

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Writ Petition NO. 1292 OF 2018

Mr. Vijay Jagdish Chheda

...Petitioner

Versus

Ms. Dimple Vijay Chheda

...Respondent

Mr.Ajit Kulkarni with Mr.Hitesh Vyas, for the Petitioner.

Mr.Abhijit D.Sarwate, for the Respondent.

CORAM : G.S.KULKARNI, J.***DATE : 22 February 2018*****P.C. :**

1. Heard learned Counsel for the parties. By this petition under Article 227 of the Constitution, the petitioner-husband challenges the order dated 13 December 2017 passed by the learned Judge Family Court No.2, Pune, whereby the application as filed by the respondent-wife making a prayer for a residence order in the form of evicting husband from matrimonial house and preventing him from committing, aiding and abetting any act of domestic violence and re-entering the house, has been allowed in the following terms:-

“

ORDER

1. Application stands allowed.
2. The respondent is directed to remove himself from matrimonial home 13/14, Belmont Park, ICS Colony, Off.University Road, Pune 411007.
3. After he removes himself from the house, he is temporarily restrained from re-entering into the house for

next six months from the date of order, by way of order of injunction under Order 39, Rule 1, r/w. Section 94 of the Code of Civil Procedure, r/w. Section 37 of the Specific Relief Act and r/w. Section 7 of the Family Courts Act.

4. The respondent is also temporarily prevented from committing, aiding, abetting any act of domestic violence with petitioner or children and he is prevented from directly communicating with petitioner for next six months.

5. The respondent is permitted to apply for his re induction into the matrimonial home after six months of this order, if he undergoes any self help course to calm down his mind and to cool down his aggressive abusive attitude, he shall also file an undertaking in that event that he will behave as a good husband, while cohabiting with petitioner.

6. The order shall take effect immediately.”

2. At the outset it may be observed that the order passed by the family Court is an elaborate order which has considered every minor factual aspect of the case of both the parties. Considering the facts and circumstances of the case the family Court has thought it appropriate to pass the above order directing the respondent to remove himself from the matrimonial home.

3. The facts are quite gross. The petitioner and the respondent got married on 15 October 1995. On 29 April 2001, daughter Tanya was born, second daughter Saumya was born on 12 May 2005. On 23 October 2008 son Arjun was born. It is not in dispute that the petitioner is engaged in business and as noted in the impugned order, the business is stated to be worth Rs.200 crores. The financial

status of the petitioner is well of. The petitioner had arranged international tours to United Kingdom in 2016, to Sri Lanka in January 2015, to Baltic, France and Russia in August 2015, and a Europe tour in 2017, when the petitioner alongwith respondent and children had travelled.

4. The case of the respondent-wife in her application as filed under Sections 18 and 19 of the Protection of Women from Domestic Violence Act, 2005 (for short “D.V.Act”) is that although the respondent and the petitioner were staying under one roof, however, they were staying as strangers in separate rooms. The petitioner was causing domestic violence and has been ill treating her since 21 January 2015 when the petition for divorce was filed by the respondent. The respondent had sought divorce on the ground of cruelty. There were instances of abuses in the presence of minor daughter on 19 November 2017 and she was called as a slut. The petitioner also threatened that he would remove the bedroom lock so that the respondent would not have any privacy. There were threats that he would stop all domestic help that to family avails in the house.

5. The grievance of the respondent is that all this ultimately culminated in an incident which took place on 20 November 2017 at 7.15 a.m. when the respondent was preparing children's breakfast in

the kitchen at which point of time the petitioner entered the kitchen and started kicking and slapping the petitioner and picked up a knife to slash the petitioner's face. The respondent in order to defend herself covered her face by hands and in the altercation suffered a cut injury on her right index finger, caused by the knife and started bleeding. The petitioner further hit the respondent on the ear area by slapping her hard, which caused injury to her on the left ear. The respondent after this altercation, called the police by dialing 100. The police officials came to the house of the respondent and took the respondent to the Chaturshrungi Police Station. A statement of the respondent was recorded. However, the case of the respondent is that the police on the influence of the petitioner did not register a first information report and asked the respondent to approach the "Aundh Government Hospital" for treatment. Doctors examined the petitioner confirming the injury on the right hand index finger and her left ear. The medical report confirmed the injury sustained by the respondent. The respondent was thereafter taken to the ENT specialist. The doctors on examination confirmed the left ear injury and also issued a report prescribing medication. In the application, the respondent has averred that the parents of the respondent were staying at Model Colony, Lakaki Road, Pune, and that if an injunction as prayed for was granted, no prejudice would be caused to the petitioner. It was pleaded that even otherwise,

the petitioner would not be in any manner affected financially. It was averred that it was impossible to stay with the petitioner under one roof as also there were threats by the petitioner to harm the children. The petitioner had also threatened the respondent that the petitioner would force her to sign certain documents and that he would stop payment of Rs.1.5 crores per month, which was being paid by him to her for household expenses, so as to make her beg.

6. The application was opposed by the respondent inter alia denying the allegations. The petitioner's contention was firstly that the allegations ought not to be believed as the petitioner and the respondent were staying in the same house as also even though the petition for divorce was filed in the family Court, the petitioner and the respondent were enjoying conjugal bliss. Secondly, the petitioner and the respondent alongwith the children had travelled to different foreign countries together and thus, the allegations as made by the respondent were not correct. Thirdly, there is also a dispute between the parties where the respondent has alleged that the 1.5 lakh shares belonging to her in the company of the petitioner have been illegally transferred by the petitioner in the name of his mother. There is a counter allegation of the petitioner that the respondent has withdrawn an amount of about Rs.3 crores by redeeming the mutual fund of Rs.3.79 crores and the amounts were transferred to her saving bank account.

