

**IN THE COURT OF ADDITIONAL DISTRICT JUDGE- 01,
NEW DELHI DISTRICT, PATIALA HOUSE COURTS,
NEW DELHI**

Presided over by :- MS. VIJETA SINGH RAWAT (DHJS)

CS No.92/21

**Mrs. Sumitra Meel
W/o Sh. Hari Singh Meel
R/o 164, Hanuman Nagar Extension
Sirsi Road, Khatipur, Jaipur
Rajasthan**

..... Plaintiff

Versus

**Mr. Dheeraj Verma
S/o Late Sh. Prem Nath Verma
R/o 778, Pocket-3,
Mayur Vihar Phase-I, Delhi-110091**

**Also at:
Flat no.7211, First Floor, Sector-D,
Pocket 10, Vasant Kunj,
New Delhi-110070**

**Also at:
National Manager: Chennel Sales
Kyocera Document Solutions India
1ind Floor, Block-C, Centrum Plaza
Sector-53, Golf Course Road,
Gurugram-122002**

..... Defendant

Suit presented	On : 11.02.2021
Arguments Concluded	On : 11.08.2023
Order Pronounced	On : 18.08.2023

ORDER

1. An interesting issue has arisen as this Court embarks to decide upon an application under Order XII Rule 6 CPC filed by the landlord against the husband tenant who has defended himself the suit stating that he has vacated the tenanted premises on 21.05.2020 but since then, it his estranged wife (who is not a party, herein), has continued in occupation with knowledge of the landlord, therefore, the suit is bad for non-joinder of a necessary party.

2. Brief facts relevant for disposal of the application are **(a)** Vide an admitted rent agreement/ lease agreement dated 17.01.2020, the defendant was admitted as a lessee in flat no.7211, First Floor, Sector-B, Pocket 10, Vasant Kunj, New Delhi-110070 (hereinafter, referred to as the 'tenanted premises') for the period 01.11.2019 till 30.09.2020 **(b)** The rent agreed for the tenanted premises was Rs.48,000/- per month exclusive of electricity and water charges. **(c)** Admittedly, before the expiry of the lease period, the defendant and his wife had matrimonial dispute. **(d)** The defendant therefore, vacated the house and in October, 2020 shared his emails with his estranged wife with the landlord/ plaintiff through which he had sought that his wife should vacate the suit premises. **(e)** Also, in November 2020, plaintiff herself at request of the defendant issued an email to the estranged wife of the defendant to vacate house but she did not respond. **(f)** The defendant also failed to deposit enhanced rent

since October 2020. (g) As the lease agreement stood terminated by efflux of time, legal notice to the defendant which is dated 11.12.2020 was issued but still, as vacant possession of tenanted premises was not handed over and the dues were not cleared, the present suit for eviction and to claim arrears of rent alongwith damages come to be instituted.

3. The written statement has been filed taking preliminary objections that a necessary party to the suit has not been joined and the suit has been filed in collusion with the estranged wife of the defendant. It is asserted that the defendant had vacated the suit property on 21.05.2020, itself and his wife with knowledge of the plaintiff has been an illegal occupation of the suit premises. Thus, existence of lease agreement and its termination by efflux of time are not disputed. But it is denied that there are any arrears of rent which are recoverable from the defendant and that he is liable to pay the damages as sought.

4. An application under consideration for judgment on admission came to be filed. During course of arguments, reliance was placed upon the following judgment:

a) Archana Goindi Khandelwal vs. Rajesh Balkrishnan Menon & Ors. in Special Leave to Appeal (C) No(s). 2939/2022 passed by the Supreme Court of India on 04.03.2022

b) Anukriti Dubey vs. Parth Kansabanik and Anr. In RSA 42/2016, decided by High Court of Delhi on 23.03.2016 and

c) Parul Nahar vs. Pooja Bansal and Ors. RFA 332/2022, CM Appls. 33107 and 34495/2022 decided by High Court of Delhi on 21.02.2023.

