

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/SPECIAL CIVIL APPLICATION NO. 11129 of 2021**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE DR. JUSTICE ASHOKKUMAR C. JOSHI**

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	<b>YES</b>
2	To be referred to the Reporter or not ?	<b>YES</b>
3	Whether their Lordships wish to see the fair copy of the judgment ?	<b>NO</b>
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	<b>NO</b>

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JAGDEEPBHAI CHANDULAL PATEL

Versus

RESHMA RUCHIN PATEL D/O SHANKARLAL HATHIRAM SANJHIRA

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Appearance:

MR YN OZA, SR ADVOCATE with SHASHVATA U SHUKLA(8069) for the Petitioner(s) No. 1

MR JAMSHED KAVINA(11236) for the Respondent(s) No. 2

MR. VISHAL P THAKKER(7079) for the Respondent(s) No. 1

PARESHKUMAR M VADHER(9204) for the Respondent(s) No. 1

PRADEEP K THAKKER(9171) for the Respondent(s) No. 1

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**CORAM:HONOURABLE DR. JUSTICE ASHOKKUMAR C. JOSHI**

**Date : 18/01/2022**

**CAV JUDGMENT**

1. **Rule.**

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

is filed by the petitioner against the order dated 06.07.2021 passed by the learned Principal Judge, Family Court, Ahmedabad below application Exh. 16 in Family Suit No. 1097 of 2020. Application Exh. 16 was filed by the petitioner - original defendant No. 2 in Family Suit No. 1097 of 2020 *inter alia* praying for to issue order / directions that the plaintiff - respondent No. 1 herein, along with minor Kashvi may remove themselves from House No. 43, Nathalal Colony, Nr. Sardar Patel Colony, Post - Navjivan Station Road, Ahmedabad (suit property) and to restrain the plaintiff by injunction from using or occupying the said property as there residence.

3. Facts in nutshell are that the the petitioner is the father-in-law of the respondent No. 1 and the father of the respondent No. 2 herein. The marriage of the respondent No. 1 and the respondent No. 2 was solemnized as back as on 02.03.2017. It is pertinent to note that it was the second marriage of both the respondents after their divorce from the previous marriage. From their previous marriage, the respondent No. 1 was having a daughter namely Kashvi, whereas, the respondent No. 2 was having a son. That, after the marriage, the respondents started living in the suit property, however, on 12.03.2017 the respondent No. 2 returned to the USA and on the very same day, the respondent No. 1 also left the suit property, so as to reside at her own flat. It submitted that the respondent No. 1 never resided along with the petitioner in the absence of the respondent No. 2 and never cared for them. Even, during the visit of the respondent No. 2 to India, they used to reside at the flat owned by the respondent No. 1 at Vejalpur, Ahmedabad. It is further submitted that it is only in March 2020 when the respondent No. 2 had come to India and due to Covid-19

pandemic since could not return to USA the respondents stayed in the suit property, however, in June 2020, the respondent No. 2 again left for USA in June 2020 and no sooner as he left for USA, the respondent No. 1 also left the suit property and started residing in her own flat. However, in September 2020, due to utter shock and surprise, the respondent No. 1 barged into the house of the petitioner with some people, including the lawyer, and forcefully entered the house and created a lot of ruckus and havoc for which, the petitioner had also given an application being Local Arji No. 239 of 2020 dated 05.09.2020 before the Naranpura Police Station, Ahmedabad. It is on the very same day that the respondent No. 1 also filed the suit in question *i.e.* Family Suit No. 2020 before the Family Court at Ahmedabad along with interim injunction application Exh. 6. The said application Exh. 6 came to be rejected *vide* order dated 04.03.2021. The petitioner also filed his written statement-cum-Reply-cum-injunction application Exh. 16, praying as aforesaid, which came to be dismissed by way of the impugned order, being grieved by the same, the petitioner is before this Court by this petition.

4. Heard, learned senior advocate Mr. Y. N. Oza with learned advocate Mr. Shashvata Shukla for the petitioner, learned advocate Mr. Vishal Thakkar for the respondent No. 1 and learned advocate Mr. Jamshed Kavina for the respondent No. 2.

5. The learned senior advocate for the petitioner has heavily contended that in the case on hand, it is the respondent No. 1 - wife who came to the house of the petitioner and thereafter, registered the FIR. Not only that but the respondent No. 1 went to the extent that the petitioner could not live his life peacefully. It is further submitted that the respondent No. 1 has never

resided with the petitioner in the absence of the respondent No. 2 and also, never took care of the petitioner and his wife. Further, during the visit of the respondent No. 2 to India, they used to stay in the flat owned by the respondent No. 1 only. It is submitted that during Covid-19 pandemic and restrictions thereto, in March 2020 when the respondent No. 2 who had returned to India since could not return, they stayed in the suit property for a limited time and accordingly, virtually, they have not resided in the suit property.

