

Neutral Citation No. - 2024:AHC:90613

A.F.R.

RESERVED

In Chambers

Case :- MATTERS UNDER ARTICLE 227 No. - 8348 of 2023

Petitioner :- Maharaj Kumari Vishnupriya

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Ritvik Upadhya

Counsel for Respondent :- C.S.C.,Sanjay Singh,Saurabh Raj
Srivastava

Hon'ble Jayant Banerji,J.

1. Heard Shri V.K. Upadhyay, learned Senior Advocate assisted by Shri Ritvik Upadhya, learned counsel for the petitioner and Shri Anil Kumar Srivastava, learned Senior Advocate assisted by Shri Saurabh Raj Srivastava, learned counsel appearing for the respondents.

2. This petition has been filed seeking to set aside the order dated 2.6.2023 passed by the Additional District Judge, Court No. 14, Varanasi in Criminal Appeal No. 70 of 2022 (Maharaj Kumari Vishnupriya vs. State of U.P. and others) with a further relief to prohibit and restrain the respondents from committing any act of economic abuse against the petitioner by alienating or creating in any manner whatsoever third party interest over any part of the properties as mentioned in the schedule to the application dated 30.10.2021¹ of the petitioner (Annexure No. 7) and also not to interfere in the peaceful possession of the petitioner.

3. It appears from the record of this petition that the petitioner is the daughter of late Vibhuti Narain Singh, who was the erstwhile ruler of the State of Banaras and has been continuously living in the fort of

¹ This application is referred to in the instant petition as well as the counter affidavit as being dated 31.10.2021, but in the order impugned, the same is referred to as dated 30.10.2021. Therefore, that application is referred herein as dated 30.10.2021.

Ramnagar since childhood. The respondent No. 2 is the youngest sibling of the petitioner and son of late Vibhuti Narain Singh who also continues to stay along with the petitioner as a family member in the Ramnagar Fort even after the demise of his father on 25.12.2000.

4. After the death of their father, it is alleged that the petitioner and another family member were subjected to misbehaviour, manhandling and torture, which were engineered to dispossess her from her residence in Ramnagar Fort and other properties to which she is entitled. The reasons for staying in her matrimonial home has been explained by the petitioner in paragraph nos. 7, 8 and 9 of the petition. It has been stated that after the death of Vibhuti Narain Singh, domestic violence was committed by the Respondent No. 2 and he took into his custody various documents including the recorded family settlement of 8.12.1969 which was reduced in writing on 16.7.1970 and other documents of title, etc. and he created a situation in the residence which became non-conducive to the peaceful residence of the petitioner. This led to the institution of a case by means of an application under Section 12 read with Section 23 of the Protection of Women from Domestic Violence Act, 2005² in October 2011. The court of the Additional Chief Judicial Magistrate, Court No. 10, Varanasi, by an order dated 21.10.2011, prohibited the petitioner no. 2 from interfering in the shared household in the possession of the petitioner over properties reflected in Annexure Nos. C1 and C2 of the application and not to evict her, not to create any hindrance and not to harass her during pendency of the aforesaid case under the DV Act. The order dated 21.10.2011 was affirmed by the Supreme Court.

Thereafter an application under Section 23 of the DV Act was filed on 30.10.2021 seeking a direction under Section 18 of the DV Act for restraining the petitioner No. 2 from transferring the properties

2 DV Act

specified in the schedule to that application. The schedule to the application specified several plots of land with their respective areas in Mauza Kodopur, Pargana Ramnagar, Tehsil and District Varanasi. Objections were filed by the respondent No. 2 on 7.1.2021. By an order dated 12.4.2022, the trial court observed that it is the civil court which would be competent to grant the relief sought in the application dated 30.10.2021. Challenging the aforesaid order dated 12.4.2022, an appeal bearing Criminal Appeal No. 70 of 2022 was filed in the court of the District and Sessions Judge, Varanasi seeking setting aside of the order dated 12.4.2022. By the impugned judgment and order dated 2.6.2022, the appeal was dismissed.

5. The contention of the learned counsel for the petitioner is that the property in dispute includes both that are mentioned in the schedule to the application made by the petitioner in the year 2011 under Section 12 read with Section 23 of the DV Act, as well as the properties mentioned in the schedule enclosed with the application dated 30.10.2021. It is stated that given the definition of the terms “aggrieved person”, “domestic relationship”, “domestic violence”, “shared household” appearing in section 3 of the DV Act, as well as the term “economic abuse” appearing in Explanation 1 to Section 3 of the DV Act, the properties in dispute are well within the jurisdiction of the courts under the DV Act. It is stated that the Magistrate is empowered to grant protection orders for prohibiting the respondents from committing any act of domestic violence as well as for prohibiting the respondents from alienating any assets of the aggrieved person that may be held jointly by the aggrieved person and the respondent or singly by the petitioner, including her ‘stridhan’ or any other property held either jointly by the parties or separately by them. It is further contended that given the provisions of Section 26 of the DV Act, any relief available under Sections 18, 19, 20, 21, and 22 may also be sought in any legal

