

(2022) 04 CAL CK 0031

In the Calcutta High Court

Case No : W.P.A. No. 19431 Of 2021, CAN 1 Of 2021

Debaki Nandan Maiti

APPELLANT

Vs

State Of West Bengal And Ors

RESPONDENT

Date of Decision : 12-04-2022

Acts Referred:

Constitution Of India, 1950 — Article 21, 226

Maintenance And Welfare Of Parents And Senior Citizens Act, 2007 — Section 27

Protection Of Women from Domestic Violence Act, 2005 — Section 2(s), 17, 19(1)

Citation : (2022) 04 CAL CK 0031

Hon'ble Judges : Rajasekhar Mantha, J

Bench : Single Bench

Advocate : Joydip Kar, Abhratosh Majumdar, Aniruddha Chatterjee, Srijib Chakraborty, Pankaj Agarwal, Paramita Maity, Raja Saha, Sayak Chabroborty Joy Saha, Probal Mukherjee, Sourav Chatterjee, Biswajit Kumar, Riya Baliyal, Debayan Sen, Rajarshi Ganguly, Arijit Majumdar

Final Decision : Dismissed

Judgement

Rajasekhar Mantha, J

1. The Applicant, Swati Das, has applied for the recall of this Court's order dated 9th December, 2021, passed in WPA 19431 of 2021 on the ground that she did not receive notice of the writ petition being WPA 19431 of 2021. By the said order, the private respondent-who is the daughter-in-law of the writ petitioner-was ordered to be evicted from the residence belonging to her father-in-law.

2. The counsel for the applicant daughter-in-law submits that the writ court does not have jurisdiction to order eviction in a purely private family matrimonial dispute, and that she has an inherent right to stay at her marital home- being her father-in-law's residence-on the basis of a combined reading of S. 2(s) r/w Ss. 17 and 19(1) of the Domestic Violence Act, 2005.

3. It is also submitted that the divorce decree against the appellant dated 5th December, 2020, obtained by the son of the writ petitioner, was so obtained by

fraud, misrepresentation and suppression of facts. The said decree has been stayed by an order of a Co-ordinate Bench of this Court on 22nd December, 2021. It is alleged that the said fraud and misrepresentation committed by the respondent-husband was in respect of service of both the divorce proceedings to an address in Midnapore, which resulted in the divorce decree being passed ex parte. This is despite the fact that the applicant-wife was never residing at Midnapore, and has always had her residence at the 2nd Floor of 46A Harish Mukherjee Road, Kolkata-700026, i.e. father-in-law's house.

4. It is further submitted on behalf of the applicant daughter-in-law, that the police report based on which the court has acted was biased, and has been filed at the behest and instance of the writ petitioner. Additionally, the applicant submits that the findings of tantrums thrown by the applicant against her in-laws, are contained in one single/solitary complaint dated 25th November, 2021 filed by the petitioner father-in-law, which ought not to have been given credence to.

5. On the question of jurisdiction of this Court to order eviction, reliance has been placed by counsel for the applicant on Division Bench's decisions of this court being *Lipika Bose Vs. State of West Bengal and Ors.* reported in 2004 SCC Online Cal 367; as well as unreported orders of a Co-ordinate Bench in WPA 8630 of 2020 dated 28th April, 2021, *Bhajogobindo Rai Bhajon Roi Vs. State of West Bengal and Ors.*, and on *Soripha Banu WPA 2165 (W)vs. State of West Bengal*, dated 27th November, 2019,

6. The writ petitioner has countered all the arguments placed above, alongside placing judgments in furtherance of their own counter-arguments. The writ petitioner father-in law submits that the existence of an alternative remedy under some statute does not automatically place a bar on the Jurisdiction of the High Courts under Article 226 to pass orders, and that the Courts can pass any such order in the interests of justice. On the point of the applicant invoking her right to continue in her matrimonial home, which has been claimed to be a "shared household" under the DV Act, 2005; the petitioners submit that the applicant has never claimed any mental or physical torture inflicted upon her by her in-laws- neither before the police nor before the Court of competent jurisdiction under the DV Act.

