

A VAISHALI ABHIMANYU JOSHI

v.

NANASAHEB GOPAL JOSHI

(Civil Appeal No. 6448 of 2017)

B MAY 09, 2017

[A. K. SIKRI AND ASHOK BHUSHAN, JJ.]

Protection of Women from Domestic Violence Act, 2005:

C ss.19 and 26 – Suit filed by father-in-law (respondent) against
daughter-in-law (appellant) – Before Small Causes Court – Seeking
possession of the suit flat from his daughter-in-law – Claiming
himself to be licensor and the appellant as gratuitous licensee –
Counter-claim by the appellant seeking order of residence in the
suit flat u/s. 19 of 2005 Act – Entertainability of the counter-claim
– Held: Small Causes Court is a civil court and proceedings before
D it are legal proceedings – On the strength of s. 26 of 2005 Act, any
relief available u/ss. 18 to 22 of 2005 Act can be sought by aggrieved
person – Order L of CPC does not bar filing of counter-claim (under
Or.VIII, r. 6A CPC) before Small Causes Court – 2005 Act was
enacted to secure a social purpose – s. 26 thereof has to be
E interpreted in a manner to effectuate the very purpose and object
of the Act – Court not to read in a bar, unless any order as
contemplated under 2005 Act is expressly barred from consideration
by a civil court – Right of residence as claimed by the appellant in
her counter-claim is inter-connected with determination of issue in
the suit filed before civil court – Denial of consideration of the
F counter-claim shall amount to denial of consideration of claim as
contemplated by s.26 of 2005 Act and would lead to multiplicity of
proceedings, which cannot be the object and purpose of 2005 Act
– Provincial Small Causes Court Act, 1887 – ss. 15 and 26 (as
amended by Maharashtra Act 24 of 1984) – Code of Civil Procedure,
G 1908 – Or. VIII, r.6A and Or. L.

Allowing the appeal, the Court

HELD: 1. The Provincial Small Cause Courts Act, 1887
was enacted to consolidate and amend the law relating to Courts
of Small Causes established beyond the Presidency-towns.
H Section 15 deals with jurisdiction of Court of Small Causes.

Section 15 refers to Schedule II. Schedule II enumerates the category of suits which are excepted from the cognizance of Court of Small Causes. [Paras 13 and 15] [496-E-F; 497-C-D] A

2. The Protection of Women from Domestic Violence Act, 2005 has been enacted to provide for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto. Act, 2005 was enacted by the Parliament to give effect to various international conventions. [Para 17] [498-D-E] B

Kunapareddy alias Nookala Shanka Balaji v. Kunapareddy Swarna Kumari & Another [2016] 2 SCR 608 : (2016) 11 SCC 774 – referred to. C

3. Section 26 of the Act is a special provision which has been enacted in the Domestic Violence Act. Although, Chapter IV of the Act containing Section 12 to Section 29 contains the procedure for obtaining orders of reliefs by making application before the Magistrate whereas steps taken by the Magistrate and different categories of reliefs could be granted as noted in Section 18 to 22 and certain other provisions. Section 26 provides that any relief available under Section 18 to 22 may also be sought in any legal proceedings, before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent. The appellant has set up her counter-claim on the basis of this Section before the Judge, Small Causes Court. [Para 19] [500-G-H; 501-A-B] D E

4. There cannot be any dispute that proceeding before the Judge, Small Causes Court is a legal proceeding and the Judge, Small Causes Court is a civil court. On the strength of Section 26 any relief available under Section 18 to 22 of Act, 2005, thus, can also be sought by the aggrieved person. [Para 20][501-E-F] F

5. Order VIII rule 6A of CPC provides for counter-claim by defendant. Order L of CPC enumerates the provisions which shall not extend to the Provincial Small Cause Court. The provisions which have been excepted from applicability of the Small Causes Court do not include Order VIII, thus, counter claim can very well be filed by the defendant in a suit before the Small H

A Causes Court. [Paras 21, 22] [501-F; 502-D]

6. The Act, 1887 has been amended in the State of Maharashtra by Maharashtra Act 24 of 1984 w.e.f. 1.1.1985. Chapter IVA has been inserted in Act, 1887 containing Section 26, 26A, 26B and 26C. Item No.4 of Second Schedule which included "a suit for the possession of immovable property or for the recovery of an interest in such property" had been deleted by Maharashtra Act, 24 of 1984. Section 26 of 1887 Act begins with '*non obstante*' clause which shall override all contrary provisions contained in Act, 1887. Maharashtra Act 24 of 1984 has been brought by inserting Section 26 and by deleting Item No. 4 of Second Schedule only to make suit between licensor and licensee to be filed before the Judge, Small Causes Court. The suit filed by the plaintiff is virtually a suit for possession of the suit flat from the appellant who is occupying the same. [Paras 25, 28] [502-F-G; 504-A-C]

