

HIGH COURT OF BOMBAY**BENCH: Sandeep V. Marne, J.****Date of Decided : 18-03-2024**

Writ Petition (Lodging) No. 28282 of 2023

SANJIVANI JAYESH SEERNANI**vs.****KAVITA SHYAM SEERNANI AND OTHERS****Legislation and Rules:**

Maintenance and Welfare of Parents and Senior Citizens Act, 2007

Protection of Woman Against Domestic Violence Act, 2005

Subject:

Challenge against the Maintenance Tribunal's order for eviction from the matrimonial house, involving conflict between rights under the Domestic Violence Act and Senior Citizens Act.

Headnotes:

Misuse of Maintenance Tribunal – Petitioner Sanjivani alleges misuse of Maintenance Tribunal by husband and his parents to evict her from the matrimonial home, infringing her rights under the Domestic Violence Act - [Para 1]

Matrimonial Discord – Ongoing matrimonial disputes, with complaints lodged by both parties, including a complaint under the Domestic Violence Act filed by Sanjivani - [Paras 2-4]

Tribunal's Order for Eviction – Maintenance Tribunal ordered eviction of petitioner and her husband from the flat owned by respondent no.1 (mother-in-law), also directing the husband to pay monthly maintenance - [Paras 5, 20]

Petitioner's Claim of Residence – Petitioner asserts her right to reside in the shared household under the Domestic Violence Act, challenging the eviction order by the Tribunal - [Paras 9, 10, 28, 29]

Senior Citizens' Perspective – Respondents (senior citizens) seeking eviction for peace in their older age, unrelated to son's matrimonial disputes, claiming continuous disturbance and harassment in the shared household - [Para 11]

Legal Conflict – Examination of the interplay between the Senior Citizens Act and the Domestic Violence Act in the context of shared household rights - [Paras 21, 22, 35]

High Court's Judgment – Suspension of Tribunal's eviction order for 6 months, allowing petitioner to seek adjudication for interim relief under the Domestic Violence Act, stating petitioner's right of residence need not be in the same flat - [Paras 37, 38]

Referred Cases:

- S. Vanitha Vs. Deputy Commissioner, Bengaluru Urban Districts & Ors. (2021) 15 SCC 730
- Dattatrey Shivaji Mane Vs. Lilabai Shivaji Mane, 2018 (6) Mh.L.J. 681
- Sheetal Devang Shah Vs. Presiding Officer of the Maintenance and Welfare of Parents and Senior Citizens & Ors., 2022 SCC OnLine Bom.1068
- Ashwini Bharat Khater & Anr. Vs. Urvashi Bharat Khater & Anr., 2023 SCC OnLine Bom. 1921

Representing Advocates:

For Petitioner: Mr. Kulkarni

For Respondent Nos.1 and 2: Mr. Kantawala

For Respondent No.3: Mr. Jha

JUDGMENT

Sandeep V. Marne, J. - Petitioner-Sanjivani is the daughter-in-law of senior citizens and has petitioned this Court challenging the Order dated 18 September 2023 passed by the Maintenance Tribunal constituted under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 complaining that the forum of Maintenance Tribunal is being misused to throw her out of her matrimonial house by the husband with connivance of his parents. The impugned order passed by the Maintenance Tribunal directs Petitioner and her husband to vacate the residence of senior citizens. The

husband has however not challenged Order of the Maintenance Tribunal. The Petitioner and her husband do not share a cordial marital relationship, which is why she feels that the jurisdiction of the Maintenance Tribunal is being misused by her husband through his parents to deny her residence in shared household within the meaning of Protection of Woman Against Domestic Violence Act, 2005.

2. Facts of the case, as pleaded in the petition, are that Petitioner married Respondent No.3-Jayesh Shyam Seernani on 22 October 1997 at Mumbai. Two children are born out of the wedlock -daughter Sanskriti on 25 December 1998 and son Harshwardhan on 19 January 2003. The daughter has completed her graduation in USA. and presently residing in USA. The son is pursuing B.B.A. Course in Mumbai and resides with the family. Since her marriage, Petitioner is residing in the flat on 4th floor of the building 'Anjali', situated on Plot No.18, Main Gulmohar Road, JVPD Scheme, Juhu, Mumbai (the said flat). The said flat is owned by Respondent No.1, who is a senior citizen and Petitioner's mother-in-law. Thus, Petitioner is residing with her husband and parents-in-law in the said flat. Petitioner alleges ill treatment at the hands of her husband, parents-in-law and sister-in-law and the details of through allegations need not be narrated here, considering the limited scope of enquiry.

3. Petitioner lodged a complaint with the police station on 12 November 2022. The Respondent No.2-Shyam Seernani (Father-in-law) filed police complaint against Petitioner on 25 November 2022. It also appears that Petitioner's son-Harshvardhan also lodged complaint against Petitioner with the police on 29 November 2023. In the above disturbed relationship between the parties, Respondent Nos. 1 and 2 filed application under Section 5 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (Senior Citizens Act) before the Maintenance Tribunal constituted under the Act. Petitioner and her husband-Respondent No.3 were impleaded as Respondents in that application, in which Respondent Nos. 1 and 2 prayed for award of monthly maintenance of Rs.50,000/- as well as for an order of eviction of Petitioner and her husband from the flat.

