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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CM(M) 69/2020 & CM APPL. 2707/2020**

AVNEET KAUR Petitioner

Through: **Mr. Prashant Mendiratta, Adv.**

versus

SADHU SINGH & ANR Respondents

Through: **Mr. A.K. Vashishtha, Mr. Rahul Kumar and Mr. Amit Verma, Adv.**

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T (O R A L)

% **01.06.2022**

1. This petition raises an interesting and, to large extent, *res integra*, question relating to the exact interpretation of Clause (d) of the explanation to Section 7 (1) of the Family Courts Act, 1984¹.

2. This petition, under Article 227 of the Constitution of India,

¹ 7. **Jurisdiction.-**

(1) Subject to the other provisions of this Act, a Family Court shall-

(a) have and exercise all the jurisdiction exercisable by any district court or any subordinate civil court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the Explanation; and

(b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a district court or, as the case may be, such subordinate civil court for the area to which the jurisdiction of the Family Court extends.

Explanation.—The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely:—

(d) a suit or proceeding for an order or injunction in circumstance arising out of a marital relationship;

(2) Subject to the other provisions of this Act, a Family Court shall also have and exercise—

(a) the jurisdiction exercisable by a Magistrate of the first class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 (2 of 1974); and

(b) such other jurisdiction as may be conferred on it by any other enactment.

assails an order dated 30th October, 2019, passed by the learned Senior Civil Judge, in Suit 12114/2016 (*Sadhu Singh v. Avneet Kaur*).

3. Suit 12114/2016, from which the dispute germinates, was filed by the respondents against the petitioner. The respondents are the mother-in-law and father-in-law of the petitioner, who is their daughter-in-law.

4. Given the nature of the controversy, it is necessary to peruse, in explicit detail, the exact nature of the case set up by the respondents in their plaint.

5. The facts as pleaded in the plaint may be set out, in precis, thus:

5.1 S. Pardip Singh (“Pardip”, in short) the son of the respondents, married the petitioner on 15th October, 2013. A son was born to the couple, on 15th December 2014. The behaviour of the petitioner towards the respondents became abnormal, a few months after the marriage.

5.2 On Respondent 2, the mother-in-law of the petitioner, taking up the issue with Pardip, he advised her to guide the petitioner to be more responsible towards the family. Following this advice, Respondent 2 called the petitioner’s mother and requested her to advise the petitioner accordingly. The petitioner’s mother agreed to do so.

5.3 Even so, that evening, the petitioner’s mother called Respondent 2 and, in harsh terms, warned her not to criticize her daughter, i.e. the

petitioner, ever again and to stay away from the petitioner's life.

5.4 Respondent 1 requested the petitioner's father to send the petitioner back to the residence of the respondents, as it was her matrimonial home. Thereafter, a meeting took place between the respondents and the petitioner's parents. Though the meeting was acrimonious, in order to attempt to save the marriage of the petitioner with their son, the respondents brought the petitioner back to their home.

5.5 Later, however, the petitioner again returned to her parents' home with Pardip. On Respondent 2 contacting Pardip while he was at the house of the petitioner's parents, the petitioner took umbrage and asked Pardip to return home. It was alleged that, in a huff, the petitioner returned to her matrimonial home, and that Pardip accompanied her. The plaint makes serious allegations about the conduct of the petitioner even after she thus returned to her matrimonial home.

6. To cut a long story short, the plaint goes on to allege that the petitioner continued to harass the respondent and went to the extent of involving them in false criminal cases. Repeated attempts by the respondents to pacify the petitioner and salvage the marriage of the petitioner and the respondent, it was alleged, were of no avail, and the alleged harassment of the respondents, by the petitioner, kept increasing. It was also alleged that the petitioner sent telephonic messages to Respondent 2, maligning Respondent 2, alleging that she was spoiling the petitioner's family life and threatening to teach her a

lesson.

