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

**Judgment reserved on : 02.09.2022**
**Judgment pronounced on: 28.10.2022**

\+ **CRL.M.C. 2872/2022**

RADICAL ARC VENTURES PVT LTD ..... Petitioner
Through: Mr. Ashim Vachher, Mr. P. Piyush, Mr. Sumeet Shaukeen, Mr. Kunal Lakra, Advs.

versus

STATE NCT OF DELHI ..... Respondent
Through: Mr. Pradeep Gahalot, Ld. APP
Mr. Prabhjit Jauhar, Ms. Tulika Bhatnagar, Advs.
Mr. Pankaj Kumar Mishra, Adv. for R-3

**CORAM:**
**HON'BLE MR JUSTICE JASMEET SINGH**

**J U D G M E N T**

**JASMEET SINGH, J**

1. This is a petition filed seeking setting aside of the orders dated 26.07.2021, 15.09.2021 and 18.10.2021 passed by the learned Metropolitan Magistrate, Mahila Court-02, South East, Saket District Court, Delhi in CT [redacted] titled [redacted] qua car bearing registration No. [redacted] make Audi Q7.

2. The present petition has its genesis in a matrimonial dispute between respondent No. 2 and respondent No. 3 who are wife and husband respectively. Admittedly, petitioner is a company of which 75% shares were

held by respondent No.3. The petitioner company is engaged in business of construction, real estate. The petitioner is the registered owner of car bearing registration No. [redacted] make Audi Q7 (*hereinafter referred to as 'Audi car'*). As per the petition, the company had given the said car to respondent No. 3 for his official use and was being used by respondent No.3.

3. It is further stated that the said car was returned by respondent No.3 to petitioner at the time of his resignation, i.e 02.07.2021. On 19.07.2021, respondent No. 2 took the car from the possession of the petitioner having original title documents of 24 properties of the clients of the petitioner. Since the petitioner was not aware of the whereabouts of the Audi car, the petitioner filed a complaint at Sector 49, Noida Police Station with respect to the theft of the Audi car.

4. On 01.08.2021, FIR No. 861/2021 was registered at Sector 49, Noida Police Station, under Section 379 IPC qua theft of the Audi car and original title documents of the 24 properties.

5. In the meanwhile, respondent No. 2 initiated proceedings under Protection of Women from Domestic Violence Act against respondent No. 3 before learned MM, Mahila Court-02, South East, Saket District Court, Delhi being [redacted] titled [redacted]

6. The petitioner was informed subsequently that the car is in the power and possession of respondent No. 2 and her possession is protected by the order of learned MM Mahila Court.

7. On 26.07.2021, respondent No. 2 and respondent No. 3 were referred to mediation. On the said date, the counsel for the respondent No.3 had made a statement that the Audi car must be returned by the respondent No. 2

and in place the respondent No. 3 would provide respondent No. 2 a BMW car. However, the learned counsel for the respondent No. 3 later retracted from the said statement regarding providing of a BMW car.

8. On 15.09.2021, the learned MM Court directed that the said Audi car will remain in power and possession of the respondent No. 2 till the matter is heard on merits. On 18.10.2021, the application filed by petitioner company seeking review of the order dated 15.09.2021 was dismissed. The learned MM Court was of the view that there is no power of review under Protection of Women from Domestic Violence Act. In addition, the learned MM Court was of the view that assuming that the powers of Section 25 (2) of the Domestic Violence Act permitted alteration/modification of the order, the petitioner, i.e. the intervener before the learned MM Court had no locus standi to move the application as it was neither an aggrieved person within the meaning of the Act nor the respondent. Lastly, the learned MM Court was of view that the respondent No. 3 was a Director of the petitioner company with 75% shares. The respondent No. 3 resigned from petitioner company only after the order of 26.07.2021 had been passed. Hence, the learned MM dismissed the application filed on 04.10.2021 moved by the petitioner company for return of the Audi car.