5.1 It is, with all vehemence at his command, submitted by the learned senior advocate for the petitioner that the property belongs to the petitioner and the respondent No. 1 has by forcefully trespassing in the same, has breached the right of the petitioner and accordingly, an eviction order is solicited against the respondent No. 1. Further, referring to Section 3 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short, 'the Act of 2007'), he submitted that the said Act has an overriding and as provided in the said section, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act, or in any instrument having effect by virtue of any enactment other than this Act. Accordingly, in his submission, the said Act has overriding effect upon the Protection of Women from Domestic Violence Act, 2005 also.

5.2 It is submitted that even otherwise, none of the respondents has invested a single penny in the suit property and the petitioner - senior citizen has paid Rs.12 lakh for the same, and therefore also, the impugned order is required to be set aside.

5.3 The learned senior advocate for the petitioner further submitted that in fact, the respondent No. 1 owns a house (flat) and used to stay there only in the absence of the respondent No. 2 and during the visit of the respondent No. 2 to India. It is further submitted that the respondent No. 2 owns a house, however, the same has been given on rent only with a view to show that she has no means to live.

5.4 The learned senior advocate for the petitioner submitted that even the respondent No. 1 was offered another suitable accommodation in lieu of the present dwelling house, however, the respondent No. 1 did not pay any heed to the said offer. The learned senior advocate for the petitioner, referring to the order dated 04.03.2021 passed below application Exh. 6 praying for interim injunction, submitted that while dismissing the said application, the learned Family Judge has observed that, *'the casual, occasional and noncontinuous stays in suit property cannot be considered as matrimonial home of plaintiff and defendant No. 1. Thus, plaintiff has no prima facie case, balance of convenience is also not there in favour of the plaintiff and no irreparable loss would be caused to plaintiff, if plaintiff is not protected.* Accordingly, in the submission of the learned senior advocate for the petitioner, present petition requires favourable consideration.

5.5 Making above submissions, the learned senior advocate for the petitioner has requested to allow the present petition.

5.6 In support of his case, the learned senior advocate for the petitioner has relied upon several decisions as under:

i) *K.T.M.T.M. Abdul Kayoom and Another v.*



*Commissioner of Income Tax, Madras, AIR 1962 SC 680;*

*ii) Commissioner of Central Excise, Bangalore v. Srikumar Agencies and Others, (2009) 1 SCC 469;*

*iii) In W.P. (C) 2761/2020 with W.P. (C) 2795/2020 dated 13.03.2020, passed by the Delhi High Court;*

*iv) In Writ Petition (L) No. 9374 of 2020 with Contempt Petition (L) No. 21713 of 2021 dated 25.11.2020, passed by the High Court of Judicature at Bombay;*

*v) In CRWP-1357-2019 dated 21.09.2021, passed by the High Court of Punjab and Haryana at Chandigarh;*

*vi) Hindustan Engineering and Construction Co., Ahmedabad v. Kalindi Co.op. Housing Society Ltd., 1991 (0) AIJEL-HC 204906.*

6. *Per contra*, learned advocate Mr. Vishal Thakkar for the respondent No. 1 – original plaintiff, while opposing the present petition, has submitted that it may be true that the flat owned by the respondent No. 1 is given on rent, however, the same does not, in itself debar the respondent No. 1 from staying in her matrimonial home, besides, it is also a fact that the respondent No. 1 would have no other means to live if the order impugned herein would be set aside. Relying upon a decision of the Larger Bench of the Apex Court in ***S. Vanitha v. Deputy Commissioner, Bengaluru Urban District, 2020 (0) AIJEL-SC 66818***, he submitted that it may be true that the Act of 2007 might have overriding effect notwithstanding anything contained for the time being in force in any other law, but in view of the aforesaid decision of the Apex Court, the provisions of the Domestic Violence Act, 2005 would prevail over the said Act and hence, the respondent No. 1 cannot be evicted from the matrimonial home, where she resides with her daughter. Learned advocate Mr. Thakkar has also relied upon a decision in

**Satish Chander Ahuja v. Sneha Ahuja, (2020) AIR (SC) 5397.** Accordingly, he urged that the petition being devoid of any merits, deserves to be dismissed.

