

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
WRIT PETITION NO.650 OF 2021**

- 1) Aditya Anand Varma,  
Aged 33 years, Occu – Service,  
Indian Hindu Inhabitant of Mumbai,  
Having His Independent Licensed  
Residence at Flat NO.D-1,  
Ground Floor, Hasmukh Nagar,  
Tagore Road, Santacruz (W),  
Mumbai – 400 054  
Contact No.9820033260  
email : [adityavarma@gmail.com](mailto:adityavarma@gmail.com)
  2. Anand Prakash Varma,  
Aged 65 years, Occu – Business of  
Mumbai, Indian Inhabitant,  
Residing at Neelkanth, Plot No.28,  
South, Jay Bharat Society, 3<sup>rd</sup> Floor,  
Khar (W), Mumbai – 400 052.  
contact No.98191 15009  
email – [anandprakashvarma@gmail.com](mailto:anandprakashvarma@gmail.com)
  3. Aarti Anand Varma,  
Aged 58 years, Occu – Business of  
Mumbai, Indian Inhabitant,  
Residing at Neelkanth, Plot No.28,  
South, Jay Bharat Society, 3<sup>rd</sup> Floor,  
Khar (W), Mumbai – 400 052  
contact No.99309 99325  
email – [aartivarma@gmail.com](mailto:aartivarma@gmail.com) ... Petitioners
- versus
1. The State of Maharashtra,  
through the Public Prosecutor,  
High Court, Mumbai – 400 032
  2. Harsha Aditya Varma (nee) Harsha Singh

Age 33 years, Occu – employed/  
Business, Indian Inhabitant  
of Kolkatta, Permanently residing at  
203, Block-A, Bangur Avenue, Ganga  
Apartments, Kolkata – 700 055,  
currently stationed in Mumbai, at an  
unknwon unprovided address  
contact no.95990 75166  
email [harshasingh87@gmail.com](mailto:harshasingh87@gmail.com)

... Respondents

Mr. J.A.Udaipuri i/by M/s. Udaipuri and Co., for Petitioners.  
Mr. S.R.Aagarkar, APP, for State.  
Mr. R. Satyanarayanan with Ms. Deepa Pujari, Ms. Sonali Tamhankar,  
Mr. Pratik Surti, Mr. Neeraj Yadav, for Respondent No.2.

**CORAM : N.J.JAMADAR, J.**

**RESERVED ON : 25<sup>th</sup> APRIL, 2022**

**PRONOUNCED ON : 10<sup>th</sup> JUNE, 2022**

**P.C.**

1. Rule.
2. Rule made returnable forthwith. With the consent of the learned Counsel for the parties, heard finally at the stage of admission.
3. This Petition under Article 226 of the Constitution of India and Section 482 of the Code of Criminal Procedure, 1973 ('the Code'), takes exception to an Order dated 20<sup>th</sup> January, 2021 passed by the learned Metropolitan Magistrate, 12<sup>th</sup> Court, Bandra, Mumbai, on an Application (Exhibit 9) preferred by the Petitioners to dismiss the Domestic Violence Application No.112/DV/2020 filed by the Respondent No.2 – complainant, whereby the said application came to be rejected.

4. Shorn of unnecessary details, the background facts leading to this Petition, can be stated as under :

(a) Respondent No.2 was working with Jet Airways (International) as a cabin crew head. The Petitioner No.1 is a businessman. The Petitioner Nos.2 and 3 are the parents of the Petitioner No.1. With a view to have a matrimonial alliance, the families of Petitioner No.1 and the Respondent No.2 got introduced. The Roka (engagement) ceremony between the Petitioner No.1 and the Respondent No.2 was held on 6<sup>th</sup> May, 2018 at the residence of the Petitioners at Mumbai. The Petitioners claimed that on 23<sup>rd</sup> August, 2018, the said engagement was broken off.

(b) The Petitioner No.1 and the Respondent No.2, however, secretly solemnized marriage on 26<sup>th</sup> November, 2018 under the provisions of Special Marriage Act, 1954 at Kolkata.

(c) The Respondent No.2's take on the development in the intervening period is that the Petitioners demanded a sum of Rs.1 Crore for hosting a grand reception ceremony, post marriage, at a resort in Lonavala. Respondent No.2's family could, however, arrange and advance a sum of Rs.10 Lakhs to the Petitioner No.2. On account of the failure of the Respondent No.2's family to meet the huge demand of Rs.1 Crore, the Petitioner Nos.2 and 3 got enraged and threatened the Respondent No.2 with dire consequences. Eventually, under the subterfuge of the horoscope of the Respondent No.2 not matching with that of the Petitioner No.1 and the former

being a *manglic*, the Petitioner Nos.2 and 3 claimed that they were advised against the martial bond between the Petitioner Nos.1 and Respondent No.2. However, since the Petitioner No.1 and Respondent No.2 were deeply in love with each other, they decided to solemnize the marriage behind back of their parents and, accordingly, the marriage was solemnized on 26<sup>th</sup> November, 2018.