proceeding, before civil court, family court, or a criminal court, affecting the aggrieved person and the respondent, whether such proceeding was initiated before or after the commencement of the DV Act, and any relief referred in that provision could be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court. However, the only condition that is imposed on the aggrieved person is that in case any relief has been obtained by her in any proceedings other than the proceeding under the DV Act, she shall be bound to inform the magistrate for the grant of such relief. The contention is that given the fact that the family settlement of 8.12.1969 that was reduced in writing on 16.7.1970 which has been admitted by the respondent no. 2 time and again in various proceedings including in the proceedings under the D.V. Act, the courts exercising jurisdiction under the DV Act had jurisdiction to grant an appropriate order under Section 23 of the DV Act, and it is a case of failure to exercise jurisdiction by the courts concerned against which the petitioner is aggrieved. The learned counsel has referred to a judgment of the Supreme Court in the case of **Satish Chander Ahuja v. Sneha Ahuja**³ to contend that the court while exercising jurisdiction under Section 18 of the DV Act would exercise civil jurisdiction. The learned counsel has referred to Annexure No. 1 in the rejoinder affidavit to contend that the appellate court had noticed that the Protection Officer in its letter dated 28.4.2018 had no right to travel beyond the scope of the inquiry that she was required to conduct. The learned counsel for the petitioner has further sought to contend that the delay attributed to the petitioner in filing the subsequent application dated 30.10.2021 was not as a result of any deliberate act on her part but was actually attributable to the circumstances emerging out of transfer of properties by the respondent No. 2 in the year 2021.

³ (2021) 1 SCC 414

Learned counsel for the petitioner has also pressed an application No.3 of 2023 filed under Chapter XXII Rule 1 of the Allahabad High Court Rules read with Section 340 Cr.P.C. for initiation of criminal prosecution against the respondent no.2 and one Shatrughan Singh for deliberately making the false and misleading statement in the counter affidavit dated 6.11.2023.

6. On the other hand, Shri Anil Kumar Srivastava, learned Senior Advocate has referred to the judgment of the High Court dated 4.1.2019 and the order of the Supreme Court dated 2.9.2019 to contend that the subsequent application dated 30.10.2021 was deliberately filed by the petitioner to delay and defeat the outcome of the case instituted under the DV Act which were directed by this Court as well as by the Supreme Court for being decided expeditiously. The learned counsel has referred to orders passed by the trial and appellate courts. It is stated that mutation with regard to the disputed properties has already taken place in favour of the respondent no. 2 and as such, no stay or injunction can be granted by the criminal court under the provisions of the DV Act inasmuch as it is the civil court which is competent to adjudicate that matter relating to immovable properties. The learned counsel for the respondent No. 2 has referred to a communication made by the Protection Officer, Varanasi dated 28.4.2018, that has been enclosed as an Annexure No. 1 to the counter affidavit, to contend that a categorical observation was made in that letter that there is no evidence of domestic violence because both the plaintiff and the respondent are residing in their separate portions of the premises. Learned counsel has also referred to the Original Suit No. 165 of 2022, a copy of the plaint, which has been enclosed as Annexure No. 3 to the counter affidavit to demonstrate that a civil suit with regard to the property in dispute is pending. It is therefore urged that rejection of the application dated 30.10.2021 was justified.

7. On perusal of the record, it appears that the aforesaid application under Section 12 read with Section 23 of the DV Act, bearing No.829 of 2011, was filed by the petitioner against the respondent no.2 claiming to be an aggrieved person who is living in a shared household in a domestic relationship and is being subjected to domestic violence. The petitioner stated that she was residing in her paternal home and soon after the death of her father, the respondent no.2 asked her to leave the house and subjected her to domestic violence. Allegation of damage to the rooms, kitchens and storerooms that are in her possession by the respondent no.2 was made, the details of which properties were mentioned in Annexures C-1 and C-2 enclosed alongwith the application. A relief, *inter alia*, was sought against the respondent no.2 for restraining him and his agents from dispossessing the petitioner from the shared household or making any alteration or demolition in the said portions which are in the exclusive possession of the petitioner. By an order of 21.10.2011, the Magistrate passed the restraint order in respect of that part of the shared household reflected in Annexures C-1 and C-2 to the aforesaid application.

8. The order dated 21.10.2011 was challenged in an appeal before the Additional Sessions Judge who, by his judgment and order dated 7.3.2013, dismissed the appeal and affirmed the order dated 21.10.2011 passed by the Magistrate. Against the aforesaid orders dated 21.10.2011 and 7.3.2013, Criminal Revision No.1499 of 2013 was preferred by the respondent no.2 before this Court, in which the Court held that there was no error in the orders dated 21.10.2011 and 7.3.2013. However, the applications pending before the trial court as well as the Case No.829 of 2011 itself were directed to be decided expeditiously. The judgment of this Court in the aforesaid criminal revision was challenged before the Supreme Court by means of a Special Leave Petition (Criminal), which

was dismissed by an order dated 2.9.2013 while directing the trial court to expeditiously dispose of the case within a period of six months.

9. Thereafter, certain plots of agricultural land situated in Mauza Kodopur, Pargana Ramnagar, Tehsil & District Varanasi, that are stated to be part of an oral family settlement, which later came to be recorded in a memorandum, were being alienated by the respondent no.2 despite the fact that, as stated, the petitioner alone was the owner under the family settlement. Therefore, the aforesaid fresh application dated 30.10.2021 was filed by the petitioner under Section 23 of the DV Act seeking protection order under Section 18 in respect of those immovable properties.