7. Learned advocate Mr. Jamshed Kavina for the respondent No. 2, who is the son of the present petitioner and husband of the respondent No. 1, has adopted the arguments advanced by learned senior advocate for the petitioner and thereby, supported the case of the petitioner. Additionally, he has submitted that he is residing in the USA and his father, the petitioner herein, is entitled to the shared house and the respondent No. 1 is not, in any way, entitled for any rights or title in the same.

8. Regard being had to the submissions advanced by the learned advocates for the respective parties, so also considering the material available on record, it appears that the issue, largely involved in the present petition, is with regard to the applicability of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 *vis-a-vis* the Protection of Women from Domestic Violence Act, 2005 and *inter se* overriding effect thereof. The petitioner is a senior citizen, whose son, the respondent No. 2 herein is residing in the USA and the daughter-in-law, the respondent No. 1 herein, has allegedly, illegally trespassed the house of the petitioner and eventually, the petitioner has to reside at a different place and accordingly, under the provisions of the Act of 2007, the petitioner is entitled for the said dwelling house by eviction of the respondent No. 1 therefrom. Whereas, the case of the respondent No. 1 is that she being the daughter-in-law of the petitioner, is entitled to the share household in her matrimonial home and she cannot be evicted from the same under the provisions of the Domestic Violence Act, 2005.

8.1 At the outset, it would not out of place here to mention that this petition is filed under Article 227 of the Constitution of India and exercise of powers under such Article is imperatively spare. The Court may refer to the decision of the Apex Court in ***Shalini Shyam Shetty and Another Vs. Rajendra Shankar Patil, (2010) 8 SCC 329***, wherein the Apex Court has considered in detail the Scope of interference by this Court that, Article 227 can be invoked by the High Court *Suo motu* as a custodian of justice. An improper and a frequent exercise of this power would be counterproductive and will divest this extraordinary power of its strength and vitality. The power is discretionary and has to be exercised very sparingly on equitable principle. The observations of the Apex Court read as under:

*“Articles 226 and 227 stand on substantially different footing. As noted above, prior to the Constitution, the Chartered High Courts as also the Judicial Committee of the Privy Council could issue prerogative writs in exercise of their original jurisdiction. [See 1986 (suppl.) SCC 401 at page 469].*

58. *However, after the Constitution every High Court has been conferred with the power to issue writs under Article 226 and these are original proceeding. [State of U.P . and others vs. Dr. Vijay Anand Mahara j - AIR 1963 SC 946, page 951].*

59. *The jurisdiction under Article 227 on the other hand is not original nor is it appellate. This jurisdiction of superintendence under Article 227 is for both administrative and judicial superintendence. Therefore, the powers conferred under Articles 226 and 227 are separate and distinct and operate in different fields.*

60. *Another distinction between these two jurisdictions is that under Article 226, High Court normally annuls or quashes an order or proceeding but in exercise of its jurisdiction under Article 227, the High Court, apart from annulling the proceeding,*



can also substitute the impugned order by the order which the inferior tribunal should have made. {See *Surya Dev Rai (supra)*, para 25 page 690 and also the decision of the Constitution Bench of this Court in *Hari Vishnu Kamath vs. Ahmad Ishaque and others - [AIR 1955 SC 233, para 20 page 243]}*.

61. Jurisdiction under Article 226 normally is exercised where a party is affected but power under Article 227 can be exercised by the High Court suo motu as a custodian of justice. In fact, the power under Article 226 is exercised in favour of persons or citizens for vindication of their fundamental rights or other statutory rights. Jurisdiction under Article 227 is exercised by the High Court for vindication of its position as the highest judicial authority in the State. In certain cases where there is infringement of fundamental right, the relief under Article 226 of the Constitution can be claimed ex-debito justicia or as a matter of right. But in cases where the High Court exercises its jurisdiction under Article 227, such exercise is entirely discretionary and no person can claim it as a matter of right. From an order of a Single Judge passed under Article 226, a Letters Patent Appeal or an intra Court Appeal is maintainable. But no such appeal is maintainable from an order passed by a Single Judge of a High Court in exercise of power under Article 227. In almost all High Courts, rules have been framed for regulating the exercise of jurisdiction under Article 226. No such rule appears to have been framed for exercise of High Court's power under Article 227 possibly to keep such exercise entirely in the domain of the discretion of High Court.

62. On an analysis of the aforesaid decisions of this Court, the following principles on the exercise of High Court's jurisdiction under Article 227 of the Constitution may be formulated:

(a) A petition under Article 226 of the Constitution is different from a petition under Article 227. The mode of exercise of power by High Court under these two Articles is also different.