D 7. "Notwithstanding anything contained elsewhere in this Act" as used in Section 26(1) of Act, 1887, are words of expression of the widest amplitude engulfing the contrary provisions contained in the Act. The suit in question has been filed by the plaintiff for enforcement of his right as a licensor after allegedly terminating the gratuitous licence of the appellant. Item No.11 of Schedule II covers determination or enforcement of any such right or interest in immovable property. But by virtue of Section 26 sub-Section (1) as applicable in State of Maharashtra, Item No.11 of Schedule 2 has to give way to section 26(1) and a suit between licensor and licensee which is virtually a suit for recovery of immovable property is fully maintainable in Judge, Small Causes Court that is why the suit has been instituted by the plaintiff in the Judge, Small Causes Court claiming the right and interest in the immovable property. [Para 29] [504-D-F]

G 8. When the suit filed by the plaintiff for determination or enforcement of his right as a licensor can be taken cognizance by Judge, Small Causes Court, the relief claimed by the appellant in the Court of Small Causes within the meaning of Section 26 of Act, 2005 can also be considered by the Judge, Small Causes Court. In the facts of the present case, the bar and embargo under Item No.11 of Schedule II read with Section 15 of Act,

H

1887 stand whittled down and engulfed by virtue of Section 26 sub-Section (1) as applicable in Maharashtra. A statutory provision containing *non obstante* clause has to be given full effect. [Paras 30 and 31] [504-F-H] A

Union of India and another v. G.M. Kokil and others
1984 (Supp) SCC 196 : [1984] SCR 292 – relied on. B

9. 2005 Act was enacted to secure a social purpose. The provisions of the Act have to be construed widely. Section 26 of the Act, 2005 has to be interpreted in a manner to effectuate the very purpose and object of the Act. Unless the determination of claim by an aggrieved person seeking any order as contemplated by Act, 2005 is expressly barred from consideration by a civil court, this Court shall be loath to read in bar in consideration of any such claim in any legal proceeding before the civil court. When the proceeding initiated by plaintiff in the Judge, Small Causes Court alleged termination of gratuitous licence of the appellant and prays for restraining the appellant from using the suit flat and permit the plaintiff to enter and use the flat, the right of residence as claimed by the appellant is inter-connected with such determination and refusal of consideration of claim of the appellant as raised in her counter claim shall be nothing but denying consideration of claim as contemplated by Section 26 of the Act, 2005 which shall lead to multiplicity of proceeding, which can not be the object and purpose of Act, 2005. The counter claim filed by the appellant before Judge, Small Causes Court was fully entertainable and courts below committed error in refusing to consider such claim. [Paras 35, 36 and 37] [506-D; 507-B-E] C
D
E

Hiral P. Harsora and others v. Kusum Narottamdas Harsora and others 2016 (10) SCC 165 – relied on. F

Allahabad Bank v. Canara Bank 2000 (4) SCC 406 : [2000] 2 SCR 1102; *Solidaire India Ltd. v. Fair Growth Financial Services Ltd. & ors.* 2001 (3) SCC 71 : [2001] 1 SCR 932; *Bank of India v. Ketan Parekh* 2008 (8) SCC 148 : [2008] 9 SCR 346 – cited. G

Case Law Reference

[2016] 2 SCR 608

referred to

Para 17

A	[1984] SCR 292	relied on	Para 31
	[2000] 2 SCR 1102	cited	Para 35
	[2001] 1 SCR 932	cited	Para 35
	[2008] 9 SCR 346	cited	Para 35
B	2016 (10) SCC 165	relied on	Para 35

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6448 of 2017.

C From the Judgment and Order dated 07.07.2016 of the High Court of Judicature at Bombay, in Civil Appellate Jurisdiction in Writ Petition No. 1550 of 2016.

Nikhil Majithia, Adv. for the Appellant.

Vinay Navare, Ms. Gwen Karthika, Dr. Raindra Chingale, Ms. Abha R. Sharma, Advs. for the Respondent.

D The Judgment of the Court was delivered by
ASHOK BHUSHAN, J. 1. Leave granted.

