)**

JUDGE