(d) Respondent No.2 alleges that, post marriage, the Petitioner No.1 subjected her to physical and mental harassment and abuse. The Respondent No.2 claimed that she tolerated the harassment with a hope that the behaviour of the Petitioner No.1 would improve with the passage of time.

(e) On 2<sup>nd</sup> January, 2019, the Petitioner No.1 apprised the Petitioner Nos.2 and 3 about the solemnization of the marriage with the Respondent No.2 on 26<sup>th</sup> November, 2018. Thereupon, the Petitioner Nos.2 and 3 allegedly abused and humiliated the Respondent No.2 and her family members. Initially, the Petitioner No.1 assured to convince and win over his parents. However, the Respondent No.2 alleges, the Petitioner No.1 gradually withdrew himself from the society of Respondent No.2. Repeated efforts by Respondent No.2 to join the matrimonial home, were frustrated by the Petitioners. Alleging acts of physical and emotional harassment and economic abuse, the Respondent No.2 preferred a complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005 ('DV Act, 2005') and sought various reliefs envisaged under the DV Act, 2005, including the

protection order, residence order and monetary relief.

(f) The Petitioners appeared and resisted the Application by filing a written statement.

(g) The Petitioners also took out an Application for dismissal of the complaint, contending, inter alia, that from the date of solemnization of the marriage i.e. on 26<sup>th</sup> November, 2018 till 2<sup>nd</sup> January, 2019, the day the Petitioner No.1 disclosed the factum of marriage to the Petitioner Nos.2 and 3, the Respondent No.2 had never resided in the matrimonial home, and, thus, the Respondent No.2 was never in a domestic relationship. In the absence of domestic relationship, the Respondent No.2 cannot be said to be an “aggrieved person” within the meaning of Section 2(a) of the DV Act, 2005. Nor the Respondent No.2 can be said to have ever resided in a “shared household”. Consequently, no case of domestic violence can be said to have been made out.

(h) The Petitioners further asserted that since the Respondent No.2 has instituted a Petition seeking restitution of conjugal rights, by no stretch of imagination, can it be urged that the Respondent No.2 was subjected to domestic violence, as the prayer for restitution of conjugal rights cannot co-exist with allegations of domestic violence. Thus, the Application deserves to be dismissed as it does not disclose any cause of action of violence in a domestic relationship in a shared household.

(i) The Respondent No.2 resisted the Application by filing an Affidavit in

Reply. The Application for dismissal of the Complaint for domestic violence, was stated to be misconceived. Banking upon the provisions contained in Section 17 of the DV Act, 2005 which guarantees a woman in a domestic relationship right to reside in a shared household and the interpretation put thereon by the Supreme Court in a judgment in the case of Satish Chander Ahuja V/s. Sneha Ahuja<sup>1</sup> the Respondent No.2 contended that the contention on behalf of the Petitioners that since the Respondent No.2 did not reside in the shared household, no case for domestic violence is made out, would defeat the very object of enacting the DV Act, 2005. Since the Petitioner No.1 has filed a Petition for annulment of the marriage, the martial relationship between the Petitioner No.1 and the Respondent No.2 can hardly be disputed. Thus, according to the Respondent No.2, all the elements necessary to sustain an action for domestic violence were made out.

(j) After appraisal of the rival contentions and submissions canvassed across the bar, the learned Magistrate rejected the Application holding, inter alia, that the martial relationship between the Petitioner and the Respondent No.2, was not in contest and the questions as to whether the Respondent No.2 was an aggrieved person, was she subjected to domestic violence, and did she reside in a shared household, were all matters for trial. Therefore, at this stage, the Respondent No.2 could not be non-suited on the basis of the contentions in the Application for dismissal

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1 (2021) 1 SCC 414

of the said proceeding.

5. Being aggrieved, the Petitioners have preferred this Petition.

6. I have heard Mr. Udaipuri, learned Counsel for the Petitioners and Mr. R. Satyanarayanan, the learned Counsel for Respondent No.2 and Mr. Aagarkar, the learned APP for the State.