E 2. This appeal raises an important question pertaining to interpretation of Section 26 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as "Act, 2005") qua the Provincial Small Cause Courts Act, 1887 (hereinafter to referred to as "Act, 1887") as amended in the State of Maharashtra. The question is as to whether counter claim by the appellant seeking right under Section 19 of Act, 2005 can be entertained in a suit filed against her under Section 26 of Act, 1887 seeking a mandatory injunction directing her to stop using the suit flat and to remove her belongings therefrom.

F 3. This appeal has been filed challenging the judgment dated 7th July, 2016 of High Court of Judicature at Bombay in Writ Petition No. 1550 of 2016 by which the writ petition filed by the appellant questioning the judgment and order of 5th Additional Judge, Small Causes Court dated 5th November, 2014 and order passed by the District Judge, Pune dated 17th December, 2015 was dismissed.

G 4. Necessary facts of the case need to be noted for deciding the issue raised are:

H The appellant got married with one Abhimanyu who is son of the

respondent on 10.02.2000. The appellant started residing in the suit flat No.4, 45/4, Arati Society Shilavihar Colony, Paud Fata, Pune since 2004 alongwith her husband. The flat was allotted to the respondent by the Society in the year 1971. On 13th June, 2011, the husband of appellant left her at the suit flat and shifted to live with his parent at Mrutunjay Society. A daughter, namely, Ishwari was born from the wedlock of the appellant and the Abhimanyu, who was about 9 years in the year 2014. The respondent along with his wife had been residing in another flat nearby. The appellant was treated with cruelty by her husband and other members of the family. A suit for divorce on the basis of cruelty being P.A.No. 23/2011 was filed by the appellant against her husband. A notice was sent on behalf of the respondent to the appellant on 23.01.2013 revoking the gratuitous licence and asking the appellant to stop the use and occupation of the suit flat. The appellant replied the notice. The respondent filed Suit No.77/2013 in the Small Causes Court, Pune seeking for following reliefs:

"A. By an order of mandatory injunction the defendant may be directed to stop the use and occupation of the suit flat and remove her belongings therefrom.

B. The defendant may be restrained by an order of perpetual prohibitory injunction from using/occupying the suit flat.

C. The defendant may be restrained by an order of perpetual prohibitory injunction from obstructing the plaintiff and his family members to possess, use and occupy the suit flat.

D. Interim orders in terms of clause A,B,C above may be passed.

E. Costs of the suit may be awarded to the plaintiff from the defendant.

F. Any other just and other equitable orders in the interest of justice may please be passed."

5. The appellant filed a written statement in the suit pleading that she was residing in the suit flat since 26.01.2004 along with her husband and daughter. Her husband who was also residing along with her left her on 13.06.2011 to live with the respondent. It was pleaded that suit flat was intended to be used by the joint family as a joint family property and although the agreement of purchase of the suit flat bears the name

A of the respondent, the suit flat has been used as joint family property. The allegation that respondent is the sole owner of the flat was denied. In her written statement a counter claim was also laid by the appellant. In the counter claim following reliefs have been claimed by the appellant:

- B *“i. The suit & injunction application at Exh.5 of the plaintiff may kindly be dismissed with heavy costs.*
- ii. It may be declared that the suit flat is the shared household.*
- C *iii. The plaintiff, his agents, representatives, relatives or anyone claiming through him may kindly be restrained by an injunction from dispossessing, disturbing the possession of the defendant in any manner from the suit flat, as per S.19 of D.V. Act.*
- iv. The plaintiff, his agents, representatives, relatives or anyone claiming through him may kindly be restrained by an injunction from entering in the suit flat as per S.19 of DV Act.*
- D *v. The plaintiff, his agents, representatives, relatives or anyone claiming through him may kindly be restrained by an injunction from alienating, disposing off, encumbering the suit flat and/or creating any of third party right, title and interest in the suit flat, or renouncing the rights in the suit flat as per S.19 of DV Act.*
- E *vi. Any other order in the interest of justice and equity may kindly be passed in favour of the defendant and oblige.”*

F 6. In the counter claim the appellant prayed for an order of residence in suit flat under Section 19 of the Act, 2005.