5. *Per contra*, a reply was filed stating that power under Order XII Rule 6 CPC is discretionary and cannot be claimed as matter of right. Reliance was placed upon *Karan Kapoor vs. Madhuri Kumar Civil Appeal no.4545 of 2020 passed by the Supreme Court of India on 06.07.2022*. Also, it has yet again been asserted that the suit is bad for non-joinder of a necessary party.

6. Arguments have been advanced by Sh. Sunil Dalal, Ld. Senior Advocate assisted by Ms. Manisha Saroha and Sh. Nikhil Beniwal, Ld. Counsels for the plaintiff and Sh. Kamal Nijhawan, Ld. Senior Advocate assisted by Sh. Pulkit Srivastava and Sh. Sumit Guar, Ld. Counsels for the defendant.

7. During the course of arguments Ld. Senior Advocate for the defendant conceded that decree for eviction may be passed but, the damages claimed should not be granted as it is a matter of trial. Further, on directions of the Court, ordersheets of CC No. 120/2021 were also filed on behalf of the defendant.

8. Yet, this Court is of the view that it first needs to be ascertained whether the estranged wife of the defendant would be a necessary party, herein?

9. Here, it would be relevant to quote the Apex Court as it observed in ***B.P. Achla Anand (Supra)***

'...Having said so generally, we may now deal with the right of a wife to reside in the matrimonial home under personal laws. In the factual context of the present case, we are confining ourselves to dealing with the personal law as applicable to Hindus as the parties are so. A Hindu wife is entitled to be maintained by her husband. She is entitled to remain under his roof and protection. She is also entitled to separate residence if by reason of the husband's conduct or by his refusal to maintain her in his own place of residence or for other just cause she is compelled to live apart from him. Right to residence is a part and parcel of wife's right to maintenance. The right to maintenance cannot be defeated by the husband executing a will to defeat such a right. (See: MULLA, Principles of Hindu Law, Vol. I, 18th Ed. 2001, paras 554 and 555) The right has come to be statutorily recognized with the enactment of the Hindu Adoption and Maintenance Act, 1956. Section 18 of the Act provides for maintenance of wife. Maintenance has been so defined in clause (b) of Section 3 of the Hindu Adoption and Maintenance Act, 1956 as to include therein provision for residence amongst other things. For the purpose of maintenance the term 'wife' includes a divorced wife.

The position of law which emerges on a conjoint reading of the Rent Control Legislation and Personal Laws providing for right to maintenance — which will include the right to residence of a wife, including a deserted or divorced wife, may be examined. The Rent Control Law makes provision for protection of the tenant not only for his own benefit but also for the benefit of all those residing or entitled to reside with him or for whose residence he must provide for. A decree or order for eviction would deprive not only the tenant of such protection but members of his family (including the spouse) will also suffer eviction. So long as the tenant defends himself, the interest of his family members merges with that of the tenant and they too are protected. The tenant cannot, by collusion or by deliberate prejudicial act, give up the protection of law to the detriment of his family members. So long as a decree for eviction has not been passed the members of

the family are entitled to come to the court and seek leave to defend and thereby contest the proceedings and such leave may be granted by the court if the court is satisfied that the tenant was not defending ____ by collusion, connivance or neglect ____ or was acting to the detriment of such persons. Such a situation would be rare and the court shall always be on its guard in entertaining any such prayer. But the existence of such a right flows from what has been stated hereinabove and must be recognized. Persons residing with the tenant as members of his family would obviously be aware of the litigation and, therefore, it will be for them to act diligently and approach the court promptly and in any case before the decree of eviction is passed as delay defeats equity. Such a prayer or any dispute sought to be raised post- decree by a member of family of the tenant may not be entertained by the court.....

In our opinion, a deserted wife who has been or is entitled to be in occupation of the matrimonial home is entitled to contest the suit for eviction filed against her husband in his capacity as tenant subject to satisfying two conditions : first, that the tenant has given up the contest or is not interested in contesting the suit and such giving up by the tenant-husband shall prejudice the deserted wife who is residing in the premises; and secondly, the scope and ambit of the contest or defence by the wife would not be on a footing higher or larger than that of the tenant himself. In other words, such a wife would be entitled to raise all such pleas and claim trial thereon, as would have been available to the tenant himself and no more. So long as, by availing the benefit of the provisions of the Transfer of Property Act and Rent Control Legislation, the tenant would have been entitled to stay in the tenancy premises, the wife too can continue to stay exercising her right to residence as a part of right to maintenance subject to compliance with all such obligations including the payment of rent to which the tenant is subject. This right comes to an end with the wife losing her status as wife consequent upon decree of divorce and the right to occupy the house as part of right to maintenance coming to an end.'