9. Mr Vachher, learned counsel for petitioner states that the petitioner company is suffering at the hands of the husband and wife i.e respondent No. 3 and respondent No. 2 without any fault of the petitioner company. He further states that in addition to the loss of car, there are original property papers also lying were in the car and one Mr A.C. Juneja has initiated criminal proceedings against the petitioner in this regard. He further submits that petitioner being the registered owner of the Audi car, cannot be

deprived of its assets on account of matrimonial disputes between Respondents 2 and 3.

10. Mr. Vachher has also relied upon Section 29 of Prevention of Women from Domestic Violence Act to state that since the petitioner is neither the respondent nor an aggrieved person in the present case, he cannot maintain an appeal under section 29 of the said act.

11. Mr Jauhar, learned counsel appearing for respondent No. 2 states that the present petition is a proxy litigation by respondent No. 3, i.e. the husband. He further states that the petitioner has already submitted to the jurisdiction of the learned MM Court and has already filed an application for recall of the order dated 15.09.2021. Once petitioner has submitted to the jurisdiction, the present petition is not maintainable as all the orders i.e. orders dated 26.07.2021, 15.09.2021 and 18.10.2021 are intermediate orders. He further submits that the respondent No. 3 on 26.07.2021 made a statement to the Court that he would provide the respondent No. 2 with a BMW car in place of the Audi car and on that statement, respondent No. 2 was agreeable. Respondent No. 2 even today is agreeable to return the Audi car, provided a BMW car is provided to respondent No. 2. Lastly, he submits that the respondent No. 3 resigned from the petitioner company only to play mischief with the Court and to deprive respondent No. 2 of the benefits of orders dated 26.07.2021, 15.09.2021 and 18.10.2021. The respondent No. 3 was a 75% shareholder of the petitioner company and a Director and he resigned from Directorship only after passing of the orders.

12. I have heard learned counsel for the parties.

13. In present case, the first question which arises for my determination is whether the present petition is maintainable against orders passed by the

learned MM under Section 12 of the Domestic Violence Act. It was stated by Mr. Jauhar that the petitioner should have filed an appeal under Section 29 of the Protection of Women from Domestic Violence Act. I am unable to agree. The petitioner in the present case is neither a respondent nor an aggrieved person. As per section 2(a) of the Protection of Women from Domestic Violence Act, an *"aggrieved person" means any woman 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*. On the other hand, section 2(q) of the Act defines a *"respondent" as 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.* The petitioner in the present case is a company of which respondent No. 3 was a Director and 75 % shareholder. The judgement of Chaitanya Singhania and Masood Khan is applicable to the facts of the present case. In '***Chaitanya Singhania and Another v. Khushboo Singhania***' (2021 SCC OnLine Cal 2602) on 27.09.2021, it was opined that:

> *"47. Similarly, there is no bar in invoking Section 482 in the cases under Protection of Women against Domestic Violence Act, 2005. In Suresh Ahirwar vs. Priya Ahirwar [M. Cr. C No.22777/2017], vide order dated 11th November, 2018, the Madhya Pradesh High Court quashed a proceeding under Section 482 of the Code where aggrieved person impleaded some persons as respondents in a proceeding under Section 12 of the said Act with whom she had no domestic relationship.*

*48. This being the interpretation of the statute, a court of the Judicial Magistrate or the Metropolitan Magistrate cannot pass any order in a proceeding under Section 125 of the Code or under the provision of Protection of Women against Domestic Violence where there is no relation or domestic relation exists between the parties. For example, an order of maintenance cannot be passed against a stranger. Similarly, an order of residence under Section 19 of the said Act cannot be passed against a landlord under the instance of an aggrieved person. Even a residence order cannot be passed against the father-in-law of the aggrieved person if the residence is not a shared household of the respondent along with his father (See Satish Chander Ahuja Vs. Sneha Ahuja reported in (2021) 1 SCC 414). If such application is filed by an aggrieved person, will it be a logical proposition that the respondent will not be able to nip the proceedings in bud without waiting for a prolonged trial or otherwise wait for a considerable period till the disposal of trial? My considered reply is - such questions affecting the maintainability of the procedure itself can be decided by this Court under Section 482 of the Code of Criminal Procedure."*