7. The plaint further asserts that, vide Gift Deed dated 29th December, 2015, Pardip gifted 50% of his share in the suit property, which was the matrimonial home of the petitioner, to Respondent 2 who, thereby became absolute owner of 50% in the suit property.

8. Continuing with the allegations against the petitioner, the plaint asserts that, on 4th September, 2015, the petitioner returned to her parents' house and, on 6th September, 2015, demanded ₹ 3 lakhs from Pardip to book a Banquet hall to celebrate the forthcoming birthday of her son. On Pardip requesting the petitioner to return to her matrimonial home, the petitioner, infuriated, returned, packed her belongings and went back to her parents' house, from which she never came back.

9. Thereafter, the petitioner is alleged to have involved the respondent in false criminal cases in, *inter alia*, the Women Cell, resulting in the respondents being subjected to needless harassment by the police authorities, ultimately compelling the respondents to terminate the license granted to the petitioner to continue to reside in her matrimonial home.

10. Graphic details of the alleged atrocities committed by police officials, at the instance of the petitioner, are also to be found in the plaint. It is further alleged that, owing to the continued persecution by the petitioner, her husband Pardip also left the house of the respondents and shifted elsewhere.

11. In these circumstances, the respondents, in the suit filed by them against the petitioner, sought a decree of permanent injunction, restraining the petitioner from entering the suit property, as well as a decree of mandatory injunction, directing the petitioner to remove, from the suit property, the belongings of the petitioner as well as her children.

12. The petitioner, as the defendant in the aforesaid suit, filed an application before the learned SCJ, seeking transfer of the proceedings to the learned Family Court, relying, for the said purpose, on Sections 7 & 8 of the Family Courts Act. The impugned order, dated 30th October, 2019, rejects the said application.

13. Paras 5.6 and 5.7 of the impugned order dated 30th October, 2019, which contain the reasoning of the learned SCJ, read thus:

“5.6 For deciding the present application, the "between the parties to a marriage" as appearing in Section 7 (1) Explanation (c) and the words "arising out of marital relationship" as appearing in Section 7 (1) Explanation (d) of the Family Courts Act are to be understood.

5.7 In my considered opinion, for any injunction, matter to be covered under this explanation, the suit shall be between the parties to a marriage. Though, the relationship of the parents-in-laws and daughter-in-law is created because of marriage only, they are not the parties to marriage. For application of Section (7) (1) Explanation (c) and (d) of the Family Courts Act, the suit shall be exclusively between the parties to a marriage, that is to say only the husband and wife. The present suit is between parents-in-law and daughter-in-law. As such, the matter does not fall within the ambit of Section 7 (1) Explanation (c) (d) of the Family Courts Act.”

14. Aggrieved by the aforesaid decision, the petitioner has moved this Court, under Article 227 of the Constitution.

15. I have heard Mr. Prashant Mendiratta, learned Counsel for the petitioner as well as Mr. A.K. Vashishtha, learned Counsel for the respondent at considerable length.

16. Learned Counsel have relied upon judicial authorities in support of their respective stand, with Mr. Mendiratta citing the judgments of the Supreme Court in *Satish Chander Ahuja v. Sneha Ahuja*² and *K.A. Abdul Jaleel v. T.A. Shahida*³, the decision of a Division Bench of this Court in *Amina Bharatram v. Sumant Bharatram*⁴ and the decision of a Division Bench of the High Court of Kerala in *Leby Issac v. Leena M. Ninan Alias Lincy*⁵. He submits that the observation, of the learned SCJ, that clauses (c) & (d) of the explanation to Section 7 (1) of the Family Courts Act would apply only where the litigation was between an husband and wife, is not supported by the statutory provision and, constituting as it does, the basis of the impugned decision, vitiates the decision in its entirety.