7. Mr. Udaipuri, learned Counsel for the Petitioners, strenuously submitted that the learned Magistrate committed a manifest error in rejecting the Application, despite their being no controversy on facts, as regards the non-existence of domestic relationship. An endeavour was made by Mr. Udaipuri to demonstrate that the facts that the Petitioner No.1 and the Respondent No.2 surreptitiously solemnized marriage (despite engagement having been broken off) on 26<sup>th</sup> November, 2018 and that the said factum of marriage was disclosed to the Petitioner Nos.2 and 3 on 2<sup>nd</sup> January, 2019 and in the intervening period, the Respondent No.2 had never resided with the Petitioners at their residence in Mumbai, were all incontrovertible. In this backdrop, it was incumbent upon the learned Metropolitan Magistrate to examine as to whether a prima facie case of domestic violence was made out. In view of the definition of domestic relationship under Section 2(f), of which living together in a shared household, is an inseparable part, in the absence of the prima facie material to demonstrate that the Respondent No.2 had lived with the Petitioner No.1 in a domestic relationship, the learned Magistrate could not have rejected the Application,

urged Mr. Udaipuri. It was submitted that the aforesaid inference is inescapable from the reading of the complaint of Respondent No.2 and, thus, the continuation of the said proceeding against the Petitioners, is a sheer abuse of the process of the Court. To bolster up this submission, Mr. Udaipuri placed a strong reliance on a judgment of a learned Single Judge of Chhattisgarh High Court in the case of Nafiza Anjum and Ors. V/s. State of Chhattisgarh and Anr.<sup>2</sup>.

8. Per contra, Mr. Satyanarayanan, learned Counsel for the Respondent No.2 supported the impugned order. At the outset, the tenability of the Writ Petition was questioned as there is efficacious statutory remedy of appeal under Section 29 of the DV Act, 2005. Inviting the attention of the Court to Section 29, which provides for an appeal to the Court of Session at the instance of the aggrieved person or the Respondent against any order passed by the learned Magistrate, Mr. Satyanarayanan, would urge that on this count alone, the Petition deserves to be dismissed.

9. On merits, Mr. Satyanarayanan urged that the claim of the Petitioners that the Respondent No.2 had never resided with the Petitioners at their residence in Mumbai, is factually incorrect. There are adequate averments in the complaint which make out a prima facie case of the Respondent No.2 having shared the household with the Petitioners. In any event, in view of the expansive interpretation given to the definition of 'shared household' under Section 2(s) of the DV Act, 2005, in the case of

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2 CRMP No.717 of 2017 dated 26<sup>th</sup> September, 2018



Satish Chander Ahuja (supra), the Application for dismissal of the proceeding, does not merit countenance. Mr. Satyanarayanan also invited attention of the Court to the allegedly reckless and wild allegations made against the family members of the complainant in paragraph 6 of the written statement. It was submitted that the Petitioners, who have made such wild and reckless allegations, do not deserve hearing, much less, relief in exercise of extra ordinary writ jurisdiction.

10. Mr. Udaipuri, joined the issue on the aspect of the tenability of the Petition despite the existence of the remedy of an Appeal under Section 29 by canvassing a submission that in a case of instant nature, where the facts are uncontroverted, this Court would be justified in exercising the writ jurisdiction, notwithstanding the remedy of statutory appeal. To lend support to this submission, Mr. Udaipuri relied upon an order passed by a learned Single Judge of this Court in the case of Parvez Kapadia and Ors. V/s. Pravin P. Kapadia and Anr.<sup>3</sup> wherein this Court had entertained the Petition and quashed and set aside the domestic violence proceeding on the premise that the allegations made against the Petitioner Nos.2 and 3 therein, who appeared to be the relatives of the husband of the aggrieved person, on the ground that they were roped in only to cause harassment to them.

11. In all fairness to Mr. Udaipuri, in the aforesaid case of Parvez Kapadia (supra), this Court had not delved into the question of maintainability of the Petition

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3 Cri.W.P. No.3652 of 2013 dated 21<sup>st</sup> April, 2015

despite the availability of a statutory remedy under Section 29 of the DV Act, 2005. The issue was not at all adverted to, much less, decided post a threadbare consideration. It would be hazardous to rely upon the said order as a precedent, since it simply lacks the precedential value.

12. In contrast, Mr. Satyanarayanan was justified in placing reliance on a judgment of another learned Single Judge of this Court in the case of Siddharth Sabharwal V/s. State of Maharashtra<sup>4</sup> wherein this Court had upheld the challenge to the tenability of the Petition in the face of the statutory remedy under Section 29 of the Act, 2005. The observations of the Court in para 19 to 22 are material and hence extracted below :

19. So far an argument of availability of alternate remedy of Appeal is concerned, it would be apt to reproduce herein below Section 29 of the DV Act,

*29. Appeal -*

*There shall lie an appeal to the Court of Session within thirty days from the date of which the order made by the Magistrate is served on the aggrieved person or the respondent, as the case may be, whichever is later.*

20. It is abundantly clear from the careful perusal of Section 29 of the said Act mentioned hereinabove that, there shall lie an Appeal to the Court of Session within thirty days from the date of the order made by the Magistrate is served upon the aggrieved person or the respondent, as the case may be, whichever is later. Therefore, it was possible for the Petitioner to file the appeal instead of filing the present Petition.