10. Objections were filed by the respondent no.2 and in paragraph 7 whereof, apparently, an admission was made with regard to the family settlement. The claim of the petitioner made in the application dated 30.10.2021 was refuted. By an order dated 12.4.2022, the Magistrate rejected the application dated 30.10.2021 filed by the petitioner. The Magistrate observed that a civil suit is pending between the parties and in the revenue records, the name of the respondent no.2 was recorded; that till the time the civil court does not decide the suit, it cannot be said with certainty that the petitioner is the owner of the property; that as only on that basis the respondent no.2 is alienating the property, he cannot be restrained under the DV Act. The Magistrate noted that on 21.10.2011, with regard to the shared household of the petitioner, an interim relief was granted till the final disposal of the application under the DV Act; that in Annexures C-1 and C-2, there is no record of any arazi number, whereas the application dated 30.10.2021 reflects several arazi numbers along with areas seeking relief with respect to those properties. It was held that the petitioner had not been able to prove how the order dated 20.10.2011 was being violated; that orders could be passed only with regard to the shared household under the DV Act, and

that no order could be made for restraining the transfer of properties as sought in the application. It was, accordingly, held that the jurisdiction with regard to the restraining transfer of the properties mentioned in the application dated 30.10.2021 was with the civil court and as far as the right of the petitioner with regard to the shared household is concerned, an order dated 20.10.2011 had already been passed. The application dated 30.10.2021 filed by the petitioner was, accordingly, rejected.

11. Against the aforesaid order of the Magistrate, an appeal being Criminal Appeal No.70 of 2022, was filed by the petitioner in which objections were filed by the respondent no.2. The respondent no.2 stated that he is the recorded owner of the properties mentioned in the application dated 30.10.2021. The petitioner had no right over the personal properties of the erstwhile ruler of Banaras; his name is recorded in the khatauni as per rules and if there is any objection to the same, it may be raised before the revenue courts; there is no jurisdiction of the Magisterial court nor can any interference be made therein; there is no collusion between the respondent no.2 and the vendees mentioned in the two sale-deeds; the vendees are not parties to the proceedings and in this connection it is only the civil court which has jurisdiction to try the matter regarding the two sale-deeds; in case there is any non-compliance of the order of the court, then it has to be clearly mentioned in the application; the petitioner has sought a new relief in that application, and accordingly, the application deserves to be dismissed.

12. The appellate court framed a point for determination that whether another application under Section 23 of the DV Act can be filed during the validity of the order dated 2.10.2011 (*sic* 21.10.2011) passed in the previous application under Section 23 of the DV Act.

13. The appellate court noted that the previous order dated 21.10.2011 mentioned in the application dated 30.10.2021 reflects that

an order under Section 23 of the DV Act was passed and on the part of the properties in possession reflected in Annexures C-1 and C-2, the respondent no. 2 was restrained from evicting the petitioner, creating any obstruction to persons meeting her and creating any obstruction with regard to the repairs being carried out by the petitioner in her portion of the properties; the complaint under Section 23 is pending trial. The appellate court observed that the issue whether the respondent No. 2 had right to execute the sale-deeds dated 20.7.2021 and 24.8.2021, can be decided by a civil court in a civil suit. Under the DV Act, a summary proceeding is prescribed in which the criminal procedure is used and under the circumstances, at the stage of the appeal or the trial, the issue cannot be looked into.

It was observed that as regards the entries made in the revenue records, the name of respondent no.2 is recorded and the petitioner had stated that she is the owner of the same immovable properties under a family settlement. It was observed that while adopting summary proceedings prescribed under the DV Act, the issue (regarding immovable properties) cannot be decided by the court; that in case any property is charged against the maintenance amount, then in respect of those properties, orders can be passed by the concerned court that that property would remain encumbered with the charge. It was held that since no charge was created with regard to any interim maintenance, therefore, such an order also could not be passed. It was observed that if the name of the respondent had been wrongly recorded, for setting it aside, the responsibility rested with the petitioner as the entries made in the revenue records are presumed to be correct. However, the appellate court did observe that the entries in the revenue records are not proof of title but pertain to recovery of land revenue only. It was observed that the proceedings under the DV Act are 'quasi-civil' which have to be decided on preponderance of probability and since, on the basis of

possession, a *prima facie* presumption can be drawn regarding ownership; under such circumstances, only by the procedure prescribed by law, the matter can be set aside by the revenue court. The appellate court held that the petitioner is admittedly enforcing her right relating to immovable properties which cannot be done under the DV Act; the order of the trial court dated 12.4.2022 was passed after including (*sic*) the order dated 21.10.2011 and no fact had been stated that the order has been disobeyed; in the original complaint no such prayer had been sought by the petitioner as in the application dated 30.10.2021. During the effectiveness of the order dated 20.10.2011 (*sic* 21.10.2011), further interim order was being sought and that too in respect of a subject matter for which no relief can be granted under the DV Act. The appeal was, accordingly, dismissed.

14. As noted above, initially the application/complaint dated 11.10.2011 under section 12 read with section 23 of the DV Act was filed seeking relief in respect of the shared household that was mentioned in Annexures C-1 and C-2 to that application. The interim order passed by the Magistrate dated 21.10.2011 is effective till the disposal of the complaint case.

15. Sections 12 to 29 of the DV Act fall under Chapter IV of the DV Act, which relates to procedures for obtaining orders seeking reliefs. Under Section 12 of the DV Act, an aggrieved person or a Protection Officer or any other person on behalf of an aggrieved person may present an application to the Magistrate seeking one or more reliefs under the DV Act. The reliefs sought for may include a relief for issuance of an order for payment of compensation or damages without prejudice to the right of such persons to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent. Every application is required to be in the prescribed format or as nearly as possible thereto.