(b) In any event, a petition under Article 227 cannot be called a writ petition. The history of

*the conferment of writ jurisdiction on High Courts is substantially different from the history of conferment of the power of Superintendence on the High Courts under Article 227 and have been discussed above.*

*(c) High Courts cannot, on the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or Courts inferior to it. Nor can it, in exercise of this power, act as a Court of appeal over the orders of Court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restraint on the exercise of this power by the High Court.*

*(d) The parameters of interference by High Courts in exercise of its power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in Waryam Singh (supra) and the principles in Waryam Singh (supra) have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.*

*(e) According to the ratio in Waryam Singh (supra), followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and Courts subordinate to it, 'within the bounds of their authority'.*

*(f) In order to ensure that law is followed by such tribunals and Courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.*

*(g) Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of tribunals and Courts subordinate to it or where*

*there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.*

*(h) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or Courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.*

*(i) High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution Bench of this Court in the case of L.Chandra Kumar vs. Union of India & others, reported in (1997) 3 SCC 261 and therefore abridgement by a Constitutional amendment is also very doubtful.*

*(j) It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227.*

*(k) The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised suo motu.*

*(l) On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main object of this Article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.*

*(m) The object of superintendence, both administrative and judicial, is to maintain*

*efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and Courts subordinate to High Court.*

*(n) This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 is meant for protection of individual grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above.*

*(o) An improper and a frequent exercise of this power will be counter-productive and will divest this extraordinary power of its strength and vitality.”*

8.2 Thus, exercise of power under Article 227 of the Constitution of India should be with a view to keep the tribunals / Courts within the bounds of their authority, to ensure that law is followed by tribunals / Courts by exercising jurisdiction which is vested in them and/or when there has been a patent perversity in the orders of tribunals and Courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted. In exercise of its power of superintendence, High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or Courts subordinate to it, is a possible view. In other words the jurisdiction has to be very



sparingly exercised.

8.3 Further, where there is *non-obstante* clause in an Act, the general rule is that, no other enactment, neither provision nor section, would have overriding effect over that statute. However, a tricky issue is before this Court in the present petition that is to say, when both the enactments viz. the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and the Protection of Women from Domestic Violence Act, 2005 in question contain *non-obstante* clause, in that case, which would prevail. Identical issue was before the Apex Court in the case of **S. Vanitha (supra)** in which, the Apex Court while dealing with such an issue and allowing the appeal, has held as under:

*“(i) Both pieces of legislation are intended to deal with salutary aspects of public welfare and interest. The PWDV Act 2005 was intended to deal with the problems of domestic violence which, as the Statements of Objects and Reasons sets out, is widely prevalent but has remained largely invisible in the public domain. The Statements of Objects and Reasons indicates that while Section 498A of the Indian Penal Code created a penal offence out of a woman's subjection to cruelty by her husband or relative, the civil law did not address its phenomenon in its entirety. Hence, consistent with the provisions of Articles 14, 15 and 21 of the Constitution, Parliament enacted a legislation which would provide for a remedy under the civil law which is intended to protect the woman from being victims of domestic violence and to prevent the occurrence of domestic violence in the society. The ambit of the Bill indicates that a significant object of the legislation is to provide for and recognize the rights of women to secure housing and to recognize the right of a woman to reside in a matrimonial home or a shared household, whether or not she has any title or right in the shared household. Allowing the Senior Citizens Act 2007 to have an overriding force and effect in all situations, irrespective of competing entitlements of a woman to a right in a shared household within the meaning of the PWDV Act 2005, would defeat the object and purpose which the Parliament sought to*

*achieve in enacting the latter legislation. The law protecting the interest of senior citizens is intended to ensure that they are not left destitute, or at the mercy of their children or relatives. Equally, the purpose of the PWDV Act 2005 cannot be ignored by a sleight of statutory interpretation. Both sets of legislations have to be harmoniously construed. Hence the right of a woman to secure a residence order in respect of a shared household cannot be defeated by the simple expedient of securing an order of eviction by adopting the summary procedure under the Senior Citizens Act 2007. [21]*

