



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

% ***Reserved on: 28th March, 2026***
Pronounced on: 1st June, 2026

+ **RFA 273/2020, CM APPL. 28948/2020 & 29143/2020**

SMT. BHAWNA GUPTA

W/o Sh. Mukesh Gupta
R/o 3rd Floor, Part of 44A,
Khasra No. 1060/497,
Ganesh Nagar -II Extension,
Shakarapur, Village Mandawali, Fazalpur,
Illaqua Shahdara, Delhi.

.....Appellant

Through: Ms. Charu Ambwani, Advocate with
Appellant in person.

versus

1. SMT. USHA GUPTA

W/o Late Shri Madan Lal Gupta
R/o 3750, Kucha Parmanand, Darya Ganj, New Delhi.

2. SH. MUKESH GUPTA

S/o Late Shri Madan Lal Gupta
Office at: DD Express, Shop No. 33,
Bhagat Singh Market, Gole Market, New Delhi.
R/o 3750, Kucha Parmanand,
Darya Ganj, New Delhi.

.....Respondents

Through: Mr. Saurabh Agarwal, Mr. Manuj
Kaushik and Mr. Karan Ahuja,
Advocates for R-1 and Respondent
No.2 through VC.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA



J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Regular First Appeal under Section 96 read with Section 151 of the Code of Civil Procedure, 1908 ('CPC') has been filed on behalf of the Appellant/Defendant No.2, Smt. Bhawna Gupta *against ex-parte Judgment and Decree dated 05.03.2019, whereby the Civil Suit of the Plaintiff/Respondent No.1 Smt. Usha Gupta for Possession and Permanent Injunction, has been decreed.*

2. *The Plaintiff/Respondent Usha Gupta had filed Suit bearing CS No.629/17 for Possession and Permanent Injunction.*

3. *The facts, in brief,* are that Defendant No.1/Respondent No. 2 Mr. Mukesh Gupta is son of Plaintiff/Respondent No. 1 Smt. Usha Gupta, who got married to Defendant No.2/Appellant Ms. Bhawna Gupta on 18.02.2003. After their marriage, Defendants started living with the Plaintiff, in her rented accommodation. Because of the conduct and attitude of Defendant No.2/Appellant Ms. Bhawna Gupta, who was non-cooperative, selfish and cruel since the beginning, Defendants shifted to rented accommodation somewhere in Nangloi, from September 2004 to January 2005. From January 2005 to July 2007, they shifted to accommodation at Burari, Delhi with rent @ Rs.1,500/- per month. Subsequently, they shifted to Shakarpur with rent @ Rs.2,500/- per month.

4. However, Defendant No.1 found the rent exorbitant and was unable to pay it from his meager income. Moreover, he had minor daughter and he was unable to meet the expenditures of the family. He was also not having good health and was suffering from various ailments.



5. In the meanwhile, the Plaintiff/Respondent No. 1 and her husband purchased immovable Property bearing No.3rd Floor of 44A, Khasra No.1060/497, Ganesh Nagar-II Extension, Shakrapur Village, Mandawali, Fazalpur, Ilaqua Shahdara, Delhi (*hereinafter referred to as suit property*) on 13.05.2013.

6. Because of the pressure of Defendant No.2, the Plaintiff and her husband, allowed the Defendants to reside in the Suit Property, *on license basis*. A Rent Agreement dated 01.02.2014 was also executed, whereby the monthly rent was agreed as Rs.3,000/- per month. Defendant No.1/Appellant adhered to this Agreement and paid the rent regularly to the Plaintiff/Respondent No. 1.

7. However, greed of Defendant No.2/Appellant did not stop and time and again she would lament about Defendant No.1 not earning enough and was unable to fulfill her greed. She used to pressurize Defendant No.1 to put pressure on the Plaintiff to transfer the Suit Property in her name. Defendant No.1 conveyed the request to the Plaintiff/Respondent No. 1, but she declined, as she was of old age and she along with her husband, was residing in a rented accommodation. The Plaintiff/Respondent No.1's husband earlier used to work in Rajasthan, but because of deteriorating health was unable to earn and had no source of income except his Government Old Age Pension. Because of these reasons they were unable to reside in rented accommodation and wanted the possession of their own Property.