The Magistrate is enjoined to endeavour to dispose of every such application within a period of 60 days from the date of its first hearing. Section 13 provides for service of notice on the respondent concerned and on any other person, through the Protection Officer. Section 14 gives power to the Magistrate to direct the respondent or aggrieved person to undergo counselling with any member of the service provider possessing such qualifications and experience in counselling as may be prescribed. Section 15 deals with assistance of welfare experts to the Magistrate. Section 16 gives a discretion to the Magistrate to conduct the proceedings under the DV Act in camera. Section 17 deals with the right of every woman in a domestic relationship to reside in the shared household whether or not she has right, title or any beneficial interest in the same. The aggrieved person cannot 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. Section 18 deals with protection order that may be passed by the Magistrate on being satisfied that domestic violence has taken place. Section 19 deals with residence orders that may be passed by the Magistrate on being *prima facie* satisfied that domestic violence has taken place, where the matter concerns the residence of the aggrieved person in a shared household. Section 20 provides for direction regarding monetary relief which may be made by the Magistrate while disposing of the application under sub-section (1) of section 12. Section 21 deals with custody orders that may be passed by the Magistrate at any stage of hearing of the application for protection order in respect of temporary custody of any child or children to the aggrieved person or the person making an application on her behalf. Section 22 deals with compensation orders that the Magistrate may pass in addition to other reliefs as may be granted under the DV Act. Section 23 invests power in the Magistrate to pass an interim *ex-parte* order as he deems just and proper, on the basis of an affidavit of the aggrieved person under Sections 18, 19, 20, 21 or,

as the case may be, Section 22, against the respondent. Section 25 provides for the duration and alteration of protection orders made under Section 18. Section 26 reads as follows:-

“26. Relief in other suits and legal proceedings.

1) Any relief available under sections 18, 19,20, 21 and 22 may also be sought in any legal proceeding, before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act.

(2) Any relief referred to in sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court.

(3) In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief.”

Section 27 provides for the jurisdiction of the court of Judicial Magistrate or the Metropolitan Magistrate and that the order made in the DV Act shall be enforceable throughout India. Section 28 reads as follows:-

“28. Procedure.

(1) Save as otherwise provided in this Act, all proceedings under sections 12,18, 19, 20, 21, 22 and 23 and offences under section 31 shall be governed by the provisions of the Code of Criminal Procedure, 1973 (2 of 1974).

(2) Nothing in sub-section (1) shall prevent the court from laying down its own procedure for disposal of an application under section 12 or under sub-section (2) of section 23.”

Section 29 provides for an appeal to the Court of Session from the order of the Magistrate.

16. Certain terms that have been defined in Section 2 of the DV Act merit consideration:-

“(a) "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;

.....

(f) "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;

(g) "domestic violence" has the same meaning as assigned to it in section 3;

.....

(o) "protection order" means an order made in terms of section 18;

(p) "residence order" means an order granted in terms of sub-section (1) of section 19;

.....

(s) "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.

.....”

The definition of “domestic violence” is provided under Chapter II of the DV Act as under:-

“3. Definitions of domestic violence.

For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it--

(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and **economic abuse**; or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

Explanation I.--For the purposes of this section,--

(i) "physical abuse" means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

(ii) "sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

(iii) "verbal and emotional abuse" includes--

(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and

(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested;

(iv) "economic abuse" includes--

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, house hold necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared house hold and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Explanation II.--For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes "domestic violence" under this section, the overall facts and circumstances of the case shall be taken into consideration."

(emphasis supplied)

17. Initially, the application filed by the petitioner in the year 2011 under Section 12 read with Section 23 of the DV Act was in respect of the properties mentioned in its Annexures C-1 and C-2 and was specifically in respect of the shared household. As noted above, a protection order can be passed by the Magistrate prohibiting the respondent from committing any act of domestic violence, and, accordingly, an interim order was passed by the Magistrate on 21.10.2011, every challenge to which has been put to rest. However, the application dated 30.10.2021 deals with other immovable properties which are mentioned in the Schedule to that application. The definition of "domestic violence" given in Section 3 of the DV Act is very wide. Under Explanation I of Section 3, sub-clause (b) of clause (iv), which pertains to 'economic abuse', the definition uses the word "includes", and entails disposal of household effects, **any alienation of assets whether movable or immovable**, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person. It is noted that in sub-clauses (a) and (c) of clause (iv) of Explanation I, reference has been made to "shared household", whereas in sub-clause (b) thereof, there is no reference to the term "shared household".

Explanation II, which is also very illustrative, reads that for the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes "domestic violence" under this section, the overall facts and circumstances of the case shall be taken into consideration.

18. As noted above, in his objections, the respondent no.2 has, *prima facie*, admitted the existence of the family settlement, which family settlement is part of the record of this petition, reflecting that the properties mentioned in this Schedule to the application of the petitioner dated 30.10.2021 fall in her share. However, this 'admission', as held by the Supreme Court in **Himani Alloys Ltd. vs. Tata Steel Ltd.**⁴, unless is clear, unambiguous and unconditional, the discretion of the Court should not be exercised to deny the valuable rights of a defendant to contest the claim.

19. In view of the aforesaid provisions of the DV Act, the observation of the appellate court in the impugned order that the properties mentioned in the application dated 30.10.2021 cannot be looked into by the court in proceedings under the DV Act, is incorrect. Given Explanation I to Section 3, which uses the word 'includes' while defining the term "economic abuse", and, the 'overall facts and circumstances of the case' that are required to be taken into consideration in view of Explanation II, it would bring into the ambit of the definition of "domestic violence" the properties mentioned in the Schedule to the application dated 30.10.2021 filed by the petitioner.

