

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 4748 OF 2015**

Babulal Phusaram Singadiya	...Petitioner
Versus	
Saraswati Mukesh Singadiya & Ors.	...Respondents

Ms. Prabha Badadare for the Petitioner

Mr. Chaitanya Bhandarkar for the Respondent No. 1

Mr. Pavan Mali for the Respondent No. 2

Ms. P. P. Shinde, A.P.P for the Respondent No. 8-State

CORAM : REVATI MOHITE DERE, J.
THURSDAY, 17th NOVEMBER, 2016

P.C. :

1. Heard learned Counsel for the parties.

2. By this petition, the petitioner has impugned clause (3) of the order dated 30th October, 2015 passed by the Additional Sessions Judge, Greater Mumbai, in Criminal Appeal No. 39 of 2014. The said clause which is impugned reads thus :

“3. The appellant is entitled to share the residence in Hut No. 346, situated at Thakkar Bappa Colony, Chembur, Mumbai and respondent Nos. 1 to 7 are

directed not to disturb the peaceful residence of the appellant in the said house or not to dispossess her”.

3. Learned Counsel for the petitioner submits that the petitioner is the Uncle of respondent No. 2. She submits that the premises belongs to the petitioner and as such, cannot be termed as shared household. She submits that earlier vide order dated 28th January, 2015 passed by the Additional Sessions Judge, Greater Mumbai, in Criminal Appeal No. 9 of 2014, the learned Additional Sessions Judge was pleased to remit the matter back to the trial Court for retrial, only for the limited issue to decide whether Room No. 346 is a shared household of respondent No. 2 (Mukesh Mohanlal Singadiya), or not. She submitted that despite the matter being remitted back to the trial Court for retrial on the said issue, when the matter was pending before the learned trial Court, there was a direction given by the learned Additional Sessions Judge on 30th October, 2015 as stated in Clause (3) of the aforesaid order.

4. Learned Counsel for the respondent No. 1 opposes the petition. He does not dispute the fact that the matter is pending before the trial Court for deciding the said issue i.e. with respect to the shared household,

pursuant to the order of the Sessions Court dated 28th January, 2015. He, however, submits that the respondent No. 1 is living at the mercy of her parents and that she is finding it extremely difficult to live in one room tenement alongwith her parents. He submits that the premises of the petitioner is shared household.

5. Perused the papers. It appears that the respondent No. 1 had filed a petition in the Court of the learned Metropolitan Magistrate, 34th Court, Vikhroli, Mumbai under Sections 12, 18, 19, 20, 22 and 23 of the Protection of Women from Domestic Violence Act. The said application was allowed vide judgment and order dated 25th November, 2013 passed by the Metropolitan Magistrate, 34th Court, Vikhroli, Mumbai. The said order reads thus :

“ORDER

- 1) *The application is partly allowed.***
- 2) *The applicant is directed to pay maintenance of Rs. 2,500/- per month from the date of judgment and should continue to pay the interim maintenance as directed by this court till the date of judgment.***
- 3) *The respondent is directed to permit the applicant to reside in room no. 346 and should not***

dispossess her from the said premises.

4) The respondent should not cause domestic violence to the applicant in any manner.

5) He should not contact her directly or indirectly.

6) No order as to cost.”

(emphasis supplied)

6. Being aggrieved by clause (3) of the said order, the petitioner preferred an appeal being Criminal Appeal No. 9 of 2014 before the Sessions Court. It was contended that the premises was not a shared household, inasmuch as, the said premises belongs to the petitioner. The learned Sessions Judge vide judgment and order dated 28th January, 2015 was pleased to remit the matter back to the trial Court for retrial, only for the limited issue for deciding whether room No. 346 is a shared household of the respondent No. 2 (Mukesh Mohanlal Singadiya) or not. It is not disputed that pursuant to the said order dated 25th November, 2013, the matter is pending before the trial Court for deciding the said issue. It appears that the respondent No. 1 also filed an appeal being Criminal Appeal No. 39 of 2014 for enhancement of maintenance before the learned Sessions Judge, pursuant to which, learned Sessions Judge vide order dated 30th November, 2015 was pleased to pass the following order :

“ORDER

1. *Criminal Appeal No. 39 of 2014 is allowed.*
2. *The impugned order is modified, resultantly the respondent No. 1 is directed to pay maintenance at the rate of Rs. 5,000/- (Rupees Five Thousand only) per month, to the appellant from the date of this order.*
3. ***The appellant is entitled to share the residence in Hut No. 346, situated at Thakkar Bappa Colony, Chembur, Mumbai and respondent Nos. 1 to 7 are directed not to disturb the peaceful residence of the appellant in the said house or not to dispossess her.***
4. *Inform accordingly to the trial court.*
5. *Record and proceeding of MA No.49/N/2010 be returned to the trial court, immediately.*
6. *Accordingly, appeal is disposed of.”*
(emphasis supplied)
7. Clause (3) of the aforesaid order could not have been passed by the learned Sessions Judge, more particularly, when the matter was pending before the trial Court for deciding, whether the premises was a shared household or not.

8. Considering the same, clause (3) of the impugned order dated 30th November, 2015 passed by the learned Sessions Judge is quashed and set-aside. The trial Court to decide the issue whether room No. 346 is a shared household of the respondent No. 2 or not, as expeditiously as possible, and preferably within six months from the receipt of copy of this order.

9. In the meantime, without prejudice, the petitioner shall deposit a sum of Rs. 5,000/- in the trial Court, towards rent starting from November, 2016, till the said issue is decided. The same shall be deposited on the 5th day of every month. As far as payment towards November, 2016 is concerned, the same shall be deposited within one week from today.

10. The respondent No. 1 is permitted to withdraw the said amounts so deposited. It is made clear, that the said direction to the petitioner, to deposit Rs. 5,000/- is without prejudice to his rights and contentions and the said amount is also accepted by the respondent No. 1 without prejudice to her rights and contentions.

11. It is made clear that this Court has not considered the issue of shared household and all rights and contentions of the parties are kept open.
12. In the meantime, till the said issue is decided by the trial Court, the petitioner shall not create any third party interest.
13. Petition disposed of accordingly.
14. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.