SATISH CHANDER AHUJA

v.

SNEHA AHUJA

(Civil Appeal No.3483 of 2020)

OCTOBER 15, 2020

[ASHOK BHUSHAN, R. SUBHASH REDDY AND M. R. SHAH, JJ.]

Protection of Women from Domestic Violence Act, 2005: ss.12, 19 – In a complaint filed under s.12 of Act, 2005, an interim order was passed in favour of complainant directing the respondent arrayed in the complaint i.e. husband not to dispossess the complainant without orders of a competent court – Suit filed by father-in-law thereafter praying for a mandatory and permanent injunction in respect of suit property against the complainant-defendant – Maintainability of – Held: Suit filed in civil court for mandatory and permanent injunction was fully maintainable – The issues raised by the plaintiff as well as by the defendant claiming a right under s.19 were to be addressed and decided on the basis of evidence led by the parties in the suit.

Protection of Women from Domestic Violence Act, 2005: s.26 – Relief in suit or legal proceedings – As per s.26, any relief available under ss.18, 19, 20, 21 and 22 of the Act, 2005 may also be sought in any legal proceeding, before a civil court, family court or a criminal court being the aggrieved person – In a suit for mandatory and permanent injunction filed by the appellant (father-in-law) where respondent (daughter-in-law) has pleaded and claimed that the suit property is shared household and she has right to live and it was on that ground she was resisting the suit for mandatory injunction, the question that whether the suit property is a shared household or not becomes relevant and necessary and the said issue cannot be skipped on the ground that application under D.V. Act is pending – In the regular suit, which was filed by the appellant, plea of defendant that suit property is her shared household and she has right to residence could have been very well gone into by virtue of s.26 of Act, 2005.

A *Protection of Women from Domestic Violence Act, 2005: s.19 – Pendency of proceedings under the Act, 2005 or any order interim or final, passed u/s.19 regarding right of residence is not an embargo for initiating/continuing any civil proceedings, which relate to subject matter of order interim or final passed in proceedings under the Act.*

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Protection of Women from Domestic Violence Act, 2005: s.2(s) – Shared household – Definition of – Held: The definition of shared household in s.2(s) is an exhaustive definition – s.2(s) uses both the expressions "means and includes" – The first part of definition begins with expression "means" which is undoubtedly an exhaustive

C *definition and second part of definition, which begins with word "includes" is explanatory of what was meant by the definition – The use of both the expressions "means and includes" in s.2(s), thus, clearly indicate the legislative intent that the definition is exhaustive and shall cover only those which fall within the purview*

D *of definition and no other.*

Protection of Women from Domestic Violence Act, 2005: s.2(s) – Expression "where the person aggrieved has lived or at any stage has lived in a domestic relationship" – Meaning of – The words "lives or at any stage has lived in a domestic relationship" have to

E *be given its normal and purposeful meaning – The living of woman in a household has to refer to a living which has some permanency – Mere fleeting or casual living at different places shall not make a shared household.*

Protection of Women from Domestic Violence Act, 2005: s.2(s)

F *– Interpretation of – It is not requirement of law that aggrieved person may either own the premises jointly or singly or by tenanting it jointly or singly; the household may belong to a joint family of which the respondent is a member irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household; and the shared household may either be*

G *owned or tenanted by the respondent singly or jointly.*

Protection of Women from Domestic Violence Act, 2005: s.2(q) – Who can be respondent – To treat a person as "respondent" for purposes of s.2(q), it has to be proved that person arrayed as respondent has committed an act of domestic violence on the

H *aggrieved person – For grant of any relief to the defendant or for*

successful resisting the suit of the plaintiff, necessary conditions for grant of relief as prescribed under the Act, 2005 has to be pleaded and proved by the defendant, only then the relief can be granted by the Civil Court to the defendant – Thus, for granting any relief by the Civil Court under s.19, it has to be proved that the respondent is committing or has committed an act of domestic violence on the aggrieved person.

Protection of Women from Domestic Violence Act, 2005: s.17 – Right to residence – 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 – This right has been expressly granted to every woman in domestic relationship to fulfill the purpose and objective of the Act – Although under the statute regulating personal law, the woman has right to maintenance, every wife has right of maintenance which may include right of residence, the right recognized by sub-section (1) of s.17 is new and higher right conferred on every woman.

Protection of Women from Domestic Violence Act, 2005: s.17(2) – Whether apart from powers of Magistrate under s.25(2) of the Act, 2005, the Act, 2005 contemplates any other eventuality when despite the order of residence under s.19 an aggrieved person can be evicted or dispossessed – Held: The right to reside in shared household as granted by s.17 itself contemplates an exception in express words, i.e., "save in accordance with the procedure established by law".

Protection of Women from Domestic Violence Act, 2005: s.17(2) – Embargo under – Held: In case, the shared household of a woman is a tenanted/allotted/licensed accommodation where tenancy/allotment/license is in the name of husband, father-in-law or any other relative, the Act, 2005 does not operate against the landlord/lessor/licensor in initiating an appropriate proceedings for eviction of the tenant/allottee/licensee qua the shared household – However, in case the proceedings are due to any collusion between the two, the woman, who is living in the shared household has right to resist the proceedings on all grounds which the tenant/lessee/licensee could have taken in the proceedings – The embargo under s.17(2) of Act, 2005 of not to be evicted or excluded save in accordance with the procedure established by law operates only

A *against the "respondent", i.e., one who is respondent within the meaning of s.2(q) of Act, 2005.*

Protection of Women from Domestic Violence Act, 2005: s.19 – Residence order – Held: The right to residence under s.19 is not an indefeasible right of residence in shared household especially B *when the daughter-in-law is pitted against aged father-in-law and mother-in-law – The senior citizens in the evening of their life are also entitled to live peacefully not haunted by marital discord between their son and daughter-in-law – Therefore, while granting relief both in application under s.12 of Act, 2005 or in any civil proceedings, the Court has to balance the rights of both the parties.*

C

Protection of Women from Domestic Violence Act, 2005: ss.17 and 19 – Proper party – In the present case, although plaintiff has not claimed any relief against his son, the husband of the respondent, hence, he was not a necessary party but in view of the fact that respondent has pleaded her right of residence in shared household D *relying on ss.17 and 19 of the Act, 2005 and one of the rights which can be granted under s.19 is right of alternate accommodation, the husband is a proper party – The right of maintenance as per the provisions of Hindu Adoption and Maintenance Act, 1956 is against that of the husband, hence he may be a proper party in cases when* E *the Court is to consider the claim of respondent under ss.17 and 19 read with s.26 of the Act, 2005 – Party/Parties – Necessary party.*

Code of Civil Procedure, 1908: Or.I r.10 empowers the Court at any stage of the proceedings either on an application or suo moto to add a party either as plaintiff or defendant, whose presence F *before the Court may be necessary in order to enable the Court effectively and completely adjudicate upon and settle all the questions involved in the suit – In the instant case, High Court issued directions that the matters be remanded back to trial court and at the first instance, in all cases where the respondent's son/the appellant's husband has not been impleaded, trial court shall direct* G *his impleadment by invoking its suo motu powers under Or.I r.10 – The said direction is a little wide and preemptory – In event, the High Court was satisfied that impleadment of husband of defendant was necessary, the High Court itself could have invoked the power under Or.I r.10 and directed for such impleadment – When the matter* H *is remanded back to trial court, trial court's discretion ought not to*

have been fettered by issuing such a general direction – Protection of Women from Domestic Violence Act, 2005.

Code of Civil Procedure, 1908: Or.XII r.6 – Power under, scope – Held: Power under Or.XII r.6 is discretionary and cannot be claimed as a matter of right.

Res judicata: Principle of, applicability when orders of criminal courts are pitted against proceedings in civil court – Held: There can be no applicability of principle of res judicata when orders of criminal courts are pitted against proceedings in civil court – With regard to criminal proceedings, Code of Criminal Procedure also contains provision that a person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence nor on the same facts for any other offence – The principle enumerated in s.300 Cr.P.C. may be relevant with respect to two criminal proceedings against same accused, which might have no relevance in reference to one criminal proceeding and one civil proceeding.

Protection of Women from Domestic Violence Act, 2005: ss.12, 25, 26 – Domestic Incident Report – Held: Before any order is passed under s.12, the magistrate has to take into consideration any domestic incident report received by him from the protection officer or the service provider – That does not mean that magistrate can pass orders solely relying upon the domestic incident report received by him from the protection officer or the service provider – Even as per s.36 of the D.V. Act, the provisions of the D.V. Act shall be in addition to, and not in derogation of the provisions of any other law, for the time being in force – Magistrate can also pass an interim order as per s.23 of the D.V. Act.

Protection of Women from Domestic Violence Act, 2005: s.19(1)(b) – Order under clause (b) of s.19(1) against a woman – Held: While passing order of residence under s.19, more particularly under sub-s.19(1)(b) as per the proviso to s.19(1), no order under clause (b) shall be passed against any person who is a woman.

Protection of Women from Domestic Violence Act, 2005: ss.12(2), 17, 19, 20, 22, 23, 25, 26 and 28 – The proceedings under

A *the D.V. Act and proceedings before a civil court, family court or a criminal court, as mentioned in s.26 of the D.V. Act are independent proceedings, like the proceedings under s.125 of the Cr. P.C. for maintenance before the Magistrate and/or family court and the proceedings for maintenance before a civil court/ family court for the reliefs under the Hindu Adoption and Maintenance Act –* B *However, the findings/orders passed by the one forum has to be considered by another forum.*

Evidence Act, 1872: ss.40 to 43 – Order passed under the Act, 2005 – Relevancy and admissibility in civil proceedings – There C *is no embargo in referring to or relying on an admissible evidence, be of a civil court or criminal court both in civil or criminal proceedings – The judgment or order of criminal court granting an interim or final relief under s.19 of D.V. Act, 2005 are relevant within the meaning of s.43 of the Evidence Act and can be referred to and looked into by the civil court – Protection of Women from Domestic* D *Violence Act, 2005.*

Words and phrases: Meaning and extent of expression "save in accordance with the procedure established by law" in s.17 of Protection of Women from Domestic Violence Act, 2005.

Dismissing the appeal, the Court

E

HELD: 1.1 The use of both the expressions "means and includes" in Section 2(s) of Act, 2005 clearly indicate the legislative intent that the definition is exhaustive and shall cover only those which fall within the purview of definition and no other. The first condition to be fulfilled for a shared household is that F **person aggrieved lives or at any stage has lived in a domestic relationship. The second part sub-divided in two parts is- (a) includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent and owned or tenanted by either of them in respect of which either the** G **aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and (b) includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household. In the above definition, two expressions, namely, "aggrieved** H **person" and "respondent" have occurred. From the above**

definition, following is clear:- (i) it is not requirement of law that aggrieved person may either own the premises jointly or singly or by tenanting it jointly or singly; (ii) the household may belong to a joint family of which the respondent is a member irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household; and (iii) the shared household may either be owned or tenanted by the respondent singly or jointly. [Paras 54, 55][230-D-H; 231-A-B]

1.2 Shared household referred to in Section 2(s) is the shared household of aggrieved person where she was living at the time when application was filed or in the recent past had been excluded from the use or she is temporarily absent. The words "lives or at any stage has lived in a domestic relationship" have to be given its normal and purposeful meaning. The living of woman in a household has to refer to a living which has some permanency. The intention of the parties and the nature of living including the nature of household have to be looked into to find out as to whether the parties intended to treat the premises as shared household or not. [Paras 62, 63][233-G-H; 234-A-B; 234-G-H]

1.3 This Court in paragraph 29 of the judgment in **S.R. Batra Vs. Taruna Batra* held that wife is only entitled to claim a right to residence in a shared household and a shared household would only mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member. The definition of shared household as noticed in Section 2(s) does not indicate that a shared household shall be one which belongs to or taken on rent by the husband. The respondent in a proceeding under Domestic Violence Act can be any relative of the husband. In event, the shared household belongs to any relative of the husband with whom in a domestic relationship the woman has lived, the conditions mentioned in Section 2(s) are satisfied and the said house will become a shared household. This court in *S.R. Batra Vs. Taruna Batra although noticed the definition of shared household as given in Section 2(s) but did not advert to different parts of the definition which makes it clear that for a shared household there is no such requirement that the house may be owned singly or jointly by the

A **husband or taken on rent by the husband. The definition of shared household is clear and exhaustive definition. The object and purpose of the Act was to grant a right to aggrieved person, a woman of residence in shared household. The interpretation which is put by this Court in **S.R. Batra Vs. Taruna Batra* if accepted shall clearly frustrate the object and purpose of the Act. [Para 64][235-C-H]**

B

S.R. Batra and Anr. v. Taruna Batra*, **(2007) 3 SCC 169 : [2006] 10 Suppl. SCR 1206 – not correct law.

Vimlaben Ajitbhai Patel v. Vatsalben Ashokbhai Patel and Ors., **(2008) 4 SCC 649 : [2008] 4 SCR 1077 – held inapplicable.**

C

1.4 In the suit filed by the appellant where respondent has pleaded and claimed that it is shared household and she has right to live and it was on that ground she was resisting the suit for mandatory injunction, the question that whether the suit property is a shared household or not becomes relevant and necessary and the said issue cannot be skipped on the ground that application under D.V. Act is pending. In the regular suit, which has been filed by the appellant, the plea of defendant that suit property is her shared household and she has right to residence could have been very well gone into by virtue of Section 26. [Para 82][244-G-H; 245-A]

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E

1.5 The right to residence under Section 19 is not an indefeasible right of residence in shared household especially when the daughter-in-law is pitted against aged father-in-law and mother-in-law. The senior citizens in the evening of their life are also entitled to live peacefully not haunted by marital discord between their son and daughter-in-law. While granting relief both in application under Section 12 of Act, 2005 or in any civil proceedings, the Court has to balance the rights of both the parties. The directions issued by High court in paragraph 56 adequately balances the rights of both the parties. [Para 83][245-B-C]

F

G

2. The power under Order XII Rule 6 is discretionary and cannot be claimed as a matter of right. In the facts of the present case, the Trial Court ought not to have given judgment under

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Order XII Rule 6 on the admission of the defendant as contained in her application filed under Section 12 of the D.V. Act. Thus, there are more than one reason for not approving the course of action adopted by Trial Court in passing the judgment under Order XII Rule 6. [Para 98][253-A-B]

Hiral P. Harsora and others v. Kusum Narottamdas Harsora and others, **(2016) 10 SCC 165 : [2016] 9 SCR 515;** *Vaishali Abhimanyu Joshi v. Nanasaheb Gopal Joshi*, **(2017) 14 SCC 373 : [2017] SCR 488;** *Eveneet Singh v. Prashant Chaudhri,* **(2010) SCC online Delhi 4507;** *Eveneet Singh v. Prashant Chaudhari*, **(2011) SCC online Delhi 4651;** *Preeti Satija v. Raj Kumari and Anr.,* **(2014) SCC online Delhi 188;** *B. R. Mehta v. Atma Devi and Ors.*, **(1987) 4 SCC 183 : [1987] 3 SCR 1184;** *Kunapareddy Alias NookalaShanka Balaji v. Kunapareddy Swarna Kumari and Anr.,* **(2016) 11 SCC 774 : [2016] 2 SCR 608;** *Captain Ramesh Chander Kaushal v. Mrs. Veena Kaushal and Ors.,* **(1978) 4 SCC 70 : [1978] 3 SCR 782;** *Manmohan Attavar v. Neelam Manmohan Attavar,* **(2017) 8 SCC 550 : [2017] 6 SCR 356;** *Bharat Coop. Bank (Mumbai) Ltd. v. Coop. Bank Employees Union,* **(2007) 4 SCC 685 : [2007] 4 SCR 347;** *Pioneer Urban Land and Infrastructure Limited and Anr. v. Union of India and Ors.*, **(2019) 8 SCC 416 : [2019] 10 SCR 381;** *The South Gujarat Roofing Tiles Manufacturers Association and Anr. v. The State of Gujarat and Anr.,* **(1976) 4 SCC 601 : [1977] 1 SCR 878;** *Karnataka Power Transmission Corporation and Anr. v. Ashok Iron Works Private Limited,* **(2009) 3 SCC 240 : [2009] 1 SCR 1109 – referred to**

3.1 The question whether the suit premises is shared household of the defendant and she has right in the shared household so as the decree before the Trial Court can be successfully resisted were required to be determined by the Trial Court. When in the suit, defendant has pleaded to resist the decree on the ground of her right of residence in the suit property it was for her to prove her claim in the suit both by pleadings and evidence. [Para 102][254-C-D]

3.2 One of the conditions to treat a person as a respondent is that "against whom the aggrieved person has sought any relief under the Act". The defendant in her pleadings having claimed that she has right of residence in the suit property, she for successful resisting the suit has to plead and prove that she was subjected to any act of domestic violence by the respondent, which is implicit in the definition of the aggrieved person itself as given in the Section 2(a) of the Act, 2005. Although the Magistrate passed an interim order in the application filed by the defendant under Section 12 on 26.11.2016 but said order was interim order which was passed on the satisfaction of the Magistrate that "the application *prima facie* disclosed that the respondent is committing or has committed an act of domestic violence". For granting any relief by the Civil Court under Section 19, it has to be proved that the respondent is committing or has committed an act of domestic violence on the aggrieved person. Thus, for the purposes of determination of right of defendant under Sections 17 and 19 read with Section 26 in the suit in question, the plaintiff can be treated as "respondent", but for the grant of any relief to the defendant or for successful resisting the suit of the plaintiff, necessary conditions for grant of relief as prescribed under the Act, 2005 has to be pleaded and proved by the defendant, only then the relief can be granted by the Civil Court to the defendant. [Paras 103, 104][254-D-G; 254-G-H; 255-A]

4.1 Section 17 of the Act has two sub-sections which engraft two independent rights. According to sub-section (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. This right has been expressly granted to every woman in domestic relationship to fulfill the purpose and objective of the Act. Although under the statute regulating personal law, the woman has right to maintenance, every wife has right of maintenance which may include right of residence, the right recognized by sub-section (1) of Section 17 is new and higher right conferred on every woman. The right is to be implemented by an order under Section 19, on an application filed under sub-section (1) of Section 12. Sub-section (2) of Section 17, however, contains an

exception in the right granted by sub-section (2), i.e., "save in accordance with the procedure established by law". Sub-section (2) of Section 17, thus, contemplates that aggrieved person can be evicted or excluded from the shared household in accordance with the procedure established by law. [Paras 105, 106][255-B-E]

4.2 Section 25(2) itself contemplates an eventuality when order passed under the Act can be altered, modified or revoked. The right to reside in shared household as granted by Section 17 itself contemplates an exception in express words, i.e., "save in accordance with the procedure established by law". The procedure prescribed for proceedings under Section 19 as provided in Section 28 of the Act is as per the provisions of the Code of Criminal Procedure, 1973. The rules have been framed under the Act, 2005, namely "The Protection of Women from Domestic Violence Rules, 2006". Rule 5 deals with Domestic Incident Report which is to be submitted by protection officer in Form I. Form-II is again part of Rule which contains various details including orders required, residence orders, under Section 19, monetary relief under Section 20, details of previous litigation, if any, and other details to enable the Magistrate to take appropriate decision. Rule 6 sub-Rule (4) provides that for obtaining an interim ex-parte order under Section 23, an affidavit is to be filed in Form-III. The Form-III is an affidavit of an aggrieved person or the person filing affidavit on behalf of his ward, daughter, etc. The Act and the Rules thus provide for a procedure and manner of filing an application for obtaining a relief under Act, 2005. [Paras 107, 109, 110, 111][256-D-H; 257-A-C]