4. Immediately after lodging of complaint by Respondent Nos. 1 and 2, Petitioner filed complaint under provisions of Protection of Woman Against Domestic Violence Act, 2005 (DV Act) against husband, parents-in-law and sister-in-law before the Metropolitan Magistrate at Andheri.

5. In the Compliant filed by Respondent Nos. 1 and 2, the Tribunal has passed Order dated 18 September 2023 directing Petitioner and Respondent No. 3 to vacate the said flat. It has further directed Respondent No.3 to pay monthly maintenance of Rs.10,000/-to the senior citizens. Petitioner and Respondent No.3 are injuncted from indulging in acts causing physical or mental torture to the senior citizens.

6. Though the Order is passed by the Maintenance Tribunal against Petitioner and Respondent No.3, directing both to vacate the said flat, only Petitioner is aggrieved by the Order passed by the Tribunal and has filed the present petition. The Respondent No.3-husband is not aggrieved either by direction for vacation of the said flat or for payment of monthly maintenance of Rs.10,000/-.

7. This Court by Order dated 11 October 2023 directed that no coercive steps be taken against Petitioner in pursuance of the Tribunal's Order dated 18 September 2023. The said interim protection is continued from time to time and operates till date. It must be observed that efforts were made by this Court to ensure settlement between the parties. However, the efforts have not yielded any success, and the petition is taken for decision on merits.

8. Mr. Kulkarni, the learned counsel appearing for Petitioner would submit that the forum of Tribunal constituted under the Senior Citizens Act is deliberately misused for settlement of matrimonial disputes. That the application under Section 5 of the Senior Citizens Act was filed by Respondent Nos.1 and 2, at the behest of Respondent No.3 as a counterblast to police complaint lodged by Petitioner on 12 November 2022. That the said application was pursued with a view to harass the Petitioner by ensuring her ouster from the said flat and to bring her to terms in complaint filed under D. V. Act. That the parents and the husband are hand in gloves with each other, which is clear from the factum of the father-in-law lodging police complaint on 25 November 2022 with regard to alleged grievance of Petitioner not opening the door for her husband.

9. Mr. Kulkarni would submit that Petitioner has been residing in the said flat right since her marriage in the year 1997 i.e. for about 27 long years and she cannot be directed to vacate the same. That she does not have any other place to reside. That she has lost her father in July 2021. That the family of husband owns several properties including another residential flat at ground floor of the same building, which is being used as office, the bungalow at Pune

as well as two flats at Oshiwara. That the Maintenance Tribunal has failed to appreciate the real motive of the husband which is to misuse the provisions of Senior Citizens Act to ensure Petitioner's ouster from the said flat.

10. Mr. Kulkarni would further submit that the provisions of Senior Citizens Act cannot be misused to settle marital disputes. Relying on the Judgment of the Apex Court in **S. Vanitha Vs. Deputy Commissioner, Bengaluru Urban Districts & Ors. (2021) 15 SCC 730**, he would submit that Petitioner is entitled to reside in the shared household within the meaning of D. V. Act and that the remedies under Senior Citizens Act cannot be exercised for nullifying the protection available to a wife under the provisions of D. V. Act. Mr. Kulkarni would therefore pray for setting aside the order passed by the Maintenance Tribunal.

11. Mr. Kantawala, the learned counsel appearing for Respondent Nos.1 and 2-Senior Citizens, would oppose the petition and support the order passed by the Tribunal. He would submit that the Senior Citizens have absolutely no interest nor are they connected in any manner, with the alleged matrimonial disputes between their son and Petitioner. That they want peace of mind at the sunset days of their lives. That they do not desire that their son and Petitioner engage in continuous fights in their flat and all that they desire is that the couple moves out the flat so that the senior citizens can leave peacefully. He would invite my attention to some of the pleadings of the Petitioner in her plaint under D. V. Act to submit that Petitioner has gone to the making allegations of sexual harassment against father-in-law which is demonstrative of the atmosphere prevailing in the house. He would submit that senior citizens cannot be expected to live in the said flat amongst constant fear of daughter-in-law accusing them and filing police complaints. That they do not want even son to reside in the flat, which is a reason why they sought even son's ouster from the flat.

That there is no connivance between senior citizens and their son, who is also a source of constant nuisance to them.