G 7. The respondent who was the plaintiff in the suit has filed an application dated 14.07.2014 under Section 9A (Maharashtra Amendment) of the Code of Civil Procedure, 1908. In the application, the respondent claimed that declaration sought by the appellant in the suit is not maintainable, hence, a preliminary issue under Section 9A of CPC be framed. The application was objected by the appellant by filing objection on 16.08.2014. The appellant claimed that since she has been subjected to domestic violence she is entitled for the reliefs sought by way of counter claim as provided in the Act, 2005; It was contended

H

that the reliefs sought by way of counter claim are not barred as per Section 15 of Act, 1887. The trial court framed preliminary issue "as to whether the Court has jurisdiction to entertain the counter claim". Judge Small Causes Court by its judgment and order dated 05.11.2014 held that Court has no jurisdiction to entertain the counter claim. Revision was filed against the order passed by the Small Causes Court before the District Judge. The District Judge rejected the revision on 17.12.2015 which order was challenged by the appellant by means of writ petition which has been dismissed by judgment dated 07.07.2016. The High Court has held that in view of the express language in Section 15 as also the Second Schedule of Act, 1887, the Small Causes Court constituted under Act, 1887 cannot entertain and try the counter claim. Aggrieved by the order of the High Court, the appellant has come up in this appeal.

8. We have heard Shri Nikhil Majithia, learned counsel for the appellant and Shri Vinay Navare, learned counsel for the respondent.

9. Shri Nikhil Majithia, learned counsel for the appellant submitted that courts below erred in law in taking the view that counter claim of the appellant is barred by the Act, 1887. He submits that Act, 2005 is a special Act which has been enacted to provide various remedies and the special Act shall have overriding effect over Act, 1887. He submits that courts below erred in law in not advertng to this aspect of the matter. Learned counsel has further placed reliance on Section 3(c) of the Act, 1887. It is submitted that Section 3(c) itself saves applicability of local law or any special law and the Act, 2005 being a special law it will have to be given full effect and Section 3(c) itself carves out an exception. It is submitted that in the event of conflict between a general statute and a special statute, special statutes always have overriding effect on a general statute. He further submits that even if both are treated to be a special statute, latter in point of time shall override the Act, 1887 and he further referring to the Section 26 of Act, 2005 contends that a relief under Sections 18 to 22 of Act, 2005 can be sought in any legal proceeding before a Civil Court, Family Court and Criminal Court. He submits that Court of Provincial Small Cause being a civil Court remedy under Section 26 is fully available to the appellant.

10. Shri Vinay Navare, learned counsel for the respondent refuting the submission of learned counsel for the appellant contends that counter claim of the appellant is clearly barred by Section 15 read with Schedule II of the Act, 1887. He has referred to Item Nos.11, 17 and 19. He

A submits that Provincial Small Cause Court is a Court which has limited jurisdiction. Referring to provisions of Order L of Civil Procedure Code he submits that only limited provisions of Civil Procedure Code have been made applicable which indicates that no substantive issue can be decided by Provincial Small Cause Court. Learned counsel further made reference to Section 12 and Section 18 of Act, 1887 by which, according to him, the Registrar, who is a Chief Ministerial Officer of the Court, is empowered to try certain suits which the Judge, Provincial Small Cause Court by general or special order directs. He submits that power given to Registrar to decide certain issues also militate against the idea that substantive issues can be decided by a Judge, Small Causes Court.

C 11. Learned counsel for the parties relied on various decisions of this Court and Bombay High Court which shall be referred to while considering submissions in detail.

12. We have considered the above submissions of the parties and perused the record.

D 13. As noted above, the only question to be answered in this appeal is as to whether the counter claim filed by the appellant seeking right of residence in accordance with Section 19 of Act, 2005 in a suit filed by the respondent, her father-in-law under the Provincial Small Cause Courts Act, 1887 is entertainable or not. Whether the provisions of the Act, 1887 bar entertainment of such counter claim, is the moot question to be answered. The Provincial Small Cause Courts Act, 1887 was enacted to consolidate and amend the law relating to Courts of Small Causes established beyond the Presidency-towns. Under Section 5, the State Government is empowered to establish Court of Small Causes. Section 15 deals with jurisdiction of Court of Small Causes. Section 15 which is relevant for the present purposes is extracted below:

“Section 15. Cognizance of suits by Courts of Small Causes.—

G (1) *A Court of Small Causes shall not take cognizance of the suits specified in the Second Schedule as suits expected from the cognizance of a Court of Small Causes.*

(2) *Subject to the exceptions specified in that Schedule and to the provisions of any enactment for the time being in force, all suits of a civil nature of which the value does not exceed five hundred rupees shall be cognizable by a Court of Small*

Causes.

A

(3) Subject as aforesaid, the [State Government] may, by order in writing, direct that all suits of a civil nature of which the value does not exceed one thousand rupees shall be cognizable by a Court of Small Causes mentioned in the order."