*(ii) On construing the provisions of Sub-section (2) of Section 23 of the Senior Citizen Act 2007, it was evident that it applies to a situation where a senior citizen had a right to receive maintenance out of an estate and such estate or part thereof is transferred. On the other hand, the Appellant's simple plea was that the suit premises constitute her shared household within the meaning of Section 2 of the PWDV Act 2005. The series of transactions which took place in respect of the property, the spouse of the Appellant purchased it in his own name a few months before the marriage but subsequently sold it, after a few years, under a registered sale deed at the same price to his father (the father-in-law of the Appellant), who in turn gifted it to his spouse i.e. the mother-in-law of the Appellant after divorce proceedings were instituted by the Fourth Respondent. Parallel to this, the Appellant had instituted proceedings of dowry harassment against her mother-in-law and her estranged spouse and her spouse had instituted divorce proceedings. The Appellant had also filed proceedings for maintenance against the Fourth Respondent and the divorce proceedings are pending. It is subsequent to these events, that the Second and Third Respondents instituted an application under the Senior Citizens Act 2007. The fact that specific proceedings under the PWDV Act 2005 had not been instituted when the application under the Senior Citizens Act, 2007 was filed, should not lead to a situation where the enforcement of an order of eviction deprives her from pursuing her claim of entitlement under the law. The inability of a woman to access judicial remedies may, as this case exemplifies, be a consequence of destitution, ignorance or lack of resources. Even otherwise, recourse to the summary procedure contemplated by the Senior Citizen Act 2007 was not available for the purpose of facilitating strategies that are designed to defeat the claim of the Appellant in respect of*

*a shared household. A shared household would have to be interpreted to include the residence where the Appellant had been jointly residing with her husband. Merely because the ownership of the property has been subsequently transferred to her in-laws (Second and Third Respondents) or that her estranged spouse (Fourth Respondent) was now residing separately, was no ground to deprive the Appellant of the protection that was envisaged under the PWDV Act 2005. [23]*

*(iii) The claim of the Appellant that the premises constitute a shared household within the meaning of the PWDV Act 2005 would have to be determined by the appropriate forum. The claim could not simply be obviated by evicting the Appellant in exercise of the summary powers entrusted by the Senior Citizens Act 2007. The Second and Third Respondents were at liberty to make a subsequent application under Section 10 of the Senior Citizens Act 2007 for alteration of the maintenance allowance, before the appropriate forum. [24]*

**Ratio Decidendi:**

*The right of a woman to secure a residence order in respect of a shared household cannot be defeated by the simple expedient of securing an order of eviction by adopting the summary procedure under the Senior Citizens Act 2007."*

8.4 Thus, as held in the aforesaid pronouncement of the Apex Court, the right of a woman to secure a residence order in respect of a shared household cannot be defeated by the simple expedient of securing an order of eviction by adopting the summary procedure under the Senior Citizens Act 2007.

8.5 Further, so far as the overriding effect is concerned, the Apex Court, in the aforesaid decision, has held as under:

*"E Harmonising competing reliefs under the PWDV Act 2005 and Senior Citizens Act 2007*

*20. Section 36 of the PWDV Act 2005 stipulates that the provisions of the Act shall be in addition to, and not in derogation of, the provisions of any other law for the time*



*being in force. This is intended to ensure that the remedies provided under the enactment are in addition to other remedies and do not displace them. The Maintenance and Welfare of Parents and Senior Citizens Act 2007 is undoubtedly a later Act and as we have noticed earlier, Section 3 stipulates that its provisions will have effect, notwithstanding anything inconsistent contained in any other enactment. However, the provisions of Section 3 of the Senior Citizens Act 2007 giving it overriding force and effect, would not by themselves be conclusive of an intent to deprive a woman who claims a right in a shared household, as under the PWDV Act 2005. Principles of statutory interpretation dictate that in the event of two special acts containing non obstante clauses, the later law shall typically prevail. 24 In the present case, as we have seen, the Senior Citizen's Act 2007 contains a non obstante clause. However, in the event of a conflict between special acts, the dominant purpose of both statutes would have to be analyzed to ascertain which one should prevail over the other. The primary effort of the interpreter must be to harmonize, not excise. A two-judge bench of this Court, in the case of Bank of India v. Ketan Parekh MANU/SC/2700/2008 : (2008) 8 SCC 148, in examining a similar factual scenario, observed that:*

*28. In the present case, both the two Acts i.e. the Act of 1992 and the Act of 1993 start with the non obstante clause. Section 34 of the Act of 1993 starts with non obstante clause, likewise Section 9-A (sic 13) of the Act of 1992. But incidentally, in this case Section 9-A came subsequently i.e. it came on 25-1- 994. Therefore, it is a subsequent legislation which will have the overriding effect over the Act of 1993. But cases might arise where both the enactments have the non obstante Clause then in that case, the proper perspective would be that one has to see the subject and the dominant purpose for which the special enactment was made and in case the dominant purpose is covered by that contingencies, then notwithstanding that the Act might have come at a later point of time still the intention can be ascertained by looking to the objects and reasons. However, so far as the present case is concerned, it is more than clear that Section 9-A of the Act of 1992 was amended on 25-1-1994 whereas the Act of 1993 came in 1993. Therefore, the Act of 1992 as amended to include Section 9-A in 1994 being subsequent legislation will prevail and not the provisions of the Act of 1993.*

