

**IN THE COURT OF SHRI ARUL VARMA
ADDL SESSIONS JUDGE-04 & SPECIAL JUDGE (NDPS) ACT
SOUTH EAST DISTRICT: SAKET COURT: NEW DELHI**

CA No. 104 / 2021

**Manju Mala Pandey
W/o Sh. Kali Prasad Pandey
R/o House no. 733, Pocket-A
Ground Floor, Sarita Vihar,
New Delhi – 110076**

.....Appellant

Vs

**Pankaj Pandey
S/o Kali Prasad Pandey
R/o House no. 733, Pocket-A
Ground Floor, Sarita Vihar,
New Delhi – 110076
Permanent R/o A-14
Vijay Apartment Indirapuram
Ghaziabad UP**

.....Respondent

Instituted on : 26.10.2021
Argued on : 12.07.2022
Decided on : 12.07.2022.

JUDGMENT

1. Vide this order, this Court shall adjudicate the present criminal appeal filed under Section 29 of the Protection of Women from Domestic Violence Act, 2005, seeking setting aside of order dated 22.10.2021 passed by the Ld. Metropolitan Magistrate (Mahila

Court), South-East District, whereby the Ld. MM partially lifted the restraint order dated 25.09.2021, and allowed the respondent to reside in a room in the premises bearing House No. 733, Pocket A, Ground Floor, Sarita Vihar, New Delhi.

IMPUGNED ORDER

FACTS

2. The facts of the case are hereby succinctly recapitulated: It was alleged that the complainant mother is the owner and resident of House no. 733, Pocket-A Ground Floor, Sarita Vihar, New Delhi. There are imputations levelled qua her son, the respondent and his wife, that they have been torturing and harassing the complainant and her husband. It was further alleged that wife of the respondent purchased a property in Indirapuram, Ghaziabad, UP for them and respondent and his wife started residing in the said property. Thereafter, they were removed from their job, and the complainant was providing education expenses of her grandson. The respondent and his wife have been pressurizing and torturing the complainant for more money. In 2019, her son/respondent started living in her house in Sarita Vihar forcibly, much to the

chagrin of the complainant. He has occupied a corner room of the property and the complainant was unable to enjoy her property freely. Now her son has brought a dog to stay in her house, without her consent. He was using this dog to make the complainant uncomfortable and uneasy in her own house. She has developed breathing problems and her son keeps instigation the dog to attack her. Thus, the complainant filed a petition under the PWDV Act to debar the respondent from the premises.

FINDINGS OF THE LD. TRIAL COURT.

3. After weighing the evidence, the Ld Trial Court opined that it was not denied that the property in question belongs to the complainant and the respondent has been staying there for some time. It was held that the present case was filed under PWDV Act, for purpose of securing and protecting the complainant from any domestic violence at the hands of respondents, one of whom was the son of the complainant. Further, in order to protect the complainant from any domestic violence which respondent was allegedly inflicting upon the complainant, Ld. Trial Court vide impugned order dated 22.10.2021 restrained the respondent and his wife from using any other portion of the property in question

barring one room, which was previously occupied by respondent.

Ld Trial Court further restrained the respondent and his wife from using the main gate/entrance of the property in question and directed them to use only the secondary gate/entrance for their entry or exit, and they were also directed to remove the dog permanently from the premises.

CONTENTIONS OF LD. COUNSELS FOR THE APPELLANT &

THE RESPONDENT

4. Ld. Counsel for the appellant vociferously contended that the appellant complainant is the absolute owner of the property in question and has expressed her desire in unequivocal terms, that she does not want her son/respondent to reside any longer in the said premises. Ld Counsel has canvassed that the relationship between the parents and the son have deteriorated to an extent where the father was constrained to file two complaints against his son/respondent. It has been submitted that the wife of the respondent has purchased immovable property in her name, and the respondent can go and stay with her rather than forcibly live in the premises at Sarita Vihar. Lastly, it was contended that the parents, being senior citizens, ought not to be burdened with the

liability of maintaining and staying with their son, contrary to their wishes. Thus, Ld Counsel has remonstrated that the impugned order dated 22.10.2021 passed by the Ld Trial Court be set aside, and its order dated 25.09.2021 be restored thereby restraining the respondent from entering into the aforementioned property. Ld Counsel placed reliance on

- a. ***Rampada Basak & Anr Vs The State of West Bengal & Ors on 23 Jul, 2021 by Calcutta High Court.***
- b. ***Smt. Darshna Vs. Government of NCT of Delhi & Ord on 18th July 2018, Delhi High Court.***
- c. ***Manmohan Singh Vs UTI, November 02, 2015 by Punjab and Haryana High Court.***
- d. ***Aarshya Gulati (Through Next... Vs. Government of NCT of Delhi & Ors. On 30 May, 2019 by Delhi High Court.***
- e. ***Sandeep Gulati Vs. Divisional Commissioner, Delhi High Court.***
- f. ***Sunny Paul & Anr. Vs. State NCT Of Delhi & Ors on 15th March 2017, by Delhi High Court.***
- g. ***Sunny Paul & Anr. vs. State NCT of Delhi & Ors on 15th March, 2017, by Delhi High Court.***
- h. ***Vinay Varma vs. Kanika Pasricha & Anr. Or 29 November, 2019, by Delhi High Court.***

5. *Per contra*, Ld. Counsel for respondent vehemently contended that the respondent son and complainant mother enjoy a cordial relationship, especially after passing of restraint order dated 25.09.2021. It was further submitted vide impugned order dated 22.10.2021, the entry into the premises was ordained to be from

the rear, and thus the respondent is in no way interfering with the day to day living of the complainant, thus ruling out the necessity of passing a total restraint order. Thus, it was submitted that the impugned order dated 22.0.2021 passed by the Ld MM be sustained.

