

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11585 OF 2015

Mr. Prasad Acharya

.. Petitioner

vs.

Mrs. Rachana P. Acharya and anr.

.. Respondents

Mr. P.J. Thorat for the Petitioner.

Mr. Udaya S. Samudrala for Respondent No.1.

**CORAM : M. S. SONAK, J.**

**DATE : 15 JANUARY 2016.**

**P.C. :-**

1] Mr. Thorat, learned counsel for the Petitioner, has submitted that there is ample material on record which establishes that the Petitioner and Respondent-wife are not staying together in the same premises. He submits that on account of this reason, the provisions of Domestic Violence Act, 2005 (said Act) are not at all applicable to the dispute raised in the petition, in which the impugned order has been made. He submits that the Petitioner is aggrieved by the impugned order, because the same proceeds on the basis that the provisions of the said Act are applicable to the present dispute.

2] On the other hand, Mr. Samudrala, learned counsel for the Respondent-wife, submits that the provisions of said Act are very much attracted to the dispute raised. He submits that upto a particular point of time, the parties were residing together and the dispute as raised would be covered under various provisions of the said Act, including *inter alia*, Section 26 thereof.

3] The observations, if any, in the impugned order, are obviously *prima-facie* cannot be regarded as conclusive on the issue of applicability of the provisions of said Act. In any case, it is clarified that the issue of applicability of the provisions of the said Act to the dispute in question is specifically kept open for decision by the Family Court, at the stage of final disposal. The Family Court, therefore, will not permit itself to be influenced by any *prima faice* observations made in the impugned order in this regard. All contentions of all parties in this regard are kept open for decision, at the final stage. This, substantially, takes care of the apprehension expressed by the Petitioner through his learned counsel.

4] The Petitioner, shall comply with the directions in the impugned order in the matter of payment of E.M.I., though, such compliance shall be without prejudice to his rights and contentions, *inter alia*, with regard to very applicability of the said Act.

5] With the aforesaid observations, this petition is disposed of.

6] All concerned to act on the basis of authenticated copy of this order.

**(M. S. SONAK, J.)**

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