17. Responding to the submission of Mr. Mendiratta, Mr. A.K. Vashishtha, learned Counsel for the respondents, cites *Samar Kumar Roy v. Jharna Bera*⁶. He submits that the very intent and purpose of constituting the Family Courts was to resolve disputes between

² 2021 (1) SCC 414

³ (2003) 4 SCC 166

⁴ (2017) 9 SCC 591

⁵ 2005 SCC OnLine Ker 345

⁶ 2017 9 SCC 591

husband and wife, and which integrally arose out of the relationship between them. Suit 12114/2016, he submits, had been filed by his clients under the Specific Relief Act, 1963 and sought reliefs thereunder. They were not arising out of the matrimonial relationship between the petitioner and Pardip. As such, he submits that no occasion arose for the proceedings to be transferred to the learned Family Court.

18. Mr. Vashishtha also submits that the impugned order reflects a reasonable interpretation of clause (d) of explanation to Section 7 (1) of the Family Courts Act, and that no interference would be justified therewith, within the narrow confines of the jurisdiction vested in this Court by Article 227 of the Constitution of India.

Analysis

19. The frontiers of Article 227 jurisdiction are, undoubtedly, narrow and circumscribed. The Supreme Court in *Sadhna Lodh v. National Insurance Co. Ltd.*⁷ has gone to the extent of holding that, in exercise of such jurisdiction, the Court would not even correct errors in the orders passed by the Court below.

20. Having said that, where the interpretation of a statutory provision which impinges on the jurisdiction of a Court to decide the matter is, in the opinion of the Court, erroneous, the Court would be shirking in its duty if it does not correct the situation, while exercising Article 227 jurisdiction.

⁷ (2003) 3 SCC 524

21. Unquestionably, the dispute in this case revolves around Clause (d) of explanation to Section 7 (1) of the Family Courts Act. A mere glance at the provision indicates that it has been worded in careful and cautious terms. It states that a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship would lie exclusively before the Family Court.

22. What has to be seen is whether the circumstances in which the order or injunction is sought in the present case arise out of a marital relationship. The test is not whether the cause of action, forming the basis of the prayer for injunction, arises out of a marital relationship or whether the marital relationship is the reason for the grievance ventilated by the plaintiff. All that has to be seen are the circumstances in which the injunction is sought. Once the Court identifies the circumstances, if those circumstances arise out of a marital relationship, Clause (d) of the Explanation to Section 7 (1) of the Family Courts Act would *ipso facto* be attracted.

23. Explanation (d) in Section 7 (1) of the Family Courts Act does not, either expressly or by necessary implication, require the parties to the *lis* to be husband and wife. Clearly, in so opining, the learned SCJ has effectively re-written the statutory provision. There is nothing in Clause (d) of the explanation to Section 7 (1) of the Family Courts Act in which indicates that the clause would apply only where the litigation is between husband and wife. For the clause to apply, all that is required is that (i) there is a marital relationship, (ii) the marital

relationship has resulted in a certain set of circumstances and (iii) the order or injunction which is sought in the suit is sought in those circumstances.

24. Applying these tests to the case at hand, if one examines the plaint, and the case set up by the respondents in the plaint, it is clear that the circumstances in which injunction has been sought by them have arisen out of the marital relationship between the petitioner and Pardip. Had the petitioner not married Pardip, she would never have been the daughter-in-law of the respondents, she would never have come to stay in the residence of the respondents, the respondents would never have given her any permissive licence to reside therein, and the entire chiaroscuro of events, which have been emphasised in the plaint by the plaintiffs, to highlight the alleged ignominy and persecution to which petitioner allegedly subjected the respondents, would not be in existence. The fact that the petitioner married the respondents' son was the foundation of the relationship that emerged between the petitioner and the respondents, and *it was in the circumstances which arose out of that relationship* that the entire dispute between the respondents and the petitioner, as per the allegations contained in the plaint, filed by the respondents, arose.