20. An application to the Magistrate under Section 12 can seek one or more reliefs under the DV Act, including a relief for issuance of an order for payment of compensation or damages. An amendment in the application filed under Section 12, in view of subsequent developments,

4 (2011) 15 SCC 273

can be sought by an aggrieved person, but for consideration of such amendment application, the court has to see whether certain circumstances exist. The under-noted judgment of the Supreme Court would point to that aspect. Therefore, subject to such amendment being effected in the application under Section 12, it cannot be said that the relief sought for in the application dated 30.10.2021 filed by the petitioner under Section 23 seeking an interim order under Section 18, would not be maintainable under the DV Act. In effect, the petitioner is seeking a protection order under Section 18 of the DV Act, which only requires a *prima facie* satisfaction of the Magistrate that domestic violence has taken place or is likely to take place. As reflected in Section 26 as quoted above, the very reliefs available to the petitioner under Sections 18, 19, 20, 21 and 22 may also be sought in any legal proceeding before a civil court, family court or a criminal court, and the relief sought under the DV Act may be along with any other relief that the aggrieved person may seek in any such suit or legal proceeding before a civil court or criminal court.

21. It is important to note that though a protection order passed by the Magistrate under Section 18 of the DV Act is to be made on his *prima facie* satisfaction that domestic violence has taken place or is likely to take place, however, no adjudication of title with regard to immovable property of the aggrieved person, in this case the petitioner, can be made under the DV Act. As such, the protection order sought in the application dated 30.10.2021 is essentially in the nature of an interim relief, which may be granted by the court subject to due amendment in the application under Section 12 of the DV Act.

22. Apparently, the petitioner has filed a suit being Original Suit No.165 of 2024 in the court of Civil Judge (Senior Division), Varanasi, seeking declaration, partition and prohibitory injunction with respect to various properties. As such, the title of the petitioner with regard to the

properties mentioned in the Schedule to the application dated 30.10.2021 can well be decided therein. Suffice to state that even in the said suit, the reliefs sought under Section 12 of the DV Act can be sought, given the provisions of Section 26, which aspect has also been indicated by the Supreme Court in a judgment cited below.

Further, for setting aside the revenue entries on properties that the petitioner claims to her own, it is for her to move appropriate legal proceedings before the revenue court.

23. The purpose for enacting the DV Act was considered by the Supreme Court in **Kunapareddy vs. Kunapareddy Swarna Kumari & Ors.**⁵ in which it observed as follows:-

12. In fact, the very purpose of enacting the DV Act was to provide for a remedy which is an amalgamation of civil rights of the complainant i.e. aggrieved person. Intention was to protect women against violence of any kind, especially that occurring within the family as the civil law does not address this phenomenon in its entirety. It is treated as an offence under Section 498-A of the Penal Code, 1860. The purpose of enacting the law was to provide a remedy in the civil law for the protection of women from being victims of domestic violence and to prevent the occurrence of domestic violence in the society. It is for this reason, that the scheme of the Act provides that in the first instance, the order that would be passed by the Magistrate, on a complaint by the aggrieved person, would be of a civil nature and if the said order is violated, it assumes the character of criminality.

.....
”

After considering the procedure for obtaining reliefs as stipulated in Chapter IV of the DV Act, which comprises Sections 12 to 29, the Supreme Court went on to observe as follows:-

“14. In the aforesaid scenario, merely because Section 28 of the DV Act provides for that (,) the proceedings under some of the provisions including Sections 18 and 20 are essentially of

5 (2016) 11 SCC 774

civil nature. We may take some aid and assistance from the nature of the proceedings filed under Section 125 of the Code. Under the said provision as well, a woman and children can claim maintenance. At the same time these proceedings are treated essentially as of civil nature.”

It is also pertinent to mention here that in the case of **Kunapareddy** (supra), the Supreme Court was considering whether an amendment application can be filed under the DV Act for amending the application filed under the DV Act. The Supreme Court further observed that it cannot be said that the Court dealing with the application under the DV Act has no power and/or jurisdiction to allow the amendment of the application. The observations of the Supreme Court are as follows:-

“16. We understood in this backdrop, it cannot be said that the court dealing with the application under the DV Act has no power and/or jurisdiction to allow the amendment of the said application. **If the amendment becomes necessary in view of subsequent events (escalation of prices in the instant case) or to avoid multiplicity of litigation, court will have the power to permit such an amendment.** It is said that procedure is the handmaid of justice and is to come to the aid of the justice rather than defeating it. It is nobody's case that Respondent 1 was not entitled to file another application claiming the reliefs which she sought to include in the pending application by way of amendment. If that be so, we see no reason, why the applicant be not allowed to incorporate this amendment in the pending application rather than filing a separate application. It is not that there is a complete ban/bar of amendment in the complaints in criminal courts which are governed by the Code, though undoubtedly such power to allow the amendment has to be exercised sparingly and with caution under limited circumstances. The pronouncement on this is contained in the recent judgment of this Court in *S.R. Sukumar v. S. Sunaad Raghuram* [*S.R. Sukumar v. S. Sunaad Raghuram*, (2015) 9 SCC 609 : (2015) 4 SCC (Cri) 44] in the following paragraphs: (SCC pp. 620-21, paras 18-20)

“18. Insofar as merits of the contention regarding allowing of amendment application, it is true that there is no specific provision in the Code to amend either a complaint or a petition filed under the provisions of the Code, but the courts have held that the petitions seeking such amendment to correct curable infirmities can be allowed even in respect of

complaints. In *U.P. Pollution Control Board v. Modi Distillery* [*U.P. Pollution Control Board v. Modi Distillery*, (1987) 3 SCC 684 : 1987 SCC (Cri) 632], wherein the name of the company was wrongly mentioned in the complaint, that is, instead of Modi Industries Ltd. the name of the company was mentioned as Modi Distillery and the name was sought to be amended. In such factual background, this Court has held as follows: (SCC pp. 689-90, para 6)

'6. The learned Single Judge has focussed his attention only on the technical flaw in the complaint and has failed to comprehend that the flaw had occurred due to the recalcitrant attitude of Modi Distillery and furthermore the infirmity is one which could be easily removed by having the matter remitted to the Chief Judicial Magistrate with a direction to call upon the appellant to make the formal amendments to the averments contained in Para 2 of the complaint so as to make the controlling company of the industrial unit figure as the accused concerned in the complaint. All that has to be done is the making of a formal application for amendment by the appellant for leave to amend by substituting the name of Modi Industries Ltd., the company owning the industrial unit, in place of Modi Distillery. ... Furthermore, the legal infirmity is of such a nature which could be easily cured.'