4.3 Section 145 of Cr.P.C. provides for procedure where dispute concerning land or water is likely to cause breach of peace. Under Section 145 Cr.P.C., in case Magistrate is satisfied that a dispute likely to cause a breach of the peace exists, he may require the parties to attend the Court and to decide whether any and which of the parties was, at the date of the order made by him under sub-section (1), in possession of the subject of dispute. Sub-section (6) of Section 145 Cr.P.C. contemplates issuance of the order by the Magistrate declaring such party to be entitled

A **to such possession. Sub-section (6), however, contemplates that the parties to be entitled to possession thereof until evicted therefrom in due course of law. The eviction in due course of law was contemplated to be by a competent court. This Court had occasion to consider the expression "until evicted therefrom in due course of law" as occurring in Section 145(6) in **Shanti Kumar Panda Vs. Shakuntala Devi. This Court held in the above case that the purpose of provisions of Section 145 Cr.P.C. is to provide a speedy and summary remedy so as to prevent a breach of the peace by submitting the dispute to the Executive Magistrate for resolution as between the parties disputing the question of possession over the property. This Court held that the unsuccessful party in proceedings under Section 145 Cr.P.C. ought to sue for recovery of possession seeking a decree or order for restoration of possession. This Court further held that finding recorded by the Magistrate under Section 145 Cr.P.C. does not bind when the matter comes for adjudication before competent court. This Court explained expression "until evicted therefrom in due course of law" mean "any court which has jurisdictional competence to decide the question of title or rights to the property or entitlement to possession". [Paras 112, 113, 114][257-C-H; 258-D-E]**

***Shanti Kumar Panda v. Shakuntala Devi*, **(2004) 1 SCC 438 : [2003] 5 Suppl. SCR 98 – relied on**

4.4 Drawing the analogy from **Shanti Kumar Panda case, the expression "save in accordance with the procedure established by law", in Section 17(2) of the Act, 2005 contemplates the proceedings in court of competent jurisdiction. Thus, suit for mandatory and permanent injunction/eviction or possession by the owner of the property is maintainable before a Competent Court. In sub-section (2), the injunction is "shall not be evicted or excluded from the shared household save in accordance with procedure established by law". Thus, the provision itself contemplates adopting of any procedure established by law by the respondent for eviction or exclusion of the aggrieved person from the shared household. Thus, in appropriate case, the competent court can decide the claim in a properly instituted

suit by the owner as to whether the women need to be excluded or evicted from the shared household. [Para 116][260-B-E]

4.5 In case, the shared household of a woman is a tenanted/ allotted/licensed accommodation, where tenancy/ allotment/ license is in the name of husband, father-in-law or any other relative, the Act, 2005 does not operate against the landlord/ lessor/licensor in initiating an appropriate proceedings for eviction of the tenant/allottee/licensee qua the shared household. However, in case the proceedings are due to any collusion between the two, the woman, who is living in the shared household has right to resist the proceedings on all grounds which the tenant/ lessee/licensee could have taken in the proceedings. The embargo under Section 17(2) of Act, 2005 of not to be evicted or excluded save in accordance with the procedure established by law operates only against the "respondent", i.e., one who is respondent within the meaning of Section 2(q) of Act, 2005. [Para 117][260-G-H; 261-A-B]

5.1 In the present case, although plaintiff has not claimed any relief against his son, the husband of the respondent, hence, he was not a necessary party but in view of the fact that respondent has pleaded her right of residence in shared household relying on Sections 17 and 19 of the Act, 2005 and one of the rights which can be granted under Section 19 is right of alternate accommodation, the husband is a proper party. The right of maintenance as per the provisions of Hindu Adoption and Maintenance Act, 1956 is against that of the husband, hence he may be a proper party in cases when the Court is to consider the claim of respondent under Sections 17 and 19 read with Section 26 of the Act, 2005. [Para 119][262-B-D]

5.2 Civil Procedure Code, Order I Rule 10 empowers the Court at any stage of the proceedings either on an application or suo moto to add a party either as plaintiff or defendant, whose presence before the Court may be necessary in order to enable the Court effectively and completely adjudicate upon and settle all the questions involved in the suit. The High Court in paragraph 56(i) directed to remand the matters back to the Trial Court for fresh adjudication in accordance with the directions that at the

first instance, in all cases where the respondent's son/the appellant's husband has not been impleaded, the Trial Court shall direct his impleadment by invoking its *suo motu* powers under Order I Rule 10 CPC. This direction is a little wide and preemptory. If the High Court was satisfied that impleadment of husband of defendant was necessary, it could have invoked the power itself under Order I Rule 10 and directed for such impleadment. The direction in paragraph 56(i) should not be treated as a general direction to the Courts to implead in all cases the husband of an aggrieved person and it is trial court which is to exercise the jurisdiction under Order I Rule 10. [Paras 120, 121][262-D-G; 263-B]

6.1 There can be no applicability of principle of res judicata when orders of Criminal Courts are pitted against proceedings in Civil Court. With regard to criminal proceedings, Code of Criminal Procedure also contains provision that a person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence nor on the same facts for any other offence. The principle enumerated in Section 300 Cr.P.C. may be relevant with respect to two criminal proceedings against same accused, which might have no relevance in reference to one criminal proceeding and one civil proceeding.[Para 126][264-E-G]

6.2 Section 40 renders admissible judgments which operate as placing any bar on a suit or trial as plea of res judicata or otherwise under some rule of law. The scheme of D.V. Act, 2005 does not contemplate that any judgment and order passed under Section 19 of the said Act prevents any court from taking cognizance of a suit or holding of trial; Section 41 deals with relevancy of certain judgments in probate, matrimonial, admirality and insolvency jurisdiction which are conclusive not only against party but against all the world. This Section enumerates four classes of judgments. A decree of Civil Court in exercise of matrimonial jurisdiction is also one of the judgments which had been held to be relevant under Section 41. The orders passed under Act, 2005 cannot be held to be orders or judgments passed

in exercise of any matrimonial jurisdiction by the Court. The Act, 2005 is a special act on the subject of providing for effective protection of the rights of women who are victims of violence of any kind. [Paras 127, 128][266-C-F]

6.3 Section 42 deals with admissibility of judgments relevant to matters of public nature though not between the parties and privy but such judgments, orders or decree are not conclusive proof of that they state. Section 43 says that judgment other than those mentioned in Sections 40 to 42 are irrelevant unless the existence of judgment, order or decree is fact in issue or is relevant under some other provisions of the Act. In the facts of this case, where there are pleadings in suit in question regarding proceeding under Section 12, the existence of orders passed under Act, 2005 are relevant and admissible in Civil Proceedings. [Para 129][266-F-H]

7.1 The proceedings under D.V. Act, 2005 are proceedings which are to be governed by Code of Criminal Procedure, 1973. The procedure to be followed by the magistrate is provided under Section 28 of the D.V. Act and as per Section 28 of the D.V. 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. Even sub-section (2) of Section 28 provides that the magistrate can lay down its own procedure for disposal of an application under Section 12 or under sub-section (2) of Section 23. However, for other proceedings, the procedure is to be followed as per the provisions of the Code of Criminal Procedure, 1973. The procedure to be followed under Section 125 shall be as per Section 126 of the Cr.P.C. which includes permitting the parties to lead evidence. Therefore, before passing any orders under the D.V. Act, the parties may be permitted to lead evidence. However, before any order is passed under Section 12, the magistrate shall take into consideration any domestic incident report received by him from the protection officer or the service provider. That does not mean that magistrate can pass orders solely relying upon the domestic incident report received by him from the protection officer or the service provider. Even as per Section 36 of the D.V. Act, the provisions of the D.V. Act shall be in addition to, and not in

derogation of the provisions of any other law, for the time being in force. Even the magistrate can also pass an interim order as per Section 23 of the D.V. Act. [Paras 130, 131][266-H; 267-A-E]

7.2 Considering Section 12(2) and Section 26(3), read with Section 25(2), even the Legislature envisaged the two independent proceedings, one before the magistrate under the D.V. Act and another proceeding other than the proceedings under the D.V. Act. Even the Civil Court has to take into consideration the relief already granted by the Magistrate in the proceedings under the D.V. Act and vice versa.However, at the same time, in a case any relief available under Sections 18, 19, 20, 21 and 22 is sought by aggrieved person in any legal proceedings before a civil court, family court or a criminal court including the residence order, the aggrieved person has to satisfy by leading evidence that domestic violence has taken place and only on the basis of the evidence led on being satisfied that the domestic violence has taken place, the relief available under Section 19 can be granted. [Paras 132, 133, 134][267-E-H]

7.3 While passing the order of residence under Section 19, more particularly under sub-section 19(1)(b) as per the proviso to Section 19(1), no order under clause(b) shall be passed against any person who is a woman. Therefore, on conjoint reading of Sections 12(2), 17, 19, 20, 22, 23, 25, 26 and 28 of the D.V. Act, it can safely be said that the proceedings under the D.V. Act and proceedings before a civil court, family court or a criminal court, as mentioned in Section 26 of the D.V. Act are independent proceedings, like the proceedings under Section 125 of the Cr. P.C. for maintenance before the Magistrate and/or family court and the proceedings for maintenance before a civil court/ family court for the reliefs under the Hindu Adoption and Maintenance Act. However, the findings/orders passed by the one forum has to be considered by another forum. [Para 136][268-A-D]

Navneet Arora v. Surender Kaur and Ors., **(2014) SCC Online Del 7617;** *Maria Margarida Sequeira Fernandes and Ors. v. Erasmo Jack De Sequeira*, **(2012) 5 SCC 370 : [2012] 3 SCR 841;** *Himani Alloys Limited*

v. Tata Steel Limited, **(2011) 15 SCC 273 : [2011] 7 SCR 60;** *S. M. Asif v. Virender Kumar Bajaj*, **(2015) 9 SCC 287 : [2015] 9 SCR 179;** *Razia Begum v. Sahebzadi Anwar Begum and others,* **AIR 1958 SC 886 : [1959] SCR 1111;** *Ramesh Hirachand Kundanmal v. Municipal Corporation of Greater Bombay and others,* **(1992) 2 SCC 524 : [1992] 2 SCR 1;** *M. S. Sheriff and Anr. v. State of Madras and Ors.,* **AIR 1954 SC 397 : [1954] SCR 1144;** *S. M. Jakati and Anr. v. S. M. Borkar and Ors.,* **AIR 1959 SC 282 : [1959] SCR 1384;** *G. Premshankar v. Inspector of Police and Anr.,* **(2002) 8 SCC 87 : [2002] 2 Suppl. SCR 350;** *Iqbal Singh Marwah and Anr. v. Meenakshi Marwah and Anr.,* **(2005) 4 SCC 370 : [2005] 2 SCR 708;** *Seth Ramdayal Jat v. Laxmi Prasad,* **(2009) 11 SCC 545 : [2009] 7 SCR 17;** *Vishnu Dutt Sharma v. Daya Sapra,* **(2009) 13 SCC 729 : [2009] 7 SCR 977;** *Kishan Singh (Dead) Through LRs. v. Gurpal Singh and Ors.,* **(2010) 8 SCC 775 : [2010] 10 SCR 16;** *K. Subramani v. Director of Animal Husbandry, Chennai,* **(2009) 1 MLJ 363 – referred to.**

Case Law Reference

[2016] 9 SCR 515	**referred to**	**Para 23**
[1987] 3 SCR 1184	**referred to**	**Para 34**
[2016] 2 SCR 608	**referred to**	**Para 37**
[1978] 3 SCR 782	**referred to**	**Para 39**
[2017] 6 SCR 356	**referred to**	**Para 40**
[2007] 4 SCR 347	**referred to**	**Para 49**
[2019] 10 SCR 381	**referred to**	**Para 50**
[1977] 1 SCR 878	**referred to**	**Para 51**
[2009] 1 SCR 1109	**referred to**	**Para 52**
[2006] 10 Suppl. SCR 1206	**not correct law**	**Para 64**
[2008] 4 SCR 1077	**held inapplicable**	**Para 65**
[2012] 3 SCR 84	**referred to**	**Para 79**

A	**[2011] 7 SCR 60**	**referred to**	**Para 86**
	[2015] 9 SCR 179	**referred to**	**Para 86**
	[2017] 5 SCR 488	**referred to**	**Para 93**
	[2003] 5 Suppl. SCR 98	**relied on**	**Para 113**
B	**[1959] SCR 1111**	**referred to**	**Para 118**
	[1992] 2 SCR 1	**referred to**	**Para 118**
	[1954] SCR 1144	**referred to**	**Para 139**
	[1959] SCR 1384	**referred to**	**Para 142**
C	**[2002] 2 Suppl. SCR 350**	**referred to**	**Para 143**
	[2005] 2 SCR 708	**referred to**	**Para 148**
	[2009] 7 SCR 17	**referred to**	**Para 149**
	[2009] 7 SCR 977	**referred to**	**Para 151**
D	**[2010] 10 SCR 16**	**referred to**	**Para 152**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3483 of 2020.

From the Judgment and Order dated 18.12.2019 of the High Court
E of Delhi at New Delhi in R.F.A. No. 381 of 2019.

Nidhesh Gupta, Sr. Adv. Prabhjit Jauhar, Ms. Tulika Bhatnagar, Mr. S. S. Jauhar, Mohit Paul, Prashant Mehta, Himanshu Kapoor, Ms. Prachi Mehta, Prateek Dhanda, Ms. Sunaina Phul, Madhav Gupta, Advs. for the appearing parties.

F The Judgment of the Court was delivered by

ASHOK BHUSHAN, J.

1. Leave granted.

2. This appeal raises important questions of law pertaining to the
G interpretation and working of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as "Act, 2005").

3. This appeal has been filed by Satish Chander Ahuja, the plaintiff questioning the judgment of Delhi High Court dated 18.12.2019 in RFA No.381/2019 by which judgment Delhi High Court has set aside the
H decree granted in favour of the plaintiff dated 08.04.2019 under Order

XII Rule 6 of Civil Procedure Code, decreeing the suit filed by the plaintiff for mandatory and permanent injunction. The High Court after setting aside the decree of the Trial Court has remanded the matter back to the Trial Court for fresh adjudication in accordance with the directions given by the High Court. The plaintiff aggrieved by the judgment of the High Court has come up in this appeal.

4. We may notice the brief facts of the case and relevant pleadings of the parties for determining the questions which have arisen for consideration in this appeal.

5. The appellant by deed dated 12.01.1983 purchased property bearing No.D-1077, New Friends Colony, New Delhi. The son of the appellant, Raveen Ahuja was married to the respondent, Sneha Ahuja on 04.03.1995. After marriage the respondent started living in the first floor of the house No.D-1077, Friends Colony, New Delhi along with her husband. There being marital discord between Raveen and Sneha, in July, 2014, Raveen moved out of the first floor and started staying in the guest room of the ground floor. In the year 2004 a separate kitchen was started by the respondent in the first floor of the house. Raveen, the husband of the respondent filed a Divorce Petition on 28.11.2014 under Section 13(1)(ia) and (iii) of Hindu Marriage Act, 1955 for decree of divorce on the ground of cruelty against the respondent, Sneha Ahuja which proceeding is said to be still pending. The respondent, Sneha Ahuja, on 20.11.2015, i.e., after filing of the Divorce Petition, filed an application under Section 12 of Act, 2005 impleading Raveen Ahuja as respondent No.1, Shri Satish Ahuja, respondent No.2 and Dr. Prem Kanta Ahuja(mother-in-law of the respondent), respondent No.3. In the complaint it was alleged that Sneha Ahuja has been subjected to severe emotional and mental abuse by the respondents. In the application respondent prayed for several orders under Act, 2005. The learned Chief Metropolitan Magistrate before whom the complaint was filed passed an interim order on 26.11.2016 to the following effect:

> "The respondents shall not alienate the alleged shared household nor would they dispossess the complainant or their children from the same without Orders of a Competent Court. These directions shall continue till next date."

6. The appellant filed a Suit No.792/2017 impleading the respondent as sole-defendant for mandatory and permanent injunction and also for recovery of damages/mesne profit. Plaintiff's case in the

A suit was that he is a senior citizen of 76 years old, the defendant is in occupation of two bed rooms with attached dressing and bath rooms and a kitchen on the first floor of the property bearing No. D-1077, New Friends Colony, New Delhi. Plaintiff pleaded that he is a heart patient and has undergone angioplasty twice and suffers from hypertension and high blood pressure. Plaintiff pleads that the defendant has filed false B and frivolous cases against the plaintiff and his wife and hence he prays for removal of the defendant from the suit property so as he may live peaceful life. Plaintiff further pleaded that the plaintiff acquired the house from the previous owner, namely, Kulbhushan Jain on 12.01.1983. He also pleaded that the property has been converted into free hold vide C conveyance deed executed in his favour dated 14.07.2003 which is registered. Plaintiff pleaded that his elder son was married with the defendant on 04.03.1995. The plaintiff further pleaded that wife of the plaintiff has been subjected to various threats and violence in the hands of the defendant on several occasions. The mention of the Divorce Petition filed by Raveen was made in the plaint and it was pleaded that D the defendant as a counter blast has filed the complaint case under the Protection of Women from Domestic Violence Act, 2005 in which interim order directing the plaintiff not to alienate and not to dispossess the defendant without order of the competent court has been passed.

7. Plaintiff claimed that he and his wife has become victim of E domestic violence on the part of the defendant. Plaintiff pleaded that the status of occupation of defendant as a daughter-in-law during subsistence of marriage with the son could be said to be permissive in nature and defendant is not entitled to claim a right of residence against the plaintiff, i.e., her father-in-law who has no obligation to maintain her during the F lifetime of her husband. Plaintiff in the suit prayed for decree for mandatory injunction against the defendant to remove herself and her belonging from the first floor of the property and a decree of permanent injunction in favour of the plaintiff and against the defendant thereby restraining the defendants, her agents, employees, representatives, etc. from in any manner creating interference or obstruction of the right of G the plaintiff in the suit property and restrain her from causing interference in the peaceful occupation of the plaintiff in the ground floor of the property. Decree of recovery of damages/mesne profit was also asked for the use and occupation of the suit property of Rs.1 lac from the date of filing of the suit till the defendant is removed from the suit property.

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8. A written statement was filed by the defendant pleading that house property was acquired by the plaintiff through joint family funds and not his self-acquired property. It was pleaded in the written statement that the plaintiff has suppressed the true and material facts regarding causing physical and mental torture to the defendant on account of domestic violence etc. by the plaintiff, his wife and their elder son.

9. The defendant also referred to filing of complaint case under section 12 of Act, 2005. The defendant claimed that the suit property is a shared household as per provision of Section 2(s) of the Act, 2005, the defendant has right to stay/reside in the shared household. The plaintiff has filed suit in the collusion of his son Raveen Ahuja to deprive the legal right of the residence of the defendant and her daughters in the suit property. It was pleaded further that the defendant has been subjected to severe emotional and mental abuse by the plaintiff, his wife and their elder son. The defendant further pleads that since marriage defendant is staying in the shared household of the first floor which is a matrimonial home of the defendant. The interim order passed in complaint case dated 16.07.2016 and 26.11.2016 has been also referred to.

10. Plaintiff filed an application under Order XII Rule 6 CPC on 05.01.2018 read with Section 151 CPC for passing a decree on the basis of admissions made by the defendant in the application under Section 12 of Act, 2005. Plaintiff pleaded that property in question is self-acquired property of the plaintiff by agreement to sell dated 12.01.1983 followed by a registered conveyance deed dated 14.07.2003. The defendant has herself in her pleadings filed in the domestic violence case admitted the plaintiff to be the owner of the suit property, hence, decree of mandatory injunction in favour of the plaintiff be granted.

