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

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Date of Decision: 27.08.2024

+ **MAT.APP.(F.C.) 253/2024**

PRACHI JOSHI

.....Appellant

Through: Mr Prosenjeet Banerjee, Mr Mohit Seth
and Mr Sarthak Bhardwaj, Advocates.

versus

SHAILENDER ADHIKARI

.....Respondent

Through: Mr Prateek Goswami, Adv. along with
respondent.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE AMIT BANSAL

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

1. Mr Prateek Goswami, Advocate, has entered appearance on behalf of the respondent.
2. On the previous date i.e., 08.08.2024, when the matter was heard, we had captured the broad contours of the case. For convenience, the relevant parts of the said order are extracted hereafter:

"2. This appeal is directed against the judgment and order dated 21.05.2024 passed by Mr Dinesh Bhatt, learned Principal Judge, Family Court, North West District, Rohini, Delhi.

2.1. Via the impugned order, the Family Court rejected the application



preferred by the appellant/wife under Sections 18, 19, 20, 22, and 23 read with Section 26 of the Protection of Women from Domestic Violence Act, 2005 [in short “DV Act”] and Section 10 of the Family Courts Act, 1984 for seeking appropriate directions.

3. The record shows that the respondent/husband has instituted a divorce petition under Section 13(1)(ia) and (ib) of the Hindu Marriage Act, 1955 [in short, “HMA”], which is pending adjudication.

4. The Family Court has, broadly, taken the view that the application instituted by the appellant/wife was not maintainable as the provisions of the DV Act had been invoked and that none of the provisions of the HMA had been brought into play.

5. Mr Prosenjeet Banerjee, learned counsel who appears on behalf of the appellant/wife says that the appellant/wife had sought the following three (3) reliefs: (i) Return of stridhan. (ii) Return of the jewellery belonging to the minor daughter. (iii) Injunction against the creation of any third party right/interest in the immovable properties which were jointly owned by the parties, i.e., (a) N3-404, Lifestyle Homes, 33A, Homes Avenue, Vatika India Next, Gurgaon, Haryana – 122004 and (b) HIG Flats 603, G2B, 18B, Dwarka, Delhi.

6. It is pointed out by Mr Banerjee that the Family Court was well within its rights to deal with the assertions and the reliefs sought in the application which have been adverted to hereinabove.

7. Particularly, Mr Banerjee has drawn our attention to Section 26 of the DV Act which, amongst other forums, alludes to the “Family Court” where reliefs, otherwise available under the aforementioned provisions of the DV Act, could be pressed.

8. Insofar as the reliefs sought by the appellant/wife are concerned, Mr Banerjee has, inter alia, drawn our attention to Section 19, sub-Sections (1)(d), (2) and (8) of the DV Act.

9. The matter requires further examination.

10. Issue notice to the respondent/husband via all modes including email.

11. List the matter on 27.08.2024.

12. Meanwhile, the respondent/husband will not create any third-party rights in the stridhan, jewellery belonging to the minor daughter, and the two (2) joint properties referred to in paragraph six (6) of CM APPL. 43510/2024, till further orders by the Court.

13. Parties will act based on the digitally signed copy of the order.”

3. Before we proceed further, it would be necessary to extract Section 26 of the Protection of Women from Domestic Violence Act, 2005 [in short “DV



Act”]. For convenience, Section 26 of the DV Act is extracted hereafter:

“26 Relief in other suits and legal proceedings.

*(1) Any relief available under sections 18, 19,20, 21 and 22 may also be sought in any legal proceeding, before a civil court, **family court** or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act.*

(2) Any relief referred to in sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court. (3) In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief.”

4. A plain reading of Section 26 of the DV Act would show that amongst others, the family court has also been invested with the power to adjudicate reliefs sought by an applicant under Sections 18 to 22 of the DV Act.

5. On the last date of hearing, i.e., 08.08.2024, Mr Prosenjeet Banerjee, learned counsel, who appears on behalf of the appellant/wife, had adverted to the nature of reliefs that the appellant/wife had sought from the family court.

6. Since the family court dismissed the appellant’s/wife’s application at the very threshold, without exercising the power conferred upon it under Section 26 of the DV Act, we are inclined to set aside the impugned judgment and order with a direction to the family court to adjudicate **de novo** the application filed by the appellant/wife.

6.1 Before the family court proceeds further, it will give liberty to the respondent/husband to file a reply to the application.

7. Pending disposal of the application, the interim directions contained in paragraph 12 of the order dated 08.08.2024, as extracted above, will continue to



operate.

8. The family court will endeavour to adjudicate the application at the earliest, though not later than four (04) weeks from today.

9. At this stage, Mr Banerjee says that since additional issues may arise on account of the application preferred by the appellant/wife, the recordal of evidence in the divorce petition, which is fixed on 31.08.2024, should be postponed to another date.

9.1 In our view, this is a call that the family court should take after hearing the learned counsel for the parties.

10. Insofar as this Court is concerned, the matter is confined to examination of the validity of the impugned judgment and order.

11. If any application is moved for deferring the trial, it will be decided by the family court, *albeit* as per law.

12. The appeal is disposed of in the aforesaid terms.

RAJIV SHAKDHER, J

AMIT BANSAL, J

AUGUST 27, 2024/pmc