

(2010) 09 DEL CK 0388

In the Delhi High Court

Case No : F.A.O. (OS) No"s. 303-306/10 and C.M. No"s. 8048 and 16250/10

Natasha Kohli

APPELLANT

Vs

Mon Mohan Kohli

RESPONDENT

Date of Decision : 24-09-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 4
Protection of Women From Domestic Violence Act, 2005 — Section 17

Citation : (2010) 172 DLT 516 : (2010) 119 DRJ 44

Hon'ble Judges : Vikramajit Sen, J; Mukta Gupta, J

Bench : Division Bench

Advocate : N.K. Kaul, Rajshekhar Rao, Anu Bagai and Bhuvan Mishra, for the Appellant; Geeta Luthra Aanchal Mullik, Ashish Dholakia and Abhimanyu Mahajan, for the Respondent

Judgement

Vikramajit Sen, J.—This Appeal assails the Order dated 21.4.2010 passed by the learned Single Judge holding that the plaintiff was not in occupation of the entire house, that is, 15-A, Amrita Shergill Marg, New Delhi; and that she was in occupation of only the Guest House where she was living and sleeping since 2004. The learned Single Judge has ordered that "till the rights of the parties are determined after adjudication, it would be just and appropriate that the plaintiff shall keep living in the guest annexee and shall not interfere into the Main Building where defendant and son of the parties is living except that she can go to her son's bedroom and stay with him as per the wishes of her son and son can also go to guest room annexee and stay with the mother as and when he likes. Apart from that, plaintiff shall not interfere into the possession of the defendant No. 1 of the main building. It is also ordered that defendant No. 1, 2 and 3 shall not sell or part with possession of the suit property, that is, 15-A, Amrita Shergil Marg, New Delhi till disposal of the present suit or till the rights of the parties are ascertained in the execution filed by the plaintiff or unless the parties arrive at a settlement". It will be immediately apparent that the Appellant has not been allowed the use of even the Kitchen. Resultantly, she would

perforce have to purchase her food etc. from elsewhere, that is, from outside of the matrimonial home.

2. The plaintiff has filed a Suit for Permanent and Mandatory Injunction in which her husband, Mr. Mon Mohan Kohli, is Defendant No. 1. The matrimonial home is 15-A, Amrita Shergil Marg, New Delhi and is owned by Jey Key Private Limited, Defendant No. 2. Mr. Joginder Kohli, Defendant No. 3, is impleaded as a Director of that Company. S/Shri Mon Mohan Kohli and Joginder Kohli have 600 shares each, out of a total Paid Up and Subscribed Share Capital of 1200 shares. The suit property is stated to comprise the entire 15-A, Amrita Shergil Marg, New Delhi, ad measuring approximately 2227 square meters; it includes the Main Bungalow as well as the Annexee. The Plaint sets out that a Family Settlement has taken place between Defendant No. 1 and his family, all of whom were residents of the undivided 15-A, Amrita Shergil Marg, New Delhi. The said Memorandum recognizes joint ownership of the plaintiff and Defendant No. 1 in 15-A, Amrita Shergil Marg, New Delhi. In paragraph 20 of the Plaint, it has been asseverated that Defendant No. 1 had made attempts to throw the plaintiff as well as her son out of the suit property which avowedly is also the matrimonial home of the plaintiff. Paragraph 27 of the Plaint contains the allegation that in the first week of May, 2006 Defendant No. 1 stepped up his efforts to throw the plaintiff and her minor son out of the suit property so that he could be able to sell the property by handing over vacant peaceful possession thereof to the buyer. All that is required to be emphasized for the present is that the plaintiffs prayers pertained to the entire suit property, that is, 15-A, Amrita Shergil Marg, New Delhi and not just the Annexee. The primary prayer is for a permanent injunction in respect of the peaceful possession and enjoyment of the suit property by the plaintiff.

3. The Site Plan, which is acceptable to both the warring spouses, is at page 1026 of the Appeal File and makes the following depiction:

4. The portion shown as Study is the room which the plaintiff claims she was using as her makeshift Bedroom; except when she allegedly took refuge, along with her son, in the Annexee. Her husband, Defendant No. 1 before us, asserts that the plaintiff had shifted to the Annexee and only during the pendency of the case had laid a false claim of her sleeping in the Study.

5. We shall abjure from narrating the allegations hurled at each other by the Husband and the Wife.

6. On the first date of hearing, that is, 19.6.2006, the learned Single Judge, who was then seised with the case restrained the Defendants "from dispossessing the plaintiff from the property bearing No. 15-A, Amrita Shergil Marg, New Delhi. The parties shall also maintain status quo of the title and occupancy of the property till the next date of hearing".

7. The next Order, dated 24.05.2007, passed by the same learned Single Judge, clarifies that the Order dated 19.6.2006 did not permit any party to alter the

status quo. We think it most expedient to quote the Order thereafter:

It is further directed that within one week from today, the defendant shall make available/provide wardrobes and cupboards in the guest room in the suit property. The plaintiff shall remove her belongings from the bed room of the defendant and shall store all her belongings in the cupboards which shall be provided by the defendant within a period of one week thereafter. The defendant may restore the locks which were admittedly existing in the bed room and have admittedly been removed by the plaintiff during the pendency of the case. ...It is made clear that this is purely an interim arrangement in order to enable the parties to cohabit in the same house without any expression of any opinion on the merits of the case.