21. According to the learned Counsel appearing for Respondent No.2, second Respondent did follow the mandate of Rule 7 and filed the affidavit in

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4 2019 SCC Online Bom 3106

Form III, as required under DV Act and Rules thereunder. Even if the case of the Petitioner is accepted as it is that, the proper procedure has not been followed by the learned Metropolitan Magistrate or proper affidavit was not filed by Respondent No.2; in that case also, for redressal of said grievance, it is open for the Petitioner to invoke an appellate jurisdiction under Section 29 of the DV Act. The Petitioner also has an opportunity to cause his appearance which reads as under : before the learned Magistrate, if already not caused, and put forth his contentions. Therefore, this Court is of the opinion that, in the peculiar facts and circumstances of the case, when the learned Magistrate has passed the ex-parte order assigning cogent reasons, which are legally sustainable, the interference by this Court in the impugned order, on the ground of non adherence to the procedure as alleged by the Petitioner, is not warranted. This Court is of the opinion that, the Petitioner ought to have availed of an appropriate remedy of appeal, so also it was possible for the Petitioner to approach before the Metropolitan Magistrate Court, in that view of the matter an inference in the impugned order is not called for. In the light of discussion in foregoing paragraphs, without entering into the merits of the matter, this Court is of the opinion that, in view of alternate and efficacious remedy available to the Petitioner or the Petitioner can also contest the proceeding pending before the Metropolitan Magistrate, the Petition deserves no consideration.

22. In that view of the matter, for the reasons recorded herein above, this Court is not inclined to entertain the writ petition. Hence, writ petition is rejected. Rule stands discharged accordingly.”

13. It is true that the existence of an alternative remedy is a self imposed restraint on the exercise of writ jurisdiction. However, where a remedy of statutory appeal is explicitly provided, the Court would not be justified in invoking the writ jurisdiction, unless clear case for exercise of such jurisdiction in the well recognized

exceptional situations is made out. These exceptional situations are expounded by the Supreme Court in the case of Whirlpool Corporation V/s. Registrar of Trade Marks, Mumbai and Ors.<sup>5</sup> as under :

“15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenge....”

14. In the case of Commissioner of Income Tax and Ors. V/s. Chhabil Dass Agarwal<sup>6</sup> the position in law was postulated as under :

“15. Thus, while it can be said that this Court has recognized some exceptions to the rule of alternative remedy i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case<sup>7</sup> Titaghar Paper Mills case<sup>8</sup> and other similar judgments that the High Court will not

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5 (1998) 8 SCC 1

6 (2014) 1 SCC 603

7 Thansingh Nathmal V. Supt. Of Taxes, AIR 1964 SC 1419

8 Titaghar Paper Mills Co. Ltd. V/s. State of Orissa, (1983) 2 SCC 433

entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.”

15. In the case at hand, no exceptional circumstance to invoke the writ jurisdiction despite the existence of the remedy of statutory appeal is pleaded, much less, made out. Nonetheless, I am inclined to deal with the Petition, on merits, as well.

16. The thrust of the submission of Mr. Udaipuri was that the Respondent No.2 can neither be said to be an aggrieved person within the meaning of the DV Act, 2005, nor can she be said to have been in a “domestic relationship” with the Petitioners. Consequently, the endeavour of the Respondent No.2 to proceed against the Petitioners with the allegation of domestic violence, is plainly unworthy countenance. The aforesaid submission was sought to be premised on the definitions of “aggrieved persons”, “domestic relationship” and “shared household” in the DV Act, 2005.

Under Section 2(a) of the DV Act, 2005, “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.

Clause (f) of Section 2 defines “domestic relationship” as under :

“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”

Clause (s) of Section 2, in turn, defines “shared household” as under :

“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.”

17. At the first blush, the definitions appear cyclical, in the sense that to qualify as the aggrieved person, a woman ought to be or have been in a domestic relationship with the Respondent. “Domestic relationship” envisaged by sub-clause (f) is a relationship between two persons who live or lived together in a shared household. A household is designated as the shared household, where the aggrieved person lives or has lived in a domestic relationship with the respondent and includes the household, over which the aggrieved person and/or the Respondent exercised the proprietary and possessory right. It also includes the household which may belong to

joint family of which the respondent is a member, irrespective of the fact as to whether the respondent or aggrieved person has any right, title or interest in the said household.

