

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

WRIT PETITION NO.169 OF 2017

Samir Vidyasagar Bharadwaj : Petitioner.
Versus
Nandita Samir Bharadwaj : Respondent.

Mr. R T Lalwani a/w Mr. Prakash Mahadik for the Petitioner.
Mr. M B Singh i/by Ms. Pooja Jalan for the Respondent.

CORAM : R. M. SAVANT, J.
DATE : 11th January 2017

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 13/12/2016 passed by the learned Judge of the Family Court No.3, Mumbai by which order the application filed by the Respondent herein i.e. the wife came to be allowed and resultantly direction came to be issued which is contained in Clause (2) of the operative part of the impugned order which for the sake of ready reference is reproduced herein under :-

“2 The respondent-husband is directed to remove himself out of the matrimonial house situated at 201, Aashna, 8 St. Martin road, Bandra (West), Mumbai 400 050, within 15 days from today and not to visit there till the decision of present petition.”

2 The Petitioner and the Respondent were married on 05/05/1992. Out of the said wedlock they have two daughters, Reeya who is 22 years of age and Raika who is 20 years of age. The Petitioner and the Respondent were residing in two flats being Flat No.102 and Flat No.103 situated in the building

known as “Hi Ville” 29th Road, Bandra (West), Mumbai. The said two flats were sold by the parties and a Flat bearing No.201 situated in “Aashna” Building, 8, St. Martin Road, Bandra (West), Mumbai was purchased by the parties by an Agreement for Sale dated 22/11/2010. The said flat was purchased in the joint names of the Petitioner and the Respondent. It is in the said flat that the Petitioner, the Respondent and their two daughters are residing till date.

3 The Respondent herein i.e. the Wife has filed a Petition for divorce against the Petitioner being Petition No.A-1873 of 2015 in the Family Court, Mumbai. The said Petition has been filed on 09/07/2015. Apart from seeking dissolution of marriage, the Respondent has sought various other reliefs. In the context of the present Writ Petition, the relief of directing the Petitioner to move out of the matrimonial house assumes importance. The said Petition is replete with instances of the allegations of ill-treatment, harassment, mental torture, physical abuse that the Petitioner has allegedly meted out to the Respondent after their marriage till the filing of the said Petition. One such instances is appearing in paragraph 34 which for the sake of ready reference is reproduced herein under :-

“34 The Petitioner has also been abused physically and mentally by the Respondent. There have been many instances where the Respondent would twist the Petitioner's arm to such an extent that it would cause excruciating pain. As the Respondent is taller and physically stronger than the Petitioner, it would be

difficult for her to protect herself. The Petitioner now suffers from a frozen shoulder and is unable to lift her left arm. The Petitioner being a flight attendant with British Airways and it is difficult for her to work with this ailment.”

4 In the said Petition for divorce the Respondent herein i.e. the Wife has filed an interim application invoking Sections 36 and 37 of the Special Marriage Act, 1954 and Section 19(1)(b) of the Domestic Violence Act, 2005. Amongst the reliefs sought is the relief that the Petitioner be directed to move out of the matrimonial home. There is a duplication of the said relief inasmuch as the same relief is sought vide prayer clause (c) as well as prayer clause (e). In the said interim application some of the allegations which find a place in the Petition for divorce have been briefly replicated.

5 The said interim application was replied to on behalf of the Petitioner – husband. The Petitioner – husband has dealt with the reliefs sought vide the said application by the Respondent – Wife. The Petitioner denied that the Respondent is entitled to any of the reliefs claimed in the application. In so far as the relief sought vide prayer clause (c) is concerned, it was the case of the Petitioner that the said relief being also claimed in the Petition for divorce, the same is in the nature of a final relief and therefore could not be granted. The reply only in respect of prayer clause (c) is relevant as the said interim application was not pressed in so far as other prayers are concerned.

6 In so far as the application for interim relief is concerned, the two daughters i.e. Reeya and Raika have filed affidavits in support of their mother i.e. the Respondent herein. Both the daughters have stated in their affidavits that the nature of the relationship shared between the Petitioner and the Respondent, which they have termed as “conflicting relationship”, “hostile” and “nasty”. They have stated that they have been witness to the ugly scenes between the Petitioner and the Respondent. They have also stated the manner in which the Petitioner is conducting himself in the house whilst they are present, which according to them prevents them from calling their girl friends to their house. The said affidavits can be said to disclose the adverse effect that the atmosphere in the matrimonial house has on them. It appears from a reading of the said affidavits that on account of the strained relationship that their parents have, they have developed some sort of cynicism towards the institution of marriage.

7 The learned Judge of the Family Court considered the said application and by the impugned order allowed the same. The gist of the reasoning of the learned Judge was that from the material on record it is prima facie proved that there is domestic violence committed by the Petitioner qua the Respondent and the two daughters. The learned Judge has relied upon the averments made in the Petition for divorce and has reproduced the averments

made in Paragraph 34 which have been referred to in the earlier part of this order. The learned Judge has relied upon the affidavits filed by the two daughters. The learned Judge rejected the case of the Petitioner – husband that the said affidavits have been procured by the Respondent wife from the daughters to somehow support her case. The learned Judge has held that the Respondent has a right to reside in the matrimonial house and that right includes the right to reside with peace, happiness and dignity. The learned Judge observed that the Petitioner can go and reside with his mother who is staying alone in a flat which is in the close vicinity. The learned Judge has held that the relief was required to be granted as the possibility of repetition of such incidents and further quarrels between the parties cannot be ruled out. As indicated herein above, it is the said order dated 13/12/2016 passed by the learned Judge of the Family Court which is taken exception to by way of the above Writ Petition.

