

*shivgan*FARAD CONTINUATION SHEET No.IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION No.1263 of 2015

IN

MISCELLANEOUS APPLICATION NO.2484 OF 2015

IN

CRIMINAL APPEAL NO.814 OF 2015

IN

C.C.NO.640/SS/2013

Office Notes, Office Memorandum of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. Sandeep Karnik with Shikha Bhura, Vijay Badgujar i/by Singhania Legal Service, Advocates for the Applicant.

Mr. Mohan Rao and Hrishikesh Ambre, Sulbha Rane, Advocates for R.No.1.

Mr. Waseem Pangovhar with Ravi Mishra, Advocates for R.Nos.2 and 3.

Smt. M.R.Tidke, APP for the State.

CORAM : A.S.GADKARI, J.

DATE : 30th June, 2016

P.C.

1) The present application under Section 482 of the Code of Criminal Procedure, 1973 has been filed by the applicant-wife questioning the correctness of the order dated 30.10.2015 passed in the Miscellaneous Application No.2484 of 2015 in Criminal Appeal No.814 of 2015 in C.C.No.640/SS/2013. By the impugned order dated 30.10.2015, the learned Additional Sessions Judge, Greater Mumbai has rejected the application filed by the applicant-wife for stay of the execution of the

order dated 7.9.2015 passed by the learned Metropolitan Magistrate 40th Court, Girgaon, Mumbai in C.C.No.640/SS/2013.

2) At the outset, it is to be noted here that the impugned order dated 30.10.2015 is purely an interlocutory order rejecting the application preferred by the applicant for stay of the execution of the order dated 7.9.2015 passed by the learned Metropolitan Magistrate 40th Court, Girgaon in C.C.No.640/SS/2013 thereby rejecting the application preferred by the applicant under Section 23(1) of the Protection of Women From Domestic Violence Act, 2005 seeking reliefs under Section 19 of the said Act.

3) The applicant has filed C.C.No.640/SS/2013 under Section 12 of the Protection of Women from Domestic Violence Act, 2005 seeking various reliefs as contemplated under the provisions of the said Act. The applicant also filed an application below Ex.1 under Section 23 of the said Act for interim reliefs. By an order dated 7.9.2015 the learned trial Court rejected the said application on the ground that the respondent nos.2 and 3 in the said complaint are not having domestic relationship with the applicant herein and no relief can be granted at the interim stage to the applicant. Application under Section 12 of the said Act is still pending for final adjudication. The learned trial Court passed the order

below Exhibit 1 as contemplated under Section 23(1) of the said Act holding that the applicant is not entitled for any relief at that stage. Feeling aggrieved by the rejection of interim application by the order dated 7.9.2015, the applicant had preferred Criminal Appeal No.814 of 2015 under Section 29 of the said Act in the Sessions Court at Mumbai. The said appeal is also pending for final adjudication. In the said appeal, the applicant filed Miscellaneous Application No.2484 of 2015 for stay of the impugned order dated 7.9.2015. The learned Additional Sessions Judge, Greater Mumbai rejected the said application by the impugned order dated 30.10.2015. While rejecting the said application, the appellate Court has held that the applicant herein has not made out any prima-facie case to show that she was staying at matrimonial house prior to the alleged dispossession. It may be noted here that filing of such an application for stay of implementation and/or execution of the order passed by the learned trial Court dated 7.9.2015 itself was misconceived application. The trial Court had rejected the interim application filed by the applicant. The said order was not an executable order. There was no question of granting stay to the said order. It is the contention of the learned counsel for the applicant that if the said order would have been stayed by the appellate Court in Miscellaneous Application No.2484 of 2015, it would have facilitated the applicant herein to have entry in the house belonging to her husband where according to her she was having a

shared household. The said contention is recorded only for its rejection at threshold because the applicant by the said application inter-alia wanted a stay to an order which was not in favour of the other party.

4) Be that as it may, the present application is preferred against the interlocutory order dated 30.10.2015 rejecting application for stay pending the appeal. The appeal is pending for final adjudication. After minutely perusing the impugned order, I am of the considered view that the appellate Court has not committed any error, either in law or on facts while rejecting the said application. No interference is called for with the said impugned order.

5) Application being devoid of any merits is, accordingly, dismissed.

(A.S. GADKARI, J.)