12. Mr. Kantawala would submit that since flat belongs to Respondent No.1- Kavita Shyam Seernani, she alone will decide as to who will stay with her in the flat. That Petitioner cannot compel Respondent No.1 to permit her to reside in the said flat against first Respondent's will. That the senior citizens are entitled to lead a safe life and all that the Tribunal has granted is protection from harassment and torture. That the husband and wife can settle their

matrimonial disputes outside the residence of the senior citizens and that senior citizens cannot be made to suffer in the matrimonial fight between the couple. In support of his contentions, Mr. Kantawala would rely upon the Judgment of this Court in ***Ashish Vinod Dalal Vs. Vinod Ramanlal Dalal, Writ Petition No.2400 of 2021 decided on 15 September 2021, Shefali Sanjiv Patil & Anr. Vs. Jyotiben Manubhai Patel & Anr., Writ Petition No.2441 of 2021 decided on 14 October 2021*** and ***Sheetal Devang Shah Vs. Presiding Officer of the Maintenance and Welfare of Parents and Senior Citizens & Ors., 2022 SCC OnLine Bom.1068.***

13. Mr. Jha, the learned counsel appearing for Respondent No.3-Husband would submit that he is unfortunately sandwiched between fight of his wife and parents. That heart of Respondent No-3 bleeds for his parents, but he is willing to obey order passed by the Maintenance Tribunal by vacating the flat. Taking me through various provisions of the Senior Citizens Act, Mr. Jha would submit that the legislative intent and object of the Act is to create a quick mechanism where the senior citizens can be granted immediate protection and relief from torture and harassment. That the said flat, from which eviction of Petitioner and Respondent No.3 is directed, is a small 2 BHK flat in which Petitioner is causing continuous harassment and torture to the senior citizens. Inviting my attention to the Affidavit of assets and liabilities of Respondent No.3, Mr. Jha would submit that the financial condition of Respondent No.3 is not very sound and that as per the income tax return for the annual year 2022-23, his yearly income is reflected only at Rs. 4,35,260/- . That the two flats reflected in the income tax returns are not residential flats, but are office premises, which have been given on leave and license, which is one of the source of livelihood for Respondent No.3. That both the flats are mortgaged with DCB Bank. Mr. Jha would submit that Respondent No.3 is willing to reside with his wife and children away from the parents' house. That Petitioner has been repeatedly offered several premises on leave and license, where Petitioner is willing to reside alongwith her and children. Mr. Jha would therefore submit that the Order passed by the Tribunal be honoured, so as to relieve the parents from harassment at their advanced ages of 83 years (father) and 76 years (mother).

14. In support of his contention Mr. Jha would rely upon Judgments of this Court in ***Dattatrey Shivaji Mane Vs. Lilabai Shivaji Mane 2018 (6) Mh.L.J. 681***, and ***Ashwini Bharat Khater & Anr. Vs. Urvashi Bharat Khater & Anr., 2023 SCC OnLine Bom. 1921.***

15. Rival contentions of parties now fall for my consideration.

16. The flat from which ouster of Petitioner and Respondent No.3 is directed is purchased by Respondent No.1-Kavita Shyam Seernani vide Agreement for Sale dated 02 February 1989, which appears to have been registered vide Deed of Confirmation dated 11 June 2009. However, the vendor in the said agreement is M/s. Jayesh Construction Company, a partnership firm, in which, Mr. Jayesh Shyam Seernani (Respondent No.3) is shown as a partner. The Deed of Confirmation dated 11 June 2009 is executed in mother's favour by son and the transaction thus shows that the M/s. Jayesh Construction Company, of which, earlier Respondent No.1-Kavita Shyam Seernani was proprietor, has constructed the building, in which the flat is located. It appears that son-Jayesh has subsequently become partner in the firm M/s. Jayesh Construction Company and accordingly flat No.401 adm. 914 sq. ft. carpet area in building 'Anjali' is shown to have been sold by M/s. Jayesh Construction Company to Respondent No.1-Kavita Shyam Seernani. In addition to the said flat, the Seernani family apparently owns one more flat on the ground floor of the building, which according to the Petitioner is being used by Respondent No.2-Shyam Seernani and Respondent No.3-Jayesh Seernani to run their partnership business. Thus the building 'Anjali' is constructed by Seernani's themselves, in which two flats are kept for the family.

17. There is no dispute to the position that in addition to the said two flats in building 'Anjali', Seernani family also owns a bungalow at Pune. Additionally Respondent No.3-Husband owns two more flats / offices bearing No.403 and 404 in Harshwardhan Chambers, Oshiwara Delears Commercial Premises Society, Oshiwara, Goregaon West, Mumbai. Tribunal has recorded statements of Respondent Nos.1 and 2, in which Respondent No.2 admitted that he runs a consultancy business and earns yearly income of Rs.2 Lakhs. Additionally, they earn monthly rental income of Rs. 35,000/- from bungalow at Pune. That they are reputed citizens and members of Lions Club, Mumbai and have donated huge amounts through the said club. That Respondent Nos.1 and 2 have spent several lakh of rupees for earning membership of various clubs. That Respondent Nos.1 and 2 owned expensive cars such as Prado and Mercedes and have employed chauffeurs. The above undisputed position would indicate that Seernani family belongs/belonged to somewhat affluent class of the society.