*(emphasis supplied)*



*This principle of statutory interpretation was also affirmed by a three-judge bench of this Court in Pioneer Urban Land and Infrastructure Ltd. v. Union of India MANU/SC/1071/2019 : (2019) 8 SCC 416. In the present case, Section 36 of the PWDV Act 2005, albeit not in the nature of a non-obstante clause, has to be construed harmoniously with the non obstante Clause in Section 3 of the Senior Citizens Act 2007 that operates in a separate field.*

*21. In this case, both pieces of legislation are intended to deal with salutary aspects of public welfare and interest. The PWDV Act 2005 was intended to deal with the problems of domestic violence which, as the Statements of Objects and Reasons sets out, "is widely prevalent but has remained largely invisible in the public domain". The Statements of Objects and Reasons indicates that while Section 498A of the Indian Penal Code created a penal offence out of a woman's subjection to cruelty by her husband or relative, the civil law did not address its phenomenon in its entirety. Hence, consistent with the provisions of Articles 14, 15 and 21 of the Constitution, Parliament enacted a legislation which would "provide for a remedy under the civil law which is intended to protect the woman from being victims of domestic violence and to prevent the occurrence of domestic violence in the society". The ambit of the Bill has been explained thus:*

*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.*

(ii) *It defines the expression "domestic violence" to include actual abuse or threat or abuse that is physical, sexual, verbal, emotional or economic. Harassment by way of unlawful dowry demands to the woman or her relatives would also be covered under this definition.*

(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.*

(iv) *It empowers the Magistrate to pass protection orders in favour of the aggrieved person to prevent the Respondent from aiding or committing an act of domestic violence or any other specified act, entering a workplace or any other place frequented by the aggrieved person, attempting to communicate with her, isolating any assets used by both the parties and causing violence to the aggrieved person, her relatives or others who provide her assistance from the domestic violence.*

(v) *It provides for appointment of Protection Officers and registration of non-overnmental organisations as service providers for providing assistance to the aggrieved person with respect to her medical examination, obtaining legal aid, safe shelter, etc. The above extract indicates that a significant object of the legislation is to provide for and recognize the rights of women to secure housing and to recognize the right of a woman to reside in a matrimonial home or a shared household, whether or not she has any title or right in the shared household. Allowing the Senior Citizens Act 2007 to have an overriding force and effect in all situations, irrespective of competing entitlements of a woman to a right in a shared household within the meaning of the PWDV Act 2005, would defeat the object and purpose which the Parliament sought to achieve in enacting the latter legislation. The law protecting the interest of senior citizens is intended to ensure that they are not left destitute, or at the mercy of their children or relatives. Equally, the purpose of the PWDV Act 2005 cannot be ignored by a sleight of statutory interpretation. Both sets of legislations have to be harmoniously construed. Hence the right of a woman to secure a residence order in respect of a shared household cannot be defeated by the simple expedient of securing an order of eviction by adopting the*

summary procedure under the Senior Citizens Act 2007.”

**22. This Court is cognizant that the Senior Citizens Act 2007 was promulgated with a view to provide a speedy and inexpensive remedy to senior citizens. Accordingly, Tribunals were constituted Under Section 7. These Tribunals have the power to conduct summary procedures for inquiry, with all powers of the Civil Courts, Under Section 8. The jurisdiction of the Civil Courts has been explicitly barred Under Section 27 of the Senior Citizens Act 2007. However, the over-riding effect for remedies sought by the applicants under the Senior Citizens Act 2007 Under Section 3, cannot be interpreted to preclude all other competing remedies and protections that are sought to be conferred by the PWDV Act 2005. The PWDV Act 2005 is also in the nature of a special legislation, that is enacted with the purpose of correcting gender discrimination that pans out in the form of social and economic inequities in a largely patriarchal society.**

