

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

CRIMINAL WRIT PETITION NO. 551 OF 2016

Nurunisa w/o Allhabaksh Beg ...Petitioner

VERSUS

Ruksanabegam w/o Allabaksh Beg
and another ...Respondents

.....
Shri B.S.Kedar, advocate for petitioner
Smt. A.N.Ansari, advocate for respondents
.....

CORAM : N.W.SAMBRE, J.

DATED : 4th October, 2016

PER COURT :-

The learned Judicial Magistrate, First Class, Badnapur on 2.8.2012 in Miscellaneous Criminal Application No. 59 of 2010 granted an order under Protection of Women from Domestic Violence Act, 2005 which was upset in Criminal Appeal No. 65 of 2012 vide order, dated 7.10.2015.

2. The bone of contention, as is raised by learned counsel Shri Kedar is that without notice to the present petitioner, the learned Additional Sessions Judge-3, Jalna has decided the appeal. According to him, the petitioner is shown to have been served through paper publication, which, in no case can be termed as good service.

3. Mrs. Ansari, learned counsel for the respondents, while opposing the claim would submit that the petitioner was very much served pursuant to the paper publication, as was given in daily news paper, 'Sakal', which has wide circulation. She would then urge that apart from the above, the order is passed by the learned Additional Sessions Judge on merits of the matter. According to her, the petition needs to be rejected.

4. Having bestowed my thoughts to the submissions made, the fact remains that pursuant to the present dispute the parties suffered certain civil proceedings in which there was no

adjudication of the rights of the parties, but it is by virtue of compromise entered into between the parties in the civil suit. Not only this, the petitioner is alleged to have created third party interest in the suit property.

5. In my opinion, in the interest of justice, it will be appropriate to grant an opportunity of hearing to the present petitioner with following directions.

The order dated 7.10.2015, passed by the learned Additional Sessions Judge, Jalna in Criminal Appeal No. 44 of 2016 is set aside.

The matter is remitted back to the learned Additional Sessions Judge-3, Jalna for deciding the appeal afresh after giving an opportunity of hearing to the petitioner.

The petitioner and the respondents shall appear before the learned Additional Sessions Judge-3, Jalna on 15.11.2016 and shall not seek any adjournment before the said Court and shall work out the appeal.

If the parties fail to appear before the learned Additional Sessions Judge, as directed above, the said Court will be at liberty to proceed with the matter on merits.

It is expected of the learned Additional Sessions Judge to decide the appeal within a period of four weeks from the date of appearance of the parties before him.

In the mean time, the parties to maintain status quo as on today.

Petition stands disposed of in the above terms.

(N.W.SAMBRE, J.)

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