14. Furthermore, in '***Masood Khan v. Millie Hazarika***' (2021 SCC OnLine Megh 58) on 04.03.2021, it was observed as under-

*"35. The applicability of the said provision of Section 28 of the said DV Act in criminal proceedings was emphasized by the*

*Hon'ble Supreme Court in the case of Satish Chander Ahuja (supra) at paragraphs 138 and 139 where it has restated that the procedure to be followed shall be under the Code of Criminal Procedure.*

*36. The learned counsel for the Respondent No. 2 has submitted that the Hon'ble Supreme Court in the said case of Satish Chander Ahuja (supra) at paragraph 146 of the same has pointed out that only Section 19 of the DV Act, 2005 has been singled out for consideration and exposition to examine the conflict between orders passed in a criminal proceeding on a civil proceeding and as such, it is maintained that the observation of the Court at paragraphs 138 and 139 are limited to this extent.*

*37. This Court is not in agreement with the submission of the learned counsel for the Respondent No. 2 on the observation of the Hon'ble Supreme Court in the said case of Satish Chander Ahuja (supra) to say that it is limited, when it is clearly seen that the Hon'ble Supreme Court has clearly spelt out its position on the nature of proceedings under the DV Act, 2005 being governed by the procedure under the Code of Criminal Procedure which is only a reiteration of the stated provision of Section 28 and as such, the relief or remedy may be civil in nature, but the procedure to be followed under the DV Act, particularly for proceedings under Sections 12, 18, 19, 20, 21, 22 and 23 as well as under Section 31 has*

*to be governed by the provisions of the Code of Criminal Procedure. Even reference to paragraph 146 would also show that Section 19 of the DV Act which is under consideration, is one of the section indicated above to be governed by the procedure of Code of Criminal Procedure.*

*38. It is also a fact that Section 482 Cr.P.C provides for inherent power on the High Court to make such order as may be necessary to give effect to any order under the Code and as stated above, proceedings under the DV Act being governed by the procedure under the Cr.P.C, therefore the logical conclusion would be that an application under Section 482 is maintainable qua order passed under Sections 12, 18, 19, 20, 21, 22 and 23 of the DV Act.*

*39. With due respect, the decisions of the Hon'ble Kerala High Court and the Madras High Court cited above and relied upon by the learned Counsel for the Respondent No 2, as far as the procedural aspects under the DV Act is concerned, would not stand the test in the light of the decision of the Hon'ble Supreme Court in the case of Satish Chander Ahuja (supra).*

*40. Consequently, this Court finds that this instant petition under Section 482 Cr.PC is maintainable. The submission and contention of the parties on the issue of consideration of converting this instant petition into one under Article 227 and the authorities referred thereto would therefore not require*

*any decision or observation by this Court under the circumstances."*

15. Hence, for the reasons stated above and relying on the judgments, I am of the view that the petitioner company is not a respondent and the respondent No. 2 is not an aggrieved person within the meaning of Protection of Women from Domestic Violence Act vis-à-vis each other and hence the petitioner cannot be relegated to filing an appeal under section 29 of Protection of Women from Domestic Violence Act.

16. Coming to the second limb of the argument, whether the learned MM could have passed an order permitting the respondent No. 2 to retain the control of the said Audi car? The Audi car belongs to the petitioner company and the RC bearing No. [redacted] is not in dispute. As already held, it is not the petitioner company which is in a domestic relationship with respondent No. 2. At best, the car was given to respondent No. 3 maybe as a 75% shareholder or as a Director of petitioner company, as a benefit. The respondent No.2 under Section 12 of the Domestic Violence Act can only have a grievance against the respondent No. 3 with whom she was in a domestic relationship. Section 19 and 22 of the Act entitles the respondent No. 2 with right of residence as well as relief of compensation and damages against the respondent who has been defined under Section 2(q). The petitioner company does not come within the ambit of the said definition. The lifting of corporate veil and to hold that the Audi car even though belongs to petitioner company but in fact belongs to respondent No. 3, would not be legally tenable. The company and its shareholders and Directors are separate legal entities.

