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

WRIT PETITION NO. 1294 OF 2018

Sonal Sadanand Naik

.....Petitioner

V/s.

Mayuresh Sadanand Naik and Ors

....Respondents

Mr. Sanjay Bhojwani for the petitioner.

Mr. Shirin Merchant i/b Mr. Hitesh Vyas for respondent nos. 1 & 2.

Mr. Y. Y. Dabke APP for the State.

CORAM : NITIN W. SAMBRE, J.

DATE : APRIL 9, 2018.

P.C.

In an unfortunate dispute between mother and son and daughter-in-law, the provisions of Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as “the said Act” for the sake of brevity) are invoked which prompted the learned Magistrate on 25/01/2016 to pass following order:

“1- Non-applicants hereby directed not to indulge in any act of omission or commission that may cause any kind of domestic violence to the applicant and the family members of the applicant till the appearance of the non-applicants.

2- It is hereby restrained the non-applicants from making any contact with the applicant and the family members of the applicant in any manner whatsoever whether physically,

telephonically or otherwise till the appearance of the non-applicants.

3- It is hereby restrained the non-applicants and any person acting for them from entering into the residence of the applicant being flat No. 1, Bldg No. 5, Brindawan Garden Co-op. Housing Society Ltd, Opp. Bank of Maharashtra, Salisbury Park, Pune till the appearance of the non-applicants.

4- Non-applicants are hereby restrained and anyone acting for them also restrained from entering into the property owned by the applicant being S.No. 45, Parvati Industrial Estates, Pune Stara road, Pune next to the Laxmi Bank, Pune till the appearance of the non-applicants.

5- Non-applicants hereby restrained from any alienating, encumbering, creating any third party interest and disposing off their movable and immovable properties till the appearance of the non-applicants.

6- Applicant hereby directed to serve the copy of the order and notice to the non-applicants and file it in the proceeding and complied the same.

7- Notice returnable on 03/02/2016”.

which was confirmed on 27/09/2016 which reads as under:

“1) Interim order dated 25/01/2016 stands confirmed till the final decision of the main application.

2) Other relief shall be considered at the time of deciding main application.

3) Applicant is directed to lead her evidence within one month from the date of this order.

4) No order as to costs.”

2 The respondent son and daughter-in-law, feeling aggrieved thereby, preferred an appeal under section 29 of the said Act before the learned Sessions Judge being Appeal no. 461 of 2016 which came to be partly allowed vide impugned order dated 05/12/2016. As such, this writ petition by the original complainant.

3 The learned counsel for the petitioner would urge that the property in question in relation to which present proceedings are restricted are survey no. 45, Parvati Industrial Estates, Pune Stara road, Pune where according to the applicant, her husband and other son than respondent are carrying out their manufacturing activity pursuant to the permission granted by her. He submits that it can be borne out of the record that respondent i.e. other son operating his business in the batteries from some other place by name Venkatesha Agencies. He would urge that there is no documentary evidence to infer that respondent son was in possession of part portion of the aforesaid industrial plot. According to him, as such, order of injunction passed by the learned Trial Court needs to be

restored by modifying the order of the learned Sessions Judge passed in appeal. So as to substantiate his contentions, he would invite attention of this Court to the provisions of section 18 (c) of the said Act so as to claim that the learned Sessions Judge has misread and misunderstood the provisions of the said Act while inferring that the order *qua* commercial premises cannot be passed. The learned counsel for the petitioner then would urge that even if presuming without admitting that the respondent son is in possession of part portion of plot no. 45, Parvati Industrial Estates, Pune Stara road, Pune still it is not clear as to which portion of the said property is occupied by the respondent son which may give rise to law and order issue. My attention is further invited to the proceedings initiated by the respondent under section 144 of the Code of Criminal Procedure, 1973 and application under the said Act preferred by the respondent daughter-in-law in this very proceedings.

4 *Per contra*, the learned counsel for the respondent would urge that the order passed by the learned Sessions Judge in Appellate jurisdiction under section 29 of the Domestic Violence Act, 2005 is

based on appreciation of the documentary evidence which was not looked into by the learned Magistrate. She would submit that the respondent son along with daughter-in-law was occupying part premises of the disputed premises viz. survey no. 45, Parvati Industrial Estates, Pune Stara road, Pune for the last more than 20 years. It is further urged that the order of the learned Sessions Judge taking care of the interest of the petitioner also does not warrant any interference.

5 Considered rival submissions and perused both orders which are impugned in the present petition.

6 It is noticed from the pleadings in the complaint preferred under the Domestic Violence Act, 2005 that the petitioner has not disclosed in the said complaint about the possession of any of the part of the plot no. 45. It is pursuant to the reply to the application, respondent son has brought on record that for last more than 20 years, he is occupying a portion of the said property and carrying out business in relation to the batteries. Respondent so as to

substantiate his contentions has produced on record documentary evidence as reflected in para 48, 49 & 50 of the order of the Appellate Court. Apart from above, documents viz. tax invoice which are produced on record on page no. 297, 298 and such other documents speaks of fact about the respondent son was operating his business from this very premises. The documents which are considered by the learned Appellate Court referred to in para 48, 49 & 50 of its order are in the nature of tax invoice, telephone bills, income tax department notices etc. It is not the case of the respondent son that his son, his other brothers or his mother is not occupying the said premises but what is claimed and established from the documents which can be inferred *prima facie* is respondent son is in possession of part premises wherein he is carrying out his business activity.

7 In the aforesaid background, if the first ad-interim order dated 25/01/2016 passed by the learned Magistrate in favour of the petitioner, further confirmed on 27/09/2016 which is modified by the learned Sessions Judge in Appellate jurisdiction, in my opinion,

does not warrant any interference. The view expressed by the Appellate Court appears to be based on documentary evidence which was never appreciated by the learned Magistrate while passing the order which was set aside by the learned Sessions Judge in appeal.

8 In view of above, in my opinion, no interference is warranted. Writ petition lacks merit, dismissed. The learned Magistrate shall decide the contentions raised before it, without being influenced by the observations made herein above.

[NITIN W. SAMBRE, J.]