8. There was constant pressure made by the Defendant No. 2/Appellant on the Defendant No. 1/Respondent No.2 to pressurize the Plaintiff/Respondent No.1 to transfer the Suit Property in the name of Defendant No. 2/Appellant but the Plaintiff/Respondent No.1 declined to do



the same. It later transpired that Defendant No.1/Respondent No.2 had been thrown out of the house, by Defendant No.2/Appellant on 21.01.2014. Defendant No.1 used to often reside with the Plaintiff/Respondent No. 1 or in the house of relatives, friends or even at his place of work. *Defendant No.2/Appellant exclusively resided in the Suit Property of the Plaintiff since 21.02.2014 and Defendant No.1 had been made to leave the Suit Property.*

9. The Plaintiff/Respondent No.1 claimed that Defendants had not tendered a single penny towards rent, since December 2013. Only because of the indifferent attitude of the Defendants, she debarred the Defendant No. 1/Respondent No.2 from her movable and immovable Property through publication in the Newspaper on 19.07.2017.

10. The Plaintiff/Respondent No. 1 claimed that she and her husband, are senior citizens and their Property has been illegally occupied by Defendant No.2/Appellant. They also found out that one room had been sub-let by Defendant No.2/Appellant, which was fetching good income, though the Plaintiff has not been able to ascertain the name and rate of rent of this sub-tenant.

11. The Plaintiff/Respondent No. 1 further asserted that the rent has not been paid since December, 2013 till August, 2017 i.e. for 46 months. Therefore, the Plaintiff/Respondent No. 1 served a Legal Notice dated 28.07.2017 terminating the tenancy of the Defendants, from 15.08.2017. However, despite Notice, neither the Suit Property was vacated nor the arrears paid. ***Hence, the Plaintiff/Respondent No. 1 filed the Suit for Possession of the Suit Property and also for Permanent Injunction to restrain the Defendants from creating any third-party rights.***



12. **Defendant No.1/Respondent No.2** appeared in the Court and made a statement on 06.12.2018, that his mother was an absolute owner of the Suit Property. He also stated that there were matrimonial disputes between him and Defendant No.2 (his wife) and that Defendant No.2/Appellant was residing alone in the Suit Property while he had been thrown out of the house. He further stated that he had nothing to do with the Suit Property and was not residing there.

13. **Defendant No.2/Appellant**, despite service of summons by affixation on 06.12.2017, failed to appear and was proceeded **ex-parte** on **23.04.2018**.

14. The Plaintiff/Respondent No.1 **Smt. Usha Gupta** in support of her case **examined herself as PW-1** and proved the Rent Agreement Ex.PW-1/B, and Legal Notice Ex.PW-1/E.

15. Learned District Judge on appreciation of the evidence, made a reference to the case of S.R. Batra and Another vs. Tarun Batra, (2007) 3 SCC 169 and Shobha Gupta vs. Rajesh Gupta, MAT.APP.63/2004, to hold that Defendant No.2/Appellant had no right, title or interest to continue in the suit premises. Consequently, ***the Suit of Possession was decreed in favour of the Plaintiff, vide against ex-parte Judgment and Decree dated 05.03.2019.***

16. Aggrieved by the impugned *ex-parte* Judgment and Decree dated 05.03.2019, present **Regular First Appeal** has been preferred by the Appellant / Defendant No.2 Smt. Bhawna Gupta.

17. **The grounds of challenge** are that the Suit for Possession has been filed in collusion and connivance between the Respondents herein, to dispossess the Appellant from the Suit Property since there exists a



matrimonial dispute. The impugned *ex-parte* Judgment ought not have to be passed, as she was not adequately served on the address mentioned in the memo of parties. As per the Report of Process Server, summons had been returned unserved.

18. It is further asserted that it has been claimed that Defendant No.1/ Appellant has been debarred by Ms. Usha Gupta, but it is only on paper, in order to deny any right to the Appellant. The Appellant being daughter-in-law, has a right to reside in the matrimonial household, even if it is owned by the mother-in-law, Plaintiff/ Respondent No.1 Smt. Usha Gupta. She cannot be dispossessed from the Suit Property on the grounds that it is not her matrimonial household.

19. Learned District Judge wrongly placed reliance on S. R. Batra (*supra*), which stands over-ruled by the Judgment dated 15.10.2020 passed by the Apex Court in Civil Appeal No.2483/2020 titled as Satish Chander Ahuja vs. Sneha Ahuja, which permits the daughter-in-law to reside in the matrimonial home, even if it is owned by her in-laws.

20. The Appellant got the knowledge of the impugned *ex-parte* Judgment on 28.09.2020 when she got the copy of the impugned *ex-parte* Judgment in the *Execution Petition No.123/2020*. The Appellant had visited the Court premises for filing the Execution Petition against Respondent No.2 in respect of the Orders of maintenance and it was only then, that copy of the impugned *ex-parte* Judgment was made available to her. The official copy of the summons for the *Execution Petition No.123/2020* has not been served upon her. She has been contesting the Maintenance proceedings and was not aware of the pendency of the present Suit.