10. Also in *Anukriti Dubey vs. Parth (Supra)*, the Delhi High Court while considering the second appeal filed by an estranged wife against the eviction order in favour of the landlord held as under:

'...19. From the definition of domestic relationship and shared household referred to above, it is apparent that domestic relationship would not exist between persons who are not related by consanguinity, marriage or through a relationship in a nature of marriage, adoption or are not family members living together as a joint family. Thus, a landlord is completely out of the scheme of the Act, not being in domestic relationship with a person who along with her husband is or was a tenant in his house.

20. A tenanted premises may come under the definition of "shared household" under Clause (s) of Section 2 of the D.V Act if such premises have been used by the aggrieved person and the respondent even if and irrespective of whether the respondent or the aggrieved person has any right, title or interest in the aforesaid premises. This definition, though, is inclusive of tenanted premises, but is limited to the period during which the tenancy subsists. The definition of "shared household" is surely with respect to a joint family property or a tenanted premises which are occupied by the aggrieved person and the respondent in a domestic relationship. A landlord does not have any domestic relationship even during the subsistence of a tenancy and, therefore, he is outside the realm of the D.V. Act. After the expiration of the tenancy, thus, the premises of the respondent which may have been used or is being used by the aggrieved person and the respondent would not come under the category of a shared household. Under the Domestic Violence Act an aggrieved person has a right to reside in a shared household, whether or not the aggrieved person has any right, title or beneficial interest in the same. Section 17 of the Act reads as hereunder:- "17. Right to reside in a shared household-- (1) Notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same. (2) The aggrieved person shall not

be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law.".....

27. In B.P.Achala Anand vs. S.Appi Reddy and Anr., 2005 (3) SCC 313 the issue before the Supreme Court was whether a deserted wife who has been or is entitled to be in occupation of the matrimonial home can contest the suit for eviction filed against her husband in her capacity as tenant. The aforesaid question was answered by saying that subject to the condition that the tenant has given up the contest or is not interested in contesting the suit and such giving up by the tenant-husband shall prejudice the deserted wife who is residing in the premises. Another issue which was before the Supreme Court was whether the scope and ambit of the contest or defence by the wife would be on a higher/larger footing than that of the tenant himself. Answer to the aforesaid poser was that the wife would only be entitled to raise such pleas and claims as would have been available to the tenant himself and no more.

28. The Supreme Court in the aforesaid case made it very clear that a deserted wife in occupation of the tenanted premises cannot be placed in a position which is different from her husband if he had contested the suit. In paras 32 & 33, the Supreme Court clarified the conditions under which a deserted wife would be in a position to contest the suit for eviction:- 32. In our opinion, a deserted wife who has been or is entitled to be in occupation of the matrimonial home is entitled to contest the suit for eviction filed against her husband in his capacity as tenant subject to satisfying two conditions: first, that the tenant has given up the contest or is not interested in contesting the suit and such giving up by the tenant-husband shall prejudice the deserted wife who is residing in the premises; and secondly, the scope and ambit of the contest or defence by the wife would not be on a footing higher or larger than that of the tenant himself. In other words, such a wife would be entitled to raise all such pleas and claim trial thereon, as would have been available to the tenant himself and no more. So long as by availing the benefit of the provisions of the Transfer of Property Act and rent control legislation, the tenant would have been entitled to stay in the tenancy premises, the wife too can continue to stay exercising her right to residence as a part of right to maintenance subject to compliance with all such obligations including the

payment of rent to which the tenant is subject. This right comes to an end with the wife losing her status as wife consequent upon decree of divorce and the right to occupy the house as part of right to maintenance coming to an end....