7. Reliance has been placed by the counsel of the writ petitioner on the decisions of the Hon'ble Supreme Court in the case of *Sangita Saha Vs. Abhijit Saha* reported in 2019 18 SCC 819, wherein the Apex Court has held that the right to a residence in a 'shared household' shall only be available when the complainant establishes domestic violence. The petitioner has also relied on a Division bench order of this Court in APOT No. 105 of 2021 (*Anuradha Agarwal Vs. Shivshankar Agarwal*) dated 16th July 2021, which has held that the concept of the "shared household" shall apply qua the wife's claim towards her husband, and that the status of the wife in the household of the father-in-law would still be that of a licensee.

8. The petitioner also submits that the he has fulfilled/discharged his requisite obligations under the law, by sending a copy of the writ petition, along with its annexures to the applicant/respondent by Speed Post; and that the Article Tracking System of the Speed Post as well as the Affidavit-in-Opposition affirmed in the behalf of the Postman, Kalighat Post Office shows that the same was delivered to the applicant.

9. On the allegations of the applicant that the Police Report filed was fraudulent, it is submitted by the petitioners that the said report is evidence of the police investigating the case, as also of the fact that the applicant was aware of the present proceedings. Additionally, the petitioner submits that since the private respondent did not file any affidavit-in-opposition to the writ, all the allegations are presumed to be admitted by the private respondent/applicant.

10. This Court has carefully considered the arguments advanced by the applicant, as also replies by the writ petitioner; both those advanced in Court, as well as those contained in the notes submitted by the parties, and the postal authorities.

11. There is admittedly a decree for divorce passed between respondent nos. 4-5, albeit ex parte. The applicant has never claimed any right of residence or share of the household against the writ petitioner or her husband under the provisions of the DV Act. The applicant, Swati Das, has not asserted any domestic violence or torture perpetrated by the writ petitioner or her husband either.

12. In the backdrop of the aforesaid facts, let us now consider the arguments of the applicant, Swati Das. The Lipika Bose's (supra) decision of a Division Bench of this Court has been rendered under completely different facts and circumstances. In that case, the maid servant who was occupying the residence belonging to the husband, was sought be evicted from said residence by the actual wife. There was dispute as regards whether the appellant therein was a maidservant or a wife. In the instant case however, there is no dispute as to the relations between the applicant/daughter-in-law of the petitioner, and her husband/ son of the petitioner. In any event, the said decision was rendered before the coming into force of the D.V. Act, 2005 and the Maintenance of Senior Citizens Act, 2007. The said decision therefore cannot be applied in the facts of the case. The other two orders of relied upon by the applicant suffer from the same issue of irrelevance, and hence cannot be relied upon.

13. This court had in the case of Ramapada Basak Vs. State of West Bengal & Ors. reported in 2021 SCC OnLine Cal 2161, had discussed the rights of children and their spouses towards senior citizen. The relevant paragraphs of the said decision are set out:

" 3. It is now well settled that the children and their spouses living in the senior citizen's house are at best "licensees". Such licence comes to an end once the senior citizens are not comfortable with their children and their families. This

principle has also been followed by the Delhi High Court in in WP(C) 2761/2020 (Sandeep Gulati v. Divisional Commissioner), decided on 13.03.2020 and the Punjab and Haryana High Court in the cases of (a) Manmohan Singh v. U.T. Chandigarh (Case No. 1365/2015), (b) Samsher Singh v. District Magistrate, U.T. Chandigarh (Case No. 2017 CWP 6365) and (c) Gurpreet Singh v. State of Punjab (Case No. (2016) 1 RCR (Civil) 324).

4. Two issues would come up for consideration. The first of which is the availability of alternative remedy under the provisions of the Maintenance and Welfare of Parents Senior Citizens Act, 2007. The other is a right of a daughter-in-law of residence to be provided by either the husband or the father-in-law, if directed by a competent court under the provisions of the Domestic Violence Act, 2005.