21. She has no independent source of income and is financially dependent on her father, for her day-to-day expenses. Respondent No.2 / husband has not been regular in paying the maintenance as has been directed by the learned Family Court. There are four Execution Petitions filed against the husband and it is only in compliance of the Orders of the Court, that some maintenance is paid. Defendant No.1 claims that she has no alternative place of residence and owns no immovable property. She has not initiated any other matrimonial proceedings and wishes to reside with her husband and his family. However, it is the aim of Respondents, who have connived to throw the Appellant out of her matrimonial household.

22. Respondents have neither visited the Suit Property nor do they maintain it. The Suit Property is occupied by the Appellant and her minor child. Therefore, she cannot be dispossessed from the Suit Property it being her matrimonial household. Respondents are residing together in a house owned by Smt. Usha Gupta in Darya Ganj, Delhi and not in rented premises. Smt. Usha Gupta cannot dispossess the Appellant from her matrimonial home. Therefore, prayer is made that impugned *ex-parte* Judgment be set aside.

23. **Respondent No.1 Smt. Usha Gupta, in her Reply to the Appeal**, has asserted that she is the owner of the Suit Property and Appellant/daughter-in-law along with her husband had been inducted in the suit premises as tenants with a rent of Rs.3,000/- per month. However, no rent was paid by the Appellant and her husband / Defendant No.1 (Plaintiff's son), since December, 2013.



24. It later transpired that Defendant No.1 had been forcibly evicted from the suit premises and Appellant was residing alone in the Premises. She had been duly served, despite which she failed to appear and contest the Suit.

25. It is claimed that the Appellant is a cruel, greedy and selfish lady, who has been living exclusively in the property of Plaintiff, Smt. Usha Gupta. **Smt. Usha Gupta**, Plaintiff had filed *Suit bearing No.840/2017* under Protection of Women from Domestic Violence Act against the Appellant Smt. Bhawna Gupta and Shri and Smt. Triloki Nath (parents of the Appellant).

26. The husband of Respondent No.1 Smt. Usha Gupta expired on 24.02.2020. She herself is a senior citizen residing in the tenement premises with her elder son and suffers from serious ailments; and for her survival, her elder son always carries an Oxygen cylinder. There is no source of income after the demise of her husband. They are having huge financial crisis.

27. Smt. Usha Gupta has claimed that the Suit Property is not a matrimonial home in terms of the Judgment dated 15.10.2020 passed by the Apex Court in *Satish Charider Ahuja (supra)*. She has further asserted that she had purchased the Suit Property from her own funds and it is not a joint property or purchased from ancestral funds. She claims that there is no shared household and her son / Defendant No.1 had been inducted as a tenant in the Suit Premises and Defendant No.2 had been residing with him as a family member. She further claims that there is no merit in the present Appeal, which is liable to be dismissed.

Submissions heard and record perused.



28. This is another unfortunate litigation between the mother as the Plaintiff and her son and daughter-in-law as Defendants. The son Mukesh Gupta had appeared in the Court and gave a statement on 06.12.2018 that he has been forcefully thrown out of the suit property by his wife Bhawna Gupta/Defendant No.2 on 21.02.2014. Since then, he has been living with the relatives or in different premises on rent. He further stated that he had nothing to do with the Suit property.

29. The Defendant No.2 Bhawna Gupta was duly served, but she failed to appear and was proceeded ex-parte. The Suit in favour of the Respondent was decreed ex-parte.

30. Admittedly, Mukesh Gupta, son of the Respondent got married to Bhawna Gupta on 18.02.2003 and they came to reside with her, in the rented accommodation. However, because of the in-cooperative attitude of Bhawna Gupta who treated the Respondent with a cruel and selfish manner, they were unable to continue to reside together and the son and daughter-in-law shifted to rented accommodation in September, 2004 and resided in the rented premises till July, 2007. However, because Mukesh Gupta found the rent to be exorbitant and unable to discharge his obligations including towards the daughter in his meager income, he shifted back to the house of the Plaintiff with her permission in July, 2007.

31. The Respondent further deposed that she purchased the Suit property on 13.05.2013. On receiving assurances from Bhawna Gupta, she allowed the Defendants to reside in the Suit premises on license basis, though she also got a Rent Agreement dated 01.02.2014 executed for a monthly rent of Rs.3,000/- per month.



32. From the unrebutted testimony of the Respondent, it emerged that she herself was in rented accommodation at the time of marriage of the Appellant and her son, in 2003 and after marriage they all had started residing together in rented premises. However, because of the conduct of Bhawna Gupta, the son and the daughter-in-law separated and lived in different rented premises. However, they shifted back to the residence of the Respondent in July, 2007.