18. Petitioner claims that she belongs to middle class family and fell in love with Respondent No.3 and the couple got married on 22 October 1997. There is no denial to the position that right from the day of her wedding, Petitioner has always resided in the said flat. It has now been 27 long years since couple is married and residing in the said flat. The couple has two children, a daughter living in U.S.A. after completion of her graduation and a son pursuing BBA Course in Mumbai.

19. Though the couple had lived in the said flat for 27 long years, marital discord between them appears to have taken place somewhat recently. Petitioner lodged police complaint on 12 November 2022, which was immediately followed by two police complaints lodged by father-in-law on 25 November 2022 and son - Harshwardhan on 29 November 2022. Immediately thereafter, the application under Section 5 of the Senior Citizens Act was lodged by Respondent Nos.1 and 2 on 05 December 2022, Petitioner filed complaint under D. V. Act before the Metropolitan Magistrate in January 2023.

20. Since the said flat is owned by Respondent No.1, in ordinary circumstances, it is only Respondent No.1 who should decide as to who can reside with her in that flat. The owner has decided that neither son nor daughter-in-law should reside with her in the flat owned by her. The owner complains that she and her husband are being subjected to harassment and torture at the hands of son and daughter-in-law and with this complaint, the senior citizens approached Maintenance Tribunal seeking ouster of their son and daughter in law from the said flat. On the other hand, it is contention of the Petitioner that the said flat is her shared household within the meaning of D. V. Act and that she is entitled to reside in the same and that provisions of Senior Citizens Act are being misused for seeking her ouster from the shared household.

21. The interplay between the provisions of Senior Citizens Act and D. V. Act has been considered by the Apex Court in its Judgment in **S. Vanitha** (supra). In the case before the Apex Court, senior citizens had filed application before the Tribunal against their daughter-in-law. The application was allowed and the daughter-in-law was directed to vacate the premises. The Division Bench of the High Court held that the premises belonged to the mother-in-law and upheld the Order of the Tribunal. The Appellant contended before the Apex Court that the provisions of the Senior Citizens Act were manipulated to defeat her rights under Section 17 of the D. V. Act. Jurisdiction of the Tribunal under Senior Citizens Act was questioned to order eviction of the Appellant

who was entitled to shared household under D. V. Act. The Apex Court has accordingly considered provisions of Senior Citizens Act and D. V. Act. and the interplay amongst both the enactments by observing in paragraph Nos. 37, 38, 39 as under :

37. The above extract indicates that a significant object of the legislation is to provide for and recognise the rights of women to secure housing and to recognise 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 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.

38. This Court is cognizant that the Senior Citizens Act, 2007 was promulgated with a view to provide a speedy and inexpensive remedy to senior citizens. Accordingly, Tribunals were constituted under Section 7. These Tribunals have the power to conduct summary procedures for inquiry, with all powers of the civil courts, under Section 8. The jurisdiction of the civil courts has been explicitly barred under Section 27 of the Senior Citizens Act, 2007. However, the overriding effect for remedies sought by the applicants under the Senior Citizens Act, 2007 under Section 3, cannot be interpreted to preclude all other competing remedies and protections that are sought to be conferred by the PWDV Act, 2005. The PWDV Act, 2005 is also in the nature of a special legislation, that is enacted with the purpose of correcting gender discrimination that pans out in the form of social and economic inequities in a largely patriarchal society. In deference to the dominant purpose of both the legislations, it would be appropriate for a tribunal under the Senior Citizens Act, 2007 to grant such remedies of maintenance, as envisaged under Section 2(b) of the Senior Citizens Act, 2007 that do not result in obviating competing remedies under other special statutes, such as the PWDV Act,

2005. Section 2629 of the PWDV Act empowers certain reliefs, including relief for a residence order, to be obtained from any civil court in any legal proceedings. Therefore, in the event that a composite dispute is alleged, such as in the present case where the suit premises are a site of contestation between two groups protected by the law. it would be appropriate for the Tribunal constituted under the Senior Citizens Act, 2007 to appropriately mould reliefs, after noticing the competing claims of the parties claiming under the PWDV Act, 2005 and the Senior Citizens Act, 2007. Section 3 of the Senior Citizens Act, 2007 cannot be deployed to override and nullify other protections in law, particularly that of a woman's right to a "shared household" under Section 17 of the PWDV Act, 2005. In the event that the "aggrieved woman" obtains a relief from a tribunal constituted under the Senior Citizens Act, 2007, she shall be duty-bound to inform the Magistrate under the PWDV Act, 2005, as per sub-section (3) of Section 26 of the PWDV Act, 2005, This course of action would ensure that the common intent of the Senior Citizens Act, 2007 and the PWDV Act, 2005, of ensuring speedy relief to its protected groups who are both vulnerable members of the society, is effectively realised. Rights in law can translate to rights in life, only if there is an equitable ease in obtaining their realisation.