7. Learned Counsel for the petitioner in assailing the impugned order would submit that though the divorce petition is pending between the parties as filed on 21 January 2015, nonetheless the parties were staying together in the same house and were in a normal matrimonial relation. The next contention is that the petitioner and the respondent alongwith the children had undertaken foreign tours in July 2015, August 2015, July 2017 which shows that the petitioner and the respondent were having cordial relation. The contention is that in fact it is the respondent-wife who has siphoned petitioner's money. It is next contended that the medical report would indicate that it is a nominal injury which the respondent has suffered while working in the kitchen and the respondent's story of the petitioner causing physical injury and harassment to the respondent, ought not to be believed looking to the medical record. It is submitted that also the business office of the petitioner is at the residential address. It is thus submitted that the impugned order has caused severe prejudice to the petitioner and hence, the same is required to be set aside.

8. On the other hand, learned Counsel for the respondent-wife in supporting the impugned order has made submissions on the

nature of cruelty and the physical harassment caused to the respondent by the petitioner for which the provisions of D.V. Act have been invoked. My attention is drawn to the medical report which according to the learned Counsel for the respondent clearly shows the nature of injury caused on the hand as also on the ear being evident of the physical harassment to the respondent. It is submitted that all this has happened in the presence of the children who are of an age to understand these unpleasant events and such incidents are causing the children a serious prejudice resulting into a severe disturbed psychological condition of the children. It is further submitted that the contention as urged on behalf of the petitioner that the petitioner and the respondent were staying under one roof in the same house, also cannot be believed, as the respondent and the petitioner were staying in separate rooms. The travel on tours was undertaken for the children for which the respondent was compelled to travel in the interest of the children, however the petitioner and the respondent stayed in separate rooms, which was clear from the hotels' vouchers, which is also to the knowledge of the children. It is submitted that the conduct of the petitioner has made it impossible for the respondent and the children to stay together. My attention is also drawn to the relevant details of C.C.T.V. footage which according to the respondent clearly reflects an incident which had occurred on 20 November 2017, that the petitioner

after causing physical injuries to the respondent, had left the house in his car at 7.26 a.m., which was recorded in the C.C.T.V. footage. It is submitted that all this evidence was placed before the family Court. It is submitted that the Court has considered the legal position of significance as to why only women are asked to leave the home and why such an order cannot be passed against the husband, in such a situation when no prejudice would be caused to the husband. It is submitted that ultimately it is not the respondent-wife alone whose interest was required to be considered in such a situation but also of the children who are completely dependent on her for all their needs. It is submitted that the family Court had appropriately considered that the petitioner had right of residence to live in the matrimonial home and with a condition that petitioner should live as a good husband and not an abuser husband. It is thus submitted that hence the petition does not require any interference in the discretionary jurisdiction of the Court under article 227 of the Constitution.

9. Having heard the learned Counsel for the parties and having perused the detailed impugned order and the materials as placed on record, I am of the opinion that there was sufficient evidence on record for the Court to come to a conclusion that the conduct of the petitioner amounted to domestic violence. The medical report clearly

indicates that there was injury suffered by the petitioner on hand as also there was assault on her ear, as the medical report refers to a “contusion to ear”. Further there was sufficient evidence on record as referred in detail in the impugned order which was the 'whatsapp' communication between the respondent and her daughter which clearly shows that the children were complaining about their father to the mother that the petitioner-father is harassing them. On one incident which had taken place on 4 April 2017 the child has stated to the respondent-mother that *“it would have been better if she had died in the Baltic sea and she was not to be saved”* when they were on foreign trip. A child saying this about her own mother is something unusual and of a grave concern reflecting the nature of the harassment being caused to the respondent. The learned Judge has rightly observed that such type of conversation is not a normal conversation between the child and mother and the petitioner had also made the life of the children miserable. The contention as urged on behalf of the petitioner that the parties are in the normal matrimonial bliss, is also not correct as they were staying in separate rooms as also in the foreign trips, the parties stayed in separate rooms. The evidence to that effect was placed on record before the Family Court.

10. This is not the case where the petitioner would be rendered homeless. The petitioner is a businessman and is well placed in life and

has more than sufficient means to take care of all his needs. The petitioner runs his business from Shirval, Pune and the contention that registered office of his business is at the residential address is thus of no avail. As observed in the impugned order, there is nothing on record to show that any manager or accountant or clerical staff or office staff visited his house and conducted business operation from his house. The petitioner also has alternative accommodation where his parents are residing at Pune. Considering the facts and circumstances, it also cannot be overlooked that any alternative arrangement of residence can be made by the petitioner for himself. The object and intention of the protection under D.V.Act would be rendered meaningless if the hands of law cannot reach to remedy/help such suffering of the respondent and her children and provide a relief to the helpless wife and children. Learned Counsel for the respondent is correct in relying on a recent decision of the Supreme Court in “*Samir Vidyasagar Bhardwaj Vs. Nandita Samir Bhardwaj*”¹ where the Supreme Court considering the object of Section 19 of the Domestic Violence Act, has confirmed the order passed by the Family Court being satisfied that the domestic violence has taken place and that the spouse should be removed from the shared household.

¹ AIR 2017 SC 2713

11. In the facts and circumstances of the present case, it cannot be said that the exercise of jurisdiction under Section 19 of the D.V.Act by the Family Court is in any manner perverse, calling for interference of this Court.

12. The petition is devoid of merit. It is accordingly rejected.
No costs.

(G.S.KULKARNI, J.)