

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER (STAMP) NO. 27652 OF 2016
WITH
CIVIL APPLICATION (STAMP) NO. 27655 OF 2016
IN
APPEAL FROM ORDER (STAMP) NO. 27652 OF 2016**

Mrs.Manju w/o.Gopal Kedia & Ors.	...	Applicants/ Appellants
Versus		
Mr.Sandeep s/o. Gopal Kedia & Anr.	...	Respondents

Mr.R.V. Govilkar i/b. Mr.Vikas Singh Gour for Applicants/Appellants.
Mr.A.M.Saraogi for Respondent No.1.
Mr.Ameet Mehta with Ms.Sheetal Pandya i/b. M/s.Solicis Lex for
Respondent No.2.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 19TH OCTOBER, 2016.

P.C. :

1] This appeal is preferred by the original plaintiffs challenging the order dated 26th September, 2016 by which in the Notice of Motion No.2010 of 2016 taken out by them in Suit No.1922 of 2016, the City Civil and Sessions Court, Dindoshi (Borivali Division), Goregaon, Mumbai, was pleased to refuse the ad-interim relief of mandatory nature, directing respondent no.2 not to remain in possession of the suit flat.

2] Brief facts of the appeal are to the effect that appellants nos.1 and 2 are the parents of appellants no.3 and respondent no.1. Respondent no.2 is the wife of respondent no.1. As per the case of the appellants, the suit premises bearing flat no.803, “A” wing, 8th Floor in the building known as Kingston Palace Co-operative Housing Society situated at Chincholi Bunder Road, Malad (W), Mumbai were owned and possessed by them jointly alongwith respondent no.1. Subsequently in a suit filed by respondent no.1 against appellants, the consent terms came to be filed on 2nd July, 2016 and by virtue of the consent terms, respondent no.1 has surrendered his right in the said flat as well as business where respondent no.1 was shown as partner. It is submitted that respondent no.1 has also removed himself from possession of the suit flat. The matrimonial proceedings in the nature of divorce are pending in the Court in between respondent nos.1 and 2 on account of the serious differences and disputes *interse*.

3] In this backdrop, it is urged that respondent no.2, the daughter-in-law of appellant nos.1 and 2 has, however continued to reside in the suit flat alongwith appellants and her behavior and conduct is causing all kinds of nuisance and annoyance to the appellants. It is urged that she is making wild allegations against the appellants no.3-

her brother-in-law and at the same time, on account of her conduct of lodging frivolous and false complaints with Police, against them, the appellants, are suffering mental torture at her hands. It is urged that her continuous occupation in the suit flat is creating constant nuisance and harassment to the appellant nos.1 and 2 in their old age. The suit flat now belongs to them exclusively and they want to live their life happily and peacefully in the suit flat without any nuisance or obstruction at the hands of respondent no.2. It is submitted by the learned counsel for the appellants that, appellants no.2 father-in-law, is ready to obtain some alternate premises for respondent no.2 and is also ready to bear all the expenses towards the licence fee or other charges of the alternate premises, though it is not his responsibility to do so. Thus, according to the learned counsel for the appellants, this was a fit case where they had rightly approached the trial Court for the relief of injunction restraining both the respondents from entering upon and/or remaining in possession of the suit flat in any manner what so ever.

4] Alongwith the suit they had also filed the Notice of Motion seeking the interim relief of injunction to the effect. It is submitted by the learned counsel for the appellants that the trial Court has vide its impugned order however refused the ad-interim relief in the said Notice

of Motion without giving any valid and legal reasons for the same. The learned counsel for the appellants has, in this respect had drawn attention of this Court to the copies of the complaints dated 28th June, 2016 and 26th July, 2016, which are filed by respondent no.2 against her in-laws to substantiate his submission that it is impossible for appellants to reside in the suit flat alongwith respondent no.2. It is submitted that when respondent no.2 is having no right to remain in possession of the suit flat, as her husband respondent no.1 has already relinquished the said right by accepting the monetary consideration, respondent no.2 be directed to remove herself from the suit flat.

5] Reliance is placed by the learned counsel for the appellants on the decision of this Court in ***Conrad Dias Of Bombay vs Joseph Dias¹***, wherein it was held that, “the parents are entitled to reside peacefully in the house owned by them. A person, who may be a son or daughter-in-law, who is residing with parents in the said house, cannot claim any legal character, much less the character of a licensee, as defined in Section 52. He or she is residing therein simpliciter as the member of family and nothing more or much. He can reside only during the sweet will of the parents and not against their wishes and

1 AIR 1995 Bom. 210

desires”.