18. Mr. Udaipuri, in the light of the aforesaid definitions, would urge that “shared household” is the linchpin of the domestic relationship and the living of the aggrieved person in such a domestic relationship is peremptory. In the facts of the case, according to Mr. Udaipuri, even if the case of the Respondent No.2 is taken at par, it falls short to show that the Respondent No.2 ever shared the household in the sense that the Petitioner No.1 and the Respondent No.2 resided together, at any point of time, at the residence of the Petitioners. In this view of the matter, according to Mr. Udaipuri, the proceeding under Section 12 of the DV Act, 2005 is wholly untenable.

19. Evidently, the edifice of the submission on behalf of the Petitioners is sought to be built on the premise that the Respondent No.2 never resided with the Petitioners at their residence in Mumbai. Consequently, it is sought to be urged that the Respondent No.2 was never in a domestic relationship with the Petitioners to qualify as the aggrieved person. Whether this endeavour of the Petitioners is legally sustainable ?

20. In the case of Satish Chander Ahuja (Supra) a three Judge Bench of the Supreme Court considered the judicial connotation of “shared household” and delved into, inter alia, the following questions :

“30.1 (1) Whether definition of “shared household” under Section 2(s) of the Protection of Women from Domestic Violence Act, 2005 (“the 2005 Act”) has to be read to mean that shared household can only be that household which is household of joint family or in which husband of the aggrieved person has a share ?

30.2 (2) Whether judgment of this Court in S.R.Batra V/s. Taruna Batra<sup>9</sup> has not correctly interpreted the provision of Section 2(s) of the Protection of Women From Domestic Violence Act, 2005 and does not lay down a correct law ?

21. The Supreme Court answered the aforesaid questions as under :

“91.1 The definition of “shared household” given in Section 2(s) cannot be read to mean that shared household can only be that household which is household of the joint family of which husband is a member or in which husband of the aggrieved person has a share.

91.2 The judgment of this Court in S.R.Batra V/s. Taruna Batra (supra) has not correctly interpreted Section 2(s) of the 2005 Act and the judgment does not lay down a correct law.”

(emphasis supplied)

22. In the process, the Supreme Court expounded the import of “shared household”, especially the expression “live or at any stage, has lived in a domestic relationship” under clause (s) of Section 2 of the DV Act, 2005. The observations in paragraphs 59, 66, 67, 68 and 70 are instructive and, thus, extracted below :

“59. Now, reverting back to the definition of Section 2(s), the definition can be divided in two parts, first, which follows the word “means” and second which follows the word “includes”. The second part which follows “includes” can be further sub-divided in two parts. The first part

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9 (2007) 3 SCC 169



reads “shared household means a household where the person aggrieved has lived or at any stage has lived in a domestic relationship either singly or along with the respondent”. Thus, first condition to be fulfilled for a shared household is that person aggrieved lives or at any stage has lived in a domestic relationship. The second part sub-divided in two parts is- (a) includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent and 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 (b) 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. In the above definition, two expressions, namely, “aggrieved person” and “respondent” have occurred. From the above definition, following is clear : (i) it is not requirement of law that aggrieved person may either own the premises jointly or singly or by tenanting it jointly or singly; (ii) the household may belong to a 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; and (iii) the shared household may either be owned or tenanted by the respondent singly or jointly.

66. The observation of this Court in S.R. Batra Vs. Taruna Batra (supra) in paragraphs 24, 25 and 26 were made while considering the expression “person aggrieved lives or at any stage has lived”. This Court observed in paragraph 26 that if the interpretation canvassed by learned counsel for the respondent is accepted that the house of the husband’s relative where respondent resided shall become shared household, shall lead to chaos and would be absurd. The expression “at any stage has lived” occurs in Section 2(s) after the words “where the person aggrieved lives”. The use of the expression “at any stage has lived” immediately after words “person aggrieved lives” has been used for object different to what has been apprehended by this Court in paragraph 26. The expression “at any stage

has lived” has been used to protect the women from denying the benefit of right to live in a shared household on the ground that on the date when application is filed, she was excluded from possession of the house or temporarily absent. The use of the expression “at any stage has lived” is for the above purpose and not with the object that wherever the aggrieved person has lived with the relatives of husband, all such houses shall become shared household, which is not the legislative intent. The shared household is contemplated to be the household, which is a dwelling place of aggrieved person in present time.