B

14. Section 17 provides that the procedure prescribed in the Civil Procedure Code, shall save in so far as is otherwise provided by that Code or by 1887 Act, be the procedure followed in a Court of Small Causes, in all suits cognizable by it and in all proceedings arising out of such suits.

C

15. Section 23 provides for return of plaint in suits involving questions of title. Section 15 refers to Schedule II. Schedule II enumerates the category of suits which are excepted from the cognizance of Court of Small Causes. For the purposes of this case Item Nos.4, 11, 17 which may be relevant for the present case are extracted below:

D

"(4) a suit for the possession of immoveable property or for the recovery of an interest in such property;

(11) a suit for the determination or enforcement of any other right to or interest in immoveable property;

E

(17) a suit to obtain in injunction;"

16. The submission which has been pressed by the learned counsel for the respondent is that the High Court for holding that Judge, Small Causes Court has no jurisdiction has relied on Section 15 read with clause (11) of Second Schedule. In paragraph 14 of the judgment, the High Court gives the following reasoning for deciding against the appellant:

F

"14. As noted earlier, clause(11) of the Second Schedule of P.S.C.C. Act which is one of the excepted categories does not empower the Small Causes Court to entertain and try the suit for the determination or enforcement of any other right to or interest in immovable property. In the counter claim the defendant has prayed for residence orders as provided in Section 19 of D.V. Act as also for declaration that the suit flat is the shared household as per section 2(s) of D.V. Act and also for injunction restraining the plaintiff (i) from

G

H

A *dispossessing her from the suit flat and disturbing her*
possession in any manner in the suit flat, (ii) from entering
 B *suit flat, and (iii) from creating third party interest as per*
Section 19 of D.V. Act. It is not in dispute and cannot be
disputed that the counter claim is to be tried as a suit. The
defendant seeks determination or enforcement of her right
 C *or interest in the suit flat i.e. immovable property. In view*
thereof, counter claim set up by the defendant cannot gone
into by the Small Causes Court in view of express language
of Section 15 and Second Schedule of P.S.C.C. Act. If the
contention of Mr. Kulkarni is accepted, it will enlarge the
jurisdiction of Small Causes Court and the same will be
contrary to mandate of Section 15 and Second Schedule of
P.S.C.C. Act.”

17. The Protection of Women from Domestic Violence Act, 2005
 has been enacted to provide for more effective protection of the rights
 D of women guaranteed under the Constitution who are victims of violence
 of any kind occurring within the family and for matters connected
 therewith or incidental thereto. Act, 2005 was enacted by the Parliament
 to give effect to various international conventions. One of us (A.K.
 Sikri,J.) had occasion to consider the purposes of enacting the Act, 2005
 E in *Kunapareddy alias Nookala Shanka Balaji vs. Kunapareddy*
Swarna Kumari and anotehr, (2016) 11 SCC 774. In paragraph 12
 of the judgment following has been stated:

“12. In fact, the very purpose of enacting the DV Act was to
 provide for a remedy which is an amalgamation of civil rights
 F of the complainant i.e. aggrieved person. Intention was to
 protect women against violence of any kind, especially that
 occurring within the family as the civil law does not address
 this phenomenon in its entirety. It is treated as an offence
 under Section 498-A of the Penal Code, 1860. The purpose
 G of enacting the law was to provide a remedy in the civil law
 for the protection of women from being victims of domestic
 violence and to prevent the occurrence of domestic violence
 in the society. It is for this reason, that the scheme of the Act
 provides that in the first instance, the order that would be
 passed by the Magistrate, on a complaint by the aggrieved
 H person, would be of a civil nature and if the said order is

violated, it assumes the character of criminality. In order to demonstrate it, we may reproduce the introduction as well as relevant portions of the Statement of Objects and Reasons of the said Act, as follows:

“Introduction

The Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action (1995) have acknowledged that domestic violence is undoubtedly a human rights issue. The United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women in its General Recommendations has recommended that State parties should act to protect women against violence of any kind, especially that occurring within the family. The phenomenon of domestic violence in India is widely prevalent but has remained invisible in the public domain. The civil law does not address this phenomenon in its entirety. Presently, where a woman is subjected to cruelty by her husband or his relatives, it is an offence under Section 498-A of the Indian Penal Code. In order to provide a remedy in the civil law for the protection of women from being victims of domestic violence and to prevent the occurrence of domestic violence in the society the Protection of Women from Domestic Violence Bill was introduced in Parliament.

