

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10696 OF 2017

Roma Rajesh Tiwari]
Age 38 years, Occ. Housewife,]
Temporarily R/at C/of Vedprakash Pandey,]
19/20, Dena Bank Building,]
3, Pasta Lane, Above Maratha Stores,]
Colaba, Mumbai - 400 005.] Petitioner

Versus

Rajesh Dinanath Tiwari]
Age 38 years, Occ. Service,]
R/at Neelgiri Lok Everest C.H.S. Ltd.,]
502, J.S.D. Road, Cement Company,]
Near St. Girgorious High School,]
Mulund (West), Mumbai 400 080.]
Also allegedly residing at]
Kailash Residency, Room No.303,]
House No.1205, Sector-1, Shirvane,]
Nerual, Navi Mumbai - 400 706.] Respondent

Mr. Rajesh L. Dharap for the Petitioner.

Mr. S.R. Dubey for the Respondent.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 12TH OCTOBER 2017.

ORAL JUDGMENT :

1. Rule. Rule is made returnable forthwith. Heard finally, by consent of learned counsel for the Petitioner and Respondent.

2. This Petition is directed against the order dated 30th May 2017 passed by Family Court No.4, Mumbai, in the Petition bearing No.A-630 of 2014. By the impugned order, the Family Court has vacated the order of status-quo granted on 29th September 2014 in respect of Flat No.502, situate at Nilgiri Apartment, Lok Everest Co-op. Housing Society Ltd., Cement Company, J.S.D. Road, Mulund (West), Mumbai - 400 080.

3. Brief facts of the Petition are to the effect that, Respondent herein has filed a Petition for a decree of nullity on the ground that his marriage with the Petitioner is null and void and, in the alternate, for a decree of divorce. In the said Petition, the present Petitioner-wife appeared and resisted the same vide her written statement. Along with the written statement, she also filed an application at Exhibit-13, stating that she has been subjected to mental and physical torture by the Respondent, his brother, his brother-in-law and sister-in-law. After marriage, she also found that Respondent's first wife Shashi too, was similarly harassed by the Respondent and his family members and was forced to leave the matrimonial home. As per the case of the Petitioner, even during pregnancy, she was constrained to live in constant fear. After the

birth of the daughter also, she is not spared from the harassment, ill-treatment and cruelty.

4. It is the case of the Petitioner that, she was thrown out of the matrimonial home and was compelled to move to her parental home at Colaba on 8th December 2013. Then, she informed the said fact to the Colaba Police Station and also to the Maharashtra State Commission for Women etc. She also conveyed that she want to return back to her matrimonial home and eventually, on 3rd February 2014, accompanied by a woman police, she went to her matrimonial home. However, she was not allowed to enter into the house. Again she made such attempt on 29th March 2014 with the help of Mulund Police. The said attempt was also not successful. According to her, all possible attempts are being made by the Respondent and his family members to throw her out of her matrimonial home. They are also threatening her of dire consequences. It is her case that, she must have some roof over her head and except for her matrimonial home, she cannot have such roof and, therefore, she sought the relief of interim injunction, restraining the Respondent-husband and his family members from dispossessing her from her matrimonial home.

5. On 29th September 2014, on the appearance of Respondent before the Family Court, it was contended by him that, Petitioner has barged into the flat owned by the father of the Respondent; whereas, on behalf of the Petitioner, it was contended that the Respondent has terrorized her by his behaviour and is not allowing her to move out of the house. It was further stated that, she was threatened that if she moves out of the house, she will not be allowed to re-enter the house.

6. In view of these allegations, counter-allegations, claims and counter-claims, the Family Court thought it fit to issue show cause notice to the Respondent herein as to why injunction sought for should not be granted against him; however, meanwhile, Family Court thought it fit to grant the relief of status-quo. It was directed that the Respondent-husband shall not disturb her possession in that house till further orders and parties shall approach the Marriage Counselor.

7. After the Respondent appeared in the matter through Advocate, he applied, vide Exhibit-26, for vacating the impugned order of the status-quo, contending that the Petitioner herein was already married with one Yogesh Pandey and there is no legal

dissolution of the said marriage. Petitioner has filed Petition for divorce by mutual consent from Yogesh Pandey. However, that Petition is withdrawn. Hence, her marriage with the Respondent during subsistence of her marriage with Yogesh Pandey is null and void *ab initio*. She is not his legally wedded wife. Hence, she has no right to reside in the house of his father.