67. When we look into the different kinds of orders or reliefs, which can be granted on an application filed by aggrieved person, all orders contemplate providing protection to the women in reference to the premises in which aggrieved person is or was in possession. Our above conclusion is further fortified by statutory scheme as delineated by Section 19 of the Act, 2005. In event, the definition of shared household as occurring in Section 2(s) is read to mean that all houses where the aggrieved person has lived in a domestic relationship alongwith the relatives of the husband shall become shared household, there will be number of shared household, which was never contemplated by the legislative scheme. The entire Scheme of the Act is to provide immediate relief to the aggrieved person with respect to the shared household where the aggrieved person lives or has lived. As observed above, the use of the expression “at any stage has lived” was only with intent of not denying the protection to aggrieved person merely on the ground that aggrieved person is not living as on the date of the application or as on the date when Magistrate concerned passes an order under Section 19. The apprehension expressed by this Court in paragraph 26 in S.R. Batra Vs. Taruna Batra (supra), thus, was not true apprehension and it is correct that in event such interpretation is accepted, it will lead to chaos and that was never the legislative intent. We, thus, are of the considered opinion that shared household referred to in Section 2(s) is the shared household of aggrieved person where she was living at the time when application was filed

or in the recent past had been excluded from the use or she is temporarily absent.

68. The words “lives or at any stage has lived in a domestic relationship” have to be given its normal and purposeful meaning. The living of woman in a household has to refer to a living which has some permanency. Mere fleeting or casual living at different places shall not make a shared household. The intention of the parties and the nature of living including the nature of household have to be looked into to find out as to whether the parties intended to treat the premises as shared household or not. As noted above, Act 2005 was enacted to give a higher right in favour of woman. The Act, 2005 has been enacted to provide for more effective protection of the rights of the woman who are victims of violence of any kind occurring within the family. The Act has to be interpreted in a manner to effectuate the very purpose and object of the Act. Section 2(s) read with Sections 17 and 19 of Act, 2005 grants an entitlement in favour of the woman of the right of residence under the shared household irrespective of her having any legal interest in the same or not.

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70. We are of the view that this court in S.R. Batra Vs. Taruna Batra (supra) although noticed the definition of shared household as given in Section 2(s) but did not advert to different parts of the definition which makes it clear that for a shared household there is no such requirement that the house may be owned singly or jointly by the husband or taken on rent by the husband. The observation of this Court in S.R. Batra Vs. Taruna Batra (supra) that definition of shared household in Section 2(s) is not very happily worded and it has to be interpreted, which is sensible and does not lead to chaos in the society also does not commend us. The definition of shared household is clear and exhaustive definition as observed by us. The object and purpose of the Act was to grant a right to aggrieved person, a woman of residence in shared household. The interpretation which is put by this Court in S.R. Batra Vs. Taruna Batra (supra) if accepted shall clearly frustrate the object

and purpose of the Act. We, thus, are of the opinion that the interpretation of definition of shared household as put by this Court in S.R. Batra Vs. Taruna Batra (supra) is not correct interpretation and the said judgment does not lay down the correct law.”

(emphasis supplied)

23. The aforesaid pronouncement was followed and further explained by the Supreme Court in the case of Prabha Tyagi (supra). In the said case, the High Court had ruled against the aggrieved person holding, inter alia, that in order to establish that the Respondents had committed violence as contemplated under the DV Act, 2005, it was necessary to show that the aggrieved person was sharing the household with the respondents and there was a domestic relationship between the parties. In the said case, the aggrieved person was found to have resided separately from the respondents from the date of her marriage and thus, it was held that, there was no domestic relationship between the aggrieved person and the respondent and, therefore, no relief can be granted under the provisions of the DV Act, 2005.

24. The Supreme Court after noting the expansive definition of the “shared household” expounded in the case of Satish Chander Ahuja (supra), considered it expedient to further explain the import of the expression “every women in a domestic relationship shall have a right to reside in the shared household, irrespective whether she has any right, title or beneficial interest in the same”, appearing in Section 17 of the DV Act, 2005. The Supreme Court held that in the context of Section 17 of the

DV Act, 2005, the expression “shared household” cannot be restricted only to household where a person aggrieved resides or at any stage resided in a domestic relationship. Even a woman in a domestic relationship who is not aggrieved, in the sense that who has not been subjected to act of domestic violence by the Respondent, has a right to reside in the shared household.

25. It was further enunciated in clear and explicit terms that the expression “right to reside in a shared household” cannot be restricted to actual residence. In other words, even in the absence of actual residence in the shared household, a woman in a domestic relationship can enforce a right to reside therein. The Supreme Court gave illustrations wherein an aggrieved person can enforce a right of residence even where she has not actually shared the household.