11. The defendant filed an application on 23.09.2017 under Order XI Rules 12 and 14 CPC for production of documents. In paragraph 7 of the application, the defendant referred to various documents which according to the defendant were relevant for deciding the suit. By the application documents were sought to be produced by the plaintiff. The Trial Court vide its order dated 20.03.2018 directed the plaintiff to file an affidavit and documents as sought for in the application under Order XI Rule 13 which are in his custody with advance copy to the opposite party. A reply was filed by the defendant on 15.02.2018 to the application filed by the plaintiff under Order XII Rule 6 CPC. The defendant again reiterated that the shared household was acquired by the plaintiff through joint-family business and the house is not his self-acquired property.

12. The plaintiff also filed an affidavit and documents under Order XI Rule 13 CPC in compliance of the order of the Trial Court dated 20.03.2018.

13. The Trial Court proceeded to decide the application under Order XII Rule 6 CPC filed by the plaintiff. By judgment dated 08.04.2019 Trial Court decreed the suit in the following manner:

> "**26.** In the light of aforesaid discussion and the observations, this Court is of the considered opinion that there are sufficient admission to pass a decree in favour of the plaintiff. Consequently, suit of the plaintiff is decreed for the relief of mandatory and permanent injunction as prayed for. The defendant is directed to hand over the vacant and physical possession of the suit property to the plaintiff within 15 days. At the time of announcement of the order, this Court asked plaintiff whether he wants to pursue his suit for the relief of damages to which he agreed to waive off the said relief. Accordingly, statement of the plaintiff was also recorded to this effect. Accordingly, the relief of damages stands withdrawn. Decree sheet be prepared for the relief of permanent and mandatory injunction accordingly. There is no order as to costs. File be consigned to record room. As requested, copy of this judgment be given dasti."

14. Aggrieved with the judgment of Trial Court the defendant filed RFA No.381 of 2019 in the High Court of Delhi. The Delhi High Court heard the RFA filed by the respondent along with five other RFAs and by a common judgment dated 18.12.2019 set aside the decree of the Trial Court and remanded the matter to the Trial Court for fresh adjudication in accordance with the directions given in paragraph 56 of the judgment.

15. The High Court noticed the facts of the different appeals and submissions made by the learned counsel. The High Court opined that the real point of determination in the appeal is not as to whether suit premises is a shared household or not and since the domestic violence proceedings initiated by the daughter-in-law are pending adjudication, determination of this issue in suit proceedings would result in causing serious prejudice to the claim of the applicant in the domestic violence proceedings. The High Court observed that it had consciously refrained from determining the question as to whether the suit premises is shared

household or not. The High Court was of the view that the decisions cited have not considered the effect of the pending domestic violence application instituted by daughter-in-law upon the civil suit. The High Court, however, held that suit for possession instituted cannot be said to be non-maintainable since necessary answer falls within the term "procedure established by law". The High Court has further observed that question is whether the suit could be simply decreed by the Trial Court on the basis of the title without weighing the effect of the statutory right in favour of the appellant. The High Court in paragraph 33 made following observation:

> "**33**……Thus, I find that the DV Act has aspired to bring in a sea change in the rights of persons affected by domestic violence by ensuring that irrespective of the ownership of the suit premises where the aggrieved person resided, she would still retain the right to reside therein as long as she was able to prove that she had endured domestic violence while being in a domestic relationship with the owner of such premises."

16. The High Court opined that the Trial Court erroneously proceeded to pass decree under Order XII Rule 6 CPC by not impleading the husband and failing to appreciate the specific submission of the appellant while admitting the title of the respondent that the suit premises was the joint family property but also losing the site of the DV Act. The directions given by the High Court are contained in the paragraph 56 to the following effect:

> "**56.** In these circumstances, the impugned judgments cannot be sustained and are accordingly set aside. The matters are remanded back to the Trial Court for fresh adjudication in accordance with the directions given hereinbelow:
>
> (i)At the first instance, in all cases where the respondent's son/the appellant's husband has not been impleaded, the Trial Court shall direct his impleadment by invoking its suo motu powers under Order I Rule 10 CPC.
>
> (ii) The Trial Court will then consider whether the appellant had made any unambiguous admission about the respondent's ownership rights in respect of the suit premises; if she has and her only defence to being dispossessed there from is her right of residence under the DV Act, then the Trial Court shall, before

A passing a decree of possession on the wife premise of ownership rights, ensure that in view of the subsisting rights of the appellant under the DV Act, she is provided with an alternate accommodation as per Section 19(1)(f) of the DV Act, which will continue to be provided to her till the subsistence of her matrimonial relationship.

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(iii) In cases where the appellant specifically disputes the exclusive ownership rights of the respondents over the suit premises notwithstanding the title documents in their favour, the Trial Court, while granting her an opportunity to lead evidence in support of her claim, will be entitled to pass interim orders on applications moved by the respondents, directing the appellant to vacate the suit premises subject to the provision of a suitable alternate accommodation to her under Section 19(1)(f) of the DV Act, which direction would also be subject to the final outcome of the suit.

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(iv) While determining as to whether the appellant's husband or the in-laws bears the responsibility of providing such alternate accommodation to the appellant, if any, the Trial Court may be guided by paragraph 46 of the decision in ***Vinay Verma (supra).***

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(v) The Trial Court shall ensure that adequate safeguards are put in place to ensure that the direction for alternate accommodation is not rendered meaningless and that a shelter is duly secured for the appellant, during the subsistence of her matrimonial relationship.

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(vi) This exercise of directing the appellant to vacate the suit premises by granting her alternate accommodation will be completed expeditiously and not later than 6 months from today."

17. The plaintiff-appellant aggrieved by the judgment of the High G Court dated 18.12.2019 has come up in this appeal.

18. We have heard Shri Prabhjit Jauhar, learned counsel for the appellant. Shri Nidhesh Gupta, learned senior counsel has appeared for the respondent. We have also heard Ms. Geeta Luthra, learned senior counsel and Shri Jayant Bhushan, learned senior counsel in the connected

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SLP (C) No.9415 of 2020 in which parties are stated to have entered into a settlement.

19. Shri Prabhjit Jauhar, learned counsel for appellant contends that suit property which is exclusively owned by the appellant is not a shared household. The son of the appellant, Raveen has no right in the property and the son as well as respondent-daughter-in-law were only gratuitous licencees of the appellant. The appellant purchased the property in the year 1983, at that time the son of the appellant was only 14 years old. It is submitted that the respondent can claim right to reside only in house which is either joint family property or the husband of the respondent has a share in it. In the property belonging to father of the husband, she has no right to reside. Learned counsel for the appellant has relied on judgment of this Court in **S.R. Batra and Anr. Vs. Taruna Batra, (2007) 3 SCC 169,** where two-Judge Bench of this Court held that the wife is entitled only to claim a right under Section 17(1) to residence in a shared household and a shared household would only mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member.

20. It is submitted that the complaint under the Act, 2005 filed by the respondent was only a counter blast to the Divorce Petition dated 28.11.2014 filed by the husband of the respondent. It is submitted that Sections 17 and 19 of the Act, 2005 do not contemplate a proprietary or ownership right in the shared household for the aggrieved person. Shri Jauhar further submits that her claim for alternate accommodation can be made qua husband and not qua the father-in-law because her relationship in the household emanates pursuant to the marriage and father-in-law cannot be under a statutory obligation to provide for the residence and maintenance of daughter-in-law. Shri Jauhar submits that unless the definition of shared household under Section 2(s) is not interpreted in a manner confining the definition of shared household to joint family or the property where the husband has a share it will create chaos in the society. It is submitted that extensive interpretation of shared household would lead the chaos in the society which needs to be avoided for protecting peace and harmony in the society. He submitted that harmonious construction by interpretation in the suit is to be adopted so that the right of the parties are balanced. Shri Jauhar submits that in her application filed under Section 12 of Act, 2005, the respondent has asked for alternate accommodation.

A 21. Shri Jauhar submits that the High Court committed error in not following the binding precedence of Delhi High Court itself. Shri Jauhar submits that the respondent never filed a counter claim in the suit filed by the appellant-owner, nor filed a suit for declaration of her claim of property being joint family property. Shri Jauhar submits that the High
B Court has not adverted to facts of different appeals and all appeals were decided by a common judgment without referring to evidence and pleadings in each appeal separately. The finding of the Trial Court has not been overruled by the High Court in the appellant's case. Shri Jauhar further submits that husband is not a necessary party in a suit filed by the father-in-law. Shri Jauhar submits that the Trial Court has rightly
C decreed the suit under Order XII Rule 6 CPC relying on the admission made by the respondent in her application under Section 12 of the Act, 2005. The High Court has not followed the binding judgment of this Court in **S. R. Batra Vs. Taruna Batra** which was binding on the High Court under Article 141 of the Constitution of India. Shri Jauhar submits
D that rights of wife in other statutes like Hindu Marriage Act, 1955 and Hindu Adoption and Maintenance Act, 1956 are only against the husband.

22. Shri Nidhesh Gupta, learned senior counsel appearing for the respondent refuting the submission of the learned counsel for the appellant supports the judgment of the High Court. Shri Gupta submits that Act,
E 2005 granted protection and security of residence to woman. Shri Gupta referring to definition of domestic relationship under Section 2(f) contends that respondent was in domestic relationship with the appellant and the appellant was respondent within the meaning of Section 2(q) against whom allegation of domestic violence was made in petition under Section 12. Shri Gupta referring to definition of shared household under Section
F 2(s) submits that factum of residence and domestic relationship with the respondent are the only qualification to fall within the ambit of definition of shared household. Shri Gupta submits that second part of the definition of the shared household is extensive in nature which gives certain example but cannot be said to be exhaustive looking at scheme of the Act. He
G submits that when 'includes' is used after the term "means" it is extensive and not exhaustive in nature. The respondent being in domestic relationship with the appellant living in the suit property since her marriage and continues to do so till date, the property is shared household where the appellant is staying. It is submitted that for shared household it is not necessary that aggrieved person should have any right, title or interest.
H It is further submitted that it is also not necessary that the husband of the

woman should have any right, title or interest in the house. It is submitted that protection under Section 17 is available in all legal proceedings including the suit filed by the appellant.

23. Referring to Section 26 of the Act, 2005 Shri Gupta submits that relief under Section 19 was very well available in Civil Procedure Code. The plea taken by the respondent in her pleadings in the civil suit would constitute the counter claim which warranted exercise of power of Trial Court under Section 26 of the Act, 2005. Referring to the judgment of this Court in **S.R.Batra Vs. Taruna Batra,** Shri Gupta submits that the said judgment is distinguishable on facts. He submits that the said case was pre-Act, 2005 case and secondly **Taruna Batra** admitted that she had shifted to her parents' residence at the time of institution of the suit. It is submitted that the injunction was denied since **Taruna Batra** was not residing in the house which finding was not liable to be interfered with by the High Court under Article 226 or 227 as held by this Court. Shri Gupta further submits that the judgment of this Court in **S.R. Batra** case does not lay down correct law. He submits that the definition of "shared household" has not been correctly analysed in **S.R. Batra** case. The definition of respondent does not include only husband. The relatives of the husband who have treated the aggrieved person with domestic violence can be arrayed as respondent. There is no reason to extend definition of shared household only to property in which the husband has a share. It is submitted that **S.R. Batra** has not appreciated that second part of the definition of shared household is merely illustration and not exhaustive. **S.R.Batra** also erred in holding that alternative accommodation under Section 19 can only be enforced against the husband. Shri Gupta submits that the judgment of **S.R. Batra** does not correctly interpret provisions of Act, 2005. Referring two subsequent judgments of this Court, namely **Hiral P. Harsora and others Vs. Kusum Narottamdas Harsora and others, (2016) 10 SCC 165,** and **Vaishali Abhimanyu Joshi Vs. Nanasaheb Gopal Joshi, (2017) 14 SCC 373**, Shri Gupta submits that the above two judgments have taken a view contrary to law lay down in **S.R. Batra** case. Shri Gupta submits that present was not a case of granting any decree under Order XII Rule 6, the respondent having categorically pleaded in the written statement that the suit property was purchased from the joint family fund. Shri Gupta referred to various documents which were brought on the record before the Trial Court indicating that joint family fund was utilised for purchasing the suit property.

A 24. Shri Jayant Bhushan, learned senior counsel supporting the submission of the learned counsel for the appellant contends that rights of daughter-in-law are only to the extent of right of the husband/ respondent. He submits that in the definition in Section 2(s) the word 'includes' has to be read "means and includes". Referring to term household, Shri Bhushan referred to definition as given by Census of
B India where common kitchen is a pre-requisite of a household.

25. Ms. Geeta Luthra supporting the submission of Shri Nidhesh Gupta contends that household of father-in-law will be shared household of daughter-in-law where she is living since marriage. Ms. Luthra relies
C on the judgment of Delhi Court in **Eveneet Singh Vs. Prashant Chaudhri, 2010 SCC online Delhi 4507**, Division Bench judgment of Delhi High Court in **Eveneet Singh Vs. Prashant Chaudhari, 2011 SCC online Delhi 4651** and Division Bench judgment of the Delhi High Court in **Preeti Satija Vs. Raj Kumari and Anr., 2014 SCC online Delhi 188**.

D 26. Learned counsel for the parties have also referred to various judgments of this Court and Delhi High Court which we will consider while considering the submissions of the parties in detail.

27. From the submissions of the learned counsel for the parties following questions arise for determination in this appeal:

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

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(2) Whether judgment of this Court in **S.R. Batra and Anr. Vs. Taruna Batra, (2007) 3 SCC 169** has not correctly interpreted the provision of Section 2(s) of Protection of Women from Domestic Violence Act, 2005 and does not lay down a correct law?

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(3) Whether the High Court has rightly come to the conclusion that suit filed by the appellant could not have been decreed under Order XII Rule 6 CPC?

(4) Whether, when the defendant in her written statement pleaded that suit property is her shared household and she

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has right to residence therein, the Trial Court could have decreed the suit of the plaintiff without deciding such claim of defendant which was permissible to be decided as per Section 26 of the Act, 2005?

(5) Whether the plaintiff in the suit giving rise to this appeal can be said to be the respondent as per definition of Section 2(q) of Act, 2005 ?

(6) What is the meaning and extent of the expression "save in accordance with the procedure established by law" as occurring in Section 17(2) of Act, 2005 ?

(7) Whether the husband of aggrieved party (defendant) is necessary party in the suit filed by the plaintiff against the defendant?

(8) What is the effect of orders passed under Section 19 of the Act, 2005 whether interim or final passed in the proceedings initiated in a civil court of competent jurisdiction?

28. Before we consider the questions as noted above, we need to notice the Statutory Scheme of the Protection of Women from Domestic Violence Act, 2005.

29. The progress of any society depends on its ability to protect and promote the rights of its women. Guaranteeing equal rights and privileges to women by the Constitution of India had marked the step towards the transformation of the status of the women in this country.

30. The domestic violence in this country is rampant and several women encounter violence in some form or the other or almost every day, however, it is the least reported form of cruel behavior. A woman resigns her fate to the never ending cycle of enduring violence and discrimination as a daughter, a sister, a wife, a mother, a partner or a single woman in her lifetime. This non-retaliation by women coupled with the absence of laws addressing women's issues, ignorance of the existing laws enacted for women and societal attitude makes the women vulnerable. The reason why most cases of domestic violence are never reported is due to the social stigma of the society and the attitude of the women themselves, where women are expected to be subservient, not just to their male counterparts but also to the male's relatives.

31. Till the year 2005, the remedies available to a victim of domestic violence were limited. The women either had to go to the civil court for a decree of divorce or initiate prosecution in the criminal court for the offence punishable under Section 498-A of the IPC. In both the proceedings, no emergency relief/reliefs is/are available to the victim. Also, the relationships outside the marriage were not recognized. This set of circumstances ensured that a majority of women preferred to suffer in silence, not out of choice but of compulsion.

32. The enactment of Act, 2005 is a milestone for protection of women in this country. The Statement of Objects and Reasons of the Protection of Women from Domestic Violence Bill, 2005 marks the objective which was sought to be achieved by the enactment. It is useful to reproduce the Statement of Objects and Reasons, which are in the following words:-

"4. The Bill, inter alia, seeks to provide for the following ==

(i) It covers those women who are or have been in a relationship with the abuser where both parties have lived together in a shared household and are related by consanguinity, marriage or through a relationship in the nature of marriage or adoption. In addition, relationships with family members living together as a joint family are also included. Even those women who are sisters, widows, mothers, single women, or living with the abuser are entitled to legal protection under the proposed legislation. However, whereas the Bill enables the wife or the female living in a relationship in the nature of marriage to file a complaint under the proposed enactment against any relative of the husband or the male partner, it does not enable any female relative of the husband or the male partner to file a complaint against the wife or the female partner.

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(iii) It provides for the rights of women to secure housing. It also provides for the right of a woman to reside in her matrimonial home or shared household, whether or not she has any title or rights in such home or household.

This right is secured by a residence order, which is passed by the Magistrate.

XXXXXXXXXXXXXXXXXXX"

33. The Statement of Objects and Reasons refers to three International Conventions where recommendations were made to the parties States to take measures including Legislation to protect women against violence including occurring within the family. General Recommendation No.XII of the United Nations Committee on Convention on Elimination of All Forms of discrimination against women stated:-

"**General Recommendation No. 12**

(Eighth session, 1989)

Violence against women

The Committee on the Elimination of Discrimination against Women.

Considering that Articles 2, 5, 11, 12 and 16 of the Convention require the States parties to act to protect women against violence of any kind occurring within the family, at the work place or in any other area of social life."

34. Even before the Act, 2005 was enacted, Justice Sabyasachi Mukharji in **B.R. Mehta Vs. Atma Devi and Ors., (1987) 4 SCC 183** has noted that right of occupation in matrimonial home which is granted under Matrimonial Homes Act, 1967 in England are not granted in India though it may be that with the change of situation and complex problems arising, it is high time to give the wife or the spouse a right of occupation. In paragraph 6 following was laid down:-

"6. ……In England the rights of the spouses be it the husband or the wife to the matrimonial home are now governed by the provisions of Matrimonial Homes Act, 1967. Halsbury's Laws of England, Fourth Edition, Vol. 22 page 650 deals with the rights of occupation in matrimonial home and paragraph 1047 deals with and provides that where one spouse is entitled to occupy a dwelling house by virtue of any estate or interest or contract or by virtue of any enactment giving him or her the right to remain in occupation, and the other spouse is not so entitled, then the spouse not so entitled has the certain rights

(known as "rights of occupation") that is to say if in occupation, a right not to be evicted or excluded from the dwelling house or any part of it by the other spouse except with the leave of the court given by an order, if not in occupation, a right with the leave of the court so given to enter into and occupy the dwelling house. But such rights are not granted in India though it may be that with change of situation and complex problems arising it is high time to give the wife or the spouse a right of occupation in a truly matrimonial home, in case of marriage breaking up or in case of strained relationship between the husband and the wife……"

35. In the laws of United Kingdom, the rights of husband or wife to occupy a dwelling house, which has been the matrimonial home, was included in Matrimonial Homes Act, 1967. Section 1(1) of the Act provides:-

"Protection against eviction, etc., from matrimonial home of spouse not entitled by virtue of estate, etc., to occupy if

1. -(1)Where one spouse is entitled to occupy a dwelling house by virtue of any estate or interest or contract or by virtue of any enactment giving him or her the right to remain in occupation, and the other spouse is not so entitled, then, subject to the provisions of this Act, the spouse not so entitled shall have the following rights (in this Act referred to as "rights of occupation")—

(a) if in occupation, a right not to be evicted or excluded from the dwelling house or any part thereof by the other spouse except with the leave of the court given by an order under this section;

(b) if not in occupation, a right with the leave of the court so given to enter into and occupy the dwelling house."