39. Adverting to the factual situation at hand, on construing the provisions of sub-section (2) of Section 23 of the Senior Citizens Act, 2007, it is evident that it applies to a situation where a senior citizen has a right to receive maintenance out of an estate and such estate or part thereof is transferred. On the other hand, the appellant's simple plea is that the suit premises constitute her "shared household" within the meaning of Section 2(s) of the PWDV Act, 2005. We have also seen the series of transactions which took place in respect of the property the spouse of the appellant purchased it in his own name a few months before the marriage but subsequently sold it, after a few years. under a registered sale deed at the same price to his father (the father-in-law of the appellant), who in turn gifted it to his spouse ie the mother-in-law of the appellant after divorce proceedings were instituted by the fourth respondent. Parallel to this, the appellant had instituted proceedings of dowry harassment against her mother-in-law and her estranged spouse, and her spouse had instituted divorce proceedings. The appellant had also filed proceedings for maintenance against the fourth respondent and the divorce proceedings are pending. It is subsequent to these events, that the second and third respondents instituted an application under the Senior Citizens Act, 2007. The fact that specific proceedings under

the PWDV Act, 2005 had not been instituted when the application under the Senior Citizens Act, 2007 was filed, should not lead to a situation where the enforcement of an order of eviction deprives her from pursuing her claim of entitlement under the law. The inability of a woman to access judicial remedies may, as this case exemplifies, be a consequence of destitution, ignorance or lack of resources. Even otherwise, we are clearly of the view that recourse to the summary procedure contemplated by the Senior Citizens Act, 2007 was not available for the purpose of facilitating strategies that are designed to defeat the claim of the appellant in respect of a shared household. A shared household would have to be interpreted to include the residence where the appellant had been jointly residing with her husband. Merely because the ownership of the property has been subsequently transferred to her in-laws (second and third respondents) or that her estranged spouse (fourth respondent) is now residing separately, is no ground to deprive the appellant of the protection that was envisaged under the PWDV Act, 2005.

22. The Apex Court thus held that right of a woman to secure residence in respect of shared household cannot be defeated by securing an order of eviction by adopting summary procedure under Senior Citizens Act. The Court further held that the overriding effect of remedies under Senior Citizens Act cannot be incorporated to preclude all other competent remedies and protections that are sought to be conferred by the D. V. Act. That the D. V. Act is also a special legislation enacted for the purpose of correcting gender discrimination. The Court held that in the light of dominating purpose of both the legislations, the Tribunal under the Senior Citizens Act, while granting remedy of maintenance, cannot pass an order which would obviate competing remedies under the D. V. Act, especially the relief for a residence order to be obtained from a Civil/Criminal Court under D. V. Act. The Apex Court thus held that in the event of composite dispute, it would be appropriate for the Tribunal to mold the relief and that Section 3 of the Senior Citizens Act cannot be deployed to override and nullify other protections in law, particularly that of woman's right to shared household under Section 17 of the D. V. Act.

23. The Apex Court accordingly summed up its conclusions in paragraph No.40 and set aside the Order of the Tribunal under Senior Citizens Act, granting liberty to the Appellant to pursue her remedies under D. V. Act. The Apex Court held in paragraph No. 40 and issued following directions in Para 41 as under:

40. For the above reasons, we have come to the conclusion that the claim of the appellant that the premises constitute a shared household within the meaning of the PWDV Act, 2005 would have to be determined by the appropriate forum. The claim cannot simply be obviated by evicting the appellant in exercise of the summary powers entrusted by the Senior Citizens Act, 2007. The second and third respondents are at liberty to make a subsequent application under Section 10 of the Senior Citizens Act, 2007 for alteration of the maintenance allowance, before the appropriate forum.

41. For the above reasons, while allowing the appeal, we issue the following directions:

41.1. The impugned judgment and order of the Division Bench of the High Court of Karnataka dated 17-9-2019 [**S. Vanitha v. Commr., 2019 SCC OnLine Kar 3171**] affirming the order of eviction against the appellant shall stand set aside with the consequence that the order of the Assistant Commissioner ordering and directing the appellant to vacate the suit premises shall stand set aside.

41.2. We leave it open to the appellant to pursue her remedies under the PWDV Act, 2005. For that purpose, it would be open to the appellant to seek the help of the District Legal Services Authorities and if the appellant does so, all necessary aid and assistance shall be furnished to her in pursuing her legal remedies and rights.

41.3. IA No. 111352 of 2020 for restoration of the electricity connection is allowed by directing the fourth respondent to take all necessary steps for restoration of the electricity connection to the premises within a period of two weeks from the receipt of a certified copy of this judgment. The fourth respondent shall also continue to pay the electricity dues in future.

41.4. In order to enable the appellant to pursue her remedies under the PWDV Act, 2005, there shall be an order and direction restraining the respondents from forcibly dispossessing the appellant, disposing of the premises or from creating any right, title and interest in favour of any third party in any manner whatsoever for a period of one year, to enable the appellant to pursue her remedies in accordance with law. The appellant is at liberty to move the Court to espouse her remedies under the PWDV Act, 2005 for appropriate orders, including interim protections.