6] The learned counsel has also placed reliance on the celebrated decision of the Hon'ble Apex Court in ***S.R. Batra And Anr vs Smt. Taruna Batra***² to submit that respondent no.2 has no right to reside in the suit flat even on the ground that the said flat is her matrimonial home, especially when the suit flat now stands exclusively in the name of the appellants and that respondent no.1, her husband, is shown to be not having any right, title or ownership over the suit flat. It is submitted that respondent no.1 has also now obtained another premises on leave and licence basis, where he has shifted his residence and in such situation respondent no.2 cannot continue to reside in the suit flat, mentally torturing and harassing the appellants.

7] This case of the appellants came to be strongly resisted by the learned counsel for respondent no.2 by submitting that respondent no.2 is having every right to remain in possession of the suit flat, it being her matrimonial home. It is urged that since the date of marriage on 10th March, 2015, respondent no.2 is residing alongwith her husband, respondent no.1 in the suit flat. It is urged that even if she may not be having any right of ownership or title over the suit flat, her

² AIR 2007 SC 1118

right to residence in the said flat, it being her matrimonial home, needs to be protected.

8] It is submitted that respondent no.1-her husband and appellants are acting in collusion to deprive respondent no.2 of her right to residence in the matrimonial home. The learned counsel for respondent no.2 has drawn attention of the Court to the fact that in a collusive suit bearing No. 1559 of 2016 filed by the respondent no.1 against appellants, a consent decree is obtained on 2nd July, 2016 and that too without paying the proper Court fees stamp. It is submitted that the market value of the suit flat comes to Rs.2.30 Crore and $\frac{1}{4}$ th valuation thereof comes to Rs.57.50 Lakh. However in the collusive suit, the valuation was shown much less and by way of consent decree it is shown that respondent no.1 has given up his right, title and interest in the suit flat. It is submitted that till today respondent no.1 continues to reside in the suit flat but only with an intention to deprive respondent no.2 from her right, title and claim of residence in the suit flat, the false case is tried to be made out that respondent no.1 has shifted his residence. It is further submitted by respondent no.2 that she has been subjected to the domestic violence in the nature of physical and mental cruelty, as she has given birth to the female child. As a result of it, she

was constrained to file a case under the provisions of ***the Protection of Women from Domestic Violence Act, 2005***, (herein after referred to as “*the D.V. Act*” for short), it is pending in the Court. The divorce proceedings are also pending in the Court and in such background when she is having a minor child of 8 months, the appellants are bent upon removing her from possession of the suit flat, that too at this interim stage of the suit. It is submitted that she has right to remain in possession of the suit flat, it being her matrimonial home and that right needs to be protected by this Court. Having regard to her vulnerable condition the trial Court has protected her possession, by refusing ad-interim relief in the Notice of Motion filed by the appellants for her removal from the possession of the suit flat. It is urged by the learned counsel for respondent no.2 that as the trial Court has exercised its discretion properly, in the facts and circumstances, in the limited scope of the appellate Court jurisdiction against the discretionary order passed by the trial Court, this court should not interfere.

9] At this stage, it may be stated that respondent no.1-the husband of respondent no.2, has fully supported the case of the appellants and also the impugned order passed by the trial Court by submitting that he has started residing separately in the premises taken

on leave and licence basis and therefore, his wife, respondent no.2 has no right to continue in possession of the suit flat, especially when he is ready to allow her to reside in the premises where he is residing or even take for her on leave and licence basis any other alternate premises in the same vicinity, wherever she may be ready to stay. Hence, according to respondent no.1 also, the impugned order of the trial Court calls for no interference.