19. What is discernible from *U.P. Pollution Control Board case* [*U.P. Pollution Control Board v. Modi Distillery*, (1987) 3 SCC 684 : 1987 SCC (Cri) 632] is that an easily curable legal infirmity could be cured by means of a formal application for amendment. **If the amendment sought to be made relates to a simple infirmity which is curable by means of a formal amendment and by allowing such amendment, no prejudice could be caused to the other side, notwithstanding the fact that there is no enabling provision in the Code for entertaining such amendment, the court may permit such an amendment to be made. On the contrary, if the amendment sought to be made in the complaint does not relate either to a curable infirmity or the same cannot be corrected by a formal amendment or if there is likelihood of prejudice to the other side, then the court shall not allow such amendment in the complaint.**

20. In the instant case, the amendment application was filed on 24-5-2007 to carry out the amendment by adding Paras 11(a) and 11(b). Though, the proposed amendment was not a formal amendment, but a substantial one, the Magistrate allowed the amendment application mainly on the ground that no cognizance was taken of the complaint before the disposal of amendment application. **Firstly, the Magistrate was yet to apply the judicial mind to the contents of the complaint and had not taken cognizance of the matter. Secondly,**

since summons was yet to be ordered to be issued to the accused, no prejudice would be caused to the accused. Thirdly, the amendment did not change the original nature of the complaint being one for defamation. Fourthly, the publication of poem *Khalnayakaru* being in the nature of subsequent event created a new cause of action in favour of the respondent which could have been prosecuted by the respondent by filing a separate complaint and therefore, to avoid multiplicity of proceedings, the trial court allowed the amendment application. Considering these factors which weighed in the mind of the courts below, in our view, the High Court rightly declined [*S.R. Sukumar v. S. Sunaad Raghuram*, 2012 SCC OnLine Kar 1619] to interfere with the order passed by the Magistrate allowing the amendment application and the impugned order does not suffer from any serious infirmity warranting interference in exercise of jurisdiction under Article 136 of the Constitution of India.”

17. What we are emphasising is that even in criminal cases governed by the Code, the court is not powerless and may allow amendment in appropriate cases. **One of the circumstances where such an amendment is to be allowed is to avoid the multiplicity of the proceedings.** The argument of the learned counsel for the appellant, therefore, that there is no power of amendment has to be negated.

18. In this context, provisions of sub-section (2) of Section 28 of the DV Act gain significance. Whereas proceedings under certain sections of the DV Act as specified in sub-section (1) of Section 28 are to be governed by the Code, the legislature at the same time incorporated the provisions like sub-section (2) as well which empowers the court to lay down its own procedure for disposal of the application under Section 12 or Section 23(2) of the DV Act. This provision has been incorporated by the legislature keeping a definite purpose in mind. Under Section 12, an application can be made to a Magistrate by an aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person to claim one or more reliefs under the said Act. Section 23 deals with the power of the Magistrate to grant interim and ex parte orders and sub-section (2) of Section 23 is a special provision carved out in this behalf which is as follows:

“23.(2) If the Magistrate is satisfied that an application prima facie discloses that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he may grant an ex parte order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under Section 18, Section 19, Section 20, Section 21 or, as the case may be, Section 22 against the respondent.”

19. The reliefs that can be granted by the final order or by an interim order, have already been pointed out above wherein it is noticed that most of these reliefs are of civil nature. If the power to amend the complaint/application, etc. is not read into the aforesaid provision, the very purpose which the Act attempts to subserve itself may be defeated in many cases.”

(emphasis supplied)

24. In the case of **Vaishali Abhimanyu Joshi v. Nanasaheb Gopal Joshi**⁶, the Supreme Court was considering a question that whether a counter-claim filed by a lady seeking right under Section 19 of the DV Act can be entertained in a suit filed against her under Section 26 of the Provincial Small Cause Courts Act, 1887, as amended in the State of Maharashtra, seeking a mandatory injunction directing her to stop using the suit flat and to remove her belongings therefrom. The Supreme Court observed as under:-

“40. Section 26 of the 2005 Act has to be interpreted in a manner to effectuate the very purpose and object of the Act. Unless the determination of claim by an aggrieved person seeking any order as contemplated by the 2005 Act is expressly barred from consideration by a civil court, this Court shall be loath to read in bar in consideration of any such claim in any legal proceeding before the civil court. When the proceeding initiated by the plaintiff in the Judge, Small Cause Court alleged termination of gratuitous licence of the appellant and prays for restraining the appellant from using the suit flat and permit the plaintiff to enter and use the flat, the right of residence as claimed by the appellant is interconnected with such determination and refusal of consideration of claim of the appellant as raised in her counterclaim shall be nothing but denying consideration of claim as contemplated by Section 26 of the 2005 Act which shall lead to multiplicity of proceedings, which cannot be the object and purpose of the 2005 Act.

41. We, thus, are of the considered opinion that the counterclaim filed by the appellant before Judge, Small Cause Court in Civil Suit No. 77 of 2013 was fully entertainable and the courts below committed error in refusing to consider such claim.”