17. The Supreme Court in '***Abhilash Vinodkumar Jain v. Cox & Kings (India) Ltd.'*** [(1995) 3 SCC 732] has held that-

> *"18. Section 630 of the Act provides speedy relief to the company where its property is wrongfully obtained or wrongfully withheld by an "employee or an officer" or a "past employee or an officer" or "legal heirs and representatives" deriving their colour and content from such an employee or officer" in so far as the occupation and possession of the property belonging to the company is concerned. The failure to deliver property back to the employer on the termination, resignation, superannuation or death of an employee, would render the "holding" of that property wrongful and actionable under Section 630 of the Act. To hold that the "legal heirs" would not be covered by the provisions of Section 630 of the Act would be unrealistic and illogical. It would defeat the "beneficent" provision and ignore the factual realities that the legal heirs or family members who are continuing in possession of the allotted property, had obtained the right of occupancy with the employee concerned in the property of the employer only by virtue of their relationship with the employee/officer and had not obtained or acquired the right to possession of the property in any other capacity, status or right. The legislature, which is supposed to know and appreciate the needs of the people, by enacting Section 630 of the Act manifested that it was conscious of the position that today in the corporate sector - private or public enterprise -*

*the employees officers are often provided residential accommodation by employer for the 'use and occupation' of the concerned employee during the course of his employment. More often than not, it is a part of the service conditions of the employee that the employer shall provide him residential accommodation during the course of his employment. If an employee or a past employee or anyone claiming the right of occupancy under them, were to continue to 'hold' the property belonging to the company, after the right to be in occupation has ceased for one reason or the other, it would not only create difficulties for the company, which shall not be able to allot that property to its other employees, but would also cause hardship for the employee awaiting allotment and defeat the intention of the legislature."*

18. The Hon'ble Supreme Court in '***Life Insurance Corporation of India v Escorts Ltd & Ors.'*** [1986] 1 SCC 264] on 19.12.1985 had observed that-

*"90. ... Generally and broadly speaking, we may say that the corporate veil may be lifted where a statute itself contemplates lifting the veil, or fraud or improper conduct is intended to be prevented or a taxing statute or a beneficent statute is sought to be evaded or where associated companies are inextricably connected as to be in reality, part of one concern."*

19. Further, the Hon'ble Supreme Court in '***P.C. Agarwala v. Payment of Wages Inspector, M.P'*** [(2005) 8 SCC 104] in the year 2005 has cited with

approval the law laid down in "*Salomon v. Salomon & Co"*, holding that a company is a separate legal entity and the corporate veil is to be lifted only in exceptional circumstances and cases like serious fraud. It has opined that-

> *"21. In TELCO v. State of Bihar [(1964) 6 SCR 885 : AIR 1965 SC 40] the basic features of a company, its corporate existence and its position vis-á-vis shareholders was highlighted as follows: (SCR pp. 897-98)*
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> > *"The true legal position in regard to the character of a corporation or a company which owes its incorporation to a statutory authority, is not in doubt or dispute. The corporation in law is equal to a natural person and has a legal entity of its own. The entity of the corporation is entirely separate from that of its shareholders; it bears its own name and has a seal of its own; its assets are separate and distinct from those of its members; it can sue and be sued exclusively for its own purpose; its creditors cannot obtain satisfaction from the assets of its members; the liability of the members or shareholders is limited to the capital invested by them; similarly, the creditors of the members have no right to the assets of the corporation. This position has been well established ever since the decision in the case of Salomon v. Salomon & Co. [1897 AC 22 : (1895-99) All ER Rep 33 (HL)] was pronounced in 1897; and indeed, it has always been the well-recognised principle of common law. However, in*