In deference to the dominant purpose of both the legislations, it would be appropriate for a Tribunal under the Senior Citizens Act, 2007 to grant such remedies of maintenance, as envisaged Under Section 2(b) of the Senior Citizens Act 2007 that do not result in obviating competing remedies under other special statutes, such as the PWDV Act 2005. Section 26 of the PWDV Act empowers certain reliefs, including relief for a residence order, to be obtained from any civil court in any legal proceedings. Therefore, in the event that a composite dispute is alleged, such as in the present case where the suit premises are a site of contestation between two groups protected by the law, it would be appropriate for the Tribunal constituted under the Senior Citizens Act 2007 to appropriately mould reliefs, after noticing the competing claims of the parties claiming under the PWDV Act 2005 and Senior Citizens Act 2007. Section 3 of the Senior Citizens Act, 2007 cannot be deployed to over-ride and nullify other protections in law, particularly that of a woman's right to a 'shared household' Under Section 17 of the PWDV Act 2005. In the event that the "aggrieved woman" obtains a relief from a Tribunal constituted under the Senior Citizens Act 2007, she shall duty-bound to inform the Magistrate under the PWDV Act 2005, as per Sub-section (3) of Section 26 of the PWDV Act 2005. This course of action would ensure that the common intent of the Senior Citizens Act 2007 and the PWDV Act 2005- of ensuring speedy relief to its protected groups who are both



*vulnerable members of the society, is effectively realized. Rights in law can translate to rights in life, only if there is an equitable ease in obtaining their realization."*

8.6 Thus, normally, the provisions in the later enactment would prevail over the former. However, there is some exception to this rule as held by the Apex Court under its plenary powers under Article 142 of the Constitution of India in the aforesaid decision that the significant object of the Domestic Violence Act is to provide for and recognize the rights of women to secure housing and to recognize the right of a woman to reside in a matrimonial home or a shared household, whether or not she has any title or right in the shared household. Allowing the Senior Citizens Act 2007 to have an overriding force and effect in all situations, irrespective of competing entitlements of a woman to a right in a shared household within the meaning of the PWDV Act 2005, would defeat the object and purpose which the Parliament sought to achieve in enacting the latter legislation. The law protecting the interest of senior citizens is intended to ensure that they are not left destitute, or at the mercy of their children or relatives. Equally, the purpose of the PWDV Act 2005 cannot be ignored by a sleight of statutory interpretation. Both sets of legislation have to be harmoniously construed. Hence the right of a woman to secure a residence order in respect of a shared household cannot be defeated by the simple expedient of securing an order of eviction by adopting the summary procedure under the Senior Citizens Act 2007.

8.7 The learned senior advocate for the petitioner has argued that the said decision is not binding to this Court inasmuch as the Apex Court, under its plenary powers under Article 142 of the Constitution of India, has passed such an order. It is trite that the



extra ordinary powers under Article 142 of the Constitution of India were brought about to bridge the gap created by an insufficient law so as to meet the ends of justice, grant of which is met out by passing an 'enforceable decree or order' by the Apex Court. Further, Article 142 of the Constitution of India is supplementary in nature and cannot supplant the substantive provisions, though they are not limited by the substantive provisions in the statute. It is a power that gives preference to equity over law. It is a justice-oriented approach as against the strict rigors of the law. Be that as it may. The fact remains, a bare reading of Exh. 16, (injunction application of the petitioner) reveals not a single word setting into motion the Act of 2007.

8.8 Further, if the definitions of “Children” under Section 2(a), “Parent” under Section 2(d) and “Senior Citizen” under Section 2(h) as well as the provisions of Sections 4 and 5 of the Act of 2007 are referred to, they read as under:

**“2(a)Children** includes son, daughter, grandson and grand-daughter but does not include a minor.

2(d) **Parent** means father or mother whether biological, adoptive or step-father or step-mother, as the case may, whether or not the father or the mother is a senior citizen.

2(h) **Senior Citizen** means any person being a citizen of India, who has attained the age of sixty years or above.

**4. Maintenance of parents and senior citizens.—(1)**  
A senior citizen including parent who is unable to maintain himself from his own earning or out of the property owned by him, shall be entitled to make an application under section 5 in case of—

- (i) parent or grand-parent, against one or more of his children not being a minor;
- (ii) a childless senior citizen, against such of his relative referred to in clause (g) of section 2.
- (2) The obligation of the children or relative, as the case may be, to maintain a senior citizen extends to the needs of such citizen so that senior citizen may lead a normal life.
- (3) The obligation of the children to maintain his or her parent extends to the needs of such parent either father or mother or both, as the case may be, so that such parent may lead a normal life.
- (4) Any person being a relative of a senior citizen and having sufficient means shall maintain such senior citizen provided he is in possession of the property of such citizen or he would inherit the property of such senior citizen:

*Provided that where more than one relatives are entitled to inherit the property of a senior citizen, the maintenance shall be payable by such relative in the proportion in which they would inherit his property.*

5. **Application for maintenance.**—(1) An application for maintenance under section 4, may be made—
- (a) by a senior citizen or a parent, as the case may be; or
- (b) if he is incapable, by any other person or organisation authorised by him; or
- (c) the Tribunal may take cognizance suomotu.

