

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AURANGABAD

CRIMINAL REVISION APPLICATION NO. 235 OF 2013

- 1] Sandhya w/o Sanjay Mahurkar,
age 36 years, occ. Household,
- 2] Shivani d/o Sanjay Mahurkar,
age 17 years, occ. Education,
- 3] Shubham s/o Sanjay Mahurkar,
age 16 years, occ.education,
- 4] Manish s/o Sanjay Mahurkar,
age 13 years, occ. Education,
Resp. Nos. 2 to 4 are minor
u/g of their mother
i.e. Petitioner no.1

All r/o Waman Nagar,
Tq. And Dist. Nanded

...Applicants

VERSUS

Sanjay s/o Madhav Mahurkar,
age 40 years, occ. Service
at Zilla Parishad High School,
Hadgaon, Tq. Hadgaon,
District Nanded

...Respondent

.....
Shri V.P.Savant, advocate for applicants
Smt. A.N.Ansari, advocate for respondent sole
.....

CORAM : V.M.DESHPANDE, J.

DATED : 13th January, 2015

ORAL JUDGMENT :-

1] Rule. Rule is made returnable forthwith. With the consent of the learned counsel for the parties taken up for final hearing.

2] I have heard Shri Vilas P. Savant, learned counsel for the applicants and Smt. A.N.Ansari, learned counsel for sole respondent.

3] Proceedings under the provisions of the Protection of Women from Domestic Violence Act, 2005 were initiated by the present applicants against the respondent. The said proceedings were filed in the court of Judicial Magistrate, First Class at Nanded. The said proceeding was registered as Miscellaneous Criminal Application No. 318 of 2009. In the said proceedings, the applicants claimed maintenance and also the right of residence in the house.

4] On being notice, the respondent put his appearance and filed his written statement. The material allegations made in the application were denied by the respondent.

5] The learned Magistrate partly allowed the application vide judgment and order, dated 5.5.2010. By the said order,

the learned Magistrate granted Rs.800/- per month to each of the applicants by way of maintenance from the date of the application. By the said order, he has also directed the respondent to pay Rs.1,500/- per month from the date of the order towards the rent to the applicants.

6] The order dated 5.5.2010 was challenged by the present applicants by filing the appeal in the Sessions Court. The said appeal was registered as Criminal Appeal No. 52 of 2010. It appears that the respondent was satisfied with the finding and the order passed by the learned Magistrate and he did not question the said order. Thus, so far as the order, dated 5.5.2010 vis-a-vis the respondent/husband is concerned, the same has attained finality.

7] The learned lower appellate court, after hearing the parties to the appeal, was pleased to dismiss the appeal vide judgment and order, dated 7.9.2013. Against these concurrent findings, the present applicants are before this court. Learned counsel for the applicants vehemently submitted that both the courts below committed a wrong in not granting the right of residence in the house which is situated at Mahsul colony at Nanded. He submitted that in the said house the present respondent has his share and in that view of the matter the applicants being the wife and children of the

respondent/husband, they have every right to reside in the said house.

8] Perusal of both the impugned judgments and orders shows that the house at Mahsul colony, Nanded is in the name of Kevalabai w/o Madhavrao Mahurkar, who is the mother of present respondent. Both the courts below, on the basis of available evidence have recorded a finding concurrently that the said house, at no point of time, was the matrimonial house. Further said house was not shared by the present applicants with the respondent. Therefore, merely because the respondent has any right of succession in the said house, that will not entitle the present applicants to claim the right of residence.

9] Apart from the fact that the said house was never shared by the applicants along with the respondent, the house admittedly stands in the name of Kevalabai and she was never made party in the proceedings. Therefore, the present applicants want the order to share such house which is exclusively owned and possessed by Kevalabai behind her back. Both the courts below have considered the said aspect rightly and have rejected the claim of right of residence. Though the right of residence is rejected, the learned trial court has taken care of the interest of the applicants by directing the

respondent to pay Rs.1,500/- per month to the applicants, so that they will be able to procure the rented house at Nanded. It is not the case of the applicants either before the learned appellate court or before this court that Rs.1,500/- per month is insufficient amount. In that view of the matter, there is no merit in the Criminal Revision Application, and hence, the Revision Application is dismissed. Rule discharged.

[V.M.DESHPANDE, J.]

dbm/crra235.13