10] I have given my thoughtful consideration to the submissions advanced at bar by the learned counsel for the parties. Some undisputed facts in this case are to the effect that respondent no.2 is the legally wedded wife of respondent no.1 and since the date of her marriage in the year 2015 she is continuously residing and at present also residing in the suit flat alongwith the appellants and her husband respondent no.1. It is also a matter of record that she is having a small minor female child of 8 months, born within the wedlock, residing with her. The appellant nos.1 and 2 are the parents of respondent no.1 and appellants no.3 is the brother of respondent no.1. The agreement of sale relating to the suit flat is produced in the paper-boook at page no.59 to show that it was purchased on 15th October, 2004 for consideration of Rs.21,50,000/- and its market price was Rs.33,93,679/-. It was

purchased jointly in the name of appellants nos.1 to 3 and respondent no.1. It is not disputed that at the relevant time respondent no.1 was 20 years old. Hence the submission advanced is that whatever monetary contribution, if he has paid at all, for purchase of the flat, then he has already received the 1/4 amount of the same, towards his share in the suit flat, by virtue of the consent terms filed in the suit instituted by respondent no.1 against the appellants. Therefore, now he is not having any right, title and interest in the suit flat. The heavy reliance is therefore, placed on the fact that the title, ownership and right in the suit flat lies only in the name of appellants nos.1 to 3 and therefore, neither respondent no.1 nor respondent no.2 can claim any right to remain in possession thereof. Accordingly, respondent no.1 has left the possession and started residing separately. Therefore, respondent no.2 should also follow the same suit. She has to leave suit flat and shift to some alternate premises, of which the appellants are ready to make the provision.

11] The submission advanced is also to the effect that as her conduct is causing the nuisance and harassment to the appellants and as her possession, at the most, being of family member of the appellants, is like a licensee. Hence she cannot insist on residing therein against

wish and desire of the owners i.e. appellant nos.1 to 3.

12] On the face of it, needless to state that, this argument of the learned counsel for the appellants appears to be attractive and persuasive but on closure scrutiny one has to negative the same. It is pertinent to note that respondent no.2 is claiming to remain in possession of the suit flat, on the count that it is her matrimonial home and therefore she has right to occupy the same. The provisions of the **D.V. Act**, on which, she is placing reliance in this respect are very clear to the effect that an estranged wife has right to remain in possession of the shared household. According to respondent no.2, as since the date of her marriage, she is residing in the suit flat in the domestic relationship with the appellants and respondent no.1, it is her shared household and hence she cannot be dispossessed from thereof, it is apart whether she is having any ownership or title over the said flat. In my considered opinion, this contention of the respondent no.2 deserves to be accepted, having regard to the definition of “shared household”, which is given in Section 2(s) of the **D.V. Act** and having regard to the provisions of Section 17 of the said Act which pertain to “right to residence” of an estranged wife.

13] This Court has to deal with similar factual position and rival contentions raised in Appeal from Order no.910 of 2014 in the case of ***Mrs.Sarika Mahendra Sureka vs. Mr.Mahendra s/o.Rajkumar Sureka***, in the order dated 19th September, 2016. In the said case also, the in-laws were asking for removal of the daughter-in-law from possession of the suit flat on the ground of it belonging to them exclusively. Whereas it was claimed by the daughter-in-law that it being her matrimonial home, she is having right to reside therein. In the said judgment and order this Court has dealt in detail all the aspects relating to “shared household” and right of daughter-in-law to remain in possession of the “shared household” even if the shared household stands in the name of her in-laws. While deciding the said appeal it was clearly held by this Court, on the analysis of the various provision of the ***D.V. Act*** and the related case laws, which need not be reiterated again, that as regards the right of daughter-in-law to remain in possession of the matrimonial home, it is irrespective of her title or ownership over the said property.

14] It is may be stated that earlier to the enactment of the ***D.V. Act***, the right of an estranged wife to remain in possession of the matrimonial home was not recognized on the ground that she has no

ownership rights or title over the said house. Exactly to meet this situation, the **D.V. Act** was brought on the statute book with this specific object that an estranged wife should not be thrown out of the residential house, immediately after the dispute starts between husband and wife. The very object of making provision for the “Residence orders” in Section 19 of the **D.V. Act** was to secure her right to remain in possession of her matrimonial home. Her right to reside in shared household is also recognized under Section 17 of the **D.V. Act**. The very object and the reason of the **D.V. Act** was to provide protection in Civil law to the estranged wife to ensure that she does not get evicted from matrimonial house on account of family disputes. Hence right of residence is given to her in the shared household under the provisions of Section 17 and 19 of the said Act. Her right to remain in possession is *dehors*, as to whether her husband or she is having any ownership right over the said property. The very definition of “shared household” given in Section 2(s) of the **D.V. Act** implies that it is irrespective of the fact that whether the house stands in the name of her in-laws or it may be taken on rent or it may be a service quarter, her right to remain in possession cannot be disturbed.