25. The words “arising out of” have been held, by the Supreme Court, in several decisions, to be words of wide amplitude. One may refer, in this context, to the judgments of the Supreme Court in *Renusagar Power Company Ltd. v General Electric Co.*⁸,

⁸ 1984 4 SCC 679

*Dhanrajmal Govindram v. Shamji Kalidas*⁹ and *Doypack Systems Ltd. v. Union of India*¹⁰. In *State of Orissa v. State of Andhra Pradesh*¹¹, the Supreme Court held that the expression “arising out of” is wider in scope than the expression “arising under” and would include matters not only “arising under” but also matters “connected with” the instrument under consideration in that case.

26. Applying the understanding of the expression “arising out of” as contained in the afore cited decisions of the Supreme Court, it is clear that the circumstances in which the allegedly offending acts of the petitioner, against the respondents, from which the entire dispute in the suit filed by the respondents against the petitioner germinated, arose out of the marital relationship between the petitioner and the respondent.

27. I deem it necessary to emphasize, in this context, that Clause (d) of the explanation to Section 7 (1) of the Family Courts Act does not envisage a causal relationship, i.e. a relationship of cause and effect, between the marital relationship and the circumstances in which injunction was sought. All that is required is that the circumstances in which injunction was sought *arose out of* the marital relationship. A holistic reading of the case set up by the respondents against the plaintiff in suit 12114/2016 clearly indicates that the circumstances in which injunction was sought by the respondents against the petitioner did arise out of the marital relationship between the petitioner and

⁹ AIR 1961 SC 1285

¹⁰ 1988 2 SCC 299

¹¹ 2006 9 SCC 591

Pardip, the son of the respondents.

28. That being so, in my view, the case squarely falls within Clause (d) of the explanation to Section 7 (1) of the Family Courts Act.

29. I am unable, therefore, to subscribe to the view expressed by the learned SCJ in the impugned order 30th October, 2019 in Suit 12114/2016 that the suit was not required to be transferred to the Family Court.

30. Mr. Mendiratta has also emphasised the fact that there is considerable overlapping of the dispute which is pending before the Family Court and that forms subject matter of Suit 12114/2016. If the two proceedings take place before two different fora, he submits that the petitioner would have to cross examine the same witnesses twice over, once before the Family Court and once before the Civil Court trying suit 12114/2016. I am not entering into the intricacies of this submission as, in my view, the question is one of jurisdiction which has to be decided on the basis of the explicit jurisdictional clause contained in Clause (d) of the explanation to Section 7 (1) of the Family Courts Act.

31. It is also a well-settled jurisprudential principle that where special Courts or Tribunals are set up, and disputes regarding jurisdiction arise, the attempt should be to confer jurisdiction on such special Courts or Tribunals, rather than to exclude their jurisdiction.

32. The Family Court being set up to deal with disputes which arise within the structure, and in the context of a marital relationship, the Court, while interpreting the jurisdiction Clause (d) of the explanation to Section 7 (1) of the Family Courts Act has, in my view, to attempt to bring the dispute within the jurisdiction of the Family Court, rather than to exclude the dispute from such jurisdiction. Of course, this would always be subject to the rigours of the statutory provision. A dispute which, statutorily, is not amenable, under Section 7 (1) of the Family Courts Act, to adjudication by the Family Court, cannot, by subjecting the provision to an unduly strained interpretation, be brought within such jurisdiction. However, in the present case, as I have already opined hereinabove, Clause (d) of the explanation to Section 7 (1) of the Family Courts Act, properly interpreted, would include, within its hold, a plaint such as that which has been filed by the respondents against the petitioner, i.e. Suit 12114/2016.

33. For the aforesaid reasons, the impugned order dated 30th October, 2019 is quashed and set aside. The application, filed by the petitioner seeking transfer of the proceedings in Suit 12114/2016 is allowed. The proceedings in Suit 12114/2016 shall stand transferred to the Family Court which is presently in *seisin* of the dispute.

34. This petition stands allowed in the aforesaid terms, with no order as to costs.

C. HARI SHANKAR, J

JUNE 1, 2022

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