Statement of Objects and Reasons

1. Domestic violence is undoubtedly a human rights issue and serious deterrent to development. The Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action (1995) have acknowledged this. The United Nations Committee on Convention on Elimination of All Forms of Discrimination against Women (CEDAW) in its General Recommendation No. XII (1989) has recommended that State parties should act to protect women against violence of any kind especially that occurring within the family.

* * *

3. It is, therefore, proposed to enact a law keeping in view the rights guaranteed under Articles 14, 15 and 21 of the

A *Constitution to provide for a remedy under the civil law which is intended to protect the women from being victims of domestic violence and to prevent the occurrence of domestic violence in the society.*

4. *The Bill, inter alia, seeks to provide for the following—*

B

* * *

(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.*

C

(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.*

D

(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.”*

E

F

18. Section 17 provides for right to reside in a shared household by aggrieved person. Section 18 empowers the Magistrate to pass protection orders of different categories as enumerated in section itself. Section 19 provides for passing of a residence order in favour of an aggrieved person who is subjected to domestic violence.

G

19. Section 26 of the Act is a special provision which has been enacted in the enactment. Although, Chapter IV of the Act containing Section 12 to Section 29 contains the procedure for obtaining orders of reliefs by making application before the Magistrate whereas steps taken by the Magistrate and different categories of reliefs could be granted as

H

noted in Section 18 to 22 and certain other provisions. Section 26 provides that any relief available under Section 18 to 22 may also be sought in any legal proceedings, before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent. Section 26 is material for the present case since the appellant has set up her counter claim on the basis of this Section before the Judge, Small Causes Court. Section 26 is extracted below:

“26. Relief in other suits and legal proceedings.—

(1) Any relief available under sections 18, 19, 20, 21 and 22 may also be sought in any legal proceeding, before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act.

(2) Any relief referred to in sub section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court.

(3) In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief.”

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

21. Order VIII Rule 6A provides for counter claim by defendant. Order VIII Rule 6A of CPC is quoted below:

“6A. Counter claim by defendant.- (1) A defendant in a suit may, in addition to his right of pleading a set off under rule 6, set up, by way of counter claim against the claim of the plaintiff, any right or claim in respect of a cause of action accruing to the defendant against the plaintiff either before or after the filing of to suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter claim is in the

- A *nature of a claim for damages or not:*
Provided that such counter claim shall not exceed the pecuniary limits of the jurisdiction of the court.
- B (2) *Such counter claim shall have the same effect as a cross suit so as to enable the court to pronounce a final judgment in the same suit, both on the original claim and on the counter claim.*
- C (3) *The plaintiff shall be at liberty to file a written statement in answer to the counter claim of the defendant within such period as may be fixed by the court.*
- (4) *The counter claim shall be treated as a plaint and governed by the rules applicable to plaints."*

D 22. Order L of CPC enumerates the provisions which shall not extend to the Provincial Small Cause Court. The provisions which have been excepted from applicability of the Small Causes Court do not include Order VIII, thus, counter claim can very well be filed by the defendant in a suit before the Small Causes Court.

E 23. We have noted above the reasons given by the High Court holding that Provincial Small Cause Court cannot entertain the counter claim filed by the defendant who is appellant before us.

F 24. The High Court refers to Item No.11 of Second Schedule which is "a suit for the determination or enforcement of any other right to or interest in immovable property". It appears that the High Court had taken the view that the right under Section 26 of Act, 2005 as claimed by the appellant involves the determination or enforcement of any right to or interest in immovable property.

G 25. The Act, 1887 has been amended in the State of Maharashtra by Maharashtra Act 24 of 1984 w.e.f. 1.1.1985. Chapter IVA has been inserted in Act, 1887 containing Section 26, 26A, 26B and 26C. Section 26 is quoted as below:

"26. Suits or proceedings between licensors and licensees or landlords and tenants for recovery of possession of immovable property and licence fees or rent, except those to which other Acts apply, to lie in Court of Small Causes.—

H

(1) Notwithstanding anything contained elsewhere in this Act, but subject to the provision of sub-section (2), the Court of Small Causes shall have jurisdiction to entertain and try all suits and proceedings between in licensor and licensee, or a landlord and tenants, relating to the recovery of possession of any immovable property situated in the area within the local limits of the jurisdiction of the Court of Small Causes, or relating to the recovery of the licence fee or charges or rent therefor, irrespective of the value of the subject matter of such suits or proceedings.