33. Another significant fact which has emerged is that the suit property had been purchased by respondent, on 13.05.2013 and on the request of the son, he had been allowed to occupy the property, *on license basis*. It also emerges from her testimony that she by way of abundant caution and to secure her rights, also got a Rent Deed dated 01.04.2014 executed from her son. It reflects that the Defendants had been inducted as licensees, but the Rent Deed was merely an additional document which was never acted upon by the parties.

34. From the testimony of the Plaintiff, it also emerged that the Suit property *was not a shared household*, as the Respondent never lived with her son and daughter-in-law in the said property. Moreover, it had been purchased much later in 2013. *It is clear case where the son and daughter-in-law had been inducted as licensees, by the Respondent/Plaintiff.*

35. The Plaintiff/Respondent in her testimony had further deposed that the Appellant Bhawna Gupta started pressurizing her son Mukesh Gupta to get the property transferred in her name, to which Mukesh Gupta did not agree which led to constant quarrels inter-se the parties. Eventually, Mukesh Gupta was forced to vacate the suit property on 21.01.2014, though the Appellant continued to reside in the Suit property. This further stands



corroborated by the statement of Mukesh Gupta, which was recorded in the Court on 06.12.2018.

36. The entire testimony therefore, establishes that Mukesh Gupta had been inducted as a licensee who started residing in the property along with his wife Bhawna Gupta and child. However, because of the conduct of the Appellant, the Plaintiff terminated the license and asked the Appellant to vacate the property. It is clearly evident that it is a simplicitor case of the Appellant being a licensee in the property, but she lost the license when the owner/Plaintiff asked her to vacate the Suit property. Once the license got terminated, the Appellant was left with no right, title, interest in the Suit property and had no option but to vacate the premises.

37. Even if for the sake of arguments, the Rent Deed is considered, then too, once the son in whose name the alleged tenancy was created, vacated the premises, the status of the Appellant, became that of an unauthorized occupant, liable for eviction. Any right of residence is against the husband and not against the mother-in-law.

38. *The only aspect which needs to be considered is whether the Suit property can be termed as a shared household.* There is ample evidence on record that the property was purchased in 2013, after which, on the request of Mukesh Gupta he along with his family had been inducted as a licensee. **There was no shared household nor was the Appellant entitled to any protection under the law.** Whatever rights she has of residence are provided in Section 17 Domestic Violence Act and her rights, are essentially against her husband.

39. In this regard, it may be noted that she has already filed a Maintenance Petition, wherein she is being granted maintenance. The



Appellant has an absolute right to seek residence or maintenance from her husband but in the facts and circumstances of this case where it is clear that a license was created in favour of the son and the Appellant was in occupation of the Suit property merely as a family member, she cannot assert any independent rights by claiming the Suit property to be a shared household.

40. In this regard, it would be pertinent to refer to the case of Satish Chander Ahuja (supra), wherein the rights of a woman were extensively discussed and it was held that where the shared household of a woman is a tenanted/allotted/licensed accommodation, which is in the name of husband/father-in-law or any other relative, the Domestic Violence Act does not operate against the landlord/ the lessor and licensor. However, if such proceedings are shown to be collusive between the son and the mother, the woman who is living in the shared household may resist the proceedings on the ground which a tenant/licensee can take in such proceedings. The embargo under Section 17(2) of 2005 Act *is only to save the person from being evicted without following due process of law.*

41. It would also be pertinent to refer to B.P. Achla Anand vs. S. Appi Reddy & Anr. 2005 (3) SCC 313, wherein the right of a deserted wife in respect of tenanted premises was considered, and it was held that a deserted wife continuing in occupation of the premises obtained on lease by her husband which was their matrimonial home, occupies the possession akin to that of a heir of the tenant-husband, in case the right of residence has not come to an end. However, the tenant having lost his interest in protecting the tenancy rights as available to him under the law, the same right would devolve upon and inhere on the wife, so long as she continues in occupation



of the premises. Her rights and obligations shall not be higher or larger than those of the tenant himself.

42. Herein, once the license of the husband itself has been terminated, no better protection can be accorded to the Appellant.

43. In the present case, as it may be reiterated that *firstly* it is not a shared household; and *secondly*, the license stood revoked by the mother-in-law in respect of her self-acquired suit premises. The learned District Judge though has considered the right of a woman under shared household under Domestic Violence Act, but has rightly observed that the Respondent/Plaintiff was entitled to a Decree of Possession and the Suit was accordingly, decreed.

44. In view of the aforesaid discussion, it is held that there is no merit in the present case and the Appeal is hereby, dismissed.

45. The Appeal is disposed of along with the pending Application(s).

(NEENA BANSAL KRISHNA)
JUDGE

JUNE 1, 2026/R/VA