

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 2167 OF 2016

Sau. Sonali S. Kadam

.....Petitioner

V/s.

Sou. Snehal S. Kadam and Ors.

.....Respondents

* * * * *

Mr. Anand S. Patil, Advocate for the petitioner.

Mr. Sandeep S. Koregave, Advocate for respondent no.1.

Respondent no.2 absent.

Ms. N.S. Jain, APP for respondent, State.

CORAM :- SMT. R.P. SONDURBALDOTA, J.

DATED :- 1ST FEBRUARY, 2017.

P.C. :-

1). This petition challenges the order dated 25th May, 2016 by which the Sessions Court, Kolhapur allowed Criminal Appeal No. 70 of 2016 filed by respondent no.1 against the interim order passed by the trial Court in favour of the petitioner in the proceedings filed by her under the Protection of Women from Domestic Violence Act, 2005 ("Domestic Violence Act" for short). The petitioner is a Doctor by profession and runs a Dispensary under the name and style of

“Dhanwantari Clinic” from a portion of the shop premises owned by respondent no.1, her mother-in-law. Respondent no.2 is her husband. He runs a medical shop from the balance portion.

2). By the order dated 13th January, 2016 the trial Court partly allowed the petitioner's application for interim reliefs. It restrained the respondents no.1 and 2 from (i) indulging in domestic violence to the petitioner, (ii) from creating third party rights in respect thereof of the first floor of the residential bungalow by name “Nilai Bungalow” situate at Kolhapur, and (iii) from evicting the petitioner from the first floor of the bungalow. The petitioner had also sought two interim reliefs against respondents no.1 and 2 regarding her occupation of portion of the shop premises being Shop No.1, Shreeram Residency, Tarabai Park, Behind Circuit House, Kolhapur. The first relief was, to restrain respondents no.1 and 2 from creating third party rights over the shop premises and the second relief was to restrain them from obstructing her use of the shop premises. The trial Court, rejected the application in respect of the two reliefs.

3). The petitioner has not challenged the order dated 13th January, 2016 to the extent of denial of two of the reliefs to her. The order was challenged by respondent no.1 by preferring Criminal Appeal No. 17 of 2016 to the Sessions Court. By the impugned order, the appeal is allowed and the interim order passed by the trial Court is set aside as against respondent no.2.

4). The Sessions Court has noted in the impugned order that, the directions as regards Nilai Bungalow cannot be given against respondent no.2 because the property does not stand in her

name. The petitioner does not dispute that the property of Nilai Bungalow is not owned by respondents no.1 and 2. In that circumstance, there can be no infirmity with the impugned order as far as setting aside the direction as regards alienation of the bungalow. This leaves for consideration of the direction to restrain respondent no.2 from causing domestic violence to the petitioner. The Sessions Court has noted that Section 23 of the Domestic Violence Act requires the petitioner to file an affidavit in the prescribed format against the respondents to the complaint. Admittedly, the petitioner has not filed affidavit in the prescribed format. She has, filed her own affidavit alongwith the affidavit of her father-in-law and her brother-in-law. The Sessions Court, notes that the supporting affidavits make no reference whatsoever to any act of domestic violence on the part of both the respondents. The affidavits merely refer to the property of Neelai Bungalow and the shop and the claims made in respect thereof. The Sessions Court has next considered the report of the Protection Officer. He has found that the report is silent in respect of any attempt on the part of the respondents to evict the petitioner from the residential premises. In the circumstances, it was held that the petitioner had not made out any *prima-facie* case for grant of interim reliefs in her favour. Perusal of the record, substantiates the view taken by the Sessions Court. Hence, the petition is dismissed.

(SMT. R.P. SONDURBALDOTA, J)