(2) Nothing contained in sub-section (1) shall apply to suits or proceedings for the recovery of possession of any immovable property or of licence fee or charges or rent thereof, to which the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, the Bombay Government Premises (Eviction) Act, 1955, the Bombay Provincial Municipal Corporations Act, 1919 or the Maharashtra Housing and Area Development Act, 1976, or any law for the time being in force, apply."

26. Section 26 sub-Section (1) begins with "**notwithstanding anything contained elsewhere in this Act**". In the suit which was filed by the respondent before the Judge, Small Causes Court, the plaintiff (respondent herein) has claimed himself to be licensor and appellant as gratuitous licensee. In paragraph 9 of the plaint following has been pleaded by the plaintiff:

"9. The Plaintiff submits that the Defendant has falsely stated in the Marriage petition bearing PA No.23/2011 that she is in actual and physical possession of the suit flat even though she has been in use of the suit flat only as a gratuitous licensee. The plaintiff through his advocate served a notice to the Defendant on 23.01.2013, revoking the gratuitous license and asking the Defendant to stop the use and occupation of the suit flat..."

27. Although the relief which has been claimed by the plaintiff does not specifically contain any relief regarding recovery of possession from the appellant but the reliefs sought for indicate that the appellant is sought to be restrained from using the suit flat.

A 28. It is relevant to note that Item No.4 of Second Schedule which included “a suit for the possession of immovable property or for the recovery of an interest in such property” had been deleted by Maharashtra Act 24 of 1984. Section 26 begins with ‘*non obstante*’ clause which shall override all contrary provisions contained in Act, 1887. Maharashtra Act 24 of 1984 has been brought by inserting Section 26 and by deleting
B Item No.4 of Second Schedule only to make suit between licensor and licensee to be filed before the Judge, Small Causes Court. The suit filed by the plaintiff is virtually a suit for possession of the suit flat from the appellant who is occupying the same. Plaintiff alleged in the plaint that the gratuitous licence of the appellant has been terminated on 23.01.2013,
C hence, appellant is not entitled to use the flat and is liable to remove her belongings.

29. “Notwithstanding anything contained elsewhere in this Act” as used in Section 26(1) of Act, 1887 are words of expression of the widest amplitude engulfing the contrary provisions contained in the Act.
D The suit in question has been filed by the plaintiff for enforcement of his right as a licensor after allegedly terminating the gratuitous licence of the appellant. On a plain reading Item No.11 of Schedule II covers determination or enforcement of any such right or interest in immovable property. But by virtue of Section 26 sub-Section (1) as applicable in State of Maharashtra, Item No.11 of Schedule 2 has to give way to
E Section 26(1) and a suit between licensor and licensee which is virtually a suit for recovery of immovable property is fully maintainable in Judge, Small Causes Court that is why the suit has been instituted by the plaintiff in the Judge, Small Causes Court claiming the right and interest in the immovable property.

F 30. When the suit filed by the plaintiff for determination or enforcement of his right as a licensor can be taken cognizance by Judge, Small Causes Court we fail to see that why the relief claimed by the appellant in the Court of Small Causes within the meaning of Section 26 of Act, 2005 cannot be considered by the Judge, Small Causes Court. In
G facts of the present case, the bar and embargo under Item No.11 of Schedule II read with Section 15 of Act, 1887 stand whittled down and engulfed by virtue of Section 26 sub-Section (1) as applicable in Maharashtra.

H 31. A statutory provision containing *non obstante* clause has to be given full effect. This Court in *Union of India and another vs.*

G.M. Kokil and others, 1984 (Supp) SCC 196 has laid down in paragraph 11 as below: A

“11. ...It is well-known that a non obstante clause is a legislative device which is usually employed to give overriding effect to certain provisions over some contrary provisions that may be found either in the same enactment or some other enactment, that is to say, to avoid the operation and effect of all contrary provisions. Thus the non obstante clause in Section 70, namely, “notwithstanding anything contained in that Act” must mean notwithstanding anything to the contrary contained in that Act and as such it must refer to the exempting provisions which would be contrary to the general applicability of the Act...” B C

32. Learned counsel for the appellant has placed reliance on a judgment of the Bombay High Court in *Writ Petition No.5648 of 2015, Ambreen Akhoun vs. Aditya Aurn Paudwal and Ors.* Decided on 4th August, 2015. The issue which was involved in the said case has been noted in paragraph 2 which is to the following effect: D

“2.This Writ Petition involves a question of law as to whether any relief can be sought against the relative of the respondent husband in the proceedings filed under Section 26 of the Protection of Women from Domestic Violence Act before the Family Court ?” E