36. By subsequent enactment, Matrimonial Homes Act, 1983 although Matrimonial Homes Act, 1967 was repealed, same protection was continued to occupy the matrimonial home and the said right was continued by virtue of Section 1(1), which was to the same effect. The Family Law Act, 1996 was enacted in the United Kingdom where a separate chapter "Chapter IV – Family Homes and Domestic Violence" was enacted. Section 30 of which provision is as follows:-

"30 Rights concerning home where one spouse or civil partner has no estate, etc.

(1) This section applies if—

(a) one spouse or civil partner is entitled to occupy a dwelling-house by virtue of—

(i) a beneficial estate or interest or contract; or

(ii) any enactment giving the right to remain in occupation; and

(b) the other spouse or civil partner is not so entitled.

(2) Subject to the provisions of this Part, has the following rights "home rights"—

(a) if in occupation, a right not to be evicted or excluded from the dwelling-house or any part of it by except with the leave of the court given by an order under section 33;

(b) if not in occupation, a right with the leave of the court so given to enter into and occupy the dwelling-house.

(3) If is entitled under this section to occupy a dwelling-house or any part of a dwelling-house, any payment or tender made or other thing done by in or towards satisfaction of any liability of in respect of rent, mortgage payments or other outgoings affecting the dwelling-house is, whether or not it is made or done in pursuance of an order under section 40, as good as if made or done by .

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37. The right of occupation of matrimonial home, which was not so far part of the statutory law in India came to be included in Act, 2005. Need of such legislation as noticed by Justice Sabyasachi Mukharji has been fulfilled by enactment of Act, 2005.

38. As noticed above, from the Statement of Objects and Reasons, the Act was enacted to fulfill the definite objectives for protection of women. This Court had occasion to examine the purpose of enactment of Act, 2005 in **Kunapareddy Alias NookalaShanka Balaji Vs. Kunapareddy Swarna Kumari and Anr., (2016) 11 SCC 774** wherein paragraph 12 following was stated:-

A "**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 B 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 C 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……"

39. The Act, 2005 is a further step to secure social justice by legislation. There has been several earlier measures for protection of D women like Section 125 Cr.P.C. and 498-A of India Penal Code. Justice Krishna Iyer in **Captain Ramesh Chander Kaushal Vs. Mrs. Veena Kaushal and Ors., (1978) 4 SCC 70** noted the objectives of enacting Section 125 Cr.P.C. in following words in paragraph 9:-

E "**9.** This provision is a measure of social justice and specially enacted to protect women and children and falls within the constitutional sweep of Article 15(3) reinforced by Article 39. We have no doubt that sections of statutes calling for construction by Courts are not petrified print but vibrant words with social functions to fulfil. The brooding presence of the constitutional empathy for the weaker sections like women and children must inform F interpretation if it has to have social relevance. So viewed, it is possible to be selective in picking out that interpretation out of two alternatives which advance the cause—the cause of the derelicts.

40. Enactment of Act, 2005 is another step in the same direction. G This Court in **Manmohan Attavar Vs. Neelam Manmohan Attavar, (2017) 8 SCC 550** noticed that Act, 2005 has been enacted to create an entitlement in favour of the woman of the right of residence. In paragraph 15, following was observed:-

H "**15.** A reading of the aforesaid provisions shows that it creates an entitlement in favour of the woman of the right of residence

under the "shared household" irrespective of her having any legal interests in the same. The direction, inter alia, can include an order restraining dispossession or a direction to remove himself on being satisfied that domestic violence had taken place."

41. Now, we proceed to notice certain provisions of Act, 2005, which are relevant for determination of the issues as arisen in the present appeal. According to Section 2(a) "aggrieved person" means any person, 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. "Domestic Relationship" has been defined in Section 2(f) in following words:-

"(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;"

42. The expression "respondent" is defined in Section 2 (q) in following words:-

"(q) "respondent" means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act:

Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner;"

43. The words "adult male" as occurring in Section 2(q) has been struck down by this Court in **Hiral P. Harsora and Ors. Vs. Kusum Narottamdas Harsora and Ors., (2016) 10 SCC 165**. Consequently, the respondent can also be a female in domestic relationship with the aggrieved person. The next definition, which is relevant to be noticed is Section 2(s), which defines shared household. Shared household is defined in following words:-

"(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

A 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;"

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44. Section 3 defines "domestic violence". Sections 4 to 11 occurring in Chapter III deals with powers and duties of protection officers, service providers etc. Section 12 occurring in Chapter IV – "Procedure for obtaining orders of reliefs" deals with details of application to Magistrate. Section 12 is as follows:-

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"**12.Application to Magistrate.**-(1) An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act:

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Provided that before passing any order on such application, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider.

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(2) The relief sought for under sub-section (1) may include a relief for issuance of an order for payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent:

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Provided that where a decree for any amount as compensation or damages has been passed by any court in favour of the aggrieved person, the amount, if any, paid or payable in pursuance of the order made by the Magistrate under this Act shall be set off against the amount payable under such decree and the decree shall, notwithstanding anything contained in the

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Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, be executable for the balance amount, if any, left after such set off.

(3) Every application under sub-section (1) shall be in such form and contain such particulars as may be prescribed or as

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nearly as possible thereto.

(4) The Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the court.

(5) The Magistrate shall Endeavour to dispose of every application made under sub-section (1) within a period of sixty days from the date of its first hearing."

45. Section 17 provides that every woman in a domestic relationship shall have the right to reside in the shared household. Section 17 is as follows:-

"**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."

46. Section 18 deals with protection orders. Section 19 deals with residence orders. Section 20 deals with monetary reliefs. Section 23 deals with power to grant interim and ex parte orders. Section 26 deals with relief in other suits and legal proceedings.

47. After briefly noticing the outline of Act, 2005, we, now, proceed to consider the questions noted above.

Questions Nos. 1 and 2

48. Both the above questions being inter-related are being taken together. We may recapitulate the facts of the present case in reference to shared household. The suit property was purchased by appellant in the year 1983 in his name. The respondent got married to the son of appellant on 04.03.1995 and after marriage she was living in first floor of suit property. Till July, 2004, the husband of respondent also lived in first floor whereafter due to marital discord, he shifted in the guest room on the ground floor. In the suit filed by the appellant for mandatory and permanent injunction, appellant pleaded that he is the sole owner of the house and prayed for removal of respondent, his daughter-in-law from the first floor of the house. The respondent had filed a written statement in the suit and claimed that the suit property is a shared household where

A the respondent had right to reside. The submission of learned counsel for the appellant is that the premises is not a shared household since the husband of the respondent neither has any share in the suit premises nor suit premises is a joint family property. In support of his submission, he relies on judgment of this Court in **S. R. Batra and Ors. Vs. Taruna Batra (supra).**

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49. The definition of shared household given under Section 2(s) as noticed above beginning with expression "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……. The section uses both the expressions "means and includes". A Three Judge bench judgment of this Court in **Bharat Coop. Bank (Mumbai) Ltd. Vs. Coop. Bank Employees Union, (2007) 4 SCC 685** had occasion to consider Section 2(bb) of Industrial Disputes Act, 1947, which section used both the words "means and includes". Explaining both the expressions, following was laid down in paragraph 23:-

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> "**23.** ……It is trite to say that when in the definition clause given in any statute the word "means" is used, what follows is intended to speak exhaustively. When the word "means" is used in the definition, to borrow the words of Lord Esher, M.R. in Gough v. Gough [(1891) 2 QB 665] it is a "hard-and-fast" definition and no meaning other than that which is put in the definition can be assigned to the same. (Also see P. Kasilingam v. P.S.G. College of Technology [1995 Supp (2) SCC 348 : AIR 1995 SC 1395].) On the other hand, when the word "includes" is used in the definition, the legislature does not intend to restrict the definition: it makes the definition enumerative but not exhaustive. That is to say, the term defined will retain its ordinary meaning but its scope would be extended to bring within it matters, which in its ordinary meaning may or may not comprise. Therefore, the use of the word "means" followed by the word "includes" in Section 2(bb) of the ID Act is clearly indicative of the legislative intent to make the definition exhaustive and would cover only those banking companies which fall within the purview of the definition and no other."

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50. We may notice another judgment of this Court in **Pioneer Urban Land and Infrastructure Limited and Anr. Vs. Union of**

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India and Ors., (2019) 8 SCC 416 where this Court had occasion to consider both the expressions, i.e., "means and includes". In paragraph 82, this Court laid down:-

> "**82.** .....In fact, in *Jagir Singh* v. *State of Bihar* [(1976) 2 SCC 942] , SCC paras 11 and 19 to 21 and *Mahalakshmi Oil Mills* v. *State of A.P.* [(1989) 1 SCC 164], SCC paras 8 and 11 (which has been cited in *P. Kasilingam* [*P. Kasilingam* v. *PSG College of Technology*, 1995 Supp (2) SCC 348]), this Court set out definition sections where the expression "means" was followed by some words, after which came the expression "and includes" followed by other words, just as in *Krishi Utpadan Mandi Samiti case* [*Krishi Utpadan Mandi Samiti* v. *Shankar Industries*, 1993 Supp (3) SCC 361 (2)] . In two other recent judgments, *Bharat Coop. Bank (Mumbai) Ltd.* v. *Employees Union* [(2007) 4 SCC 685], SCC paras 12 and 23 and *State of W.B.* v. *Associated Contractors* [*State of W.B.* v. *Associated Contractors*, (2015) 1 SCC 32], SCC para 14, this Court has held that wherever the expression "means" is followed by the expression "and includes" whether with or without additional words separating "means" from "includes", these expressions indicate that the definition provision is exhaustive as a matter of statutory interpretation. It has also been held that the expression "and includes" is an expression which extends the definition contained in words which follow the expression "means"......"

51. We may notice two more judgments relied by Shri Jayant Bhushan, learned senior counsel, i.e., **The South Gujarat Roofing Tiles Manufacturers Association and Anr. Vs. The State of Gujarat and Anr., (1976) 4 SCC 601.** Shri Bhushan's submission is that use of expression "includes" in Section 2(s) has to be read as means. He placed reliance on following observations made by this Court in paragraph 5:-

> "**5.** XXXXXXXXXXXXXXXX
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> .....Though "include" is generally used in interpretation clauses as a word of enlargement, in some cases the context might suggest a different intention. Pottery is an expression of very wide import, embracing all objects made of clay and hardened by heat. If it had been the legislature's intention

A to bring within the entry all possible articles of pottery, it was quite unnecessary to add an explanation. We have found that the explanation could not possibly have been introduced to extend the meaning of potteries industry or the articles listed therein added ex abundanti cautela. It seems to us therefore that the legislature did not intend everything that the potteries industry turns out to be B covered by the entry. What then could be the purpose of the explanation. The explanation says that, for the purpose of Entry 22, potteries industry "includes" manufacture of the nine articles of pottery named therein. It seems to us that the word "includes" has been used here in the sense of 'means'; this is the only C construction that the word can bear in the context. In that sense it is not a word of extension, but limitation; it is exhaustive of the meaning which must be given to potteries industry for the purpose of Entry 22. The use of the word "includes" in the restrictive sense is not unknown. The observation of Lord Watson in Dilworth v. Commissioner of Stamps which is usually referred D to on the use of "include" as a word of extension, is followed by these lines:

> "But the word 'include' is susceptible of another construction, which may become imperative, if the context of the Act is sufficient to show that it was not merely employed E for the purpose of adding to the natural significance of the words or expressions defined. It may be equivalent to 'mean and include', and in that case it may afford an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions."

F 52. Next judgment relied by Shri Bhushan is **Karnataka Power Transmission Corporation and Anr. Vs. Ashok Iron Works Private Limited, (2009) 3 SCC 240.** In the above case also submission was made before this court that in the definition of person given in section 2(m) of Consumer Protection Act, the expression "includes" should be G read as "means". This Court laid down that interpretation of a word or expression must depend on the text and the context. In paragraphs 14 to 17, following was laid down:-

> **"14.** The learned counsel also submitted that the word "includes" must be read as "means". In this regard, the learned H counsel placed reliance upon two decisions of this Court, namely;

(*1*) *South Gujarat Roofing Tiles Manufacturers Assn.* v. *State of Gujarat* [(1976) 4 SCC 601] and (*2*) *RBI* v. *Peerless General Finance and Investment Co. Ltd.* [(1987) 1 SCC 424].

15. Lord Watson in *Dilworth* v. *Stamps Commr.* [1899 AC 99] made the following classic statement: (AC pp. 105-06)

> "… The word 'include' is very generally used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include. But the word 'include' is susceptible of another construction, which may become imperative, if the context of the Act is sufficient to show that it was not merely employed for the purpose of adding to the natural significance of the words or expressions defined. It may be equivalent to 'mean and include', and in that case it may afford an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions."

16. *Dilworth* [1899 AC 99] and few other decisions came up for consideration in *Peerless General Finance and Investment Co. Ltd.* [(1987) 1 SCC 424] and this Court summarised the legal position that (*Peerless case* [(1987) 1 SCC 424], SCC pp. 449-50, para 32) inclusive definition by the legislature is used:

> "*32*. … (*1*) to enlarge the meaning of words or phrases so as to take in the ordinary, popular and natural sense of the words and also the sense which the statute wishes to attribute to it; (*2*) to include meanings about which there might be some dispute; or (*3*) to bring under one nomenclature all transactions possessing certain similar features but going under different names."

17. It goes without saying that interpretation of a word or expression must depend on the text and the context. The resort to the word "includes" by the legislature often shows the intention of the legislature that it wanted to give extensive and enlarged

A meaning to such expression. Sometimes, however, the context may suggest that word "includes" may have been designed to mean "means". The setting, context and object of an enactment may provide sufficient guidance for interpretation of the word "includes" for the purposes of such enactment."

B 53. After noticing the ratio of above judgments, Section 2(s), which uses both the expressions "means and includes" and looking to the context, we are of the view that the definition of shared household in Section 2(s) is an exhaustive definition. The first part of definition begins with expression "means" which is undoubtedly an exhaustive definition and second part of definition, which begins with word "includes" is explanatory C of what was meant by the definition. Shri Nidhesh Gupta, learned senior counsel for the appellant submits that even if it is accepted that the definition of Section 2(s) is exhaustive, his case is fully covered in both the parts of the definition.

D 54. The use of both the expressions "means and includes" in Section 2(s) of Act, 2005, thus, clearly indicate the legislative intent that the definition is exhaustive and shall cover only those which fall within the purview of definition and no other.

55. Now, reverting back to the definition of Section 2(s), the definition can be divided in two parts, first, which follows the word E "means" and second which follows the word "includes". The second part which follows "includes" can be further sub-divided in two parts. The first part reads "shared household means a household where the person aggrieved has lived or at any stage has lived in a domestic relationship either singly or along with the respondent". Thus, first F condition to be fulfilled for a shared household is that person aggrieved lives or at any stage has lived in a domestic relationship. The second part sub-divided in two parts is- (a) includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent and owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly G have any right, title, interest or equity and (b) includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household. In the above definition, two expressions, namely, "aggrieved person" and "respondent" have H occurred. From the above definition, following is clear:- (i) it is not

requirement of law that aggrieved person may either own the premises jointly or singly or by tenanting it jointly or singly; (ii) the household may belong to a joint family of which the respondent is a member irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household; and (iii) the shared household may either be owned or tenanted by the respondent singly or jointly.

56. Now, we revert back to the submission of the learned counsel for the appellant that the shared household is that household which belongs to joint family of which husband is a member or husband has share in the shared household. He finds support for his submission by the judgment of this Court in **S.R. Batra Vs. Taruna Batra (supra)**.

57. The judgment of this court in **S.R. Batra Vs. Taruna Batra (supra)**, which is sheet anchor of the submission of the appellant needs to be noticed in detail. In the above case, the respondent was married with the son of appellant on 14.04.2000. Respondent started living with her husband in the house of appellant No.2 on the second floor. It was not disputed that house belonged to appellant No.2 and her son, i.e., husband of respondent had no share. Husband had filed a divorce petition against respondent whereas respondent filed a criminal case under Sections 406, 498A, 506 and 34 of Indian Penal Code. Respondent shifted to her parents' residence because of the dispute with her husband. She when later tried to enter the house, she found the main entrance locked hence, she filed suit No. 87 of 2003 to grant mandatory injunction to enable her to enter the house. The Trial Court granted temporary injunction in favour of the respondent. The appellant filed the appeal, which was allowed by dismissing the temporary injunction. Respondent filed a Writ Petition under Article 227 of the Constitution, which was allowed by learned Single Judge holding that the appellant is entitled to reside in the second floor as that was her matrimonial home. The appellant aggrieved against the judgment of the High Court had filed an appeal. This Court in Paragraph 18 observed that since the house belongs to mother-in-law of the respondent and does not belong to the husband, hence, she cannot claim any right to live in the said house. Following was observed in paragraph 18:-

> "**18.** Here, the house in question belongs to the mother-in-law of Smt Taruna Batra and it does not belong to her husband Amit Batra. Hence, Smt Taruna Batra cannot claim any right to live in the said house."

A 58. Before this Court, in the above case, the provisions of Act, 2005 were relied. This Court held that the respondent was not residing in the premises in question, a finding of fact recorded by the court below which ought not to be interfered by the High Court under Articles 226 or 227. After taking the aforesaid view, this Court observed that house in question cannot be said to be shared household. In paragraph 22, this Court held:-

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> "**22.** Apart from the above, we are of the opinion that the house in question cannot be said to be a "shared household" within the meaning of Section 2(s) of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as "the Act")."

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59. This Court also noticed Sections 17 and 19 and the argument of respondent that household is a shared household since aggrieved person had lived there in a domestic relationship. Argument of the respondent was noticed in paragraph 24 in following words:-

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> "**24.** Learned counsel for the respondent Smt Taruna Batra stated that the definition of shared household includes a household where the person aggrieved lives or at any stage had lived in a domestic relationship. He contended that since admittedly the respondent had lived in the property in question in the past, hence the said property is her shared household."

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60. This court expressed its dis-agreement with the submission and made following observations in paragraphs 25 to 30:-

> **"25.** We cannot agree with this submission.
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> **26.** If the aforesaid submission is accepted, then it will mean that wherever the husband and wife lived together in the past that property becomes a shared household. It is quite possible that the husband and wife may have lived together in dozens of places e.g. with the husband's father, husband's paternal grandparents, his maternal parents, uncles, aunts, brothers, sisters, nephews, nieces, etc. If the interpretation canvassed by the learned counsel for the respondent is accepted, all these houses of the husband's relatives will be shared households and the wife can well insist in living in all these houses of her husband's relatives merely because she had stayed with her husband for some time in those houses in the past. Such a view would lead to chaos and would be absurd.

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27. It is well settled that any interpretation which leads to absurdity should not be accepted.

28. Learned counsel for the respondent Smt Taruna Batra has relied upon Section 19(1)(*f*) of the Act and claimed that she should be given an alternative accommodation. In our opinion, the claim for alternative accommodation can only be made against the husband and not against the husband's (*sic*) in-laws or other relatives.