26. The observations of the Supreme Court in paragraphs 35 to 45 are instructive and, hence, extracted below :

“35. As already noted, a domestic relationship means a relationship between two persons who live or have at any point of time, lived together in a shared household. The relationship may be by (i) consanguinity, (ii) marriage or, (iii) through a relationship in the nature of a marriage, (iv) adoption or (v) are family members living together as a joint family. The expression ‘domestic relationship’ is a comprehensive one. Hence, every woman in a domestic relationship in whatever manner the said relationship may be founded as stated above has a right to reside in a shared household, whether or not she has any right, title or beneficial interest in the same. Thus, a daughter, sister, wife, mother, grand-mother or great grand-mother, daughter-in-law, mother-in-law or any woman having a relationship in the nature of marriage, an

adopted daughter or any member of joint family has the right to reside in a shared household.

36. Further, though, the expression 'shared household' is defined in the context of a household where the person aggrieved lives or has lived in a domestic relationship either singly or along with respondent, in the context of Sub-Section (1) of Section 17, the said expression cannot be restricted only to a household where a person aggrieved resides or at any stage, resided in a domestic relationship. In other words, a woman in a domestic relationship who is not aggrieved, in the sense that who has not been subjected to an act of domestic violence by the respondent, has a right to reside in a shared household. Thus, a mother, daughter, sister, wife, mother-in-law and daughter-in-law or such other categories of women in a domestic relationship have the right to reside in a shared household de hors a right, title or beneficial interest in the same.

37. Therefore, the right of residence of the aforesaid categories of women and such other categories of women in a domestic relationship is guaranteed under Sub-Section (1) of Section 17 and she cannot be evicted, excluded or thrown out from such a household even in the absence of there being any form of domestic violence. By contrast, Sub-Section (2) of Section 17 deals with a narrower right in as much as an aggrieved person who is inevitably a woman and who is subjected to domestic violence shall not be evicted or excluded from the shared household or any part of it by the respondent except in accordance with the procedure established by law. Thus, the expression 'right to reside in a shared household' has to be given an expansive interpretation, in respect of the aforesaid categories of women including a mother-in-law of a daughter-in-law and other categories of women referred to above who have the right to reside in a shared household.

38. Further, the expression 'the right to reside in a shared household' cannot be restricted to actual residence. In other words, even in the absence of actual residence in the shared household, a woman in a domestic relationship can enforce her right to reside therein. The aforesaid interpretation can be

explained by way of an illustration. If a woman gets married then she acquires the right to reside in the household of her husband which then becomes a shared household within the meaning of the D.V.Act. In India, it is a societal norm for a woman, on her marriage to reside with her husband, unless due to professional, occupational or job commitments, or for other genuine reasons, the husband and wife decide to reside at different locations. Even in a case where the woman in a domestic relationship is residing elsewhere on account of a reasonable cause, she has the right to reside in a shared household. Also a woman who is, or has been, in a domestic relationship has the right to reside not only in the house of her husband, if it is located in another place which is also a shared household but also in the shared household which may be in a different location in which the family of her husband resides.

39. If a woman in a domestic relationship seeks to enforce her right to reside in a shared household, irrespective of whether she has resided therein at all or not, then the said right can be enforced under Sub-Section (1) of Section 17 of the D.V. Act. If her right to reside in a shared household is resisted or restrained by the respondent(s) then she becomes an aggrieved person and she cannot be evicted, if she has already been living in the shared household or excluded from the same or any part of it if she is not actually residing therein. In other words, the expression 'right to reside in the shared household' is not restricted to only actual residence, as, irrespective of actual residence, a woman in a domestic relationship can enforce her right to reside in the shared household. Thus, a woman cannot be excluded from the shared household even if she has not actually resided therein that is why the expression 'shall not be evicted or excluded from the shared household' has been intentionally used in Sub-Section (2) of Section 17. This means if a woman in a domestic relationship is an aggrieved person and she is actually residing in the shared household, she cannot be evicted except in accordance with the procedure established by law. Similarly, a woman in a domestic relationship who is an aggrieved person cannot be excluded from her right to reside in the shared household except in accordance with the procedure established by law.

Therefore, the expression 'right to reside in the shared household' would include not only actual residence but also constructive residence in the shared household i.e., right to reside therein which cannot be excluded vis-à-vis an aggrieved person except in accordance with the procedure established by law. If a woman is sought to be evicted or excluded from the shared household she would be an aggrieved person in which event Sub-Section (2) of Section 17 would apply.