31. No doubt, right of residence is a part of the right of maintenance to a wife. Had the appellant taken the plea that she would continue to pay the monthly rental, the situation would have been different. However, this is also debatable in as much as no person could be forced to enter into a contract with another without his consent or choice. Thus it would have depended upon the desire and willingness of the landlord to continue with the tenancy when the tenancy has expired.....

34. The ratio in Ishpal Singh Kahai vs. Mrs. Ramanjeet Kahai, 2011 Vol.3 Mh.L.J, does not improve the case of the appellant as it talks about the right of a woman to residence not as a proprietary right but in the nature of entitlement to protection for human rights against violence by a respondent. A tenanted premises may come within the expression of shared household but such premises would come out of the scope of such definition, no sooner the tenancy expires.

11. Perusal of ordersheets dated 07.06.2023, 01.03.2023, 17.12.2022, 30.05.2022 and 22.11.2022 in CC No. 120/2021, titled as *Mandeep Kaur vs. Dheeraj Verma Ors* leads to an inference that it is also within the knowledge of estranged wife of the defendant that the tenanted property ought to be vacated. The legal notice dated 11.11.2020 on record had also been issued to the defendant at the tenanted premises where the estranged wife of the defendant is in occupation. However, till date the estranged wife of the defendant has not approached this Court for impleadment.

12. Also, the lease by efflux of time the tenancy expired on 30.09.2020. Therefore, the tenanted premises no longer falls in

the category of a shared household. Hence, this Court is convinced that in the facts of the present case, even though the plaintiff was aware of the matrimonial dispute of the defendant and has not made the estranged wife of the defendant a party herein, the estranged wife of the defendant would not be a necessary party as **(a)** the tenancy has expired **(b)** she is aware that she has to vacate the suit premises and shift to an alternate accommodation but has not diligently acted and promptly sought impleadment before this Court and as **(c)** she could only raise such plea as the defendant himself can.

13. Having stated so, while deciding the application, it is to be now seen whether there is an unequivocal admission of the following facts and circumstances;

- a)** there exists relationship of landlord and tenant between the parties;
- b)** notice of termination under Section 106 of The Transfer of Property Act, 1882 was duly served;
- c)** the rate of rent exceeds Rs.3500/- when notice under Section 106 of The Transfer of property Act was served. Reliance is placed upon *Sushil Ansal vs. Charanjit Singh Sole Proprietor, Charmis Enterprises*.

14. The landlord tenant relationship is not disputed. It is also admitted that by efflux of time rent agreement dated 17.01.2020 expired on 30.09.2020. Thereafter, a legal notice has also been issued to the defendant but regarding receipt of the same, it is merely stated that the legal notice issued by the plaintiff is a 'web

of lies'. Hence, there is a evasive denial. However, it is now well settled that even filing of the suit for eviction would be proper notice. Reliance is placed upon ***Sushil Ansal (Supra)***. ***Further in Sushil Ansal (Supra)*** following ***Nopany Investments P. Ltd. v. Santosh Singh HUF (2008) 2SCC 728***, as under:

'... filing of the eviction suit under general law itself was notice to quit upon the respondents...'

15. As per the plaintiff, rent payable was Rs.48,000/- per month in advance exclusive of water and electricity charge. The same has not been contested by the defendant. Therefore, it is also established that the rent is beyond Rs.3,500/-.

16. As regards non-payment of rent w.e.f. December, 2020, it is observed that such contention of the plaintiff has again been only evasively denied. Hence, it is deemed to have been admitted.

17. Thus, in view of the above discussions, a preliminary decree is passed for relief of possession of the suit/ tenanted premises H.No. 7211, B-10, Vasant Vihar, new Delhi and recovery of rent of @ Rs.48,000/- for the month of December 2020.

18. However, the issue qua enhanced rent and the fixation of damages per day Rs.5,000/- is under challenge and therefore, are a matter of trial as to how the same has been assessed. Therefore, the suit shall be tried for determination of the same.

19. Decree sheet be accordingly, prepared on payment of appropriate Court fees.

20. Application is accordingly, disposed off.

**Pronounced in open Court
on 18.08.2023**

**(Vijeta Singh Rawat)
Additional District Judge-01,
New Delhi District,
Patiala House Courts,
New Delhi**