6 (2017) 14 SCC 373

It is pertinent to note that in the aforesaid case of **Vaishali Abhimanyu Joshi**, the Supreme Court categorically held that denial of consideration of claim, as contemplated by Section 26 of the DV Act in a counter-claim filed in proceedings under the Provincial Small Cause Courts Act, 1887, would lead to multiplicity of proceedings which cannot be the object and purpose of the DV Act.

25. In the case of **Deoki Panjhiyara vs. Shashi Bhushan Narayan Azad & Anr.**⁷, the Supreme Court was considering a matter where an application under Section 12 of the DV Act seeking certain reliefs including damages and maintenance was filed and on an application for interim maintenance filed therein, by an order dated 13.2.2008, the trial court granted an interim maintenance. The order of the trial court was affirmed by the Session Judge and against the aforesaid order, the husband filed a writ petition before the High Court. During pendency of the writ petition, the husband sought a recall of the order dated 13.2.2008 (granting maintenance) on the ground that he subsequently came to know that his marriage with the lady was void on the ground that at the time of the said marriage the lady was already married to another person. The husband had placed reliance upon a certificate of marriage dated 18.4.2003 between the lady and another person issued by the competent authority under Section 13 of the Special Marriage Act, 1954. The application was rejected by the trial court. The revision filed against this order of the trial court before the High Court was heard along with the writ petition filed earlier and by a common order it was held that the marriage certificate issued under Section 13 of the Special Marriage Act was conclusive proof of first marriage of the lady with another person which had the effect of rendering the marriage between the lady and her husband null and void. The Supreme Court observed as follows:-

7 (2013) 2 SCC 137

“17. While considering the provisions of Section 11 of the Hindu Marriage Act, 1955 this Court in *Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav* [(1988) 1 SCC 530 : 1988 SCC (Cri) 182 : AIR 1988 SC 644] (SCC p. 534, para 3) has taken the view that a marriage covered by Section 11 is void ipso jure, that is, void from the very inception. Such a marriage has to be ignored as not existing in law at all. It was further held by this Court that a formal declaration of the nullity of such a marriage is not a mandatory requirement though such an option is available to either of the parties to a marriage. It must, however, be noticed that in *Yamunabai* [(1988) 1 SCC 530 : 1988 SCC (Cri) 182 : AIR 1988 SC 644] there was no dispute between the parties either as regards the existence or the validity of the first marriage on the basis of which the second marriage was held to be ipso jure void.

18. A similar view has been expressed by this Court in a later decision in *M.M. Malhotra v. Union of India* [(2005) 8 SCC 351 : 2005 SCC (L&S) 1139] wherein the view expressed in *Yamunabai* [(1988) 1 SCC 530 : 1988 SCC (Cri) 182 : AIR 1988 SC 644] was also noticed and reiterated. However, the facts in which the decision in *M.M. Malhotra* [(2005) 8 SCC 351 : 2005 SCC (L&S) 1139] was rendered would require to be noticed in some detail.

19. The appellant M.M. Malhotra was, inter alia, charged in a departmental proceeding for contracting a plural marriage. In reply to the charge-sheet issued it was pointed out that the allegation of plural marriage was not at all tenable inasmuch as in a suit filed by the appellant (M.M. Malhotra) for a declaration that the respondent (wife) was not his wife on account of her previous marriage to one D.J. Basu the said fact i.e. previous marriage was admitted by the wife leading to a declaration of the invalidity of the marriage between the parties. The opinion of this Court in *M.M. Malhotra* [(2005) 8 SCC 351 : 2005 SCC (L&S) 1139] was, therefore, once again rendered in the situation where there was no dispute with regard to the factum of the earlier marriage of one of the spouses.

20. In the present case, however, the appellant in her pleadings had clearly, categorically and consistently denied that she was married to any person known as Rohit Kumar Mishra. The legitimacy, authenticity and genuineness of the marriage certificate dated 18-4-2003 has also been questioned by the appellant. Though Section 11 of the aforesaid Act gives an option to either of the parties to a void marriage to seek a declaration of invalidity/nullity of such marriage, the exercise of such option cannot be understood to be in all situations voluntarily. Situations may arise when recourse to a court for a declaration regarding the nullity of a marriage claimed by one of the spouses to be a void marriage, will have to be insisted

upon in departure to the normal rule. This, in our view, is the correct ratio of the decision of this Court in *Yamunabai [(1988) 1 SCC 530 : 1988 SCC (Cri) 182 : AIR 1988 SC 644]* and *M.M. Malhotra [(2005) 8 SCC 351 : 2005 SCC (L&S) 1139]*.

.....

22. In the present case, if according to the respondent, the marriage between him and the appellant was void on account of the previous marriage between the appellant and Rohit Kumar Mishra the respondent ought to have obtained the necessary declaration from the competent court in view of the highly contentious questions raised by the appellant on the aforesaid score. It is only upon a declaration of nullity or annulment of the marriage between the parties by a competent court that any consideration of the question whether the parties had lived in a “relationship in the nature of marriage” would be justified. In the absence of any valid decree of nullity or the necessary declaration the court will have to proceed on the footing that the relationship between the parties is one of marriage and not in the nature of marriage.

23. We would also like to emphasise that any determination of the validity of the marriage between the parties could have been made only by a competent court in an appropriate proceeding by and between the parties and in compliance with all other requirements of law. Mere production of a marriage certificate issued under Section 13 of the Special Marriage Act, 1954 in support of the claimed first marriage of the appellant with Rohit Kumar Mishra was not sufficient for any of the courts, including the High Court, to render a complete and effective decision with regard to the marital status of the parties and that too in a collateral proceeding for maintenance. Consequently, we hold that in the present case until the invalidation of the marriage between the appellant and the respondent is made by a competent court it would only be correct to proceed on the basis that the appellant continues to be the wife of the respondent so as to entitle her to claim all benefits and protection available under the DV Act, 2005.”