41.5. The directions contained in sub-paras 41.3 and 41.4, above emanate in exercise of the powers of this Court under Article 142 of the Constitution.

24. There is no dispute to the position that the present case involves contesting claims of Senior Citizens to seek an order of eviction under Senior Citizens Act and of the daughter-in-law to seek residence in shared household under provisions of Section 17 of the D. V. Act. The Tribunal ought to have noticed this aspect while adjudicating prayer of Respondent Nos.1 and 2 seeking eviction of Petitioner from the said flat. Perusal of the findings recorded by the Tribunal would indicate that it has not considered Judgment of the Apex Court in S. Vanitha.

25. When the facts of the present case are considered in the light of the Judgment of Apex Court in S. Vanitha, it leaves no manner of doubt that there is a contesting claim between Petitioner to seek residence in shared household under Section 17 of the D. V. Act and of Respondent Nos. 1 and 2 under the Senior Citizens Act. No doubt Maintenance Tribunal under Senior Citizens Act is not supposed to decide the claim of Petitioner to residence in shared household under Section 17 of the D. V. Act. However, as held by the Apex Court in S. Vanitha, when a contesting claim is presented before the Tribunal under both the enactments, Tribunal must mold the relief to ensure that the rights which woman seeks to protect under the D. V. Act are not interfered with, while deciding summary proceedings under Senior Citizens Act.

26. Petitioner alleges connivance between her husband and his parents to seek her ouster from her residence in shared household. As observed above, the family belongs to an affluent class. The son however claims that he is not doing good in the business and does not have any source of income except the rental income through the two office premises at Oshiwara. Maintenance Tribunal has directed eviction of son also from the said flat, which according to Petitioner is nothing but a ploy devised by the trio to ensure Petitioner's ouster from the flat. In the light of the above position, it would be necessary to consider the pleadings made by the senior citizens in their application filed before the Maintenance Tribunal. The relevant pleadings in the application are as under :

4. That, the facts and circumstances of our grievances are as follows:

a. That, i.e. Applicant No. 1 is the housewife and Applicant No.2 is a business running a business of property development in Mumbai and export of textiles.

Respondent No.2, being the partner is looking after day to day affairs of business.

b. That, due to Applicant No.2's old age he is not able to actively look after the business and the Applicants are surviving on the meagre income that they get from the business and from their life-savings.

(i) That, out of our marriage, we have three children, namely, (1) Son, Jayesh Shyam Seernani, who is staying with the Applicants in the said Premises, (2) Unmarried daughter, Anjali Shyam Seernani, who is staying in the said Premises along with the Applicants, and (3) Mrs. Sakhi Rajesh Matta (nee Ms. Bindu Shyam Seernani), who is married and is settled and residing at New Jersey, USA.

(ii) That, Respondents got married on 22/10/1997 and out of the said wedlock the Respondents have two children namely (1) Harshvardhan Jayesh Seernani, aged 19 years and who is staying in the said Premises, (2) Sanskriti Jayesh Seernani, aged 23 years and presently studying/working at San Francisco, USA.

(iii) That, the Applicants allowed the Respondents to stay in the said Premises even after their marriage and also have supported them by all means for a very long period of time. Now, due to their old age, the Applicants are unable to maintain themselves, however, both the Respondents are not looking after the Applicants in their old age and have failed to provide even for the basic necessities of life and the Applicants are constrained to struggle for their own survival.

(iv) That, in the month of November 2022, the harassment of the Applicants, especially in the hands of Respondent No.2 has taken a serious turn and the Applicants and Respondent No.2's son have been living in a constant fear of danger to their health and life.

(v) That, there has been serious marital discord between the Respondents and there have been frequent quarrels, including shouting & banging of the doors, making noise, etc. taking place in the said Premises. On many occasions, Respondent No. 2 have unnecessarily dragged the Applicants into the quarrels which has gravely affected the mental and physical health of the Applicants and disturbed the peace of the house. The Applicant No.2 has filed NC dated 25/11/2022 in D.N. Nagar Police Station against Respondent No.2 citing one of such incidents. Herewith annexed and marked as Exhibit "B-

Colly" is the copy of the said NC dated 25/11/2022 along with statement of Applicant No.2 of the even date given at D. N. Police Station.

(vi) Moreover, Respondent No.2 has gone to the extent of intimidating her own son, Harshvardhan on many occasions. Respondent No.2's son, i.e. Harshvarshan Jayesh Seernani has filed NC dated 29/11/2022 with D. N. Nagar Police Station against his mother, i.e. Respondent No.2. Herewith annexed and marked as Exhibit C- Colly" are the copies of Complaint dated 29/11/2022 duly acknowledged by D.N. Nagar Police Station and NC dated 29/11/2022.

(vii) That, the Applicant No. 1 is a heart patient and also suffering from high blood pressure, diabetes, and arthritis. The Respondents are very well aware of the ailments of the Applicant No.1.