8. As regards the adverse allegations made against him in the application, the Respondent denied them totally. He denied all the alleged incidents of domestic violence and contended that, it is the Petitioner, who is creating the nuisance and harassment. She has filed a complaint against him and his family members for the offence punishable under Section 498, r/w. Section 34, of IPC at Colaba Police Station and Mulund Police Station. It was further stated that, she has willfully and voluntarily left the matrimonial home and threatened to teach him a lesson. In such circumstances, he has no option but to file the Petition for dissolution of marriage. It was further stated that, the order of status-quo, therefore, passed on 29th September 2014, in this fact situation, needs to be vacated; especially because the said house belongs to his father and it is his self-acquired property.

9. This application came to be resisted by the present Petitioner contending that, she has no other premises to live and, therefore, she had to take shelter in the house of her parents. She has right to stay in the said house, as it is her matrimonial home and hence Respondent has no right to dispossess her from the said home. She, therefore, requested that this order of status-quo be made absolute.

10. The Family Court, after hearing learned counsel for both the parties, vide its impugned order, vacated the status-quo by holding that the said premises belongs to the father of the Respondent. Respondent himself is residing separately at New Bombay. Having regard to the Share Certificate of the said flat, it was held that, as the flat exclusively belongs to the father of the Respondent and there was nothing produced on record to show that the Respondent has any interest or title in the property along with his father, the Petitioner herein has no right to claim any relief in respect of the property, which stands in the name of Respondent's father. She can agitate her legal right against the Respondent only and, therefore, since the property is in the name of the Respondent's father, the Family Court vacated the status-quo order passed earlier.

11. In the present Writ Petition, the submission of learned counsel

for the Petitioner-wife is that the flat might be standing in the name of the Respondent's father, but, it being a matrimonial home of the Petitioner-wife, she is entitled to reside therein and she cannot be dispossessed or restrained from entering in the said house. According to learned counsel for the Petitioner, the impugned order passed by the Family Court, therefore, vacating the order of status-quo, only on the count that property stands in the name of Respondent's father, is not legal and correct.

12. Per contra, learned counsel for the Respondent has supported the said order by submitting that, as per the settled position of law, the wife can have right of residence only in the property owned or possessed by her husband and not by his relatives. It is urged that the Respondent is presently residing at New Bombay and, therefore, Petitioner also cannot have right to reside in the flat at Mulund.

13. As the necessary question raised for consideration in this Writ Petition is, '*whether the Petitioner is having the right of residence in her matrimonial home?*', one has to go through the provisions of the Protection of Women from Domestic Violence Act, 2005. Section 19 of the said Act provides for '*Residence Orders*'. The '*Statement of Objects and Reasons*' of the said Act is very illustrative as to why

this Section 19 was inserted or why this very Act was passed. Clause 4(iii) of the '*Statement of Objects and Reasons*' lays down that,

'This Act seeks to provide for the rights of women to secure housing. It also provides for the right of a woman to reside in her matrimonial home or shared household, whether or not she has any title or rights in such home or household. This right is secured by a residence order, which is passed by the Magistrate.'

14. Thus, the '*Statement of Objects and Reasons*' of the Act makes it clear that, this D.V. Act is enacted to secure the right of a woman to reside in her matrimonial home or shared household, irrespective of the question '*whether she has any right, title or interest in the said household or not*'.

15. Now what is '*shared household*' is also defined in Section 2(s) of the D.V. Act, as follows :-

" 'Shared Household' - 'a household, where a person aggrieved lives or at in any stage has lived in a domestic relationship, either singly or along with the respondent and includes such a household, whether owned or tenanted, either jointly by the aggrieved person and the respondent, or, owned or tenanted by either of them, in respect of which either the aggrieved person or the respondent or both jointly or singly, have

any right, title or interest or equity and includes such a household, which may belong to the joint family, of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household'."

16. Section 19 of the said D.V. Act provides for '*Residence Orders*'.

It lays down that,

"When any application under Section 12 is made with a complaint of domestic violence, while disposing of such application, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order; (a) restraining the respondent from dispossessing, or, in any other manner, disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household'."