5. The Hon'ble Supreme Court in the case of S. Vanitha v. Deputy Commissioner, Bangaluru Urban District reported in 2020 SCC OnLine SC 1023, has said that since both, the Senior Citizens Act, 2007 as also the Domestic Violence Act, 2005 are special legislations, the two must be construed harmoniously and applied suitably by a writ court hearing a plea of the senior citizens that they do not want their children to live with them. At paragraphs 35-40 the Hon'ble Supreme Court has elaborately dealt with the principle under the headline "E. Harmonising competing reliefs under the PWDV Act 2005 and Senior Citizens Act 2007". In particular at paragraph 38 the Court held as follows:

38. The above extract indicates that a significant object of the legislation is to provide for and recognize the rights of women to secure housing and to recognize the right of a woman to reside in a matrimonial home or a shared household, whether or not she has any title or right in the shared household. Allowing the Senior Citizens Act 2007 to have an overriding force and effect in all situations, irrespective of competing entitlements of a woman to a right in a shared household within the meaning of the PWDV Act 2005, would defeat the object and purpose which the Parliament sought to achieve in enacting the latter legislation. The law protecting the interest of senior citizens is intended to ensure that they are not left destitute, or at the mercy of their children or relatives. Equally, the purpose of the PWDV Act 2005 cannot be ignored by a sleight of statutory interpretation. Both sets of legislations have to be harmoniously construed. Hence the right of a woman to secure a residence order in respect of a shared household cannot be defeated by the simple expedient of securing an order of eviction by adopting the summary procedure under the Senior Citizens Act 2007."

9. However, the right of senior citizen to exclusively reside in his own house, must be viewed from the prism of Article 21 of the Constitution of India. To compel a senior citizen to approach either a civil court (the jurisdiction of which is any way barred under Section 27 of the 2007 Act) or take recourse to a special Statute like the 2007 Act would in most cases be extremely onerous and painful for a person in the sunset days of life. This Court is therefore of the view that the

principle of alternative remedy cannot be strictly applied to Senior Citizens and a Writ Court must come to the aid of a Senior Citizen in a given case.”

14. In view of the above decision of this Court, which is in consonance of previous decisions of the Supreme Court dealing with similar conflict between the interests of parties protected under different specialized Acts, and in view of the given facts and circumstances, the Writ Court under Article 226 has jurisdiction to evict sons and daughters-in-law from the residence of senior citizens, if the latter is uncomfortable or inconvenienced by the presence of any of the former. The applicant and her ex-husband are at best licensees in the house of the writ petitioner.

15. The applicant has vehemently argued that a copy of the writ petition was not supplied to her and that someone else- possibly someone on behalf of the petitioner had collected the said writ petition. The Court however, is sufficiently satisfied with the evidence forwarded by the postal authorities, as also the reasons provided in the affidavit filed. Satisfactory reasons have been provided for absence/lack of a physical pay-slip of delivery, as well as for the lack of a signature in the electronic device used by the postman, wherein, as per the postman, the lady of the house who received the package had refused to sign citing COVID conditions. It therefore cannot be said that there is no proof of delivery of the writ petition to Swati Das, the applicant.

16. The findings of the enquiry/investigation of the Kalighat Police Station, as recorded in the communication on 6th December, 2021 indeed show existing disputes between the parties and after notice of the writ petition to the State. Placing reliance on the report in the peculiar facts of the case cannot therefore be faulted by the writ petitioner.

17. In respect of a discomfort expressed by a senior citizen towards his children, a single complaint is good enough evidence. Further, there are no disputed questions of fact in the instant case i.e., that the house admittedly belongs to the father of the writ petitioner. There is a decree for divorce, albeit ex parte. Admittedly, the son has already taken up separate residence before the writ petition was filed. The applicant daughter-in-law has not claimed any right of residence, nor has she alleged violence against her father-in-law/writ petitioner or husband. There is bad blood between the applicant daughter-in-law on one side and her husband and father-in-law on the other. The aforesaid facts are, in view of this Court, sufficient for invoking the extraordinary jurisdiction of this court under Article 226 of the Constitution of India, with a view to protect life and liberty under Article 21, of the senior citizen.

18. The applicant, Swati Das, is admittedly a medical practitioner. She is neither destitute nor in a poor economic or financial condition, and there is no averment to that effect in the application. Apart from the questions of law raised by the applicant daughter-in-law, she has not able to make out any case for restoration with possession of her father-in-law's house.

19. For the reasons stated above, CAN 1 of 2021 seeking recall of the order dated 9th December, 2021, shall stand dismissed.

20. In view of the above order and since the main contesting parties have filed pleadings and have been heard, the main writ petition shall also stand disposed of.

21. There shall however no order as to costs.

22. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.