(viii) That, the Applicants have time and again earnestly requested the Respondents to evict the said Premises and let the Applicants live in peace, however, Respondent No.2 denies the requests of Applicants with a malafide intention of grabbing the said Premises.

(ix) That, not only the Applicants have been deprived of medical facilities and other basic necessities for their sustenance, but the marital dispute and discord amongst the Respondents has become unbearable for the Applicants and resultantly, mental and physical well-being of the Applicants have been completely jeopardized.

(x) That, the Applicants are being harassed in the said Premises despite being the owners of the said Premises. The Respondents have failed to maintain the Applicants and failed to vacate the said Premises despite repeated requests by the Applicants and the physical and mental torture of the Applicants is continued.

27. Senior Citizens have relied upon complaint lodged by Respondent No. 2 (father-in-law) with police station on 25 November 2022. However, perusal of the said complaint would indicate that grievance raised therein is essentially with regard to Petitioner's alleged conduct in not opening the door when her husband and son were ringing the doorbell. The police complaint, which was filed immediately before approaching the Maintenance Tribunal, mainly sought to espouse the conduct of Petitioner towards her husband and son. But the Petitioner's husband did not lodge any complaint. In an unusual move, Petitioner's son Harshwardhan also lodged a complaint with police station on

29 November 2023 against his mother. The complaint of son-Harshwardhan, who was just 19 years in November 2022, is typewritten on which he has signed. There is gap of just 4 days between the two complaints. Petitioner's husband has stayed away from these complaints. These two complaints came to be lodged in the background of Petitioner filing her own complaint with police on 12 November 2022.

28. Having set the background as observed above, the senior citizens and Petitioner immediately invoked the respective fora of Maintenance Tribunal under Senior Citizens Act and Metropolitan Magistrate under DV Act respectively. In her complaint filed under the DV Act, Petitioner is seeking inter alia protection of residence in shared household under Section 17 of the D. V. Act. Prayer clause (a) in her complaint reads thus:

a. The Hon'ble Court may please pass orders pass necessary orders under section 17 that the Applicant shall not be evicted or excluded from the shared household viz. Plot No.18, Anjali 4th floor, Main Gulmohor Road, JVPD Scheme, Juhu, Mumbai 400 049 or any part of it by the Respondents save in accordance with the procedure established by law.

29. In that view of the matter, the Maintenance Tribunal ought to have given due consideration to almost simultaneously instituted proceedings by the parties under the two legislations.

30. No doubt, senior citizens are entitled to reside in their own house with peace and without any disturbance on account of marital discord between Petitioner and her husband. But at the same time, the machinery under Senior Citizens Act cannot be used for the purpose defeating right of a woman under Section 17 of the D. V. Act. Considering the facts and circumstances of the case, there is reason to believe that the summary eviction order passed by the Maintenance Tribunal would result in defeat of right which Petitioner claims under Section 17 of the D. V. Act, before its adjudication. Her prayer for seeking protection against eviction from shared household is pending consideration before the Metropolitan Magistrate. True it is that Petitioner has gone to the extent of leveling allegations of sexual harassment against the father-in-law. The truth in the said allegation would be investigated by the learned Magistrate. Both Mr. Kantawala and Mr. Jha have strenuously relied upon those pleadings in Petitioner's complaint under DV Act in support of their contention that the senior citizens cannot be made to live under threat of Petitioner implicating them under false accusations. While the senior citizens

cannot be entirely wrong in expecting that they live peacefully during the sunset days of their lives, in the facts and circumstances of the case, their grievance cannot be considered in isolation and Petitioner must also be permitted to get her claim of residence in shared household adjudicated, at least at interim stage. The summary inquiry under Senior Citizens Act in the present case should not result in rendering Petitioner's remedy under DV Act nugatory.

31. Before proceedings further, it would be necessary to discuss the judgments relied upon by Mr. Kantawala and Mr. Jha. The judgment in **Dattatrey Shivaji Mane** (supra) did not involve the issue of contesting claims under the provisions of Senior Citizens Act and D. V. Act. In **Dattatrey Shivaji Mane** there was no matrimonial dispute involved between son and daughter-in-law. The son had questioned jurisdiction of the Tribunal to order eviction under Senior Citizens Act and this Court held that claim for eviction under Section 4 of the Act was maintainable before the Tribunal.

32. In **Sheetal Devang Shah**, the Judgment of the Apex Court in **S. Vanitha** was cited before the Division Bench of this Court. The Division Bench considered the statutory framework of Senior Citizens Act and has proceeded to decide the case on the basis of facts involved therein by examining correctness of findings of the Tribunal on the four issues framed by it. Most part of the judgment is about liability of Petitioner therein to pay maintenance amount to her parents-in-law. On course this Court has dealt with the issue of vacation of house by the Petitioner and had held as under:

63. The Tribunal has directed Devang Shah and Sheetal Shah to handover the possession of entire residential premises i.e., Saprem, Plot No. 20, 3rd Road, Juhu Scheme, Vile Parle (West), Mumbai - 400 056 to Nalini Shah and Mahendra Shah (since deceased) in a peaceful manner. In our opinion, said direction given by the Tribunal is legally and factually sustainable, in as much as, when the application was decided by the Tribunal, the subject property stood in the name of husband of Nalini Shah, namely, Mahendra Shah. Relying upon the various documents placed on record including criminal complaints and other materials, the Tribunal has correctly reached a conclusion, that there is a continuous mental as well as physical harassment to Nalini Shah and Mahendra Shah (since deceased).