15] This Court has, in the case of **Ishpal Singh Kahai vs.**

Ramanjeete Kahai³, also held that under the various provisions of the **D.V. Act** like Section 2(s), 17 and Section 19(1) (a), there is no place for proprietary rights in the scheme of the **D.V. Act**, as it was an extension of the deeper and profound principle of women's right as concomitant of human rights". Hence it is not material to consider in whose name matrimonial home stands. It was further held that the **D.V. Act** came to be enacted essentially to grant statutory protection to victims of violence in domestic sector, who had no proprietary rights owing to which Civil Law protection could not be availed of by them. The **D.V. Act** intends to grant statutory protection to her right to remain in possession of the shared household which is her matrimonial home.

16] In the instant case, once it is held that respondent no.2 is residing in the suit flat in the shared household since the date of her marriage, then it follows that she cannot be ousted from possession of the suit flat, at-least at this interim stage, that too by way of interim mandatory injunction, calling upon her to remove herself from the suit flat. Needless to state that the relief of interim mandatory injunction can be granted only in rarest of rare case, that too to restore status quo ante. By granting ad-interim mandatory injunction at this stage, this Court

3 (2011) DMC 250

will be disturbing the status quo ante and not restoring the same, because it is a matter of record as on today also, respondent no.2 is in possession of the suit flat and therefore the trial Court has rightly considered that at this interim stage, she cannot be vacated there from by order of interim mandatory injunction.

17] As regards the authority relied upon by the learned counsel for the appellants, that of the case of **S.R. Batra (supra)**, this Court has already distinguished the same on facts in the earlier order referred above. In this case also, it needs to be distinguished on facts, as in the case of **S.R. Batra (supra)** the evidence on record proved that mother-in-law and the daughter in-law were residing separately, daughter-in-law was residing on the second floor and the mother-in-law was residing on the ground floor. Therefore, it was not a “shared household” falling within the definition of “shared household” given in Section 2(s) of the **D.V. Act**. Moreover in that case the house was belonging exclusively to mother-in-law and that factual position was not disputed. As against it, in this case even at this *prima facie* stage, it is admitted that the house suit flat was purchased jointly by the appellants and respondent no.1. Not only that, agreement of sale of the suit flat also stands jointly in the name of appellants and respondent no.1. Merely by

virtue of consent decree passed in the suit, which apparently appears to be a conclusive one, filed only with a view to deprive respondent no.2 from her right to remain possession in the suit flat, respondent no.2 cannot be dispossessed there from. It is pertinent to note that respondent no.2 is also having a daughter from respondent no.1, who is also having the claim, the $\frac{1}{4}$ share of respondent no.1 in the suit flat. It is also yet to be decided whether really respondent no.1 has given up his right and whether he has really shifted to some alternate premises? No documentary evidence is produced on record to prove that fact. Therefore there is every possible reason to hold that such case is pending just to remove respondent no.2 from the suit flat.

18] If one considers all these factual aspects of the case, keeping in mind the legal provisions, as laid down in the **D.V. Act**, which was enacted specifically to protecting the right of estranged wife from being dispossessed from the matrimonial home, then it is clear that at this interim stage the appellants cannot be entitled for the relief of interim mandatory injunction, which they are asking this Court to grant. It would be as good as deciding the suit itself, if such relief is granted at this stage. Hence when the trial Court has rightly exercised its discretion while refusing the ad-interim relief, which was in the

nature of an equitable relief. Hence, no fault can be found in the discretion exercised by the trial Court. The view taken by the trial Court, being in tune with the legal position as illustrated above, then in my considered opinion, within the limited scope of the appellate Court jurisdiction, this Court will not be justified in interfering with the impugned order passed by the trial Court. Therefore, no interference is warranted in the same. As a result, the appeal holds no merit, hence stands disposed of as dismissed.

19] In view of the disposal of the appeal, nothing survives in the Civil Application and the same also stands disposed of.

20] However, it is clarified that all the aforesaid observations are made for the purpose of deciding this appeal only, the trial Court not to be influenced in any way by these observations.

(DR.SHALINI PHANSALKAR-JOSHI, J.)