

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

CRIMINAL WRIT PETITION NO. 163 OF 2018

Mrs. Smita Jagdish Yagnik ... Petitioner

Versus

State of Maharashtra & Ors. ... Respondents

Ms. Shilpa Joshi for Petitioner.

Mr. Mahesh Bendre a/w Jaya Misal & Gaurav Gokhale I/by MMB Associates for Respondent Nos. 2 to 4.

Mrs. N. S. Jain, APP for State.

CORAM : NITIN W. SAMBRE, J.

DATE : APRIL 13, 2018.

P.C. :

Heard learned Counsel for respective parties.

2. The husband of the present Petitioner was a Bank employee, who expired on 16th April 2016. Before his death, there was a matrimonial dispute in between the Petitioner – wife and her husband.

3. The Petitioner after death of her husband moved an Application under Section 12 along with Application under Section 23 of

the Protection of Women from Domestic Violence Act (hereinafter be referred to as 'D. V. Act') for grant of interim relief in which a prayer for making arrangements of accommodation were made. In the said Domestic Violence Act proceedings, the learned Judicial Magistrate First Class, Thane vide order dated 28th August 2017 granted relief in favour of the Petitioner with following observations :

“ORDER

1. *Application is partly allowed.*
2. *Opponents are hereby directed not to cause any physical or mental harassment to the Applicant.*
3. *Opponents are hereby directed to allow the applicant to reside in matrimonial house i.e. Room No. 08, II nd Floor, Nafisa Manzil, Building no. 04, I st Carpenter Street, Mumbai-04.*
4. *The copy of this order be given to parties free of cost.*
5. *Copy of this order be sent to the concerned Police Station and Protection Officer.”*

4. The Respondents, who are in-laws of the Petitioner, preferred Appeal under Section 24 of the D. V. Act bearing Criminal PWDVA Appeal No. 81 of 2017 which came to be allowed by the learned District

Judge-4 and Additional Sessions Judge, Thane on 31st October 2017, which order is questioned in the present Revision by the Petitioner – wife.

5. The learned Counsel for the Petitioner – wife would urge that considering the hardship faced by the present Petitioner and the fact that before the death of her husband he was residing in the suit premises, where resident order was sought, she has every right to step into the shoes of her husband seeking right of stay in the suit premises. She would then urge that it is claimed by the Respondents that rights by the husband in the suit premises were surrendered in favour of her brother-in-law i.e. Respondent No. 4 – Rajesh Kanhaiyalal Yagnik by virtue of a Relinquish Deed.

6. According to the learned Counsel for Petitioner - wife, but for the copy of 'Declaration' or 'NOC' which is styled to be 'A Relinquish Deed', there is no *iota* to infer such relinquishment. She would invite attention of this Court to the Income Tax Returns filed by her late husband in the year 2015, so as to claim that the husband till his death has shown the property as that had come to his share, as a consequence thereof, after the differences with the Petitioner, he resided in the suit premises. Based on

the aforesaid submission, it is claimed that the impugned order passed in an Appeal by the learned District Judge is not sustainable, as the learned District Judge has failed to consider the aforesaid evidence while reversing the order of share residence passed by the learned Magistrate.

7. Per contra, the learned Counsel for Respondents, who are in-laws of the present Petitioner, submits that the Petitioner has intentionally not claimed any maintenance as it is an admitted position on the record that her late husband was an employee in a Bank and his post-death service benefit had come to the share of the present Petitioner. It is also claimed that before the death of the husband of the Petitioner when he was residing along with the Petitioner, a house - an accommodation was purchased by her late husband which was at later point disposed of in view of differences between the parties. It is specifically brought to the notice of this Court that late husband of the Petitioner has relinquished *qua* given no objection to the transfer of the rights in the suit premises in favour of Respondent No. 4 – Rajesh Yagnik. My attention is also invited to the fact that originally the premises where the relief of accommodation is sought, was in favour of the grand-father of the Respondent No.4 and

husband of the Petitioner having tenanted rights which was subsequently transferred in favour of Respondent No.4. It is specifically pleaded that before the death of the husband of Petitioner at no point of time Petitioner resided in the suit premises along with her husband.

8. Having considered rival submissions and upon perusal of both the orders; viz – one passed by the learned Judicial Magistrate First Class, Thane granting accommodation and another passed by the District Judge and Additional Sessions Judge, Thane in Criminal Appeal, reversing the order of the learned Magistrate, it is noticed that the post-death service benefit had gone to the coffers of the present Petitioner *qua* when her husband, who is Bank employee has expired. Perhaps, for this reason no order of maintenance was passed in favour of Petitioner or husband of the Petitioner had not paid any maintenance.

9. But for the Income Tax Returns filed by the late husband of the Petitioner, there is no material on record to infer that the premises in relation to which accommodation order is sought was occupied by the present Petitioner along with her husband. The learned courts below, particularly the Appellate Court in the wake of above, has rightly

proceeded to pass an order rejecting the prayer for an order of accommodation. Apart from above, the fact remains that the order of accommodation, which is sought, is in relation to the tenanted premises over which the initial right as a tenant that of grand-father of Respondent No.4 to which Respondent No.4 succeeded by virtue of the documents which are placed on record.

10. For the aforesaid reasons, no interference is warranted. As such, the Writ Petition is dismissed.

(NITIN W. SAMBRE, J.)