33. After considering the provisions of Act, 2005 and certain precedents, the Bombay High Court has laid down following in paragraph 18: F

“18. As a question of law is raised before this Court, the Court has restricted its finding only to that extent and answered that the relatives of the husband being respondents under Section 2(q) of the D V Act can be made party respondents before the Family Court if the proceedings specified under Section 26 of the D.V. Act are preferred.” G

34. In the present case, the issue which is raised is entirely different and pertains to the jurisdiction of Small Causes Court to entertain counter claim filed by the appellant seeking an order of residence. The above judgment is not relevant for answering the issue raised in the present case. H

A 35. Learned counsel for the appellant has placed reliance on judgments of this Court in *Allahabad Bank vs. Canara Bank*, 2000(4) SCC 406; *Solidaire India Ltd. vs. Fair Growth Financial Services Ltd. & ors.*, 2001 (3) SCC 71 and *Bank of India vs. Ketan Parekh*, 2008 (8) SCC 148 for the proposition that a special Act overrides a general Act and when a conflict is found in two special Acts, the special Act latter in point of time has to prevail. He further contends that dominant purpose of the Act has to be looked into while deciding the question as to which of the Act shall prevail over other. In the facts of the present case especially Section 26 as inserted in the State of Maharashtra by Maharashtra Act 24 of 1984, it is not necessary to enter into the issue of conflict between Act, 1887 and Act, 2005. We have already observed above that the suit in the nature of present suit was cognizable before the Judge, Small Causes Court, hence, in the said suit determination of claim of the appellant seeking a right of residence under Section 19 is also not excluded from consideration. It is further to be noted that Act, 2005 was enacted to secure a social purpose. The provisions of the Act have to be construed widely. This Court in *Hiral P. Harsora and others vs. Kusum Narottamdas Harsora and others*, 2016 (10) SCC 165 had occasion to consider the ambit and scope of Act, 2005. In paragraph 25 following has been stated by this Court:

E “25. When we come to Section 26 of the Act, the sweep of the Act is such that all the innovative reliefs available under Sections 18 to 22 may also be sought in any legal proceeding before a civil court, family court or criminal court affecting the aggrieved person and the respondent. The proceeding in the civil court, family court or criminal court may well include female members of a family, and reliefs sought in those legal proceedings would not be restricted by the definition of “respondent” in the 2005 Act. Thus, an invidious discrimination will result, depending upon whether the aggrieved person chooses to institute proceedings under the 2005 Act or chooses to add to the reliefs available in either a pending proceeding or a later proceeding in a civil court, family court or criminal court. It is clear that there is no intelligible differentia between a proceeding initiated under the 2005 Act and proceeding initiated in other fora under

H

other Acts, in which the self-same reliefs grantable under this Act, which are restricted to an adult male person, are grantable by the other fora also against female members of a family..." A

36. Section 26 of the Act, 2005 has to be interpreted in a manner to effectuate the very purpose and object of the Act. Unless the determination of claim by an aggrieved person seeking any order as contemplated by Act, 2005 is expressly barred from consideration by a civil court, this Court shall be loath to read in bar in consideration of any such claim in any legal proceeding before the civil court. When the proceeding initiated by plaintiff in the Judge, Small Causes Court alleged termination of gratuitous licence of the appellant and prays for restraining the appellant from using the suit flat and permit the plaintiff to enter and use the flat, the right of residence as claimed by the appellant is interconnected with such determination and refusal of consideration of claim of the appellant as raised in her counter claim shall be nothing but denying consideration of claim as contemplated by Section 26 of the Act, 2005 which shall lead to multiplicity of proceeding, which can not be the object and purpose of Act, 2005. B C D

37. We, thus, are of considered opinion that the counter claim filed by the appellant before Judge, Small Causes Court in Civil Suit NO.77 of 2013 was fully entertainable and courts below committed error in refusing to consider such claim. E

38. We, however, make it clear that we have neither entered into the merits of the claim of the appellant nor shall be understood to have expressed any opinion on the claim either way and the merits of the claim has to be considered by the court in accordance with law.

39. In the result, the appeal is allowed, the judgment of the High Court dated 07.07.2016, judgment and order dated 05.11.2014 of 5th Additional Judge, Small Causes Court, Pune and judgment dated 17.12.2015 of the District Judge, Pune are set aside. It is held that counter claim filed by the appellant in Civil Suit No.77 of 2013 is fully entertainable by Judge, Small Causes Court and needs to be considered in accordance with law. F G