

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

WRIT PETITION NO.37 OF 2017

Mr. Muzibur Rehman Ansari

..Petitioner

Versus

The State of Maharashtra and another

..Respondents

Mr. N. U. Masurkar a/w Mr. Irfan Ansari for the Petitioner.

CORAM : R. M. SAVANT, J.

DATE : 14th FEBRUARY, 2017

PC.

1 The writ jurisdiction of this Court is invoked against the order dated 11.08.2016 passed by the Learned Judge of the City Civil & Sessions Court, Greater Mumbai, by which order, the Criminal Appeal filed by the Petitioner came to be disposed of by modifying the order dated 26.07.2013 passed by the Learned Metropolitan Magistrate, 25th Court, Mazgaon, by granting enhancement of the rent payable to the Respondent No.2 herein from Rs.5000/- to Rs.10,000/-.

2 The Respondent No.2 herein is the wife of the Petitioner. The Respondent No.2 has invoked the provisions of the Protection of Women from Domestic Violence Act, 2005 by filing application being C.C.No.5/Misc/2009 before the Learned Metropolitan Magistrate, 25th Court, Mumbai. In the said application, the Respondent No.2 filed an

interim application for interim maintenance and for being provided with rent by the Respondent so as to make arrangements for her stay alongwith her two children. At the relevant time when the said application was filed, the son was studying in school in the 9th standard and the daughter was studying in the 7th standard. The application for interim maintenance came to be granted by the Learned Metropolitan Magistrate and the interim maintenance of Rs.5000/- was awarded to the Respondent No.2 under the said Act. In so far as the claim for payment of rent for accommodation is concerned, the said application was thereafter adjudicated upon by the Learned Metropolitan Magistrate, who by his order dated 26.07.2013 allowed the same to the extent of directing the Petitioner herein to pay an amount of Rs.5000/- per month towards rent to the Applicant i.e. Respondent No.2 herein. The Learned Metropolitan Magistrate has adverted to the number of flats owned by the Petitioner out which one flat stands in his name which it seems is rented out and another flat is in the name of his second wife. The Learned Metropolitan Magistrate further adverted that it was not possible for the Respondent No.2 to reside with the second wife of the Petitioner as there were chances of quarrel between the two wives of the Petitioner and their children. The Learned Metropolitan Magistrate was therefore of the view that the Petitioner would have to pay rent to the Respondent No.2 so that

Respondent No.2 could make arrangements for her accommodation. The Learned Metropolitan Magistrate accordingly granted Rs.5000/- as rent payable to the Respondent No.2.

3 The Petitioner aggrieved by the said order dated 26.07.2013 passed by the Learned Metropolitan Magistrate filed Criminal Appeal being No.830 of 2015. The Learned Sessions Judge confirmed the finding of the Learned Metropolitan Magistrate as regards whether it was possible for the Respondent No.2 and her children to reside with the second wife of the Petitioner and the three children. The Learned Sessions Judge observed that if both the wives reside in the same household then the chances of quarrel cannot be ruled out as their relations cannot be said to be cordial. The Learned Sessions Judge however having regard to the fact that only Rs.5000/- were awarded as rent, held that the said amount was very negligible, considering the fact that the Respondent No.2 would have to look for accommodation for herself as well as her two children. The Learned Sessions Judge accordingly enhanced the compensation from Rs.5000/- to Rs.10,000/- per month by the impugned order dated 11.08.2016 and accordingly disposed of the Appeal.

4 The Learned Counsel appearing on behalf of the Petitioner

Mr. N. U. Masurkar would contend that the Petitioner is ready and willing to provide accommodation to the Respondent No.2 in the vicinity. However when queried he submitted that the said accommodation would be made available at Govandi which is some distance from Kurla wherein the Respondent No.2 is presently residing. It was also the submission of Mr. N. U. Masurkar that the Learned Metropolitan Magistrate had erred in awarding rent from the year 2013 when in actual fact according to the Learned Counsel the Respondent No.2 has left the matrimonial house in the year 2016. In so far as the said submission is concerned, there is no material on record that the Respondent No.2 has left the matrimonial house in the year 2016. However a perusal of the application filed by the Respondent No.2 for interim maintenance and rent, the same discloses that it was filed in the year 2013 and the order passed by the Learned Metropolitan Magistrate was on 26.07.2013. In view of the fact that the order was passed in the year 2013, the Respondent No.2 would be entitled to rent from date of the order i.e. 2013, there is nothing on record from which a conclusion can be drawn that the Respondent No.2 has left the matrimonial house in the year 2016. With the assistance of the Learned Counsel for the parties I have gone through the application filed by the Respondent No.2, however I did not find any such averment in the said application made by the Respondent No.2. In that view of the

(23) -WP-37-17.doc.

matter, the impugned order passed by the Learned Sessions Judge enhancing the rent payable from Rs.5000/- to Rs.10,000/- considering the fact that the accommodation is to be found in a city like Mumbai cannot be said to suffer from any illegality or infirmity for this Court to interfere in its writ jurisdiction. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]