29. As regards Section 17(1) of the Act, in our opinion the wife is only entitled to claim a right to residence in a shared household, and a shared household would only mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member. The property in question in the present case neither belongs to Amit Batra nor was it taken on rent by him nor is it a joint family property of which the husband Amit Batra is a member. It is the exclusive property of Appellant 2, mother of Amit Batra. Hence it cannot be called a "shared household".

30. No doubt, the definition of "shared household" in Section 2(*s*) of the Act is not very happily worded, and appears to be the result of clumsy drafting, but we have to give it an interpretation which is sensible and which does not lead to chaos in society."

61. In paragraph 26, this Court observed "if the aforesaid submission is accepted, then it will mean that wherever the husband and wife lived together in the past that property becomes a shared household".

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

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

G 63. The words "lives or at any stage has lived in a domestic relationship" have to be given its normal and purposeful meaning. The living of woman in a household has to refer to a living which has some permanency. Mere fleeting or casual living at different places shall not make a shared household. The intention of the parties and the nature of living including the nature of household have to be looked into to find out H as to whether the parties intended to treat the premises as shared

household or not. As noted above, Act 2005 was enacted to give a higher right in favour of woman. The Act, 2005 has been enacted to provide for more effective protection of the rights of the woman who are victims of violence of any kind occurring within the family. The Act has to be interpreted in a manner to effectuate the very purpose and object of the Act. Section 2(s) read with Sections 17 and 19 of Act, 2005 grants an entitlement in favour of the woman of the right of residence under the shared household irrespective of her having any legal interest in the same or not.

64. In paragraph 29 of the judgment, this Court in **S.R. Batra Vs. Taruna Batra (supra)** held that wife is only entitled to claim a right to residence in a shared household and a shared household would only mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member. The definition of shared household as noticed in Section 2(s) does not indicate that a shared household shall be one which belongs to or taken on rent by the husband. We have noticed the definition of "respondent" under the Act. The respondent in a proceeding under Domestic Violence Act can be any relative of the husband. In event, the shared household belongs to any relative of the husband with whom in a domestic relationship the woman has lived, the conditions mentioned in Section 2(s) are satisfied and the said house will become a shared household. We are of the view that this court in **S.R. Batra Vs. Taruna Batra (supra)** although noticed the definition of shared household as given in Section 2(s) but did not advert to different parts of the definition which makes it clear that for a shared household there is no such requirement that the house may be owned singly or jointly by the husband or taken on rent by the husband. The observation of this Court in **S.R. Batra Vs. Taruna Batra (supra)** that definition of shared household in Section 2(s) is not very happilyworded and it has to be interpreted, which is sensible and does not lead to chaos in the society also does not commend us. The definition of shared household is clear and exhaustive definition as observed by us. The object and purpose of the Act was to grant a right to aggrieved person, a woman of residence in shared household. The interpretation which is put by this Court in **S.R. Batra Vs. Taruna Batra (supra)** if accepted shall clearly frustrate the object and purpose of the Act. We, thus, are of the opinion that the interpretation of definition of shared household as put by this Court in **S.R. Batra Vs. Taruna Batra (supra)** is not correct interpretation and the said judgment does not lay down the correct law.

65. The learned counsel for the appellant has placed reliance on another Two Judge Bench judgment of this Court in **Vimlaben Ajitbhai Patel Vs. Vatsalben Ashokbhai Patel and Ors.,(2008) 4 SCC 649**. In the above case, this Court had occasion to consider the provisions of Act, 2005. The question which came for consideration in the above case has been noticed in paragraph 14 of the judgment, which is to the following effect:-

> "14. The questions which arise for consideration are:
>
> (i) Whether in the facts and circumstances of the case, the property of Appellant 1 could have been sold in auction? and
>
> (ii) Whether in a case of this nature, the bail granted to the appellants should have been directed to be cancelled?"

66. In the above case, the complaint was filed by third respondent against her husband and appellant's father-in-law and mother-in-law under Sections 406 and 114 of Indian Penal Code. The bail granted to the appellants was cancelled. Proceedings under Section 82 Cr.P.C. were initiated attaching the properties of the appellant. The learned Metropolitan Magistrate asked the District Magistrate to auction the attached properties. The properties of the appellant was auctioned and this Court in the above case has held that the provisions of the Hindu Adoptions and Maintenance Act, 1956 that maintenance of a wife, during subsistence of marriage, is on the husband and on the applicant to maintain the daughter-in-law arises only when the husband has died. In paragraphs 21 and 22 following was laid down:-

> "**21.** Maintenance of a married wife, during subsistence of marriage, is on the husband. It is a personal obligation. The obligation to maintain a daughter-in-law arises only when the husband has died. Such an obligation can also be met from the properties of which the husband is a co-sharer and not otherwise. For invoking the said provision, the husband must have a share in the property. The property in the name of the mother-in-law can neither be a subject-matter of attachment nor during the lifetime of the husband, his personal liability to maintain his wife can be directed to be enforced against such property.
>
> **22.** Wholly uncontentious issues have been raised before us on behalf of Sonalben (wife). It is well settled that apparent state of affairs of state shall be taken as real state of affairs. It is

not for an owner of the property to establish that it is his self-acquired property and the onus would be on the one, who pleads contra. Sonalben might be entitled to maintenance from her husband. An order of maintenance might have been passed but in view of the settled legal position, the decree, if any, must be executed against her husband and only his properties could be attached therefor but not of her mother-in-law."

67. In paragraph 27, this Court further held:-

"**27.** The Domestic Violence Act provides for a higher right in favour of a wife. She not only acquires a right to be maintained but also thereunder acquires a right of residence. The right of residence is a higher right. The said right as per the legislation extends to joint properties in which the husband has a share."

68. In paragraph 28, this court noticed the judgment of this Court in **S.R. Batra Vs. Taruna Batra (supra).**

69. In the facts of the above case, this Court held that the High Court erred in cancelling the bail of the appellants. Allowing the appeal, following directions were issued in paragraph 51 of the judgment:-

"51. Having regard to the facts and circumstances of this case we are of the opinion that the interest of justice shall be subserved if the impugned judgments are set aside with the following directions:

(*i*) The property in question shall be released from attachment.

(*ii*) The 3rd respondent shall refund the sum of Rs 1 lakh to the respondent with interest @ 6% per annum.

(*iii*) The amount of Rs 4 lakhs deposited by the 1st respondent shall be refunded to him immediately with interest accrued thereon.

(*iv*) The 3rd respondent should be entitled to pursue her remedies against her husband in accordance with law.

(*v*) The learned Magistrate before whom the cases filed by the 3rd respondent are pending should bestow serious consideration of disposing of the same, as expeditiously as possible.

(*vi*) The 3rd respondent shall bear the costs of the appellant which are quantified at Rs 50,000 (Rupees fifty thousand) consolidated."

70. In the above case, this Court has held that property of mother-in-law cannot be attached since the maintenance of wife during the married life is on the husband. The question which fell for consideration before this Court in above case was as to whether the property of the appellant could have been sold in auction and the bail granted to the appellants should have been cancelled as noted in paragraph 14. No issue regarding right to reside in a shared household had arisen in the above case and the above case is entirely different from the present case, the above case arose out of criminal proceedings on the basis of complaint filed by the respondent against the appellant. The above judgment in no manner supports the case of the appellant. Further in the above case, this Court relied on judgment of **S.R. Batra Vs. Taruna Batra (supra),** we have observed above that **S.R. Mehta** does not lay down a correct law.

71. Learned counsel for the respondent has relied on few judgments of Delhi High Court in support of his submission. Delhi High Court in **Eveneet Singh Vs. Prashant Chaudhri, 2010 SCC Online Del 4507** had considered the provisions of Act, 2005 and also the definition of shared household. In paragraphs 16 and 17 following was laid down:-

"**16.** The definition of "shared household" emphasizes the factum of a domestic relationship and no investigation into the ownership of the said household is necessary, as per the definition. Even if an inquiry is made into the aspect of ownership of the household, the definition casts a wide enough net. It is couched in inclusive terms and is not in any way, exhaustive (S. Prabhakaran v. State of Kerala, 2009 (2) RCR (Civil) 883). It states that "…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"

(emphasis supplied).

17. It would not be out of place to notice here that the use of the term "respondent" is unqualified in the definition nor is there any qualification to it under Sections 12, 17 or 19. Therefore, there is no reason to conclude that the definition does not extend to a house which is owned by a mother-in-law or any other female relative, since they are encompassed under the definition of 'respondent' under Section 2(q)."

72. The Division Bench of the Delhi High Court affirmed the judgment in **Eveneet Singh Vs. Prashant Chaudhari, 2011 SCC Online Del 4651** of the learned Single Judge as noted above. In paragraph 14, the Division Bench laid down following:-

"**14.** It is apparent that clause (f) of sub-section 1 of Section 19 of the Act is intended to strike a balance between the rights of a daughter-in-law and her in-laws, if a claim to a shared residence by the daughter-in-law pertains to a building in which the matrimonial home was set up belongs to her mother-in-law or father-in-law."

73. Another judgment which need to be noticed of Delhi High Court is **Preeti Satija Vs. Raj Kumari and Anr., 2014 SCC Online Del 188.** In paragraphs 20 and 21, the Division Bench laid down following:-

"20. Crucially, Parliament's intention by the 2005 Act was to secure the rights of aggrieved persons in the shared household, which could be tenanted by the Respondent (including relative of the husband) or in respect of which the Respondent had jointly or singly any right, title, interest, or "equity". For instance, a widow (or as in this case, a daughter in law, estranged from her husband) living with a mother-in-law, in premises owned by the latter, falls within a "domestic relationship". The obligation not to disturb the right to residence in the shared household would continue even if the mother-in-law does not have any right, title or interest, but is a tenant, or entitled to "equity" (such as an equitable right to possession) in those premises. This is because the premises would be a "shared household". The daughter-in-law, in these circumstances is entitled to protection from dispossession, though her husband never had any ownership rights in the premises. The right is not dependent on title, but the mere factum of residence. Thus, even if the mother-in-law is a tenant, then, on that ground,

A or someone having equity, she can be injuncted from dispossessing the daughter in law. In case the mother in law is the owner, the obligation to allow the daughter in law to live in the shared household, as long as the matrimonial relationship between her and the husband subsists, continues. The only exception is the proviso to 19(1)(b), which exempts women from being directed to remove themselves from the shared household. No such exception has been carved out for the other reliefs under Section 19, especally in respect of protection orders. Had the Parliament intended to create another exception in favor of women, it would have done so. This omission was deliberate and in consonance with the rest of the scheme of the Act. There can be other cases of domestic relationships such as an orphaned sister, or widowed mother, living in her brother's or son's house. Both are covered by the definition of domestic relationship, as the brother is clearly a Respondent. In such a case too, if the widowed mother or sister is threatened with dispossession, they can secure reliefs under the Act, notwithstanding exclusive ownership of the property by the son or brother. Thus, excluding the right of residence against properties where the husband has no right, share, interest or title, would severely curtail the extent of the usefulness of the right to residence.

21. The other aspect, which this Court wishes to highlight, is that the 2005 Act applies to all communities, and was enacted "to provide more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family". The right to residence and creation of mechanism to enforce is a ground breaking measure, which Courts should be alive to. Restricting the scope of the remedies, including in respect of the right to reside in shared household, would undermine the purpose of this enactment. It is, therefore, contrary to the scheme and the objects of the Act, as also the unambiguous text of Section 2(s), to restrict the application of the 2005 Act to only such cases where the husband alone owns some property or has a share in it. Crucially, the mother-in-law (or a father-in-law, or for that matter, "a relative of the husband") can also be a Respondent in the proceedings under the 2005 Act and remedies available under the same Act would necessarily need to be enforced against them."

Against above judgment of Delhi High Court, Civil Appeal No. 9723 of 2014 is pending in this Court. A

74. In another elaborate judgment, the Division Bench of Delhi High Court in **Navneet Arora Vs. Surender Kaur and Ors., 2014 SCC Online Del 7617** had considered the various aspects of Act, 2005. Dealing with right of residence in paragraphs 58 to 60, following was held:- B

> **"58.** It may be highlighted that the Act does not confer any title or proprietary rights in favour of the aggrieved person as misunderstood by most, but merely secures a 'right of residence' in the 'shared household'. Section 17(2) clarifies that the aggrieved C person may be evicted from the 'shared household' but only in accordance with the procedure established by law. The legislature has taken care to calibrate and balance the interests of the family members of the respondent and mitigated the rigour by expressly providing under the provisio to Section 19(1) that whilst adjudicating an application preferred by the aggrieved person it would not be D open to the Court to pass directions for removing a female member of the respondents family from the "shared household". Furthermore, in terms of Section 19(1)(f), the Court may direct the respondent to secure same level of accommodation for the aggrieved person as enjoyed by her in the "shared household" or E to pay rent for the same, if the circumstances so require.
>
> **59.** The seemingly 'radical' provisions comprised in the Protection of Women from Domestic Violence Act, 2005 must be understood and appreciated in light of the prevalent culture and ethos in our society. F
>
> **60.** The broad and inclusive definition of the term 'shared household' in the Protection of Women from Domestic Violence Act, 2005 is in consonance with the family patterns in India, where married couple continue to live with their parents in homes owned by parents." G

75. The Delhi High Court in the above case has rightly considered the concept of shared household as occurring in Section 2(s) of the Act, 2005.

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76. We also need to notice several judgments of Delhi High Court and other High Courts, which have been relied by Shri Jauhar. The judgments of Delhi High Court relied by Shri Jauhar are:-

S.No.	Particulars	Citation
1.	Deepika Kumar Vs. Medhavi Kumar and Ors.	MANU/DE/3859/2015
2.	Sardar Malkiat Singh Vs. Knawaljit Kaur and Ors.	168 (2010) DLT 521
3.	Neetu Mittal Vs. Kanta Mittal	2009 AIR (Del) 72
4.	Sudha Mishra Vs. Surya Chand Mishra	2012 (3) AD (Delhi) 76
5.	Sangeeta Vs. Om Parkash Balyan and Ors.	MANU/PH/1251/2015
6.	Harish Chand Tandon Vs. Darpan Tandon and Anr.	MANU/DE/3200/2015
7.	Ekta Arora Vs. Ajay Arora and Anr.	AIR 2015 (Del) 180
8.	Smt. Saloni Mahajn Vs. Shri Madan Mohan Vig.	2014 SCC Online (Del) 4931

77. All these judgments of Delhi High Court relies on **S.R. Batra Vs. Taruna Batra (supra).** We having already held that judgment of **S.R. Batra Vs. Taruna Batra (supra)** insofar as it interpret the definition of shared household of Section 2(s) does not lay down the correct law, the above judgment of the High Court does not come to rescue of learned counsel for the appellant. Shri Jauhar has also placed reliance on few judgments of other High Courts namely:-

S.No.	Particulars	Citation
1.	Smt. Chanchal Agarwal Vs. Jagdish Prasad Gupta and Anr..	2014 SCC Online All 16019
2.	A.R. Hashir Najyahouse and Ors. Vs. Shima and Ors.	2015 SCC Online Ker 9007
3.	Richa Gaur Vs. Kamal Kishore Gaur	2019 SCC Online All 4084
4.	Payal Sancheti (Smt.) and Anr. Vs. Harshvardhan Sancheti	MANU/RH/08054/2008
5.	Kolli Babi Sarojini and Ors. Vs. kolli Jayalaxmi and Anr.	2014 SCC Online AP 414
6.	N.S. Leelawati and Ors. Vs. R. Shilpa Brunda	MANU/KA/8874/2019

78. The above judgments of the High Courts have again relied on judgment of **S.R. Batra Vs. Taruna Batra (supra)**, hence, they also do not support the claim of the appellant.

79. Shri Jauhar also relied on a Judgment of Three Judge Bench of this Court in **Maria Margarida Sequeira Fernandes and Ors. Vs. Erasmo Jack De Sequeira, (2012) 5 SCC 370**. Shri Jauhar placed

reliance on paragraph 97 of the judgment, which enumerates few principles of law. Paragraph 97 is as follows:-

> **"97.** Principles of law which emerge in this case are crystallised as under:
>
> (*1*) No one acquires title to the property if he or she was allowed to stay in the premises gratuitously. Even by long possession of years or decades such person would not acquire any right or interest in the said property.
>
> (*2*) Caretaker, watchman or servant can never acquire interest in the property irrespective of his long possession. The caretaker or servant has to give possession forthwith on demand.
>
> (*3*) The courts are not justified in protecting the possession of a caretaker, servant or any person who was allowed to live in the premises for some time either as a friend, relative, caretaker or as a servant.
>
> (*4*) The protection of the court can only be granted or extended to the person who has valid, subsisting rent agreement, lease agreement or licence agreement in his favour.
>
> (*5*) The caretaker or agent holds property of the principal only on behalf of the principal. He acquires no right or interest whatsoever for himself in such property irrespective of his long stay or possession."

80. There cannot be any dispute to the preposition of law as laid down by this Court in above case. The above case arose out of a suit filed by the respondent for permanent injunction and mandatory injunction against the appellant. The respondent was brother of the appellant. Suit was decreed by the Trial Court, and appeal against which judgment was also dismissed. Appellant case was that the respondent has no right, title or interest in the property and the respondent was permitted to live in the premises since the appellant being wife of a Navy Officer was most of the period out of Goa and she has permitted her brother to occupy the premises. This Court made following observations in paragraphs 91 and 92:-

> **"91.** We have heard the learned counsel for the parties at length and perused the relevant judgments cited at the Bar. In the instant case, admittedly, the respondent did not claim any title to

A the suit property. Undoubtedly, the appellant has a valid title to the property which is clearly proved from the pleadings and documents on record.

92. The respondent has not been able to establish the family arrangement by which this house was given to the respondent for his residence. The courts below have failed to appreciate that the premises in question was given by the appellant to her brother, the respondent herein as a caretaker. The appellant was married to a naval officer who was transferred from time to time outside Goa. Therefore, on the request of her brother she gave possession of the premises to him as a caretaker. The caretaker holds the property of the principal only on behalf of the principal."

81. For the above reasons, the Court allowed the appeal and laid down the preposition of law as noted above in paragraph 97 of the judgment. The ratio as laid down in the above case of this Court is nothing to do with the issues, which have arisen in the present appeal and the reliance on the above judgment by learned counsel for the appellant is misplaced.

82. Now, coming back again to the facts of the present case, there being specific pleading on behalf of the respondent that the house, which is in the name of the appellant is the matrimonial home of the respondent where she was residing in first floor since her marriage. The fact that respondent is residing in first floor of the premises is not matter of dispute. Even if the house is in the name of the appellant and that even if we accept the case of the appellant that appellant's son Raveen has no share in the house belonging to appellant, with whom the respondent was living in the domestic relationship, whether the respondent is entitled to reside in the premises in question as shared household is the question to be answered. In the impugned judgment, Delhi High Court has refrained from deciding the point as to whether suit property is a shared household on the ground that the application filed under Section 12 of Act, 2005 by the respondent is pending. In the suit filed by the appellant where respondent has pleaded and claimed that it is shared household and she has right to live and it was on that ground she was resisting the suit for mandatory injunction, the question that whether the suit property is a shared household or not becomes relevant and necessary and the said issue cannot be skipped on the ground that application under D.V. Act is pending. In the regular suit, which has been filed by the appellant,

the plea of defendant that suit property is her shared household and she has right to residence could have been very well gone into by virtue of Section 26, which we shall further deal a little later.

83. Before we close our discussion on Section 2(s), we need to observe that the right to residence under Section 19 is not an indefeasible right of residence in shared household especially when the daughter-in-law is pitted against aged father-in-law and mother-in-law. The senior citizens in the evening of their life are also entitled to live peacefully not haunted by marital discord between their son and daughter-in-law. While granting relief both in application under Section 12 of Act, 2005 or in any civil proceedings, the Court has to balance the rights of both the parties. The directions issued by High court in paragraph 56 adequately balances the rights of both the parties.