33. However the direction for vacation of the flat by Petitioner in **Sheetal Devang Shah** appears to have been upheld by the Division Bench

considering the facts of that case, where the Petitioner therein was found to be earning handsome income for herself from her profession as fashion designer. There appears to be no discussion about the interplay between the remedies under the Senior Citizens Act and DV Act. The judgment in Sheetal Devang Shah therefore does not throw much light on the issue at hand in the present case.

34. Mr. Jha has relied upon the judgment of this Court in Ashwini Bharat Khater (supra) where the issue was about validity of Order passed by the Maintenance Tribunal under Section 23 of the Senior Citizens Act annulling the gift of property made by mother in favour of her son. In the present case, there is no gift executed by senior citizens and therefore the judgment in Ashwini Bharat Khater has no application.

35. Reverting to the facts of the case in hand, I am of the view that the facts of the case are such that the order of eviction passed by the Maintenance Tribunal after conducting summary inquiry under the Senior Citizens Act would result in frustrating the relief of residence in shared household that Petitioner seeks in her compliant under the DV Act. Though Petitioner's husband is also directed to vacate the said flat and though he has not challenged the Maintenance Tribunal's Order, he continues to reside in the flat. This is another factor which makes Petitioner believe that the order of Maintenance Tribunal for eviction of the couple is just a ploy to ensure only Petitioner's ouster from home. It is not disputed that Petitioner is not earning herself and that she has no other place to reside. Therefore, Petitioner cannot be rendered homeless to ensure peace of mind of the senior citizens. Petitioner's husband has so far not made any arrangement for residence of the couple despite passage of 6 long months from the date of Tribunal's order.

36. If Petitioner was to reside in a nuclear family with her husband in a separate residence from her in-laws, Section 17 of DV Act would protect her from being thrown out of the house owned by her husband. However, where the wife stays in a joint family with her inlaws in a house owned by her in-laws, would she be put to a disadvantageous position by directing her ouster under the Senior Citizens Act in a summary inquiry thereby frustrating her rights under Section 17 of the DV Act? Does it mean that a wife staying separately from her in-laws enjoys better protection than the one who chooses to reside in a joint family with her in-laws? The answer to the question would obviously be in the negative. Therefore, where a situation arises when a contest is noticed between the rights of senior citizens under

the Senior Citizens Act and of a women under DV Act, balancing act needs to be done and the rights of senior citizens cannot be decided in isolation.

37. Though in every case, order of the Maintenance Tribunal cannot be made subject to proceedings filed by wife under DV Act, in the peculiar facts and circumstances of the case, where the husband has not made any arrangements for residence of Petitioner, I am of the view that the learned Magistrate who is in seisin of the DV Compliant takes decision on atleast the interim prayers of Petitioner. I am informed that the learned Magistrate is in the process of deciding the application for interim relief in the DV Compliant filed by Petitioner. Till the said application for interim relief is decided, Petitioner needs to be protected. Afterall, she has resided in the same house for the last 27 long years with her husband and parents-in-laws. No doubt, the duty to provide residence to Petitioner would be primarily that of the husband. Petitioner's right of residence in shared household need not be in the said flat and the learned Magistrate would decide whether she can be provided another accommodation or whether her residence in the said flat needs to be continued. The family owns other immovable properties also, which includes a residential flat in the same building (used as office) and two offices in Mumbai, which are owned by the husband.

The learned Magistrate would decide Petitioner's prayer for residence in shared household accordingly. Till the same is decided, at least at the interim stage, the order passed by the Maintenance Tribunal directing Petitioner's eviction needs to be suspended.

38. Writ Petition accordingly partly succeeds and I proceed to pass the following order:

(i) Order dated 18 September 2023 passed by the Maintenance Tribunal, to the extent of directing Petitioner's eviction from the said flat, shall not be implemented for a period of 6 months, during which time, Petitioner shall get adjudicated the prayer for interim relief in Compliant filed under DV Act.

(ii) The Order dated 18 September 2023 of the Maintenance Tribunal qua Petitioner's eviction from the said flat, shall be subject to further orders that would be passed in the Complaint filed by Petitioner under DV Act.

(iii) The Complaint filed by Petitioner under DV Act, including the application(s) for interim relief filed therein, shall be decided without being influenced by any of the observations made in the judgment.

(iv) With the above directions, the Writ Petition is disposed of. There shall be no orders as to costs.

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