

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

**APPEAL FROM ORDER st. NO.14257 OF 2017
with
CAAST./14258/2017**

Barkha Ashok Rajpal
alias Barkha Rajeev Herani ... Appellant

Vs.

Gulab Nanikram Herani & anr. ... Respondents

Mr.Rohit D. Joshi for the Appellant
Mr.Shreepad Murthy i/b Abhishek Patil, for Respondent No.1
Mr.Viabhav Jagdale i/b Amit Dabhekar for Resp. No.2

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: SEPTEMBER 11, 2017**

P.C. :

1. This Appeal from Order is directed against the order dated 6.5.2017 passed by the learned Adhoc Judge in Notice of Motion No.1425 of 2017 thereby directing the present appellant i.e., defendant Nos.1 and 2 to vacate the premises. Respondent No.1, the father in law, has filed Suit No.3306 of 2016 against his son i.e., respondent No.2 and the present appellant for injunction simpliciter that they i.e., the husband and wife should be restrained from entering into the suit premises from the flat No.B-62 at Gladhurst CHS Ltd. at Santacruz, Mumbai..

2. The marriage between the appellant and respondent No.2 took place on 5.2.2015. However, within 3 to 4 months thereafter, she was subjected to domestic violence. She was harassed by her husband and also by respondent No.1 / original plaintiff. So, she filed a criminal complaint No.2 of 2017 under Protection of Women from Domestic Violence Act before the Metropolitan Magistrate Court on 4.1.2017 against the plaintiff father in law and the husband. Prior thereto, the father in law i.e., respondent No.1 had filed a Suit in December, 2016.

3. the learned Counsel for the appellant submitted that earlier, a Notice of Motion No.3738 of 2016 was filed for a similar interim relief and by order dated 28.2.2017, some workable arrangement in respect of use of kitchen, entry in the house were made as per the order of the trial Court while disposing of the said notice of motion. The learned Counsel has submitted that thereafter respondent No.2 the husband, took a rented house and started residing in the said house and thereafter the second Notice of Motion is taken out for the same relief. He has submitted that it is a collusive suit and also the Motion, as filed. Both the respondents i.e., the father in law and son are hand in glove. He submitted that

the appellant lady is harassed physically and mentally by the respondents and they want to oust her from her matrimonial house in which she has a legal right. He has further argued that after marriage, the appellant started residing alongwith her husband in the said flat and she has been staying there till today. It is further submitted that it is her shared household where the joint family is residing and therefore such order of temporary injunction cannot be passed against her. He further submitted that the Notice of Motion is not maintainable as earlier, a similar relief was sought by the plaintiff against her and the said Notice of Motion was disposed of. He further submitted that granting such relief at an interim stage is as good as deciding the suit. He has further relied on the definition of 'shared housing' under section 2(s) of the Domestic Violence Act. The learned Counsel also submitted that the suit flat is owned by the family and the family is having joint family business.

4. In support of his submissions, he relied on the judgment of this Court in the case of **Sarika Mahendra Sureka vs. Mahendra s/o. Rajkumar Sureka & anr.**¹. He has submitted that in the said matter, the facts of the said matter and the present case are

¹ AO/910/2014 decided on 29.8.2016

identical wherein instead of mother in law and the son had tried to throw the daughter in law out of the house and wherein the learned Single Judge of this Court has relied on the definition of shared household and after taking into account the collusive nature of the suit, had protected the right of the wife and set aside and quashed the order of interim injunction against the wife.

5. Both Mr.Murthy, the learned Counsel for Respondent No.1 / father in law and Mr.Jagdale, learned Counsel appearing for Respondent No.2 / husband while opposing the appeal, have submitted that the suit flat is owned by the plaintiff ie., the father in law. Respondent No.2 is the son of respondent No.1 who is working in the family business and is earning Rs.40,000/- per month by way of remuneration. Mr.Murthy has further submitted that the suit flat is a self acquired property of the father and the son has no right in the said property. He has further submitted that the father is a Cancer patient and cannot live with the daughter in law and his son. The learned Counsel for the respondent/husband has submitted that the respondent/husband got a house rented and he is paying Rs.22,000/- per month and is ready to deposit the monthly rent/compensation for 11 months in the trial Court.

6. Heard. Considered the ratio laid down in the case of **Sarika Mahendra Sureka** (supra). in the said case, the matrimonial ties between the husband and the wife were in existence since last 25 years and there were Family Court proceedings pending in the Family Court. There was no proceeding under Domestic Violence Act as is filed in the present case. I am of the view that the definition of the shared household under 2(s) though can be considered in the interest of a woman under the Domestic Violence Act and to a certain extent under other family proceedings, however, when there is a separate civil proceeding filed by a family member other than a husband, claiming proprietary right in the house, then, the Court cannot borrow the definition of shared household to its entirety while deciding the proprietary and legal right of the plaintiff. In the present case, I am of the view that the case is covered under the ratio laid down in the case of **S.R. Batra & anr. vs. Taruna Batra**.² and it cannot be covered under the judgment in case of **Sarika Mahendra Sureka** (supra). Moreover, it is not a case of the appellant that the suit flat was purchased out of income of the joint family property. Therefore, subject to further proof of the fact at the final stage, prima facie, it appears that it is a

2 (2007) 3 SCC 169

flat purchased by the plaintiff/father in law. A person has every right to enjoy his or her property earned / acquired by him / her. Thus, under such circumstances, it being a self acquired property of the father in law, he has right to enjoy the said property. Moreover, there is a case filed under the Domestic Violence Act by the wife. I have gone through the allegations made in the complaint. It incorporates physical violence by the husband. It is made clear that as a separate house is provided for the wife, it is upto the appellant wife to allow the husband to stay together or to live separately. However, this arrangement is required to provide shelter to the appellant. Her other rights against the husband are open to her and available to her.

7. In the circumstances of the case, the impugned order is not to be disturbed and hence, appeal is dismissed with following order:

- i) The respondent No.2 shall deposit 11 months' rent/compensation in the trial Court within 15 days and a copy of the agreement is also to be handed over to the appellant.

ii) This is an interim arrangement and the appellant may move interim applications further in respect of continuation of her temporary arrangement before the trial Court.

iii) The appellant shall vacate the suit flat within 15 days i.e., on or before 26th September, 2017 and shift to the premises provided by the respondent No.2.

8. The Appeal stands disposed of accordingly.

9. In view of the disposal of the Appeal, Civil Application also stands disposed of.

(MRIDULA BHATKAR, J.)