84. In view of the foregoing discussions, we answer issue Nos. 1 and 2 in following manner:-

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

(ii) The judgment of this Court in **S.R. Batra Vs. Taruna Batra (supra)** has not correctly interpreted Section 2(s) of Act, 2005 and the judgment does not lay down a correct law.

Question Nos. 3 and 4

85. Both the issues being inter-connected are being taken together.

86. The question which is posed for the consideration is, whether the learned Trial Court was justified in passing the decree on alleged admission under Order XII Rule 6 of the CPC or not. What is required to be considered is what constitutes the admission warranting the judgment on admission in exercise of powers under Order XII Rule 6, CPC. This Court had occasion to consider above in decisions; **Himani Alloys Limited Vs. Tata Steel Limited, (2011) 15 SCC 273** and **S.M. Asif Vs. Virender Kumar Bajaj, (2015) 9 SCC 287**.

87. In **Himani Alloys Limited (supra)**, this Court had an occasion to consider the scope and ambit of judgment on admission in exercise of powers under Order XII Rule 6, CPC. It is observed and held in

paragraph 11 that being an enabling provision, it is neither mandatory nor preemptory but discretionary for the Court to pass judgment on admission in exercise of powers under Order XII Rule 6 CPC. It is observed that the Court, on examination of the facts and circumstances, has to exercise its judicial discretion keeping in mind that a judgment on admission is a judgment without trial which permanently denies any remedy to the defendant by way of an appeal on merits. It is further observed that, therefore, unless the admission is clear, unambiguous and unconditional, the discretion of the Court should not be exercised to deny the valuable right of a defendant to contest the claim. In short, the discretion should be used only when there is a clear "admission" which can be acted upon. It is further observed and held that "admission" should be categorical. It should be a conscious and deliberate act of the party making it, showing an intention to be bound by it.

88. A similar view was expressed by this Court in the case of **S.M. Asif (supra)**. It is observed and held in paragraph 8 that expression "may" in Order XII Rule 6 CPC suggests that it is discretionary and cannot be claimed as of right. It is further observed that where defendants raised objections which go to root of the case, it would not be appropriate to exercise discretion under Order XII Rule 6 CPC.

89. In this context, we need to notice a few parts of pleadings of both the parties as disclosed in plaint and the written statement. The plaintiffs have filed the suit for mandatory and permanent injunction claiming to be absolute owner of the suit property where defendant was admitted to be in occupation of two bed rooms with few amenities on first floor of the property. The plaintiff pleaded that he is a senior citizen, aged 76 years but wanted to live a peaceful life and has terminated the licence of the defendant, who stayed in the first floor. The pleadings of the plaintiffs in paragraphs 1, 2, 3, 4 and 5 are as follows:-

> "1. That the plaintiff is the absolute owner of the property bearing No.D-1077 New Friends Colony, New Delhi – 110 025, admeasuring 492 sqyds. and is filing the present suit seeking removal of the defendant from the first floor of the property bearing No.D-1077, New Friends Colony, New Delhi – 110 025.
>
> 2. That the defendant is in occupation of two bed rooms with attached dressing and bath rooms and a kitchen on the first floor of property bearing No.D-1077, New Friends Colony, New Delhi

– 110 025 more particularly described in Red colour in the site plan and hereinafter referred to as the suit premises.

3. That the plaintiff is a senior citizen aged 76 years and is a heart patient and has undergone angioplasty twice in the arteries in the heart. The plaintiff suffers from hypertension and high blood pressure and is on constant medication for the same. As such the plaintiff in his old age would like to live a peaceful life and has terminated the licence of the defendant to stay in the first floor of the suit property which is the exclusive property of the plaintiff.

4. That the plaintiff is aggrieved by the torturous acts of the defendant in filing false and frivolous cases and attempting to implicate the plaintiff and his aged wife in false cases, the plaintiff in his ripe old age prays for removal of the defendant from the suit property so as to lead a tension free life without hurling of abuses and torture perpetrated by the defendant.

5. That the plaintiff is the sole and absolute owner of the suit property which was acquired by the plaintiff from its previous owner namely Shri Kulbhushan Jain vide agreement to sell dated 12th January, 1983 for a sum of Rs.2,77,000/- (Rupees Two lacs seventy seven thousand only) and after purchase of the said property the plaintiff herein constructed the entire property including first floor of the suit property out of his own self acquired funds and the entire property bearing No.D-1077, New Friends Colony, New Delhi – 110 025 was converted into free hold vide conveyance deed dated 14.07.2000 which was duly registered with the Sub Registrar of Assurances VII vide registration No.2500 in Volume No.951 pages 54 to 56. As such, the plaintiff having acquired the absolute ownership of the entire property bearing No.D-1077, New Friends Colony, New Delhi – 110 025 is entitled and competent to file the present suit seeking removal of the defendant from the portion of the first floor of the suit property."

90. A written statement was filed by the defendant where she claimed that after marriage of the defendant on 04.03.1995, she is residing in the house. It was further pleaded that the shared household was acquired by the plaintiff through joint family funds and it is not his self acquired property. Paragraphs 1, 4 and 7 of the written statement are as follows:-

A "1. That a bare perusal of the documents filed alongwith the plaint and even otherwise it is amply evident that the plaintiff as per his own version became the owner of the suit property bearing No D-1077, New Friends Colony, New Delhi-110025 only in the year 2003. The marriage of the answering defendant was solemnized on 4/3/1995 and the defendant started residing in the B joint shared household since then. Therefore the right of the defendant is prior in point of time that of the plaintiff.

It is further submitted that the said shared household was purportedly acquired by the plaintiff through joint family funds and not his self acquired property. The plaintiff hereby called upon C to disclose all income tax returns, bank statements, audited balance sheets etc. since 1982 till 2006. This may deemed to be noticed to discover under provisions of Order XI Rule 12 CPC on the plaintiff. As separate application under relevant provision of CPC is also being filed by the defendant for such discovery of documents. In D view of this, the present is not maintainable and is liable to be dismissed.

4. That the suit filed by the plaintiff is directly in conflict with the right of the defendant to reside in her matrimonial residence/shared household granted to her by the Legislature and E specifically envisaged in section 17 and 19 of the Protection of Women from Domestic Violence Act, 2005 and as such is liable to be dismissed at the threshold. The defendant came to the suit property on 04.03.1995 as a 'Bahu' of the plaintiff and legally wedded wife of his elder son Shri Raveen Ahuja. After the marriage the defendant lived with the son of the plaintiff Shri Raveen Ahuja F in the joint family uninterruptedly and there was/is a joint kitchen. The defendant has a right to reside in the suit property whether or not she has any right title or beneficial interest in the same. The son of the plaintiff Shri Raveen Ahuja is residing with, the plaintiff on the ground floor of the suit premises. In view of this, the stilt of G the plaintiff is not maintainable and is liable to be dismissed.

7. That the plaintiff has not approached to this Hon'ble Court with clean hands and suppressed the true and material facts regarding causing physical and mental torture to the defendant on account of domestic violence etc. by the plaintiff his wife and H their elder son. They also hatched a conspiracy against the

defendant in order to compel her to leave the matrimonial home in a deceit full manner. In view of this, the present suit is not maintainable and is liable to be dismissed."

91. The suit was filed by the plaintiff claiming to be sole owner of the house on the ground that he has terminated the gratuitous licencse of the defendant. Plaintiff also alleged that respondent (defendant) has filed false case implicating the plaintiff and his wife. Plaintiff further stated that wife of the plaintiff has been subjected to various threats and violence in the hands of the defendant on several occasions. On the other hand, the defendant does not dispute that the house was recorded in the name of the plaintiff and in her application filed under the Domestic Violence Act, she stated that plaintiff is the owner of the suit property but in the written statement filed in the suit, she pleaded that house has been purchased by joint family funds. The Trial Court on the basis of admission made by the defendant in her application filed under Section 12 of the D.V. Act before the Metropolitan Magistrate that the plaintiff is owner of the house has decreed the suit under Section 12(6).

92. Even if for argument's sake, we proceed on the basis that the plaintiff is the sole owner of the house, whether on the aforesaid ground, the Trial Court could have decreed the suit under Order XII Rule 6 CPC without adverting to the defence which was taken by the defendant to resist the suit is the question to be considered. Section 26 of the Act, 2005 contains heading "Reliefs in other suits and legal proceedings". Section 26, which is relevant for the present discussion is extracted for ready reference:-

"**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,

A she shall be bound to inform the Magistrate of the grant of such relief."

93. As per Section 26, any relief available under Sections 18, 19, 20, 21 and 22 of the Act, 2005 may also be sought in any legal proceeding, before a civil court, family court or a criminal court being the aggrieved B person. Thus, the defendant is entitled to claim relief under Section 19 in suit, which has been filed by the plaintiff. Section 26 empowers the aggrieved person to claim above relief in Civil Courts also. In the present suit, it was defence of the defendant that the house being the shared household, she is entitled to reside in the house as per Section 17(1) of Act, 2005. This Court had occasion to consider provision of Section 26 C in **Vaishali Abhimanyu Joshi Vs. Nanasaheb Gopal Joshi, (2017) 14 SCC 373**. In the above case, the appellant was married with one Abhimanyu with whom she was residing in suit Flat No.4, 45/4, Arati Society, Shivvihar Colony, Paud Fata, Pune. The husband filed a suit for divorce against the appellant. The father-in-law filed a suit in Small Cause D Court for mandatory injunction praying that defendant be directed to stop the occupation and use of the suit flat. The appellant filed a written statement in the suit claiming that although the flat bears the name of the respondent but she is residing in the suit flat. She filed a counter claim claiming that flat is a shared household and the suit be dismissed. The counter claim was rejected by the Judge, Small Cause Court, against E which revision as well as the writ petition was dismissed. This Court noted the question, which arose for consideration in the above case in paragraph 16, which is to the following effect:-

"**16.** As noted above, the only question to be answered in this appeal is as to whether the counter claim filed by the appellant F seeking right of residence in accordance with Section 19 of the 2005 Act in a suit filed by the respondent, her father-in-law under the Provincial Small Cause Courts Act, 1887 is entertainable or not. Whether the provisions of the 1887 Act bar entertainment of such counterclaim, is the moot question to be answered……"

G 94. After noticing the provision of Section 26 of the Act, this Court made following observations in paragraphs 23 and 24:-

"23. Section 26 of the Act is a special provision which has been enacted in the enactment. Although, Chapter IV of the Act containing Section 12 to Section 29 contains the procedure for H obtaining orders of reliefs by making application before the

Magistrate whereas steps taken by the Magistrate and different categories of reliefs could be granted as noted in Sections 18 to 22 and certain other provisions. Section 26 provides that any relief available under Sections 18 to 22 may also be sought in any legal proceedings, before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent. Section 26 is material for the present case since the appellant has set up her counterclaim on the basis of this section before the Judge, Small Cause Court. Section 26 is extracted below:

"**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."

24. There cannot be any dispute that proceeding before the Judge, Small Cause Court is a legal proceeding and the Judge, Small Cause Court is a civil court. On the strength of Section 26, any relief available under Sections 18 to 22 of the 2005 Act, thus, can also be sought by the aggrieved person."

95. This Court held that Section 26 has to be interpreted in a manner to effectuate the purpose and object of the Act. This Court held that the determination of claim of the aggrieved person was necessary in the suit to avoid multiplicity of proceedings. This court laid down following in paragraphs 40 and 41:-

"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

A 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."

96. In view of the ratio laid down by this court in the above case, the claim of the defendant that suit property is shared household and she has right to reside in the house ought to have been considered by the Trial Court and non-consideration of the claim/defence is nothing but defeating the right, which is protected by Act, 2005.

97. We have noticed the law laid down by this Court in **S.M. Asif Vs. Virender Kumar Bajaj (supra)** where this Court in paragraph 8 has laid down following:-

"8. The words in Order 12 Rule 6 CPC "may" and "make such order …" show that the power under Order 12 Rule 6 CPC is discretionary and cannot be claimed as a matter of right. Judgment on admission is not a matter of right and rather is a matter of discretion of the court. Where the defendants have raised objections which go to the root of the case, it would not be appropriate to exercise the discretion under Order 12 Rule 6 CPC. The said rule is an enabling provision which confers discretion on the court in delivering a quick judgment on admission and to the extent of the claim admitted by one of the parties of his opponent's claim."

98. The power under Order XII Rule 6 is discretionary and cannot be claimed as a matter of right. In the facts of the present case, the Trial Court ought not to have given judgment under Order XII Rule 6 on the admission of the defendant as contained in her application filed under Section 12 of the D.V. Act. Thus, there are more than one reason for not approving the course of action adopted by Trial Court in passing the judgment under Order XII Rule 6. We, thus, concur with the view of the High Court that the judgment and decree of the Trial Court given under Order XII rule 6 is unsustainable.

Question No.5

99. Section 2(q) defines the 'respondent' in following words:

> "2(q) "respondent" means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act:
>
> Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner;"

100. There are two conditions for a person to be treated to be respondent within the meaning of Section 2(q), i.e., (i) in a domestic relationship with the aggrieved person, and (ii) against whom the aggrieved person has sought any relief under Act, 2005. It is to be noticed that the expression "any adult male person" occurring in Section 2(q) came for consideration before this Court in **Hiral P. Harsora and others Vs. Kusum Narottamdas Harsora and others, (2016) 10 SCC 165,** where this Court has struck down the expression "adult male". This Court held that "adult male person" restricting the meaning of respondent in Section 2(q) to only "adult male person" is not based on any intelligible differentia having rational nexus with object sought to be achieved. This Court struck down the word "adult male". Hence, it is now permissible under definition of Section 2(q) to include females also.

101. The defendant in her application filed under Section 12 on 20.11.2015 in the Court of Additional Chief Metropolitan Magistrate impleaded Satish Chandra Ahuja as respondent No.2. Thus, in the domestic violence proceedings initiated by the defendant, plaintiff was the respondent. As noted above, under Section 26 of the Act, 2005 any relief available under Sections 18, 19, 20, 21 and 22 may also be sought

A in any legal proceedings, before a Civil Court. The defendant in her written statement claimed that she is entitled to reside in the premises of suit property it being her shared household.

102. Learned counsel for the appellant submitted that in the suit in question the defendant has not sought for any relief under Section 19. It B is true that no separate application or separate prayer has been made by the defendant in the suit for grant of any relief under Section 19 but in her pleadings she has resisted the claim of plaintiff on the ground that she has a right to reside in the suit property it being her shared household. Thus, the question whether the suit premises is shared household of the defendant and she has right in the shared household so as the decree C before the Trial Court can be successfully resisted were required to be determined by the Trial Court. We are further of the view that when in the suit defendant has pleaded to resist the decree on the ground of her right of residence in the suit property it was for her to prove her claim in the suit both by pleadings and evidence.

D 103. As noted above, one of the conditions to treat a person as a respondent is that "against whom the aggrieved person has sought any relief under the Act". The defendant in her pleadings having claimed that she has right of residence in the suit property, she for successful resisting the suit has to plead and prove that she has been subjected to E any act of domestic violence by the respondent, which is implicit in the definition of the aggrieved person itself as given in the Section 2(a) of the Act, 2005. It is, further, relevant to notice that although learned Magistrate passed an interim order in the application filed by the defendant under Section 12 on 26.11.2016 but said order was interim order which was passed on the satisfaction of the Magistrate that "the application F prima facie disclosed that the respondent is committing or has committed an act of domestic violence". For granting any relief by the Civil Court under Section 19 it has to be proved that the respondent is committing or has committed an act of domestic violence on the aggrieved person. To treat a person as the "respondent" for purposes of Section 2(q) it has to G be proved that person arrayed as respondent has committed an act of domestic violence on the aggrieved person.

104. We, thus, are of the view that for the purposes of determination of right of defendant under Sections 17 and 19 read with Section 26 in the suit in question the plaintiff can be treated as "respondent", but for H the grant of any relief to the defendant or for successful resisting the

suit of the plaintiff necessary conditions for grant of relief as prescribed under the Act, 2005 has to be pleaded and proved by the defendant, only then the relief can be granted by the Civil Court to the defendant.

Question No.6

105. Section 17 of the Act has two sub-sections which engraft two independent rights. According to sub-section (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. This right has been expressly granted to every woman in domestic relationship to fulfill the purpose and objective of the Act. Although under the statute regulating personal law the woman has right to maintenance, every wife has right of maintenance which may include right of residence, the right recognized by sub-section (1) of Section 17 is new and higher right conferred on every woman.

106. The right is to be implemented by an order under Section 19, on an application filed under sub-section (1) of Section 12. Sub-section (2) of Section 17, however, contains an exception in the right granted by sub-section (2), i.e., "save in accordance with the procedure established by law". Sub-section (2) of Section 17, thus, contemplates that aggrieved person can be evicted or excluded from the shared household in accordance with the procedure established by law. What is the meaning and extent of expression "save in accordance with the procedure established by law" is a question which has come up for consideration in this appeal. Whether the suit filed by the plaintiff for mandatory and permanent injunction against the defendant in the Civil Court is covered by the expression "save in accordance with the procedure established by law". We may further notice that the learned Magistrate while passing the interim order on 26.11.2016 in favour of the defendant on her application filed under Section 12 has directed that "the respondent shall not alienate the alleged shared household nor would they dispossess the complainant or their children from the same **without orders of a Competent Court**". The Magistrate, thus, has provided that without the orders of Competent Court the applicant (respondent herein) should not be dispossessed. In the present case, interim order specifically contemplates that it is only by the order of the Competent Court respondent shall be dispossessed.

107. We may take an example, where a final order has been passed by the Magistrate under Section 12. What is the nature and life of the said order? Section 25(2) itself contemplates an eventuality when order passed under the Act can be altered, modified or revoked. Section 25(2) provides:

"Section 25. Duration and alteration of orders.-

(1) xxx xxx xxx

(2) If the Magistrate, on receipt of an application from the aggrieved person or the respondent, is satisfied that there is a change in the circumstances requiring alteration, modification or revocation of any order made under this Act, he may, for reasons to be recorded in writing pass such order, as he may deem appropriate."

108. Whether apart from powers of Magistrate under Section 25(2) of the Act, 2005, the Act, 2005 contemplates any other eventuality when despite the order of residence under Section 19 an aggrieved person can be evicted or dispossessed.

109. The right to reside in shared household as granted by Section 17 itself contemplates an exception in express words, i.e., "save in accordance with the procedure established by law".

110. The procedure prescribed for proceedings under Section 19 as provided in Section 28 of the Act is as per the provisions of the Code of Criminal Procedure, 1973. Section 28 of the Act, 2005, provides 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."

111. The rules have been framed under the Act, 2005, namely "The Protection of Women from Domestic Violence Rules, 2006". Rule 5 deals with Domestic Incident Report which is to be submitted by protection officer in Form I. The Form I is part of Rule which contains

details in various columns to enable the Magistrate to take appropriate decision. Rule 6 provides that every application of the aggrieved person under Section 12 shall be in Form-II or as nearly as possible thereto. Form-II is again part of Rule which contains various details including orders required, residence orders, under Section 19, monetary relief under Section 20, details of previous litigation, if any, and other details to enable the Magistrate to take appropriate decision. Rule 6 sub-Rule (4) provides that for obtaining an interim ex-parte order under Section 23, an affidavit is to be filed in Form-III. The Form-III is an affidavit of an aggrieved person or the person filing affidavit on behalf of his ward, daughter, etc. The Act and the Rules thus provide for a procedure and manner of filing an application for obtaining a relief under Act, 2005. The Act, 2005, is an special Act which provides for manner and procedure for obtaining relief by an aggrieved person.

