

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

CRIMINAL WRIT PETITION NO. 1191 OF 2015

DEORAO S/O ASARAM MORE AND OTHERS
VERSUS
RUKHMAN W/O BHASKAR MORE AND OTHERS

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Advocate for Petitioners : Mr Jadhav Kakasaheb B
Advocate for Respondents : Mr Gore Ravindra Vitthal

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CORAM : V.K. JADHAV, J.

Dated: November 23, 2016

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PER COURT :-

1. Heard finally with the consent at admission stage.
2. Being aggrieved by the order dated 21.10.2013 passed below Exh.37 in R.C.S. No.246/2011 by the Jt. Civil Judge J.D., Gangapur and the order passed by the Additional Sessions Judge, Vaijapur dated 29.6.2015 in Criminal appeal No.12/2013 confirming thereby the order passed by the learned Jt. Civil Judge J.D., Gangapur, the original defendants in the aforesaid R.C.S No.246/2011 to the extent of aforesaid orders passed by Jt. Civil Judge J.D., Gangapur and confirmed by the Additional Sessions Judge, Vaijapur in Criminal Appeal No.12/2013, preferred this writ petition.

3. Brief facts, giving rise to the present writ petition are as follows :-

a] Respondent No.1 herein after death of her husband instituted a RCS No.246/2011 against the present petitioners in respect of joint property for partition and separate possession. In the said suit, respondent no.1 alongwith her minor children also filed an application Exh.37 under the provisions of section 26 of The Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as 'the Act of 2005') for a relief of maintenance.

b] Petitioners have strongly resisted the said application, however, the learned Jt. Civil Judge J.D., Gangapur by its impugned order dated 21.10.2013 below Exh.37 in RCS No.246/2011 partly allowed the said application and thereby directed the present petitioners to pay maintenance @ Rs.1,500/-p.m. to the respondents till the disposal of the suit. Being aggrieved by the same, the present petitioners preferred a Criminal Appeal no.12/2013 before the Sessions Judge, Vaijapur and the learned Additional Sessions

Judge, Vaijapur by its judgment and order dated 29.6.2015 dismissed the appeal by confirming the order passed by the learned Jt. Civil Judge J.D., Gangapur as aforesaid. Hence, this writ petition.

4. The learned counsel for the petitioner submits that, the Jt. Civil Judge J.D., Gangapur has passed impugned order dated 21.10.2013 directing thereby the petitioners to pay maintenance of Rs.1,500/- p.m. to the respondents without recording any evidence and, even the respondents herein have not filed any affidavit in the form as prescribed in Section 23 of the Act of 2005. Learned counsel submits that, in terms of provisions of Section 26 of the Act of 2005, though, respondents may seek relief available under sections 18, 19, 20, 21 and 22 of the Act of 2005, before the civil court, however, civil court is bound to record finding on the basis of the evidence that respondent no.1 is subjected to domestic violence as defined under the Act of 2005. In absence of such findings, the impugned order passed by the Jt. Civil Judge J.D., Gangapur below Exh.37 in RCS No.246/2011 is liable to be quashed and set aside.

Learned counsel submits that, the Jt. Civil Judge J.D., Gangapur in the said R.C.S. No. 246/2011 decided application Exh.5 seeking interim relief with the observations that, documents filed by the plaintiff (respondent no.1) prima facie does not support the contentions made in the application and, there is nothing to substantiate that suit properties are joint family properties. Learned counsel submits that, the learned Additional Sessions Judge has not applied his mind to the facts of the case and, erroneously confirmed the order passed by the learned Jt. Civil Judge J.D., Gangapur. Learned counsel submits that, even though, said suit no.246/2011 was instituted in the year 2011, in the year 2013 respondents preferred an application Exh.37 seeking interim relief of maintenance in the civil proceedings and the learned Jt. Civil Judge J.D., Gangapur granted maintenance from the date of filing of the suit.

5. Learned counsel for respondents submits that, in terms of provisions of section 26 of the Act of 2005, any relief available under section 18, 19, 20, 21 and 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 whether such proceeding was initiated before or after the commencement of this Act and such relief may be sought for in addition to and along with any other relief that the aggrieved person may seek such relief before a civil court or criminal court. Respondent No.1 got married with Bhaskar, who happened to be a son of present petitioner no.1 on 8.5.2004 and he died on 15.1.2009. Respondent No.1 alongwith her husband residing jointly with the petitioners when her husband was alive. Furthermore, out of the joint income, family had purchased certain properties. However, after death of husband respondent no.1, petitioners herein started to behave with her rudely and accordingly driven her out from her matrimonial home. Since then she is residing with her parents house alongwith her children. Learned counsel submits that, respondent no.1 therefore, constrained to institute a civil suit for partition and separate possession to the extent of her share in the joint family property for herself and her

minor children. Learned counsel submits that, considering the same, the Jt. Civil Judge J.D., Gangapur has rightly granted maintenance @ Rs.1,500/- p.m. and the learned Additional Sessions Judge, Vaijapur has rightly confirmed the said order in appeal. No interference is required. Writ petition is devoid of any merits, liable to be dismissed.

6. On careful perusal of the order passed by the Jt. Civil Judge J.D., Gangapur below Exh.37 in RCS No.246/2011, it appears that, the learned Judge has observed that defendant in the suit (present petitioners) have not denied the relationship and further it is nowhere pleaded by them that respondents herein are having any independent source of income. The learned Judge has therefore in unequivocal words observed that defendants (petitioners herein) have committed economical abuse against the respondents herein and the same falls within the purview of the definition of Domestic Violence. Even, the learned Additional Sessions Judge has also considered that for invoking powers under section 26 of the Act of 2005, it is

necessary to consider the question as whether the defendants have committed domestic violence against the plaintiff. Needless to say that, the basic object of the Act is to provide more effective protection of the rights of the woman guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therein or incidental therewith.

7. It is obvious that, civil suit is time consuming and that, the respondent no.1 who is residing with her parents would face starvation in absence of any source of independent income. The petitioners-original defendants refused to give her share in the joint family property and thus respondent no.1 wife has left with no other alternative but to claim such interim maintenance by filing application under section 26 of the Act of 2005 for her maintenance and maintenance of her minor children. I do not find any fault in the order passed by the courts below. Both the courts have concurrently held that the petitioners herein, as appears prima facie from the evidence, committed domestic violence against

the respondents. No interference is required in the said finding at this stage. However, the learned Jt. Civil Judge J.D. Gangapur has granted maintenance from the date of the suit even though the application seeking interim maintenance came to be filed two years after institution of the suit. Respondents-original applicants are thus entitled for the maintenance from the date of the application Exh.37 and not from the date of filing of the suit. With this modification, this writ petition can be disposed off. Hence, following order.

O R D E R

- I. Writ Petition is hereby partly allowed.
- II. The order dated 21.10.2013 passed below Exh.37 in RCS No.246/2011 passed by the Jt. Civil Judge (J.D.) Gangapur and the Judgment and Order dated 29.6.2015 passed by the Additional Sessions Judge, Vijapur in Criminal Appeal No.12/2013 stands confirmed with the following modifications :-

a] The defendants No.1 to 3 (petitioners herein) are directed to pay the maintenance of Rs.1,500/- to the plaintiffs (respondents herein) till final disposal of the suit from the date of application Exh.37.

III. Writ Petition accordingly disposed off.

(V.K. JADHAV, J.)

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