8. A Local Commissioner had also been appointed vide those Orders and her Report has generated considerable amount of arguments. Defendant No. 1 relies on this Report where the Local Commissioner had recorded that the plaintiff had filled up the stuff in the cupboards on the Mezzanine of the Bedroom though the same was empty on the earlier occasion and that the plaintiff had locked up the entire portion and had kept her stuff in her son's room. Reliance is also placed on the Orders passed by the learned Single Judge dated 23.7.2007 wherein the plaintiff was directed to allow the Local Commissioner to physically verify the submission of the plaintiff that the cupboards, of which keys are not handed over, contain the goods of the plaintiff. The Report filed pursuant to this Order records the quarrel that took place between the plaintiff and the Local Commissioner during her proceedings. We do not propose to dwell in detail on the Report since it principally recounts the conduct of the parties, so far as making the keys to the cupboards available. In paragraph 5 of the said Report, the Local Commissioner has stated that she "went to guest room where the plaintiff is residing". We mention this because the Defendant No. 1/Respondent No. 1 endeavours to rely on it to show the place where the Appellant was residing at that time. It would be convenient to immediately mention the letter dated 13.10.2006 addressed by the plaintiff to the SHO Tughlak Road Police Station, New Delhi in which she has, inter alia, stated thus - "I have been sleeping since 2004 (the house was under renovation for 4 years before that and we had moved out in 1999 and then moved back in 2004) in the cottage in the back garden where the staff quarters are. He locked up my sleeping quarters. Despite several weeks of asking him to open it he refused saying he wanted me out with my son as he was interested in remarriage and or wanting his bisexual partners to enjoy the house. When one day I saw the cottage open for a few minutes for cleaning, I managed to slip the locks out and get the cottage opened. I finally managed a good nights rest. I may mention that every time he did something to harass me, I reminded him of the interim injunction which he showed contempt towards and scored and laughed and said money was the absolute and final power which he had. ..." It would be recalled that in the impugned Order the learned Single Judge has laid stress on the Report to arrive at the conclusion that the plaintiff was not residing in the Main House but only in the Guest Room.

9. The factual averments in the Plaint, which were relied upon by the plaintiff in his application for stay as well are categorical in that "The plaintiff was married to the Defendant No. 1 on 14.11.1994 at New Delhi as per Hindu rites and ceremonies. After the marriage, the plaintiff began to reside at 15, Amrita Shergill Marg, New Delhi. The said property was the Matrimonial Home of the plaintiff". We have perused the Reply of the Defendant/Respondent to the interim application for stay filed by the plaintiff/Appellant and the application filed under Order XXXIX Rule 4 of the Code of Civil Procedure, 1908 for vacation of ex parte ad interim stay granted on 19.6.2006 to maintain status quo. The Respondent has not traversed this fact or stated that the plaintiff was not enjoying the entire suit property as the matrimonial home and was residing only in the Outhouse. The averment as regards an admission on the part of the plaintiff that she, at the time of filing of the Suit, was not residing in the Main Building but was residing only in the Annexee or the Outhouse was only raised subsequent to Local Commissioner's Report and nowhere specifically pleaded.

10. So far as the Written Statement is concerned, it appears to us that there is an admission in the Reply to paragraph 1 to 11 that the parties had commenced residing in the suit property in March 2004. There is a bald assertion that the suit property was not the matrimonial home of the plaintiff. In paragraph 13 of the Written Statement, Defendant No. 1 has asserted that - "the plaintiff is occupying the suit premises only in a capacity as wife of Defendant No. 1. The tenancy rights always remain with Defendant No. 1 in his individual capacity. ..." In paragraph 20, Defendant No. 1 has denied any attempt to throw the plaintiff and their minor son out of the suit property. Paragraph 33 contains a submission that the "plaintiff has been sleeping in the outhouse of the suit property and not in the main building. The plaintiff has now removed the locks of the master bedroom of the Defendant No. 1 and taken away the keys of the outhouse and of one servant's quarter". In the Replication (dated 20.12.2006), the plaintiff has pleaded that - "the so-called outhouse is more in the nature of a Guest Annexee. It is only when the drunk and other violent behavior of the Defendant No. 1 goes out of hand that the plaintiff and her minor son occasionally take refuge and sleep in the outhouse". In an application dated 31.1.2007 filed by Defendant No. 1, it has been averred that his "anguish and distress is compounded by the fact that he is forced to live in the same house (in which he has exclusive tenancy rights) with the maker of these preposterous allegations against him, i.e. the plaintiff. ...Defendant No. 1 is particularly aggrieved by the fact that the plaintiff has also made false allegations in the replication that he is locking certain portions of the house. The only portion which the defendant No. 1 locks in (sic.) his bedroom for safety and privacy when he sleeps at night. ..." There are several statements made by Defendant No. 1 to the effect that it is difficult for him to live with the plaintiff under one roof. It is also pleaded by him that "it is not possible to identify discreet separate portions in the suit property as it has only one kitchen, one drawing room, one dining room, one main entrance etc. ...The plaintiff is only trying to make all sorts of claims without any basis

whatsoever only with a view to continue in the suit property". In Reply to IA No. 8088/2007 dated 14.8.2007, Defendant No. 1 has, inter alia, stated that "the plaintiff has removed the bed-cum-sofa from the guest room and has kept the same in the study of the main house, so that the study could be used as a bedroom".