It is to be noted that in the aforesaid judgment of the Supreme Court, the applicability of the DV Act was considered given the fact that the marriage was not declared a nullity by a competent court.

26. In the present case, the applicability of the DV Act is due to alleged domestic violence inflicted on the petitioner who is in a

domestic relationship with the respondent no.2 and related by consanguinity. The protection order under Section 18 is being sought in the application dated 30.10.2021 under Section 23 of the DV Act in respect of immovable property specified in the Schedule to that application. Till the issue of title with regard to those properties is finally decided in the suit by the competent court, the petitioner claiming to be an 'aggrieved person' in a 'domestic relationship' who is subjected to 'domestic violence' would continue to be entitled to claim all benefits and protection available under the DV Act. There does not appear to be any bar on seeking additional reliefs, to the extent they can be granted and the cause for which has arisen subsequently, in a subsequent application under Section 23, provided such relief and pleadings are incorporated by permissible amendments in the initial application under Section 12 of the DV Act.

27. In the backdrop of the aforesaid judgments of the Supreme Court, given the facts of the instant case, what emerges is that given the dispute being raised regarding the immovable properties mentioned in the Schedule to the application dated 30.10.2021, it is certainly the civil court that will have the jurisdiction to conclusively determine the rights of the parties and make appropriate decree/s. That is, however, not to say that proceeding under Section 23, which deals with the power to grant interim and *ex-parte* orders by the Magistrate, would not be maintainable. Where in the application under Section 12, permissible amendment in view of subsequent developments or otherwise is made and additional permissible relief is sought, a fresh application under Section 23 would be maintainable. It is iterated that the protection order to be passed by the Magistrate under Section 18 of the DV Act is on his being *prima facie* satisfied that the domestic violence had taken place or was likely to take place.

28. In view of the aforesaid, the position can thus be summarized as follows:-

(i) The purpose of enacting the DV Act was to provide a remedy in the civil law for the protection of women from being victims of domestic violence and to prevent the occurrence of domestic violence in the society. It is for this reason, that the scheme of the Act provides that in the first instance, the order that would be passed by the Magistrate, on a complaint by the aggrieved person, would be of a civil nature and if the said order is violated, it assumes the character of criminality.

(ii) There is no complete ban/bar of amendment in the complaints in criminal courts which are governed by the Code, though undoubtedly such power to allow the amendment has to be exercised sparingly and with caution under limited circumstances.

(iii) If the amendment sought in the application under the DV Act relates to a simple infirmity which is curable by means of a formal amendment and by allowing such amendment, no prejudice could be caused to the other side, notwithstanding the fact that there is no enabling provision in the Code for entertaining such amendment, the court may permit such an amendment to be made. On the contrary, if the amendment sought to be made in the complaint does not relate either to a curable infirmity or the same cannot be corrected by a formal amendment or if there is likelihood of prejudice to the other side, then the court shall not allow such amendment in the complaint.

(iv) Where amendment sought is of a substantial nature the same may be allowed after carefully considering the facts, circumstances and the stage of the case, provided that the amendment would not change the original nature of the complaint, and, provided further that the amendment is necessitated in view of subsequent event which creates a

new cause of action in favour of the aggrieved person and would avoid multiplicity of proceedings.

(v) On such amendment being effected, a fresh application filed under Section 23 of the DV Act can be maintained for seeking a protection order under Section 18.

(vi) The alienation of assets whether moveable or immoveable in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her 'stridhan' or any of the other properties jointly or separately held by the aggrieved person, may constitute 'economic abuse' bringing it within the definition of "domestic violence" under Section 3 of the DV Act.

(vii) Adjudication of title of an aggrieved person with regard to moveable or immoveable properties sought to be alienated cannot be made under the DV Act but can only be made by a competent civil court. However, in respect of such properties a protection order can be passed by the Magistrate under Section 18 of the DV Act on his *prima facie* satisfaction that domestic violence has taken place or is likely to take place.

(viii) The relief/s available under Sections 18, 19, 20, 21 and 22 in an application filed under Section 12 of the DV Act may also be sought before the civil court before which the suit filed by the petitioner against the respondent no.2 is pending, in terms of Section 26 of the DV Act.

29. In the present case, the protection order sought in the application dated 30.10.2021 is essentially in the nature of an interim relief. As noted above, a civil suit pertaining to the properties in dispute is pending, in which suit, the reliefs available to the petitioner under the DV Act can be well addressed in view of the provisions of Section 26

of the DV Act. Relegating the matter to the appellate court would unnecessarily prolong the case under the DV Act.

30. Therefore, under the facts and circumstances of the present case, this petition is **disposed of** leaving it open to the petitioner to move appropriate application before the civil court in which the aforesaid suit is pending seeking appropriate temporary injunction or protection order, as she may be advised. If such an application is filed, the concerned court is requested to decide the same in accordance with law, preferably within a period of four months from the date of filing of that application.

In the interest of justice it is provided that for a period of five months from today, none of the parties to the petition will create any third party interest over any part of the properties as mentioned in the Schedule to the application dated 30.10.2021 filed by the petitioner in Case No.829 of 2011 under the DV Act.

31. As far as the aforesaid application under Section 340 Cr.P.C. is concerned, the same is required to be registered and numbered as a Criminal Miscellaneous case and, thereafter, placed before the appropriate Court for its consideration. The office is directed to do the needful in this regard. All other pending applications stand disposed of.

Order Date :- 20.5.2024

A. V. Singh/SK

(Jayant Banerji, J.)