112. The provision of Section 145 of Cr.P.C. in this context may be noticed. Section 145 of Cr.P.C. provides for procedure where dispute concerning land or water is likely to cause breach of peace. Under Section 145 Cr.P.C. in case Magistrate is satisfied that a dispute likely to cause a breach of the peace exists, he may require the parties to attend the Court and to decide whether any and which of the parties was, at the date of the order made by him under sub-section (1), in possession of the subject of dispute. Sub-section (6) of Section 145 Cr.P.C. contemplates issuance of the order by the Magistrate declaring such party to be entitled to such possession. Sub-section (6), however, contemplates that the parties to be entitled to possession thereof **until evicted therefrom in due course of law**. The eviction in due course of law was contemplated to be by a competent court.

113. This Court had occasion to consider the expression "until evicted therefrom in due course of law" as occurring in Section 145(6) in **Shanti Kumar Panda Vs. Shakuntala Devi, (2004) 1 SCC 438.** This Court held in the above case that the purpose of provisions of Section 145 Cr.P.C. is to provide a speedy and summary remedy so as to prevent a breach of the peace by submitting the dispute to the Executive Magistrate for resolution as between the parties disputing the question of possession over the property. This Court held that the unsuccessful party in proceedings under Section 145 Cr.P.C. ought to sue for recovery of possession seeking a decree or order for restoration of possession. In paragraph 12 following was laid down:

A "12. What is an eviction "in due course of law" within the meaning of Sub-section (6) of Section 145 of the Code? Does it mean a suit or proceedings directing restoration of possession between the parties respectively unsuccessful and successful in proceedings under Section 145 or any order of competent court which though not expressly directing eviction of successful party, has the effect B of upholding the possession or entitlement to possession of the unsuccessful party as against the said successful party. In our opinion, which we would buttress by reasons stated shortly hereinafter, ordinarily a party unsuccessful in proceedings under Section 145 ought to sue for recovery of possession seeking a C decree or order for restoration of possession. However, a party though unsuccessful in proceedings under Section 145 may still be able to successfully establish before the competent court that it was actually in possession of the property and is entitled to retain the same by making out a strong case demonstrating the finding of the Magistrate to be apparently incorrect." D

114. This Court further held that finding recorded by the Magistrate under Section 145 Cr.P.C. does not bind when the matter comes for adjudication before competent court. This Court explained expression "until evicted therefrom in due course of law" mean "any court which has jurisdictional competence to decide the question of title or rights to E the property or entitlement to possession". In paragraph 17 of the judgment following was observed:

"17……The words 'until evicted therefrom in due course of law' as occurring in Sub-section (6) of Section 145' mean the eviction of the party successful before the Magistrate, F consequent upon the adjudication of title or right to possession by a competent court; that does not necessarily mean a decree of eviction. The party unsuccessful before the Magistrate may dispute the correctness of the finding arrived at by the Magistrate and is at liberty to show before the competent court that it had not G dispossessed the successful party or that it is the unsuccessful party and not the successful party who was actually in possession and the finding to the contrary arrived at by the Magistrate was wholly or apparently erroneous and unsustainable in law."

115. Summarising the law in the context of Sections 145 and 146 H Cr.P.C. the effects of the order of Magistrate were recorded by this

Court in paragraph 23, relevant part of which for the present case is as follows:

> "23. For the purpose of legal proceedings initiated before a competent court subsequent to the order of an Executive Magistrate under Sections 145/146 of the Code of Criminal Procedure, the law as to the effect of the order of the Magistrate may be summarized as under:-
>
> (1) The words 'competent court' as used in Sub-section (1) of Section 146 of the code do not necessarily mean a civil court only. A competent court is one which has the jurisdictional competence to determine the question of title or the rights of the parties with regard to the entitlement as to possession over the property forming subject matter of proceedings before the Executive Magistrate;
>
> (2) A party unsuccessful in an order under Section 145(1) would initiate proceedings in a competent court to establish its entitlement to possession over the disputed property against the successful party, Ordinarily, a relief of recovery of possession would be appropriate to be sought for. In legal proceedings initiated before a competent court consequent upon attachment under Section 146(1) of the Code it is not necessary to seek relief of recovery of possession. As the property is held custodia legis by the Magistrate for and on behalf of the party who would ultimately succeed from the court it would suffice if only determination of the rights with regard to the entitlement to the possession is sought for. Such a suit shall not be bad for not asking for the relief of possession.
>
> (3) A decision by a criminal court does not bind the civil court while a decision by the civil court binds the criminal court. An order passed by the Executive Magistrate in proceedings under Sections 145/146 of the Code is an order by a criminal court and that too based on a summary enquiry. The order is entitled to respect and weight before the competent court at the interlocutory stage. At the stage of final adjudication of rights, which would be on the evidence adduced before the court, the order of the Magistrate is only one out of several pieces of evidence.

A (4)

.....

.....

B .....”

116. Drawing the analogy from the above case, we are of the opinion that the expression “save in accordance with the procedure established by law”, in Section 17(2) of the Act, 2005 contemplates the proceedings in court of competent jurisdiction. Thus, suit for mandatory and permanent injunction/eviction or possession by the owner of the C property is maintainable before a Competent Court. We may further notice that in sub-section (2) the injunction is “shall not be evicted or excluded from the shared household save in accordance with procedure established by law”. Thus, the provision itself contemplates adopting of any procedure established by law by the respondent for eviction or D exclusion of the aggrieved person from the shared household. Thus, in appropriate case, the competent court can decide the claim in a properly instituted suit by the owner as to whether the women need to be excluded or evicted from the shared household. One most common example for eviction and exclusion may be when the aggrieved person is provided same level of alternate accommodation or payment of rent as E contemplated by Section 19 sub-section (f) itself. There may be cases where plaintiff can successfully prove before the Competent Court that the claim of plaintiff for eviction of respondent is accepted. We need not ponder for cases and circumstances where eviction or exclusion can be allowed or refused. It depends on facts of each case for which no further F discussion is necessary in the facts of the present case. The High Court in the impugned judgment has also expressed opinion that suit filed by the plaintiff cannot be held to be non-maintainable with which conclusion we are in agreement.

117. In case, the shared household of a woman is a tenanted/ G allotted/licensed accommodation where tenancy/ allotment/license is in the name of husband, father-in-law or any other relative, the Act, 2005 does not operate against the landlord/lessor/licensor in initiating an appropriate proceedings for eviction of the tenant/allottee/licensee qua the shared household. However, in case the proceedings are due to any collusion between the two, the woman, who is living in the shared H

household has right to resist the proceedings on all grounds which the tenant/lessee/licensee could have taken in the proceedings. The embargo under Section 17(2) of Act, 2005 of not to be evicted or excluded save in accordance with the procedure established by law operates only against the "respondent", i.e., one who is respondent within the meaning of Section 2(q) of Act, 2005.

Question No.7

118. Learned counsel for the appellant challenging the direction issued by the High Court that the husband of respondent be impleaded by the Trial Court by invoking suo moto powers under Order I Rule 10 CPC, submits that no relief having been claimed against the son of the appellant, he (son) was neither necessary nor proper party. Learned counsel for the appellant has relied on the judgments of this Court in **Razia Begum Vs. Sahebzadi Anwar Begum and others, AIR 1958 SC** 886 and **Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay and others, (1992) 2 SCC 524.** Latter judgment of this Court discussing judgment of **Razia Begum** has laid down following in paragraphs 10 and 12:

> "10. The power of the Court to add parties under Order I Rule 10, CPC, came up for consideration before this Court in Razia Begum (supra). In that case it was pointed out that the Courts in India have not treated the matter of addition of parties as raising any question of the initial jurisdiction of the Court and that it is firmly established as a result of judicial decisions that in order that a person may be added as a party to a suit, he should have a direct interest in the subject-matter of the litigation whether it be the questions relating to moveable or Immovable property.
>
> 12. Sinha, J. speaking for the majority said that a declaratory judgment in respect of a disputed status will be binding not only upon parties actually before the Court but also upon persons claiming through them respectively. The Court laid down the law that in a suit relating to property in order that a person may be added as a party, he should have a direct interest as distinguished from a commercial interest in the subject-matter of the litigation. Where the subject-matter of a litigation is a declaration as regards status or a legal character, the rule of presence of direct interest may be relaxed in a suitable case where the Court is of the opinion

A that by adding that party it would be in a better position effectually and completely to adjudicate upon the controversy.……"

119. There can be no dispute with the preposition of law as laid down by this Court in the above two cases. In the present case, although plaintiff has not claimed any relief against his son, Raveen Ahuja, the B husband of the respondent, hence, he was not a necessary party but in view of the fact that respondent has pleaded her right of residence in shared household relying on Sections 17 and 19 of the Act, 2005 and one of the rights which can be granted under Section 19 is right of alternate accommodation, the husband is a proper party. The right of maintenance as per the provisions of Hindu Adoption and Maintenance Act, 1956 is C that of the husband, hence he may be a proper party in cases when the Court is to consider the claim of respondent under Sections 17 and 19 read with Section 26 of the Act, 2005.

120. Civil Procedure Code, Order I Rule 10 empowers the Court at any stage of the proceedings either on an application or suo moto to D add a party either as plaintiff or defendant, whose presence before the Court may be necessary in order to enable the Court effectively and completely adjudicate upon and settle all the questions involved in the suit. The High Court in paragraph 56(i) has issued following directions:-

E "56. In these circumstances, the impugned judgments cannot be sustained and are accordingly set aside. The matters are remanded back to the Trial Court for fresh adjudication in accordance with the directions given hereinbelow:

(i) At the first instance, in all cases where the respondent's son/the appellant's husband has not been impleaded, the Trial F Court shall direct his impleadment by invoking its suo motu powers under Order I Rule 10 CPC.

XXXXXXXXXXXXXXX"

121. The above direction is a little wide and preemptory. In event, the High Court was satisfied that impleadment of husband of defendant G was necessary, the High Court itself could have invoked the power under Order I Rule 10 and directed for such impleadment. When the matter is remanded back to the Trial Court, Trial Court's discretion ought not to have been fettered by issuing such a general direction as noted above. The general direction issued in paragraph 56(i) is capable of being H

misinterpreted. Whether the husband of an aggrieved person in a particular case needs to be added as plaintiff or defendant in the suit is a matter, which need to be considered by the Court taking into consideration all aspects of the matter. We are, thus, of the view that direction in paragraph 56(i) be not treated as a general direction to the Courts to implead in all cases the husband of an aggrieved person and it is the Trial Court which is to exercise the jurisdiction under Order I Rule 10. The direction in paragraph 56(i) are, thus, need to be read in the manner as indicated above.

122. Now, coming to the present case, we have already observed that although husband of the defendant was not a necessary party but in view of the pleadings in the written statement, the husband was a proper party.

Question No.8

123. While noticing the facts and events of the present case, we have noticed that in complaint filed by the respondent under Section 12 of Act, 2005, an interim order was passed in her favour directing the respondent arrayed in the complaint not to dispossess the applicant without orders of a competent court. Suit giving rise to this appeal was filed thereafter praying for a mandatory and permanent injunction against the defendant-respondent. High Court in the impugned judgment has observed that the effect of the pendency of proceeding under D.V. Act, 2005 has not been taken note of. With regard to various precedents, which were relied before the High Court by learned counsel for the appellant, similar observations were made by the High Court that those judgments do not consider the effect of initiation and pendency of proceedings under Act, 2005.

124. What is the effect of an interim order or a final order passed under Section 19 of the Act, 2005 on a civil proceeding initiated in a court of competent jurisdiction, is a question, which need to be answered? Whether in view of the pendency of proceedings under the D.V. Act any proceedings could not have been initiated in a Civil Court of competent jurisdiction or whether the orders passed under D.V. Act giving right of residence by interim or final order are binding in Civil Court proceedings and Civil court could not have taken any decision contrary to directions issued in D.V. Act are the related questions to be considered.

125. Section 17(2) itself contemplates eviction or exclusion of aggrieved person from a shared household in accordance with the procedure established by law. The conclusion is inescapable that a proceeding in a competent court for eviction or exclusion is contemplated by the Statutory Scheme of Act, 2005. Thus, there is neither any express nor implied bar in initiation of civil proceedings in a Court of competent jurisdiction. Further, Section 26 also contemplate grant of relief of right of residence under Section 19 in any legal proceedings before a Civil Court or Family Court or Criminal Court affecting the aggrieved person. The proceedings might be initiated by aggrieved person or against the aggrieved person herself before or after the commencement of Act, 2005. Thus, initiation of the proceedings in Civil Court and relief available under Section 19 of the Act, 2005 is contemplated by the statutory scheme delineated by the Act, 2005. There may be also instances where conflict may arise in the orders issued under D.V. Act, 2005 as well as the judgment of Civil Court. What is the effect of such conflict in the decision is another related issue which needs to be answered? Whether the principle of res judicata can be pressed in respect to any decision inter parties in respect to criminal and civil proceedings?

126. The applicability of principle of res judicata is well known and are governed by provisions of Section 11 C.P.C., which principle also has been held to be applicable in other proceedings. There can be no applicability of principle of res judicata when orders of Criminal Courts are pitted against proceedings in Civil Court. With regard to criminal proceedings Code of Criminal Procedure also contains provision that a person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence nor on the same facts for any other offence. The principle enumerated in Section 300 Cr.P.C. may be relevant with respect to two criminal proceedings against same accused, which might have no relevance in reference to one criminal proceeding and one civil proceeding.

127. Sections 40 to 44 of the Indian Evidence Act, 1872 which deal with "judgments of Courts of justice when relevant" throw considerable light on the subject which is under consideration before us. Sections 40 to 44 of the Indian Evidence Act are as follows:

"Judgments of courts of justice when relevant

40. Previous judgments relevant to bar a second suit or trial.—The existence of any judgment, order or decree which by law prevents any Court from taking cognizance of a suit or holding a trial, is a relevant fact when the question is whether such Court ought to take cognizance of such suit or to hold such trial.

41. Relevancy of certain judgments in probate, etc., jurisdiction.— A final judgment, order or decree of a competent Court, in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

Such judgment, order or decree is conclusive proof—

that any legal character which it confers accrued at the time when such judgment, order or decree came into operation;

that any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment, order or decree declares it to have accrued to that person;

that any legal character which it takes away from any such person ceased at the time from which such judgment, order or decree declared that it had ceased or should cease;

and that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, order or decree declares that it had been or should be his property.

42. Relevancy and effect of judgments, orders or decrees, other than those mentioned in Section 41.—Judgments, orders or decrees other than those mentioned in Section 41, are relevant if they relate to matters of a public nature relevant to the enquiry; but such judgments, orders or decrees are not conclusive proof of that which they state.

A **43. Judgments, etc., other than those mentioned in Sections 40 to 42, when relevant.—**Judgments, orders or decrees, other than those mentioned in Sections 40, 41 and 42, are irrelevant, unless the existence of such judgment, order or decree, is a fact in issue, or is relevant under some other provision of this Act.

B **44. Fraud or collusion in obtaining judgment, or incompetency of Court, may be proved.—** Any party to a suit or other proceeding may show that any judgment, order or decree which is relevant under Section 40, 41 or 42, and which has been proved by the adverse party, was delivered by a Court not competent to deliver it, or was obtained by fraud or collusion."

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128. Section 40 renders admissible judgments which operate as placing any bar on a suit or trial as plea of res judicata or otherwise under some rule of law. The scheme of D.V. Act, 2005 does not contemplate that any judgment and order passed under Section 19 of the said Act prevents any court from taking cognizance of a suit or holding
D of trial; Section 41 deals with relevancy of certain judgments in probate, matrimonial, admirality and insolvency jurisdiction which are conclusive not only against party but against all the world. This Section enumerates four classes of judgments. A decree of Civil Court in exercise of matrimonial jurisdiction is also one of the judgments which had been
E held to be relevant under Section 41. The orders passed under Act, 2005 cannot be held to be orders or judgments passed in exercise of any matrimonial jurisdiction by the Court. The Act, 2005 is a special act on the subject of providing for effective protection of the rights of women who are victims of violence of any kind.

F 129. Section 42 deals with admissibility of judgments relevant to matters of public nature though not between the parties and privy but such judgments, orders or decree are not conclusive proof of that they state. Section 43 says that judgment other than those mentioned in Sections 40 to 42 are irrelevant unless the existence of judgment, order or decree is fact in issue or is relevant under some other provisions of
G the Act. In the facts of the present case, where there are pleadings in the suit in question regarding proceeding under Section 12 the existence of orders passed under Act, 2005 are relevant and admissible in Civil Proceedings.

130. The proceedings under D.V. Act, 2005 are proceedings which
H are to be governed by Code of Criminal Procedure, 1973.

131. The procedure to be followed by the magistrate is provided under Section 28 of the D.V. Act and as per Section 28 of the D.V. 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. Even sub-section (2) of Section 28 provides that the magistrate can lay down its own procedure for disposal of an application under Section 12 or under sub-section (2) of Section 23. However, for other proceedings, the procedure is to be followed as per the provisions of the Code of Criminal Procedure, 1973. The procedure to be followed under Section 125 shall be as per Section 126 of the Cr.P.C. which includes permitting the parties to lead evidence. Therefore, before passing any orders under the D.V. Act, the parties may be permitted to lead evidence. However, before any order is passed under Section 12, the magistrate shall take into consideration any domestic incident report received by him from the protection officer or the service provider. That does not mean that magistrate can pass orders solely relying upon the domestic incident report received by him from the protection officer or the service provider. Even as per Section 36 of the D.V. Act, the provisions of the D.V. Act shall be **in addition to,** and not in derogation of the provisions of any other law, for the time being in force. Even the magistrate can also pass an interim order as per Section 23 of the D.V. Act.

132. Considering Section 12(2) and Section 26(3), read with Section 25(2), even the Legislature envisaged the two independent proceedings, one before the magistrate under the D.V. Act and another proceeding other than the proceedings under the D.V. Act.

133. Even the Civil Court has to take into consideration the relief already granted by the Magistrate in the proceedings under the D.V. Act and vice versa.

134. However, at the same time, it is to be observed that in a case any relief available under Sections 18, 19, 20, 21 and 22 is sought by aggrieved person in any legal proceedings before a civil court, family court or a criminal court including the residence order, the aggrieved person has to satisfy by leading evidence that domestic violence has taken place and only on the basis of the evidence led on being satisfied that the domestic violence has taken place, the relief available under Section 19 can be granted as Section 19(1) specifically provides that while disposing of an application under sub-Section 1 of Section 12, the

A magistrate may, on being satisfied, that domestic violence has taken place, pass the residence order.

135. At this stage, it is also required to be noted that while passing the order of residence under Section 19, more particularly under sub-section 19(1)(b) as per the proviso to Section 19(1), no order under B clause(b) shall be passed against any person who is a woman.

136. Therefore, on conjoint reading of Sections 12(2), 17, 19, 20, 22, 23, 25, 26 and 28 of the D.V. Act, it can safely be said that the proceedings under the D.V. Act and proceedings before a civil court, family court or a criminal court, as mentioned in Section 26 of the D.V. C Act are independent proceedings, like the proceedings under Section 125 of the Cr. P.C. for maintenance before the Magistrate and/or family court and the proceedings for maintenance before a civil court/ family court for the reliefs under the Hindu Adoption and Maintenance Act. However, as observed hereinabove, the findings/orders passed by the one forum has to be considered by another forum.