6. Submissions heard.

DECISION

7. At the outset, it cannot be stressed enough that parents, who have toiled and sacrificed in their prime, deserve a peaceful life during their sunset years. It is thus quite tragic if they have to approach a Court of law to ensure that their peace is not disrupted in any manner. However, it is devastating, if such anguish is caused by their own kith and kin. Courts have become a last resort when progeny plays merry hell into lives of the old and infirm. Reasons may vary, from intolerance, apathy to sheer avarice. It is the covetous intentions and intemperate conduct of the respondent son that the Ld Counsel for the appellant mother sought to highlight during the course of proceedings.

8. It was brought to the fore that the appellant mother and her husband i.e the parents of the respondent son are owners and residents of House no. 733, Pocket-A Ground Floor, Sarita Vihar, New Delhi.

Copy of ownership documents were also annexed with the present appeal, a position which was not disputed by the respondent son. *Ex facie* the property is not an ancestral one. It is also not in dispute that the wife of the respondent has purchased a property in Indirapuram, Ghaziabad, where she and the son of the respondent are residing. It is in light of these facts that Ld Counsel for the appellant urged the Court to restrain the respondent from entering into the premises of his parents, and rather live with his wife or arrange for some alternate accommodation for himself.

9. During the course of arguments, it was emphasized by Ld Counsel for the appellant that the appellant mother was constrained, with a heavy heart, to initiate legal proceedings under the PWDV Act against her son on account of physical, mental and emotional torture meted out by the latter qua his parents. The paper book is revelatory of allegations which border on downright cruelty and a proclivity to bellicosity on part of the respondent. Ultimately, the protracted misconduct of the son has made him a respondent before the Ld Trial Court, and before this Court. The mother is an 'aggrieved' person under the PWDV Act, as the mother son duo were in a domestic relationship under the Act.

10. To adjudicate the matter, the appellant mother was also called and heard, and she expressed in unequivocal terms that the respondent son has caused a great deal of anguish to her, and that he be restrained from entering the premises. Thus, submissions of Ld Counsel for the accused that the parties share a cordial relationship, gets belied. Therefore, it becomes imperative that a *modus vivendi* has to be arrived at, lest the situation turns ugly, as the continued presence of the respondent son is ostensibly causing discomfort and alarm in the minds of the parents. The solution albeit a transient one, lies in removing the root cause, namely separating the two warring factions.

11. At this juncture, it would be apt to refer to the observations made in *Rampada Basak (supra)*, where it was spelt out as thus:

“ It is now well settled that the children and their spouses living in the senior citizen’s house are at best ‘licensees’. Such license would come to an end once the senior citizens are not comfortable with their children and their families.”

12. The other judgments relied by Ld Counsel for the appellant also pivot around the proposition of law that there is no vested right in the children to remain in possession of their parent’s self acquired property, especially when the parent’s want eviction of their offsprings therefrom. In *Vinay Varma (supra)*, seminal guidelines were laid down by the

Hon'ble Delhi High Court, one of which reads as thus:

“In case the son or his family is ill treating the parents then the parents would be entitled to seek unconditional eviction from their property so that they can live a peaceful life and also put the property to use for generating income and for their own expenses for daily living.”

13. In the case at hand, instances galore, of ill treatment of the parents by the respondent son have been brought forth. Parents are stated to be suffering from various ailments, and the stress caused by the respondent son is only adding to their woes. Ironically, the bone of contention was also the dog 'Luv'. The mother expressed that she suffers from respiratory ailments and probably the presence of the dog was unnerving for her. Some people are dog-lovers while some may have an aversion, and even abhor their very presence. In this context, the intrusion of the dog in the prayer room or the kitchen may very well be disconcerting to the mother.

14. The factum of availability of separate accommodation i.e the house of the wife at Ghaziabad, and the capacity of the respondent son to take care of himself, is also a factor which needs to be considered. It is not a case where the respondent is physically, mentally or economically disabled that he cannot fend for himself. In other words,

time is ripe for the fledging to leave the cocoon of his parent's abode, and to build his own nest. Such a move, in the perception of this Court, will not only bring peace and harmony in the house, but may also impel the respondent to forge a life of dignity, where he traverses the path from being a freeloader to probably a benefactor.

CONCLUSION

15 Ergo, in view of the aforesaid discussion, the Criminal Appeal is allowed. The order dated 22.10.2021 passed by the Ld Trial Court is expunged, and order dated 25.09.2021 passed by the Ld Trial Court is hereby restored. Accordingly, the respondent shall vacate the premises House no. 733, Pocket-A Ground Floor, Sarita Vihar, New Delhi within a week from today. Further, the respondent is hereby restrained *in toto* from entering or staying in the premises at House no. 733, Pocket-A Ground Floor, Sarita Vihar, New Delhi, subject of course to acquiescence to his ingress thereto by his parents. Needless to say, the above directions shall be in force only till the matter is finally disposed of by the Ld. Trial Court. It is hereby clarified that the Ld. Trial Court, while finally disposing of the matter, is at liberty to pass appropriate order as per law. Further, the above order is without prejudice to the rights of parties available under any other law in force.

16. TCR, if any, alongwith copy of this order be sent to Ld. Trial Court for necessary information/compliance.

17. Appeal file be consigned to record room after due compliance.

Order be uploaded on official website of District Courts.

Announced in the
open court on 12 July, 2022

(ARUL VARMA)
ASJ-04 + Spl. Judge (NDPS) South
East District, Saket Court, New Delhi: