

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR**

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3103 OF 2024

Shital Prashant Aklujkar	]	
Age: 39 years, Occu: Household	]	
Plot No.55D, Prajakta Niwas,	]	
Dr. Antrolkar Nagar 1, Hotgi Road,	]	
Solapur.	]	...Petitioner
	]	(Ori. Respondent)
Versus	]	
	]	
1. Shri. Prabhakar Narhar Aklunjkar	]	
Age: 80 years, Occu : Retired,	]	
	]	
2. Shailaja Prabhakar Aklujkar	]	
Age: 72 years, Occu: Retired	]	
	]	
3. Prashant Prabhakar Aklujkar	]	
Age : 40 years, Occu: Business	]	
	]	
All R/at Block No.30, Mukteshwar	]	
Housing Society, near Dyaneshwar	]	
Nagar, Jule Solapur, Solapur	]	...Respondents
	]	(Ori. Defendant)

**WITH
INTERIM APPLICATION NO. 11080 OF 2025
IN
WRIT PETITION NO. 3103 OF 2024**

1. Prabhakar Narhar Aklunjkar	]	
Age: 80 years, Occu : Retired,	]	
	]	
2. Shailaja Prabhakar Aklujkar	]	
Age: 72 years, Occu: Retired	]	
	]	
Both r/o. Block No.30, Mukteshwar	]	
Housing Society, Near Dnyaneshwar	]	

Nagar, Jule Solapur, Solapur

]...Applicants

IN THE MATTER OF

Shital Prashant Aklujkar

]

Age: 39 years, Occu: Household

]

Plot No.55D, Prajakta Niwas,

]

Dr. Antrolkar Nagar 1, Hotgi Road,

]

Solapur.

]...Petitioner

Versus

1. Shri. Prabhakar Narhar Aklunjkar

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Age: 80 years, Occu : Retired,

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Age : 40 years, Occu: Business

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R/o. Block No.30, Mukteshwar

]

Housing Society, near Dyaneshwar

]

Nagar, Jule Solapur, Solapur

]...Respondents

.....

*Adv. Hrishikesh S. Shinde, for Petitioner.**Adv. Pradeep Salgar a/w Adv. Vaishnavi Shelar, for Respondent Nos.1 and 2.**Adv. Rishikesh Ajit Mohite, for Respondent No.3.*

.....

CORAM : SHAILESH P. BRAHME, J.**RESERVED DATE : 29th AUGUST, 2026.****PRONOUNCED DATE : 11th SEPTEMBER, 2026.****JUDGMENT :**

Heard both sides finally.

2. The petitioner is taking exception to the order dated 10.10.2023 passed by Sub-Divisional Officer-cum-Senior Citizens Tribunal, directing the petitioner to hand over possession of the premises to respondent Nos.1 and 2, passed under Section 5 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as “ the Act”, for the sake of convenience and brevity).

3. The respondent Nos.1 and 2 are the parents-in-law of the petitioner who had instituted proceedings under Section 5 of the Act. The respondent No.3 is the husband of the petitioner. He had initiated proceedings of dissolution of marriage bearing Petition No. A-53 of 2016 and secured decree on 22.01.2021, which is subjected to challenge in High Court. The Family Court appeal is still pending and execution is stayed.

4. The petitioner had filed Criminal M.A. No. 639 of 2013 under Section 12 of Protection of Women from Domestic Violence Act, 2005 (D.V. Act), against respondents. It was partly allowed by judgment and order dated 30.09.2024, awarding maintenance of Rs.3000/- to the petitioner and Rs.2500/- to the daughter. The judgment has been subjected to challenge by both sides. The petitioner had filed RCS No.293 of 2014 for injunction. It was dismissed on 16.08.2019. She had also filed proceedings for restitution of conjugal rights bearing Petition No.152 of 2015 against the respondent - husband. It was dismissed on

22.01.2021.

5. The controversy pertains to residential house measuring 2222 square feet situated at Plot No. 55-D, Antrolkar Nagar, Solapur within municipal limits. The respondent No.1 retired as custom officer. He had purchased suit house on 27.01.1987. The respondents senior citizens have another son Vijaykumar. A gift Deed has been executed by the respondent No.1 on 18.06.2015 to Vijaykumar transferring a house measuring 82.57 square meter situated at Plot No.30, Majrewadi, which is also within municipal limits, Solapur.

6. The Tribunal under Act passed impugned order which was challenged by the petitioner before Collector. It was allowed on 25.10.2023. The respondents preferred Writ Petition No.14898 of 2023. It was pointed out that the appeal preferred by the petitioner was not maintainable. Hence, the Co-ordinate Bench quashed the order of Collector and permitted the petitioner to assail order of Sub-Divisional Officer and also restrained the respondent No.1 from creating third party interest. As per the directions of High Court passed on 16.02.2024, present petition is filed.

7. Learned counsel for the petitioner submits that first floor is in possession of the petitioner and her daughter and the ground floor can be retained by the respondent senior citizens. The petitioner has to look

after teenage daughter and order of eviction is causing grave hardship and it is detrimental to the daughter's interest. It is vehemently submitted that petitioner is ready to cohabit with the husband. The decree of dissolution has been assailed in High Court. Hence, the order of eviction is arbitrary and harsh. It is submitted that application of the respondent Nos.1 and 2 is not maintainable, as his financial position is sound. He executed Gift Deed of another house to Vijaykumar. It is vehemently contended that against the judgment and order dated 30.09.2024, both parties have preferred appeals which are pending. The reliance is placed on the judgment of *S. Vanitha Vs. Deputy Commissioner, Bengaluru Urban Districts & Ors.*¹. It is further contended that respondent No.3 is not paying maintenance. The respondents have made baseless allegations on the fidelity of the petitioner. It is further contended that alternate accommodations shown by the respondents are not suitable.

8. To repel above submissions, learned counsel Mr. Pradeep Salgar, for the respondent Nos.1 and 2 would submit that the house in question is a self acquired property of the respondent No. 1. Due to the strained relations between the petitioner and the respondents, it is not possible to reside together peacefully. My attention is adverted to the affidavit in reply to point out that the respondents showed readiness to provide alternate accommodation on rent till the Family Court appeals are

¹ (2021) 15 SCC 730.

decided finally. It is further submitted that near about four properties are made available to the petitioner and readiness was shown to bear the rent, but still the petitioner did not accept. My attention is adverted to the undertaking filed by the respondents and the correspondence to show that offer made by him is genuine. It is further submitted that the petitioner threatened those proposed landlords. Her conduct is objectionable and vindictive. The learned counsel has also informed this Court that his client is ready to give post dated cheques for the future rent.

9. The respondent No. 3 had filed Petition No. A – 53 of 2016 for dissolution of marriage. The petitioner had preferred Petition No. A – 152 of 2015 for restitution of conjugal rights. Both petitions were commonly decided by judgment dated 22.01.2021. The petition for restitution of conjugal rights was dismissed, whereas the petition for dissolution of marriage was allowed. Both parties have preferred Family Court Appeals in High Court. The decree for dissolution of marriage has been stayed in appeal. The petitioner's application preferred U/Sec. 12 of the D. V. Act was partly allowed by the Judicial Magistrate First Class vide judgment dated 30.09.2024. Both sides have preferred Criminal Appeal No. 33 of 2024 and Criminal Appeal No. 34 of 2024 before the Sessions Court, which are pending.

10. The relations between the parties are strained. There are couple

of complaints filed by them against each others. The suit house was purchased by the respondent No. 1 on 27.01.1987. It is comprising of four rooms on ground floor and four rooms on first floor. The petitioner and her daughter are occupying first floor. In this backdrop claim and the submissions of the parties are required to be assessed.

11. The respondent No. 1 is retired Customs Officer. The suit house was purchased by him. Another house located within municipal limits of Solapur was gifted by him on 18.06.2015 to his another son Vijaykumar. Its an obligation of both sons as well as the petitioner to maintain and look after respondent Nos. 1 and 2, the senior citizens. A judicial notice can be taken that the respondent No. 1 might be getting pension. It is not the claim of the respondent Nos. 1 and 2 that they are unable to maintain themselves and the financial condition is precarious. Their predominant claim is that the petitioner and the respondent No. 3 have been occupying the premises illegally and they are being harassed, threatened and tortured by the petitioner. No monetary relief is claimed in the applications before the Tribunal.