*Explanation.*—For the purposes of this section “organisation” means any voluntary association registered under the Societies Registration Act, 1860 (21 of 1860) or any other law for the time being in force.

- (2) The Tribunal may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this section, order such children or relative to make a monthly allowance for the

*interim maintenance of such senior citizen including parent and to pay the same to such senior citizen including parent as the Tribunal may from time to time direct.*

(3) *On receipt of an application for maintenance under subsection (1), after giving notice of the application to the children or relative and after giving the parties an opportunity of being heard, hold an inquiry for determining the amount of maintenance.*

(4) *An application filed under sub-section (2) for the monthly allowance for the maintenance and expenses for proceeding shall be disposed of within ninety days from the date of the service of notice of the application to such person:*

*Provided that the Tribunal may extend the said period, once for a maximum period of thirty days in exceptional circumstances for reasons to be recorded in writing.*

(5) *An application for maintenance under sub-section (1) may be filled against one or more persons:*

*Provided that such children or relative may implead the other person liable to maintain parent in the application for maintenance.*

(6) *Where a maintenance order was made against more than one person, the death of one of them does not affect the liability of others to continue paying maintenance.*

(7) *Any such allowance for the maintenance and expenses for proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or expenses of proceeding, as the case may be.*

(8) *If, children or relative so ordered fail, without sufficient cause to comply with the order, any such Tribunal may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person for the whole, or any part of each month's allowance for the maintenance and expenses of*

*proceeding, as the case be, remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made whichever is earlier:*

*Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Tribunal to levy such amount within a period of three months from the date on which it became due."*

8.9 Thus, as per the definitions of "Children" and "Parent", they include/mean the persons mentioned therein. Further, a bare reading of the provisions of Section 4 and 5 of the Act of 2007, reveals that a senior citizen including parent who is unable to maintain himself, shall be entitled to make an application under Section 5 to the Tribunal as constituted by the State Government under the provisions of Section 7 of the Act of 2007. In the case on hand, it is nobody's case that any such application has been preferred by the petitioner and/or is pending before any Tribunal.

8.10 The learned senior advocate for the petitioner has referred to the order passed by the learned trial Court below interim injunction application and heavily submitted that when no *prima facie* case is made out in favour of the plaintiff, the respondent No. 1 herein, she is not entitled for the suit premises and required to be evicted. However, if the decision of the Apex Court in **Satish Chander Ahuja (supra)**, as relied by the learned advocate for the respondent No. 1 herein is perused, in the Head Note 'A', it has been observed therein that, "*Section 2(s) - "Shared Household" - The use of both expressions "means and includes" in the definition clause - Interpretation of of - Shared household means where person aggrieved has lived at any time in domestic relationship either singly or with respondent - The household may be a joint family or jointly tenanted irrespective*



*of title or ownership of property*". It is further observed as noted in Head Note 'B' that, "*Sections 17 and 19 - Right to reside in shared household - The aggrieved has right to reside in shared household property continues until she proves that she is a victim of domestic violence, irrespective of the fact that who is owner of property*". Thus, conjoint reading of aforesaid makes it abundantly clear that "Shared household" means and include where a person aggrieved has lived at any time in domestic relationship either singly or with respondent and it may be a joint family or jointly tenanted irrespective of title or ownership of property. Further, the right to reside in the shared household continues till the victim proves that she is a victim of domestic violence. Accordingly, the respondent No. 1 herein, under the provisions of the Domestic Violence Act, has right to shared household. The learned senior advocate for the petitioner has submitted that the respondent No. 1 was also offered another suitable accommodation, however, she has not accepted such an offer. However, least is to say that, merely an offer being made to provide another suitable accommodation, cannot snatch away the legitimate right of the respondent No. 1 of shared household.

8.11 So far as the decisions relied upon by the learned senior advocate for the petitioner are concerned, the Court deems it not to burden this judgment with elaboration in view of the facts either the same are being persuasive and not binding to this Court or that the facts and circumstances are different.

9. In view of the aforesaid observations and the discussion, this Court is of the considered view that learned Family Court has committed no error which requires interference at the hands of this Court. The petition, therefore, fails and is dismissed

accordingly. Rule is discharged. No order as to costs.

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[ A. C. Joshi, J. ]