[Emphasis Supplied]

17. These words '*whether or not the respondent has a legal or equitable interest in the shared household*' are of utmost significance, when the right of the aggrieved person, i.e. the wife, is to be decided so far as her residence in shared household is concerned.

18. In this case, admittedly, till the dispute started between the

Petitioner and Respondent, both of them were very much residing in the flat at Mulund and, therefore, as they have lived together in the said flat as a 'couple', as a 'husband and wife', in a domestic relationship, it becomes her '*shared household*', as stated in the definition of Section 2(s) of the D.V. Act. In such a situation, whether the said flat belongs to or owned by the Respondent-husband, is totally irrelevant. As stated above, Section 19(a) of the D.V. Act makes it clear that, whether or not the Respondent has a legal or equitable interest in the shared household, the Court can pass a residence order, restraining the Respondent from dispossessing, or, in any other manner, disturbing the possession of the aggrieved person - Petitioner-wife herein. Therefore, much emphasis laid by the Family Court on the fact that the flat at Mulund belongs to the Respondent's father and not to the Respondent, is totally misplaced. The question of title or proprietary right in the property is not at all of relevance, when the provisions of the D.V. Act; especially Section 19 thereof, are to be considered. As a matter of fact, it needs to be emphasized that, as the wife's right to reside in the matrimonial home was being defeated on this very ground that the house does not belong to the husband or does not stand in his name, this D.V. Act was brought in the Statute Book with the specific

and clear language and the unequivocal Clause that the *'title of the husband or that of the family members to the said flat'*, is totally irrelevant. It is also irrelevant whether the Respondent has a legal or equitable interest in the shared household. The moment it is proved that it was a shared household, as both of them had, in their matrimonial relationship, i.e. domestic relationship, resided together there and in this case, upto the disputes arose, it follows that the Petitioner-wife gets right to reside therein and, therefore, to get the order of interim injunction, restraining Respondent-husband from dispossessing her, or, in any other manner, disturbing her possession from the said flat.

19. As regards the contention of the Respondent that, he has left the said house and gone to reside at New Bombay, which is again a routine defence taken by the husbands in such proceedings, there is nothing on record to show that he has actually shifted his residence. Not a single document to that effect is produced on record to show that he has taken those premises in New Bombay on rent or he has purchased them. Neither the Ration Card, Electricity Bill, Gas Bill etc., not an iota of document is produced on record to show that he has shifted his residence. Conversely, in the application for anticipatory bail filed in the Sessions Court in Mumbai, bearing

No.149 of 2014, his address is shown as that of the Flat in Mulund. Therefore, it is clear that, this ploy is adopted by the Respondent just to deprive the Petitioner from her rightful claim to reside in the '*shared household*', which is the Flat at Mulund. This Court cannot fall victim to the tricks or ploys played by the Respondent-husband in such cases.

20. The Family Court has not considered all these aspects; especially, the very clear provisions of the D.V. Act and, straightway, vacated the order of status-quo, without advertng to the contention raised by the Petitioner, that she was residing therein, it being her matrimonial home or the shared household. The impugned order, therefore, passed by the Family Court cannot be called as just, legal and correct. Hence, it needs to be set aside.

21. Accordingly, the Writ Petition is allowed. The impugned order passed by the Trial Court on 30th May 2017 below Exhibit-26 in Petition No.A-630 of 2014, of vacating the order of status-quo, is set aside. The earlier order of status-quo passed by the Family Court, Mumbai, on 29th September 2014, below Exhibit-13 in Miscellaneous Application No.198 of 2014, is restored.

22. At this stage, it is submitted that, now the stage before the Family Court is of recording of evidence and it is in process. In view thereof, this order of status-quo will continue till decision in the Petition pending before the Family Court.

23. On the request of learned counsel for the Respondent, considering the peculiar facts of the case, hearing of the proceedings before the Family Court is expedited, subject to condition that both the parties and their counsel extend utmost co-operation to the Trial Court and not seek unwanted adjournments.

24. The Trial Court is directed to decide Petition No.A-630 of 2014 as expeditiously as possible and, preferably, within a period of six months from today.

25. It is made clear that, all the observations made here-in-above are for the purpose of deciding this Writ Petition only, and the Family Court is not to be swayed by them at the time of final hearing.

26. Rule is made absolute in the above terms.

[DR. SHALINI PHANSALKAR-JOSHI, J.]