12. The respondent Nos. 1 and 2 have another son to whom one house was gifted by them. No reason is forthcoming as to why they have not made any claim against him. His house also can be said to be available for them. The Gift Deed is executed after petitioner resorted to the relief under D. V. Act and instituted suit R.C.S. No. 293 of 2014

for injunction. The execution of the Gift Deed appears to be with the purpose. Similarly exclusion of another son Vijaykumar from the proceedings under the Act fortifies my inference that the respondent Nos. 1 and 2 have deliberately filed proceedings under the Act for eviction of the petitioner. There are two separate units of the suit house and the parties can reside independently without any interference.

13. In above circumstances and for the reasons recorded above in the proceedings are filed under Section 4 of the Act, no relief can be granted to the respondent Nos. 1 and 2. The pre-requisite for making application under Section 4 of the Act is inability to maintain himself or herself from his or her own earning or out of the property owned by him or her, which is absent in the present case. The Tribunal committed error of jurisdiction for overlooking this aspect of the matter. I find that respondents are not entitled to any relief under the Act, muchless relief of eviction of the petitioner.

14. The respondent No. 1 gets pension. The respondent No. 2 was Head Mistress and she might be getting pension. They are shown to have been residing at Block No. 30, Mukteshwar Housing Society, near Dnyaneshwar Nagar, Solapur. Their another son Vijaykumar is there to look after them. As against that the petitioner has to take care of minor teenage daughter and they are staying on the first floor of the suit house. The decree of dissolution of marriage has been challenged in

the appeal, so also decree passed in restitution of conjugal rights. The judgment and order dated 30.09.2024 passed in D. V. Act proceeding is under challenge before the Sessions Court. I find that the impugned order of eviction is unsustainable, for present.

15. The learned counsel for the petitioner has heavily relied upon judgment of the Supreme Court in the matter of **S. Vanitha** (supra).

Following are the relevant extracts :

“37. The above extract indicates that a significant object of the legislation is to provide for and recognise the rights of women to secure housing and to recognise 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.

38. 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 2627 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 realisation.”

16. The facts of the present case are identical with the facts before the Apex Court. On the contrary in the case at hand both the senior citizens are well of and they have sufficient accommodation with them. Following the principles laid down by the Apex Court, I hold that impugned order is bad in law.

17. Learned counsel for the respondents has relied on the judgment of the Supreme Court in the matter of ***Manju Arora Vs. Neelam Arora and another²***. The facts of that case are distinguishable. The inter play

² (2026) 1 CCC 9456.

between D. V. Act and Senior Citizen Act was not under consideration. The readiness shown by the respondents to provide alternate accommodation and expenses for it is not sufficient to protect the petitioner's interest. This judgment will not help the respondents.

18. Further reliance is placed on the judgment of ***Sambhaji Balkrishna Zambre Vs. Chhaya Balkrishna Zambre***³. The case before the Coordinate Bench was purely under the Senior Citizens Act. No proceedings were filed under the D. V. Act. It was mother who was claiming relief against son. In those context interest of the mother was protected by the Courts. The facts are distinguishable. This judgment would not enure to the benefits of the respondents. Similar is the case cited by the respondents in the matter of ***Bholenath Mevalal Nishad Vs. Shyamdulari Mevalal Nishad and others*** in Writ Petition No. 16375 of 2025, judgment dated 05.03.2026. Though it is held that relief of eviction simplicitor without there being any monetary relief can be claimed, in a given facts and circumstances of the present case the relief of eviction cannot be granted.

19. I reiterate that facts of the present case are more akin to the law laid down by the Hon'ble Supreme Court in the case of ***S. Vanitha*** (supra). Therefore, this Court is bound to follow the decision of the Supreme Court and the petition succeeds.

³ 2026 SCC OnLine Bom 2895.

20. I, therefore, pass following order :

::ORDER::

- A. The writ petition is allowed.
- B. The impugned judgment and order dated 10.10.2023 passed by the Sub Divisional Officer and Sub – Divisional Magistrate, Solapur No. 1, Solapur is quashed and set aside.
- C. Application No. KV/419/2023 preferred by the respondent Nos. 1 and 2 under Section 5 of the Act stands rejected.
- D. It shall be open for them to re-agitate the claim in case of change of circumstances in future.
- E. In view of disposal of writ petition, pending applications, if any, also stand disposed of.

[SHAILESH P. BRAHME, J.]