8 It was the submission of the learned counsel appearing on behalf of the Petitioner herein Shri R T Lalwani that the relief sought by way of the said application being in the nature of the final relief could not be granted. The learned counsel sought to place reliance on the judgments of the Apex Court reported in 2009(2) AWC 1733 (SC) in the matter of Mehul Mahendra Thakkar @ Karia v/s. Meena Mehul Thakkar @ Karia, and AIR 2011 SC 3101 in the matter of U.P.S.C. And anr. v/s. S Krishna Chaitanya wherein the

Apex Court has held that at the interim stage the relief in the nature of the final relief cannot be granted. The learned counsel for the Petitioner would then contend that except the allegation which is referred to in the impugned order by the learned Judge of the Family Court, there was no other material on record by way of any police complaint etc in the past 25 years that the couple is married to show that there was any physical violence etc by the Petitioner. The learned counsel would contend that the learned Judge of the Family Court had erred in relying upon the judgment of a learned Single Judge of this Court reported in 2011 (4) Bom C R 656 in the matter of Ishpal Singh Kahai v/s. Ramanjeet Kahai as the facts of the said case were clearly distinguishable from the facts in the instant case. The learned counsel would lastly contend that the guiding principles for the grant of an injunction as enunciated by the Apex Court in the case reported in (1990) 2 SCC 117 in the matter of Dorab Cawasji Warden v/s. Coomi S Warden & ors have not been followed by the Trial Court whilst granting the relief by the impugned order.

9 Per contra, the learned counsel appearing on behalf of the Respondent herein Shri M B Singh would support the impugned order. By referring to the facts in the Petition, the learned counsel would controvert the submission of the learned counsel for the Petitioner herein that there was no other material on record except the averments which have been referred to by the Trial Court in the impugned order. The learned counsel by referring to the

two affidavits of the daughters would seek to demonstrate the manner in which the Petitioner is conducting himself. The learned counsel would therefore contend that the finding recorded by the Trial Court that there is a prima facie case of domestic violence made out is justified having regard to the material on record. It was the submission of the learned counsel that the impugned order does not suffer from any error of jurisdiction or any other illegality or infirmity for this Court to exercise its writ jurisdiction.

10 Having heard the learned counsel for the parties, I have considered the rival contentions. The issue which arises for consideration in the instant matter is whether the relief in the nature granted by the Trial Court i.e. the learned Judge of the Family Court could have been granted. As indicated above, the Petition filed by the Respondent wife is for dissolution of marriage with other reliefs including the relief that the Petitioner husband be directed to move himself from the matrimonial house. In the said Petition that the instant application for interim reliefs is filed. The Petition for divorce filed by the Respondent herein is replete with the instances of allegations of ill-treatment, harassment, mental torture and physical abuse which the Petitioner husband has meted out to the Respondent wife which has resulted in filing of the Petition for divorce. The said allegations in the instant case can be said to be supported by the affidavits of the two daughters i.e. Reeya and Raika. The contents of the said affidavits have already been referred to herein above. The

conclusion that is required to be drawn is that on account of the strained relationship between their parents which the daughters have seen over the years, the daughters have developed a sort of cynicism towards the institution of marriage, which is unfortunate. The daughters in filing the affidavits in support of their mother therefore have lent credence to the allegations made by the Respondent wife in the matter. The Trial Court was therefore right in coming to the conclusion that prima facie case of domestic violence is made out. It is required to be noted that the application for interim relief filed by the Respondent wife was filed invoking Section 19(1)(b) of the Domestic Violence Act. The object of the said Act is to protect the women from domestic violence. Hence an application for interim relief filed invoking the provisions of the said Act stands on slightly different footing than an application filed in a suit filed at common law. In so far as domestic violence is concerned, it is not the number of instances which is the determinative factor. Even a solitary instance may constitute domestic violence or may have a deleterious effect on the relationship between the parties. In the instant case, as indicated above, the allegations of the Respondent are supported by the daughters and therefore the view taken by the Trial Court cannot be said to be a view which could not be taken in the facts and circumstances of the case.

Hence once a case of domestic violence is made out, the sequitur to the same would be that the relief sought by a woman is required to be

granted. In the instant case on the basis of the material on record, the Court has come to the conclusion that prima facie case of domestic violence is made out against the Petitioner husband. The Trial Court has granted the said relief as a preventive measure so as to avoid future conflict etc. between the parties. In my view, having regard to the case made out by the Respondent wife, the grant of the relief of the nature granted at the interim stage was justified.

11 Though the learned counsel appearing on behalf of the Petitioner herein Shri Lalwani was right in contending that the facts in the case of *Ishpal Singh Kahai* (supra) are distinguishable, however, since that is not only the ground on which the relief has been granted to the Respondent, even if the said judgment is held to be not applicable, the same would not make any difference in so far as the entitlement of the Respondent to interim relief is concerned. In my view, the judgment in *Dorab Cawasji Warden's* (supra) case would also be of no assistance to the Petitioner husband as it cannot be said that in the facts of the present case, the learned Judge of the Family Court has exercised discretion when it was not warranted. Hence the impugned order dated 13/12/2016 does not suffer from any error of jurisdiction or any other illegality or infirmity for this Court to interfere with in its writ jurisdiction. The above Writ Petition is accordingly dismissed.

12 At this stage, the learned counsel for the Petitioner husband Shri R

T Lalwani applies for continuation of the protection which was granted by the learned Judge of the Family Court and which is in operation till 12/01/2017. The said protection is continued for a period of four weeks from date.

[R.M.SAVANT, J]