

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8227 OF 2014

Jaykumar Mistry ... Petitioner
Vs.
Bhavani Jaykumar Mistry ... Respondent

Mr. Mandar Limaye for Petitioner.
Mr. Gopalkrishna R. Hegde for Respondent.

CORAM : R. G. KETKAR, J.
DATE : JANUARY 21, 2015

P.C. :

Heard Mr. Limaye, learned Counsel for petitioner and Mr. Hegde, learned Counsel for respondent at length.

2. By this Petition under Articles 226 and 227 of the Constitution of India, the petitioner-husband has challenged the judgment and order dated 23.06.2014 passed by the learned Judge, Family Court No.3, Mumbai in Interim Application No.162 of 2014, Exhibit-13. By that order, the Family Court rejected the application made by the petitioner for mandatory temporary injunction for removing the respondent from matrimonial home i.e. Flat No.16, Ganesh Krupa Co-operative Housing Society, J. P. Road No.5, Goregaon (E), Mumbai (for short 'suit premises'). The petitioner has also prayed for temporary injunction restraining the respondent from entering the suit premises.

3. In support of this Petition, Mr. Limaye invited my attention to the Petition for divorce filed by the Petitioner under Section 13(1)(ia) of the Hindu Marriage Act, 1955, and in particular paragraph 12 thereof. He also invited my attention to interim application made by the petitioner on 20.03.2014 (exhibit-13). He submitted that before the marriage

counselor, parties agreed to give divorce by mutual consent, and in fact, exchanged emails. However, at the last moment, respondent had backed out. He submitted that the suit premises stands jointly in the name of petitioner and respondent. However, the entire consideration is paid by the petitioner. Flat at Bhayander though stands in the name of the respondent, the petitioner had borrowed loan and has repaid the entire loan amount. In other words, though the flat at Bhayander stands in the name of the respondent, the entire consideration is paid by the petitioner. He submitted that having regard to the conduct of the respondent as stated in paragraph 12 of the Petition for divorce, it is impossible for the petitioner to stay along with the respondent in the suit premises. It is also adversely affecting petitioner's health. For all these reasons, he submitted that the interim application deserves to be allowed.

4. On the other hand, Mr. Hegde supported the impugned order. He submitted that flat at Bhayander stands in the name of respondent. The suit premises stands jointly in the name of petitioner and respondent. In other words, since the respondent is a co-owner, the petitioner cannot claim any injunction as sought in the interim application. As far as the allegations of cruelty made against the respondent are concerned, these are required to be proved by leading evidence. He submitted that this aspect is considered by the Family Court in paragraph 8 of the impugned order. He, therefore, submitted that no case is made out for interfering with the impugned order.

5. I have considered the rival submissions made by the learned Counsel appearing for the parties. I have also perused the material on record. In paragraph 8, the Family Court observed that parties are admittedly staying in their matrimonial home at Goregaon. The petitioner has made serious allegations of cruelty against the respondent.

The petitioner has also placed on record photographs of respondent to contend that she is playing black-magic. The Family Court observed that on the basis of the photographs, no finding can be expressed as regards the behaviour of the respondent. All these allegations and counter-allegations are required to be considered on the basis of evidence that is to be led by the parties. Having regard to the fact that the suit premises jointly stands in the name of petitioner and respondent, respondent has every right to continue to stay in the suit premises, being her matrimonial home.

6. After hearing the learned Counsel appearing for the parties, I do not find that the Family Court committed any error in dismissing the application. The suit premises stands jointly in the name of the petitioner and respondent. Respondent is a co-owner, unless proved otherwise. In view thereof, Petition fails and the same is dismissed. Liberty is reserved to the petitioner to apply for expeditious disposal of Divorce Petition. If such application is made, the Family Court will pass appropriate order keeping in mind the controversy raised in the Divorce Petition. Order accordingly.

(R. G. KETKAR, J.)