11. The Orders passed by the learned Single Judge from time to time, as well as the pleadings of the parties, must be kept in perspective. We think that the so-called admissions contained in the plaintiff's Report to the SHO have been blown out of reasonable proportions. All that she has brought to the notice of that Official was that oftentimes she had to sleep in the Guest Room/Outhouse/Annexee. However much we stretch this statement we are unable to find in it an admission that she was not living in the Main House. On the contrary, Respondent No. 1 has pleaded that she had brought a sofa-cum-bed into the "Study". There may be legitimate provocation for the Local Commissioner to have developed an inimical attitude towards the plaintiff. A plain reading of the Report does not lead us to the conclusion that the plaintiff has ceased residing in the Main House and/or that she had returned to the Main House after the passing of any of the interim Orders in the Suit. It is not so infrequent that one of the spouses abandons the matrimonial bed. If this is for an extended period, it inevitably leads to the breakdown of the matrimony. However, it would be out of context to see into such action as an abandonment by the withdrawing spouse from the matrimonial home itself. We have already observed that there is only a bald denial by the husband that the suit property, that is, 15-A, Amrita Shergill Marg, New Delhi is not the matrimonial home. In the facts of the case, prima facie, we cannot but conclude that the suit property is the matrimonial home of the plaintiff/Appellant. Accordingly, her rights of residence therein must be respected not only because of the statutory mandate of Section 17 of Protection of Women from Domestic Violence Act, 2005 which acknowledges a woman's right to reside in a shared household but also on the principles of equity.

12. If we were to decide this legal nodus a priori, we would be influenced, and not in a small manner only, by the wife's/plaintiff's rights of residence in the matrimonial home. Apart from making adjustments so that the warring spouses may not assault each other, we would protect occupation of both parties by engineering a distance between them. We must also not lose sight of the fact that prima facie the plaintiff/Wife is a part owner of the suit property which is also the matrimonial home. However, Courts must abjure adopting a feudal and archaic attitude by thinking that a wife can be relegated to Outhouse as if it is a mere chattel. On the contrary, efforts must be made to ensure that she can live a life of respect.

13. The Order of the learned Single Judge directing the removal of the plaintiffs belongings to the Outhouse/Guest Room/Annexee does not lead to the conclusion that she was compelled and confined to reside there. The grievance which was ventilated before the Court was that she had locked-up her husband/

Defendant No. 1's belongings which were in the Master Bedroom; the cupboards/almirahs were upstairs mezzanine. The learned Single Judge merely endeavoured to obviate a quarrel on this account by directing the plaintiff to remove her belongings from the Master Bedroom, especially in view of the fact that she had herself pleaded that sometimes she had been left with no other recourse than to sleep separately from Defendant No. 1.

14. We would be loathe to lose sight of the fact that the son of the parties is not an adult and would require substantial overseeing and care by his mother. In the course of hearings, which spanned over a 1000 pages and have taken several hours of arguments, it has become evident to us that the plaintiff can reside in the room styled as the "Study" which is what was before disharmony erupted between the spouses. This room is directly in front of the son's Bedroom. The plaintiff has herself contended that she will confine herself to the use of the small "Powder Room" or toilet in front of the Study and contiguous to her son's Bedroom.

15. It is important to maintain some semblance of peace in the matrimonial home and/or suit property, and we think that this is precisely what the learned Single Judge earlier seised of the matter had endeavoured to achieve when she directed the plaintiff to remove her belongings from the cupboards in the Main Bedroom. The plaintiff is directed not to enter the Master Bedroom. She may sleep in the Study. Owing to the fact that her belongings are now stored in the Outhouse/Annex/Guest Room, where there is a larger bathroom/toilet, she shall have its additional use. Accordingly, except for the Master Bedroom, the plaintiff shall be entitled to use the remaining portion of the Main House, that is, the Kitchen, Dining Room/Sitting Room/Drawing Room. We clarify that the plaintiff shall have no right of access to Master Bedroom or to the Mezzanine which is part of the Master Bedroom from which she was ordered to remove her belongings.

16. As has been pointed out by learned Single Judge in the impugned Order, this is purely an Interim Arrangement which will await the Final Judgment.

17. It will be worth of mention that no Order has been passed, and none has been brought to our notice, whereby the plaintiff has been restrained from access to any part of the suit property, except that of the Master Bedroom and the Mezzanine and bathrooms contiguous thereto, earlier to the impugned Order.

18. Appeal is allowed accordingly and all pending applications are disposed of.

19. Parties to bear their respective costs.