*the course of time, the doctrine that the corporation or a company has a legal and separate entity of its own has been subjected to certain exceptions by the application of the fiction that the veil of the corporation can be lifted and its face examined in substance. The doctrine of the lifting of the veil thus marks a change in the attitude that law had originally adopted towards the concept of the separate entity or personality of the corporation. As a result of the impact of the complexity of economic factors, judicial decisions have sometimes recognised exceptions to the rule about the juristic personality of the corporation. It may be that in course of time these exceptions may grow in number and to meet the requirements of different economic problems, the theory about the personality of the corporation may be confined more and more."*

*23. Gower has similarly summarised this position with an observation that in a number of important respects, the legislature has rent the veil woven by Salomon case [1897 AC 22 : (1895-99) All ER Rep 33 (HL)] . Particularly this is so, says Gower, in the sphere of taxation and in the steps which have been taken towards the recognition of the enterprise entity rather than corporate entity. It is significant, however, that according to Gower the courts have only construed the statutes as "cracking open the corporate shell" when compelled to do so by the clear words of the statute—indeed*

*they have gone out of their way to avoid this construction whenever possible. Thus, at present the judicial approach in cracking open the corporate shell is somewhat cautious and circumspect. It is only when the legislative provision justifies the adoption of such a course that the veil has been lifted. In exceptional cases where the courts have felt "themselves able to ignore the corporate entity and to treat the individual shareholder as liable for its acts" the same course has been adopted. Summarising his conclusions, Gower has classified seven categories of cases where the veil of corporate body has been lifted. But it would not be possible to evolve a rational, consistent and inflexible principle which can be invoked in determining the question as to whether the veil of the corporation should be lifted or not. Broadly, where fraud is intended to be prevented, or trading with the enemy is sought to be defeated, the veil of the corporation is lifted by judicial decision and the shareholders are held to be "persons who actually work for the corporation."*

20. In the present case which is a matrimonial dispute, the corporate veil cannot be permitted to be lifted to hold that the Audi car bearing registration No. [redacted] even though belongs to the petitioner company, must be held to be belonging to and owned by respondent No. 3. The respondent No.3 was a director of the petitioner company and a 75% shareholder. There is another shareholder who owns 25% of the shareholding and there are other directors of the petitioner company.

21. The learned counsel for respondent No. 2 has tried to emphasise that respondent No. 3 has been showing incorrect dates of resignation. He states that respondent No. 3 has fraudulently shown his date of resignation as a director from the petitioner company on 02.07.2021, when in fact he had resigned from the petitioner company on 04.08.2021, i.e, only after passing of the consent order dated 26.07.2021. The same is irrelevant for purpose of adjudication as the proceedings which have been enumerated hereinabove cannot be brought within the ambit of the phrase "fraud". Black's Law Dictionary has defined fraud as "*A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment*". The act and conduct of the respondent No. 3 does not come within the said definition of fraud. The respondent No. 3 is entitled to resign as a director from the petitioner company as and when he desires. The law permits him to do so. Once the respondent No. 3 has done a legally permissible act, the same cannot be considered a fraud in any way. Hence, there cannot be a declaration to hold that the said Audi Car belongs not the petitioner company but to the respondent No. 3.

22. For the aforesaid reasons, I am inclined to allow the petition. The orders dated 26.07.2021, 15.09.2021 and 18.10.2021 as far as permitting respondent No. 2 to retain the Audi car are set aside and Audi car bearing registration No. [redacted] must be returned to the petitioner company within one week of passing of this order. However, this order is only for the return of the Audi car and in no way determines the right of respondent No. 2 to seek maintenance, right of residence commensurate with her stature and her living lifestyle, from respondent No. 3. She shall be at liberty to initiate any/all such proceedings for getting a car/maintenance for herself and her

children which if already filed or which may be filed in future, shall be determined in accordance with law.

23. With these observations, the petition is allowed.

**JASMEET SINGH, J**

**OCTOBER 28th, 2022**
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