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137. Now, we proceed to examine effect of orders passed under criminal proceedings, i.e., Act, 2005 on the civil proceedings and consequence of any conflict in proceedings under D.V. Act as well as civil proceedings.

E 138. We make it clear that in the present case we are called upon to examine the consequences and effect of orders passed under Section 19 of D.V. Act, 2005 on civil proceedings in a court of competent jurisdiction. Thus, our consideration and exposition are limited qua orders passed under Section 19 of D.V. Act only, i.e., a conflict between orders passed in a criminal proceeding on a civil proceeding.

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139. We may first notice the judgment of Constitution Bench of this Court in ***M.S. Sheriff and Anr. Vs. State of Madras and Ors., AIR 1954 SC 397***. In the above case, the appellants were sought to be prosecuted for perjury under Section 193 IPC, which was directed by High Court after an inquiry. Appeal was filed against the order of the G High Court directing the filing of a complaint for perjury. The complainant had also filed a suit for damages for wrongful confinement against the appellants, who were accused, who were alleged to have illegally detained the complainant. One of the questions, which arose for consideration before this Court was that which proceeding should be stayed, i.e., prosecution under Section 193 or suit for damages for wrongful

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confinement. In the above context, following observations were made by the Constitution Bench in paragraph 15:-

> **"15.** As between the civil and the criminal proceedings we are of the opinion that the criminal matters should be given precedence. There is some difference of opinion in the High Courts of India on this point. No hard and fast rule can be laid down but we do not consider that the possibility of conflicting decisions in the civil and criminal courts is a relevant consideration. The law envisages such an eventuality when it expressly refrains from making the decision of one court binding on the other, or even relevant, except for certain limited purposes, such as sentence or damages. The only relevant consideration here is the likelihood of embarrassment."

140. In the above case, this Court had observed that possibility of conflicting decisions in the civil and criminal courts was not a relevant consideration. This Court had further observed that "The law envisages such an eventuality when it expressly refrains from making the decision of one court binding on the other, or even relevant, except for certain limited purposes……."

141. This Court in **M.S. Sheriff (supra),** directed that civil suits should be stayed till the criminal proceedings have finished. The issue before the Constitution Bench was limited as of stay of one out of two proceedings. In the present proceedings, we are not faced with any question regarding stay of any of the proceedings", however, "factum of possibility of conflicting decisions" was noticed by this Court qua civil and criminal proceedings which is a possible and probable consequence of decision taken in two proceedings.

142. We may notice a judgment of this Court dealing with Section 43 of the Indian Evidence Act, i.e., ***S.M. Jakati and Anr. Vs. S.M. Borkar and Ors., AIR 1959 SC 282***. This Court in the above case had occasion to consider the relevancy of the effect and consequence of an order passed by Deputy Registrar of Cooperative Society in a suit filed for partition of joint family property, which was sold in auction in consequence of orders passed by the Deputy Registrar for the Society. The relevancy of orders of Deputy Registrar under Section 43 of the Evidence Act came to be considered and this Court noticing the principle of Section 43 of Evidence Act laid down following in paragraph 11:-

A "11. In the case now before us the appellants have attempted to prove that the debt fell within the term Avyavaharika by relying upon the payment order and the findings given by the Deputy Registrar in the payment order where the liability was inter alia based on a breach of trust. Any opinion given in the order of the Deputy Registrar as to the nature of the liability of Defendant 1 M.B. Jakati cannot be used as evidence in the present case to determine whether the debt was Avyavaharika or otherwise. The order is not admissible to prove the truth of the facts therein stated and except that it may be relevant to prove the existence of the judgment itself, it will not be admissible in evidence. Section 43 of the Evidence Act, the principle of which is that judgments excepting those upon questions of public and general interest, judgment in rem or when necessary to prove the existence of a judgment, order or decree, which may be a fact in issue are irrelevant……"

D 143. We may notice a Three Judge Bench judgment of this Court in ***K.G. Premshankar Vs. Inspector of Police and Anr., (2002) 8 SCC 87*** in which case this Court had occasion to consider the effect of decision of civil court on the criminal proceeding. This Court had also occasion to consider Sections 40 to 43 of Indian Evidence Act in the said judgment. The Three Judge Bench was answering the reference made on 09.11.1998 by which an earlier judgment of this Court in V.M. Shah Vs. State of Maharashtra (1995) 5 SCC 767 required a reconsideration. This Court in V.M. Shah's case had laid down that "the finding recorded by the criminal court stands superseded by the finding recorded by the civil court" thereby the finding of civil court got precedence over the finding recorded by the criminal court. Before this Court in K.G. Premshankar case prosecution was launched against the appellants, cognizance of which was taken by the Chief Judicial Magistrate. Appellant filed a proceeding under Section 482 Cr.P.C. for quashing the prosecution, which was rejected, against which matter was taken to this Court. The complainant had also filed a suit for damages for the alleged act before the civil court, which suit was pending in the trial court at the stage of framing of issues. Submission, which was raised before this court was that the High Court ought to have dropped the prosecution against the appellants as the civil court has dismissed the suit, i.e., suit for damages filed against the appellants. The submission of the appellants was refuted by learned Additional Advocate General, who relied on

Sections 41, 42 and 43 of the Evidence Act. It was contended that previous proceedings are relevant only to limited extent and criminal proceedings are not required to be dropped as soon as a decree is passed in the civil suit. The submission of learned Additional Advocate General has been noticed in paragraph 15 of the judgment. This Court accepted the submission of the learned Additional Advocate General. Paragraphs 15 and 16 of the judgment are as follows:-

> "15. Learned Additional Solicitor-General Shri Altaf Ahmed appearing for the respondents submitted that the observation made by this Court in V.M. Shah case [(1995) 5 SCC 767 : 1995 SCC (Cri) 1077] that
>
> > "the finding recorded by the criminal court, stands superseded by the finding recorded by the civil court and thereby the finding of the civil court gets precedence over the finding recorded by the criminal court"
>
> (SCC p. 770, para 11)
>
> is against the law laid down by this Court in various decisions. For this, he rightly referred to the provisions of Sections 41, 42 and 43 of the Evidence Act and submitted that under the Evidence Act to what extent judgments given in the previous proceedings are relevant is provided and therefore it would be against the law if it is held that as soon as the judgment and decree is passed in a civil suit the criminal proceedings are required to be dropped if the suit is decided against the plaintiff who is the complainant in the criminal proceedings.
>
> 16. In our view, the submission of learned Additional Solicitor-General requires to be accepted. Sections 40 to 43 of the Evidence Act provide which judgments of courts of justice are relevant and to what extent. Section 40 provides for previous judgment, order or a decree which by law prevents any court while taking cognizance of a suit or holding a trial, to be a relevant fact when the question is whether such court ought to take cognizance of such suit or to hold such trial. Section 40 is as under:
>
> > "40. Previous judgments relevant to bar a second suit or trial.—The existence of any judgment, order or decree which by law prevents any court from taking cognizance of a suit or holding a trial, is a relevant fact when the question is whether such

A court ought to take cognizance of such suit or to hold such trial."

144. This Court noticing the Constitution Bench judgment in **M.S. Sheriff (supra)** and few other judgments had recorded its conclusion in paragraph 30 to the following effect:-

B **"30.** What emerges from the aforesaid discussion is — (*1*) the previous judgment which is final can be relied upon as provided under Sections 40 to 43 of the Evidence Act; (*2*) in civil suits between the same parties, principle of *res judicata* may apply; (*3*) in a criminal case, Section 300 CrPC makes provision that C once a person is convicted or acquitted, he may not be tried again for the same offence if the conditions mentioned therein are satisfied; (*4*) if the criminal case and the civil proceedings are for the same cause, judgment of the civil court would be relevant if conditions of any of Sections 40 to 43 are satisfied, but it cannot be said that the same would be conclusive except as provided in D Section 41. Section 41 provides which judgment would be conclusive proof of what is stated therein."

145. This Court ultimately held that civil proceedings as well as criminal proceedings are required to be decided on the facts and evidences brought on the record by the parties. Paragraphs 32, 33 and 34, which E are relevant, are quoted below:-

"32. In the present case, the decision rendered by the Constitution Bench in M.S. Sheriff case [AIR 1954 SC 397] would be binding, wherein it has been specifically held that no hard-and-fast rule can be laid down and that possibility of conflicting decision in civil F and criminal courts is not a relevant consideration. The law envisages

> "such an eventuality when it expressly refrains from making the decision of one court binding on the other, or even relevant, except for limited purpose such as sentence or damages".

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33. Hence, the observation made by this Court in V.M. Shah case [(1995) 5 SCC 767] that the finding recorded by the criminal court stands superseded by the finding recorded by the civil court is not correct enunciation of law. Further, the general observations made in Karam Chand case [(1970) 3 SCC 694] are in context of the H facts of the case stated above. The Court was not required to

consider the earlier decision of the Constitution Bench in M.S. Sheriff case [AIR 1954 SC 397] as well as Sections 40 to 43 of the Evidence Act. A

34. In the present case, after remand by the High Court, civil proceedings as well as criminal proceedings are required to be decided on the evidence, which may be brought on record by the parties." B

146. We have noticed above judgment of this Court in ***Shanti Kumar Panda (supra)*** while considering the provisions under Sections 145 and 146 Cr.P.C. in context of suit filed in a court of competent jurisdiction in paragraphs 15 and 21 following was laid down:- C

"15. It is well settled that a decision by a criminal court does not bind the civil court while a decision by the civil court binds the criminal court. (See Sarkar on Evidence, 15th Edn., p. 845.) A decision given under Section 145 of the Code has relevance and is admissible in evidence to show: (i) that there was a dispute D relating to a particular property; (ii) that the dispute was between the particular parties; (iii) that such dispute led to the passing of a preliminary order under Section 145(1) or an attachment under Section 146(1), on the given date; and (iv) that the Magistrate found one of the parties to be in possession or fictional possession of the disputed property on the date of the preliminary order. The E reasoning recorded by the Magistrate or other findings arrived at by him have no relevance and are not admissible in evidence before the competent court and the competent court is not bound by the findings arrived at by the Magistrate even on the question of possession though, as between the parties, the order of the F Magistrate would be evidence of possession. The finding recorded by the Magistrate does not bind the court. The competent court has jurisdiction and would be justified in arriving at a finding inconsistent with the one arrived at by the Executive Magistrate even on the question of possession. Sections 145 and 146 only G provide for the order of the Executive Magistrate made under any of the two provisions being superseded by and giving way to the order or decree of a competent court. The effect of the Magistrate's order is that burden is thrown on the unsuccessful party to prove its possession or entitlement to possession before the competent court. H

A 21. The order of the Magistrate under Sections 145/146 of the Code is not only an order passed by the criminal court but is also one based on summary enquiry. The competent court in any subsequent proceedings is free to arrive at its own findings based on the evidence adduced before it on all the issues arising for decision before it. At the stage of judgment by the civil court the
B order of the Magistrate shall have almost no relevance except for the purpose of showing that an enquiry held by the Magistrate had resulted into the given declaration being made on a particular date. The competent court would be free to record its own findings based on the material before it even on the question of possession
C which may be inconsistent with or contrary to the findings arrived at by the Magistrate."

147. We may observe that the observations made by this Court in **Shanti Kumar Panda (supra)** were in reference to statutory scheme under Sections 145 and 146 Cr.P.C. and had to be read in reference to
D statutory scheme which came for consideration before this Court.

148. We may notice a Constitution Bench judgment of this Court in ***Iqbal Singh Marwah and Anr. Vs. Meenakshi Marwah and Anr., (2005) 4 SCC 370*** where the Constitution Bench laid down that there is neither any statutory provision nor any legal principle that the findings
E recorded in one proceeding may be treated as final or binding in the other, as both the cases have to be decided on the basis of the evidence adduced therein. In paragraph 32, following was laid down:-

"**32.** Coming to the last contention that an effort should be made to avoid conflict of findings between the civil and criminal
F courts, it is necessary to point out that the standard of proof required in the two proceedings are entirely different. Civil cases are decided on the basis of preponderance of evidence while in a criminal case the entire burden lies on the prosecution and proof beyond reasonable doubt has to be given. There is neither any statutory provision nor any legal principle that the findings recorded
G in one proceeding may be treated as final or binding in the other, as both the cases have to be decided on the basis of the evidence adduced therein……

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149. In ***Seth Ramdayal Jat Vs. Laxmi Prasad, (2009) 11 SCC 545,*** this Court had occasion to consider the provisions of Sections 41 to 43 of Indian Evidence Act where this Court laid down that a judgment in a criminal court is admissible for a limited purpose. After noticing the provisions of Sections 40 to 43 of Indian Evidence Act, this Court laid down following in paragraph 13:-

> **"13.** XXXXXXXXXXXXXX
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> A judgment in a criminal case, thus, is admissible for a limited purpose. Relying only on or on the basis thereof, a civil proceeding cannot be determined, but that would not mean that it is not admissible for any purpose whatsoever."

150. It was further held that a decision in a criminal case is not binding in a civil case. In paragraph 15, following was laid down:-

> "15. A civil proceeding as also a criminal proceeding may go on simultaneously. No statute puts an embargo in relation thereto. A decision in a criminal case is not binding on a civil court. In M.S. Sheriff v. State of Madras [AIR 1954 SC 397], a Constitution Bench of this Court was seized with a question as to whether a civil suit or a criminal case should be stayed in the event both are pending. It was opined that the criminal matter should be given precedence. In regard to the possibility of conflict in decisions, it was held that the law envisages such an eventuality when it expressly refrains from making the decision of one court binding on the other, or even relevant, except for certain limited purposes, such as sentence or damages. It was held that the only relevant consideration was the likelihood of embarrassment."

151. In ***Vishnu Dutt Sharma Vs. Daya Sapra, (2009) 13 SCC 729,*** this Court again reiterated that a judgment of a criminal court in civil proceedings will have only a limited application and finding in a criminal proceeding by no stretch of imagination would be binding in a civil proceeding. Referring to Section 40 of the Indian Evidence Act, this Court laid down following in paragraph 23:-

> "23. XXXXXXXXXXXXXXXXXXXX
>
> This principle would, therefore, be applicable, inter alia, if the suit is found to be barred by the principle of res judicata or by reason of the provisions of any other statute. It does not lay down that a

judgment of the criminal court would be admissible in the civil court for its relevance is limited. (See Seth Ramdayal Jat v. Laxmi Prasad [(2009) 11 SCC 545]. The judgment of a criminal court in a civil proceeding will only have limited application viz. inter alia, for the purpose as to who was the accused and what was the result of the criminal proceedings. Any finding in a criminal proceeding by no stretch of imagination would be binding in a civil proceeding."

152. A Two Judge Bench of this Court in ***Kishan Singh (Dead) Through LRs. Vs. Gurpal Singh and Ors., (2010) 8 SCC 775*** after noticing the several earlier judgments concluded that finding of fact recorded by the civil court do not have any bearing so as the criminal case is concerned and vice versa. In paragraph 18, following was laid down:-

"18. Thus, in view of the above, the law on the issue stands crystallised to the effect that the findings of fact recorded by the civil court do not have any bearing so far as the criminal case is concerned and vice versa. Standard of proof is different in civil and criminal cases. In civil cases it is preponderance of probabilities while in criminal cases it is proof beyond reasonable doubt. There is neither any statutory nor any legal principle that findings recorded by the court either in civil or criminal proceedings shall be binding between the same parties while dealing with the same subject-matter and both the cases have to be decided on the basis of the evidence adduced therein. However, there may be cases where the provisions of Sections 41 to 43 of the Evidence Act, 1872, dealing with the relevance of previous judgments in subsequent cases may be taken into consideration."

153. We take an example to further illustrate the point. In the plaint of suit giving rise to this appeal, the plaintiff has pleaded that the wife of the plaintiff has been subjected to various threat and violence in the hands of the defendant on several occasions. In event, the suit is filed by wife of the plaintiff against the defendant for permanent injection and also praying for reliefs under Section 19[except Section 19(1)(b)]. The suit be fully maintainable and the prayers in the suit can be covered by the reliefs as contemplated by Section 19 read with Section 26 of the Act, 2005.

154. By a written statement, the defendant is sure to resist the suit on the ground that she had already filed an application under Section 12 where plaintiff Dr. Prem kant Ahuja(mother-in-law of the defendant) is one of the respondent and she may also place reliance on the interim order dated 26.11.2016 restraining the respondents which included Dr. Prem Kant Ahuja from dispossessing the applicant except without obtaining an order of competent Court. The order dated 26.11.2016 which was passed by the Magistrate under D.V. Act, 2005, shall be relevant evidence and fully admissible in the civil suit, but the above order shall only be one of the evidence in the suit but shall neither preclude the civil court to determine the issues raised in the suit or to grant the relief claimed by the plaintiff Dr. Prem Kant Ahuja. The Civil Court in such suit can consider the issues and may grant relief if the plaintiff is able to prove her case. The order passed under D.V. Act whether interim or final shall be relevant and have to be given weight as one of evidence in the civil suit but the evidentiary value of such evidence is limited. The findings arrived therein by the magistrate are although not binding on the Civil Court but the order having passed under the Act, 2005, which is an special Act has to be given its due weight.

155. We need to observe that in event a judgment of criminal court is relevant as per Sections 40 to 43 of Evidence Act in civil proceedings, the judgment can very well be taken note of and there is no embargo on the civil court to place reliance upon it as a corroborative material. We may notice a judgment of Madras High Court in ***K. Subramani Vs. Director of Animal Husbandry, Chennai, (2009) 1 MLJ 363*** where Madras High Court has made following observations in paragraph 7:-

> **"7.** A decision of the Criminal Court does not have the effect of binding nature on the proceedings before the Civil Court including the Motor Accident Claims Tribunal for the reason that the proof in both the Civil and Criminal cases are having two different categories of standards. In criminal cases, guilt of the accused must be proved beyond reasonable doubt, while in civil cases, the rights of the parties or matter in issue shall be decided on preponderance of probabilities. If a party to the case relies upon a decision of the criminal Court and insists the Civil Court to give credence to the said decision, it is incumbent upon the party to gather further materials in the case, which would support the

A observations and the decisions of the criminal Court. If any material is available in the case, which would corroborate or strengthen the decision of the criminal Court, then, there is no embargo for the Civil Court to place reliance upon it."

156. We are in full agreement with the above view. There is no B embargo in referring to or relying on an admissible evidence, be of a civil court or criminal court both in civil or criminal proceedings.

157. From the above discussions, we arrive at following conclusions:-

C (i) The pendency of proceedings under Act, 2005 or any order interim or final passed under D.V. Act under Section 19 regarding right of residence is not an embargo for initiating or continuing any civil proceedings, which relate to the subject matter of order interim or final passed in proceedings under D.V. Act, 2005.

D (ii) The judgment or order of criminal court granting an interim or final relief under Section 19 of D.V. Act, 2005 are relevant within the meaning of Section 43 of the Evidence Act and can be referred to and looked into by the civil court.

(iii) A civil court is to determine the issues in civil proceedings on E the basis of evidence, which has been led by the parties before the civil court.

(iv) In the facts of the present case, suit filed in civil court for mandatory and permanent injunction was fully maintainable and the issues raised by the appellant as well as by the F defendant claiming a right under Section 19 were to be addressed and decided on the basis of evidence, which is led by the parties in the suit.

158. In view of the foregoing discussions, we are of the considered opinion that High Court has rightly set aside the decree of the Trial G Court and remanded the matter for fresh adjudication. With the observations as above, the appeal is dismissed. No Costs.

Devika Gujral Appeal dismissed.