

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.3437 OF 2016

Tukaram Baburao Suryawanshi & Ors. ... **Petitioners**

V/s.

Smt.Dnyal Tukaram Suryawanshi & Ors.... **Respondents**

.....

Ms.Anusha P. Amin, Advocate for the Petitioners.

Mr.Kuldeep Nikam, Advocate for the Respondent No.1.

Mrs.N.S.Jain, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 20th September 2017.

P.C. :

1 Rule. Rule is made returnable forthwith.

2 Heard finally by consent of parties.

3 This is a writ petition by original respondents in an application under Section 12 of the Protection of Women from Domestic Violence Act (hereinafter referred to as “D.V.Act” for the sake of brevity) by respondent Nos.1 to 3 herein before the learned Judicial Magistrate First Class, Sangli. By this petition, petitioners/original respondents are challenging the order dated

06/08/2016 passed by the learned Sessions Judge thereby rejecting prayer of petitioners/original respondents for staying the effect and operation of Order dated 04/05/2016 passed by the learned J.M.F.C., Sangli whereby it partly allowed the application under Section 12 of the D.V.Act filed by the respondent Nos.1 to 3 herein.

4 Facts in nutshell are thus :

- (a) The respondent No.1 is daughter of petitioner Nos.1 and 2 and sister of petitioner No.3. Respondent Nos.2 and 3 herein are her children. After taking divorce from her husband, respondent No.1 herein along with her children started residing at the house of petitioners herein. She along with her children has preferred an application under Section 12 of the D.V.Act before the learned J.M.F.C., Sangli praying for sufficient reliefs. After due trial thereby, by the Judgment and order dated 04/05/2016 passed in Misc.Criminal Application bearing No.308 of 2014, the learned trial Magistrate was pleased to allow an application partly. Protection order came to be passed against present petitioners. Apart from that, they are also directed to pay maintenance of Rs.7,000/- per month to respondent No.1 herein and at the rate of Rs.5,000/- per month to respondent Nos.2 and 3. Petitioners are also directed to pay compensation of Rs.1,00,000/- to respondents herein.

(b) Feeling aggrieved by the Order passed by the learned J.M.F.C., partly allowing the application under Section 12 of the D.V.Act filed by respondents herein, petitioners preferred an appeal under Section 29 of the said Act before the learned Sessions Judge, Sangli. Along with the appeal, they preferred an application for stay to the impugned Judgment and Order dated 4th May 2016. The learned Sessions Judge after hearing both parties by the impugned Order dated 06/08/2016 was pleased to reject the application for stay preferred by the petitioners. This Order is impugned in the instant petition.

5 I heard the learned Advocate appearing for petitioners. She vehemently argued that evidence on record goes to show that petitioners had already provided a flat for residence of respondents. One shop block was also provided to her for her maintenance. They had repaid loan amount of that shop block. The learned Advocate further argued that respondent Nos.2 and 3 herein are children of ex-husband of respondent No.1 Dnyal and, therefore, the ex-husband of respondent No.1 Dnyal being natural guardian is duty bound to maintain those children. It is further argued that respondent No.1 Dnyal never resided with petitioners and as such, it cannot be said that she has shared the residence with them making petitioners liable for payment of maintenance to her, as well as her children.

6 The learned Advocate appearing for respondent Nos.1 to 3 opposed the petition by contending that flat as well as shop block was provided to respondent No.1 Dnyal even prior to her marriage and maintenance was granted by the learned trial Court as per evidence on record.

7 I have carefully considered the rival submissions and also perused the material produced on record including impugned Order. It is seen from evidence on record that after her divorce from her husband, respondent No.1 Dnyal started residing with her parents and brother i.e. present petitioners from the year 2012. In fact, it is not disputed that from the year 2012, she along with her children were residing in the premises owned by her father. Domestic relationship includes relationship between two persons who live or have, at any point of time, lived together in the shared household and they are related by consanguinity. As such, undisputed position on record reveals that respondent No.2 daughter is descendant of petitioner Nos.1 and 2. Petitioner No.3 is her brother.

8 So far as quantum of maintenance is concerned, it is well settled that the same lies in discretion of the learned trial Magistrate and unless and until, it is shown that such discretion is exercised in a perverse manner or arbitrarily and capriciously, such order cannot be interfered with. What is challenged in the

instant petition is an interim order passed by the learned Session Judge, rejecting the application for stay. In the matter of ***Ramdev Food Products Pvt. Ltd. v. Arvinbhai Rambhai Patel & Ors.***, reported in (2006) 8 SCC 726, the Honourable Apex Court has examined the issue of challenge to interlocutory injunction and held that the appellate Court should be slow to substitute its own discretion, if it is found that the discretion exercised by the trial Court was not arbitrary, capricious or perverse. In the case in hand, maintenance awarded to respondent Nos.1 to 3 cannot be said to be excessive considering the cost of living. At the interim stage, it cannot be interfered with, when the statutory appeal is pending herein.

9 However, it is found that impugned order, so far as it relates to directing petitioner No.2/original respondent No.2 to pay maintenance and compensation is concerned, suffers from error of law. The term 'respondents' is defined in Section 2(q) of the D.V.Act and it reads thus :

(q) “respondent” means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act: Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner.

Bare perusal of this definition shows that respondent in D.V.Act proceedings can be adult male person or relative of the husband or the male partner. In the case in hand, petitioners, who are original respondents, are father, mother and brother of the aggrieved persons i.e. respondent No.1. Petitioner No.2 is her mother. Undisputedly, the respondent No.1 has taken divorce from her husband and took shelter at her parental house. As such, her own mother cannot be treated as 'relative of her husband' so as to arraign her as 'respondent' in domestic violence proceedings. To that extent, the petition succeeds. Rest of the discretionary order cannot be upset in exercise of extraordinary powers of this Court as the same is perfectly in consonance with law and based on sound exercise of discretion. Therefore, the Order :

- (i) The writ petition is partly allowed.
- (ii) The impugned order dated 06/08/2016 passed below Exh.5 in Criminal Appeal No.111 of 2016 by the learned Sessions Judge, Sangli is quashed and set aside, so far as petitioner No.2/appellant No.2 is concerned.
- (iii) Application for stay to the impugned order dated 04/05/2016 passed by the learned trial Magistrate, Sangli in Criminal Miscellaneous Application No.308 of 2014, so far as it relates to petitioner No.2/appellant No.2, is stayed during pendency of the appeal.

(iv) Rule made absolute in above terms.

(A.M.BADAR J.)