

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 821 OF 2015

Madhu Ashok Jadhav

.. Petitioner

Versus

Ashok Sunderjibhai Jadhav
and anr

.. Respondents

...

Mr. S.R.Phanse i/b Mr. A.S.Sawant for the petitioner.
Mr.Brijesh Shukla with Shakuntala Sharma for the respondent
no.1
Mr.K.V. Saste, APP for the State.

CORAM: SMT. BHARATI H.DANGRE, J.

DATED : 10th SEPTEMBER, 2018

P.C:-

1 The present writ petition assails an order of the Addl. Sessions Judge, Mumbai passed in Appeal preferred by the respondent husband. The petitioner wife had filed an application under Section 12 of the Domestic Violence Act, 2005 before the Metropolitan Magistrate, 65th Court, Andheri,

Mumbai and sought relief under Sections 18, 19, 20, and 22 of the said Act. On consideration of the said matter, the Metropolitan Magistrate by an order dated 13th May 2014 was pleased to partly allow the said application. The petitioner, an applicant before the Court was held entitled to access to the property bearing TF/92, Raj Laxmi, Old Prakash Cinema premises, Gheekanta, Ahmedabad and the respondent was restrained from obstructing her access to the said property or in any way, alienating, mortgaging or creating any encumbrances in it.

Apart from the aforesaid direction, the Magistrate also directed the respondent-husband to pay an amount of Rs.5,000/- per month from the date of filing of the application till March 2008 and thereafter, to pay an amount of Rs.7,500/- from April 2008 to March 2013 and thereafter an amount of Rs.15,000/- was directed to be paid from April 2013 onwards. Further, an order of compensation of Rs.2,50,000/- was also passed. Apart from this, direction was also issued to the respondent to pay an amount of Rs.2,500/- per month towards alternate residential accommodation from the date of filing of

application till March 2008 and further, at the rate of Rs.5,000/- upto March 2013 and Rs.10,000/- from April 2013 onwards.

2 Being aggrieved by the said order and specifically by relying on the admissions given in the cross-examination of the complainant and also the entire material brought on record being not taken into consideration by the Metropolitan Magistrate in its proper perspective, the husband approached the Sessions Court by filing an Appeal. The Sessions Court while hearing an application for grant of stay vide Miscellaneous Application No. 2173 of 2014 considered the said application and passed the following order :-

“It appears that the Ld.M.M. 65th Court, Andheri, Mumbai has, granted the various relief as interim relief to the present respondent. I find no reason to stay the relief which granted by Ld. Trial Court in Clause 2nd, 3rd and 4th of its order pending hearing of this appeal.

However, the relief granted by the respondent no.1 by Ld Trial Court in Clause 5 and Clause 6 in respect of amount of compensation of Rs.2,50,000/- within period of 3 months from the date of 13/5/14 and relief granted by way of payment of Rs.10,000/-

from April 2013 onwards towards alternate residential accommodation is appears to be just and reasonable to be stayed during the pendency of this appeal”.

3 Being aggrieved by the said order, which according to the petitioner, is a cryptic and a non-reasoned order, petitioner has invoked the jurisdiction of this Court. With the assistance of the learned counsel for the parties, I have perused the impugned order and the learned counsel for the parties have also invited my attention to the evidence brought on record of the Metropolitan Magistrate and also to the averments made in the application preferred under Section 12 of the Domestic Violence Act. The order passed by the Metropolitan Magistrate, which in detail, deals with the material brought on record, also record that there was some discord on account of the property and has made remarks to the effect that this appears to be the bone of contention between the parties.

4 The Appellate Court, however, while staying the effect and operation of the two portions of the order passed by the Metropolitan Magistrate i.e. the direction to pay an amount

of compensation of Rs.2,50,000/- and direction to the respondents to make payment of Rs.10,000/- towards alternate residential accommodation, has arrived at a conclusion that it needs to be stayed.

The Sessions Judge did not even bother to record any reasons while granting stay to the said effective orders passed by the Metropolitan Magistrate in exercise of his power conferred under the provisions of the Domestic Violence Act, 2005.

5 The precise submission of the learned counsel for the petitioner, therefore, appears to be justified that while staying an order which was passed by the Metropolitan Magistrate which was passed on due consideration of material brought before the Court by the complainant, there was no justification in staying the said two directions and that two without citing any reason.

6 The parties inform that the proceedings pending before the Addl. Sessions Judge, Greater Mumbai are moving

with a slow pace and though the interim order is passed on 21st January 2015, the proceedings are still pending for final adjudication.

7 In such circumstances, it would be appropriate if the proceedings itself are disposed of and the parties co-operate with the Addl. Sessions Judge in finally disposing of the Appeal No.639 of 2014, since it is pending for a considerable period of time. It is also informed by the learned counsel for the petitioner that the order passed by the Addl. Sessions Judge is stayed by this Court. However, inspite of the interim order granted in favour of the petitioner by the Magistrate, no amount towards rent as directed by the Magistrate or the amount of compensation has been disbursed.

 Considering the scenario as on today, I am of the opinion that the amount of compensation of Rs.2,50,000/- can be decided by the Addl. Sessions Judge by recording appropriate reasons in exercise of his appellate powers. However, as regards the payment of Rs.10,000/- towards rent, the respondent is directed to deposit an amount of Rs. One lakh

within a period of one month and remaining amount of Rs.One lakh to be paid within next two months. Petitioner is also given liberty to make appropriate application before the Addl. Sessions Judge for withdrawal of the said amount and the Addl. Sessions Judge on its due consideration would pass appropriate orders. The Addl. Sessions Judge, Greater Mumbai is directed to dispose of the Appeal within a period of three months from the date of passing of this order. It is made clear that both the parties i.e. the petitioner and respondent would co-operate with the Addl. Sessions Judge and would assist him in his endeavour to dispose of the Appeal within a period of three months as directed.

With the aforesaid directions, writ petition is disposed of.

SMT. BHARATI H. DANGRE, J.

Manali
Prasanna
Tilak

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