40. In support of this interpretation, another example may be noted. A woman on getting married, along with her husband may proceed overseas on account of professional or job commitments. Such a woman may not have had an opportunity of residing in the shared household after her marriage. If, for any reason, such a woman becomes an aggrieved person and is forced to return from overseas then she has the right to reside in the shared household of her husband irrespective of whether her husband (respondent) or the aggrieved person (wife) has any right, title or beneficial interest in the shared household. In such circumstances, parents-in-law of the woman who has returned from overseas and who is an aggrieved person cannot exclude her from the shared household or any part of it except in accordance with the procedure established by law.

41. Another situation is a case where, immediately after marriage, the wife actually resided in the shared household while her husband proceeded overseas. When such a woman is subjected to domestic violence, she cannot be evicted from the shared household except in accordance with the procedure established by law.

42. There may also be cases where soon after marriage, the husband goes to another city owing to a job commitment and his wife remains in her parental home and nevertheless is a victim of domestic violence. She has the right to remain in her parental home as she would be in a domestic relationship by consanguinity. Also in cases where a woman remains in her parental home soon after marriage and is subjected to domestic violence and is therefore an aggrieved person, she also has the right to reside in the shared household of



her husband which could be the household of her in-laws. Further, if her husband resides in another location then an aggrieved person has the right to reside with her husband in the location in which he resides which would then become the shared household or reside with his parents, as the case may be, in a different location. There could be a multitude and a variety of situations and circumstances in which a woman in a domestic relationship can enforce her right to reside in a shared household irrespective of whether she has the right, title or beneficial interest in the same. Also, such a right could be enforced by every woman in a domestic relationship irrespective of whether she is an aggrieved person or not.

43. In the Indian societal context, the right of a woman to reside in the shared household is of unique importance. The reasons for the same are not far to see. In India, most women are not educated nor are they earning; neither do they have financial independence so as to live singly. She may be dependent for residence in a domestic relationship not only for emotional support but for the aforesaid reasons. The said relationship may be by consanguinity, marriage or through a relationship in the nature of marriage, adoption or is a part of or is living together in a joint family. A majority of women in India do not have independent income or financial capacity and are totally dependent vis-à-vis their residence on their male or other female relations who may have a domestic relationship with her.

44. In our view, the D.V. Act is a piece of Civil Code which is applicable to every woman in India irrespective of her religious affiliation and/or social background for a more effective protection of her rights guaranteed under the Constitution and in order to protect women victims of domestic violence occurring in a domestic relationship. Therefore, the expression 'joint family' cannot mean as understood in Hindu Law. Thus, the expression 'family members living together as a joint family', means the members living jointly as a family. In such an interpretation, even a girl child/children who is/are cared for as foster children also have a right to live in a shared household and are conferred with the right under Sub-Section (1) of Section 17 of the D.V. Act.

When such a girl child or woman becomes an aggrieved person, the protection of Sub-Section (2) of Section 17 comes into play.

45. In order to give an expansive interpretation to the expression 'every woman in a domestic relationship shall have the right to reside in shared household', certain examples by way of illustrations have been discussed above. However, those illustrations are not exhaustive and there could be several situations and circumstances and every woman in a domestic relationship can enforce her right to reside in a shared household irrespective of whether she has any right, title or beneficial interest in the same and the said right could be enforced by any woman under the said provision as an independent right in addition to the orders that could be passed under Section 19 of the D.V. Act; also an aggrieved woman who has the right to reside in the shared household is protected by Sub-Section (2) of the Section 17 of the D.V. Act."

(emphasis supplied)

27. The aforesaid pronouncement is a complete answer to the submissions sought to be canvassed on behalf of the Petitioners that since the Respondent No.2 had not actually resided with the Petitioners at their residence in Mumbai, the Respondent No.2 was not in a domestic relationship with the Petitioners. The edifice of the submissions, thus, gets dismantled.

28. Before parting, I deem it appropriate to note that the fact that the Petitioner No.1 and the Respondent No.2 solemnized the marriage, is indubitable. The resistance to the continuation of matrimonial relationship, as is evident from the contentions in the Written Statement (paragraphs 6; to which Mr. R. Satyanarayanan takes strong exception) stems from the allegations that one of the parents and other

close family members of Respondent No.2 are engaged in human trafficking. This stand of the Petitioners (if found untrue) and the consequent conduct of the Petitioners especially Petitioner Nos.2 and 3, in resisting and excluding the Respondent No.2 from matrimonial home, has the propensity to fall within the mischief of domestic violence, under the DV Act, 2005

29. The conspectus of aforesaid consideration is that the Petition deserves to be dismissed on the count of maintainability as well as on merits. Hence, the following order :

**ORDER**

- (i) The Writ Petition stands dismissed.
- (ii) Rule discharged.
- (iii) No costs.

**( N.J.JAMADAR, J. )**