

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY****CIVIL APPELLATE JURISDICTION****CIVIL APPLICATION NO. 191 OF 2018  
IN  
FAMILY COURT APPEAL NO. 159 OF 2018**

Mrs.Sajita Subhash Unnikruishnan      ...Appellant/Applicant  
Vs.  
Mr. Subhash Unnikrishnan                      ...Respondent

Mr.Pankaj Thatte for Appellant/Applicant.  
Ms.Susy Mathew for Respondent.

**CORAM : A.A. SAYED & S.C. GUPTA, JJ.**

**DATED : 11 SEPTEMBER 2018**

**P.C. :**

The Civil Application is taken out by the wife seeking the following reliefs :

(a) pending the hearing and final disposal of this Family Court Appeal, this Hon'ble Court by its Order be pleased to stay the operation, implementation and execution of the impugned Judgment dated 22.12.2017 and Decree dated 22.12.2017 passed by the Hon'ble 6<sup>th</sup> Family Court, Bandra, Mumbai in MJ Petition No.A-2586 of 2012;

(b) pending the hearing and final disposal of this Family Court Appeal, this Hon'ble Court by its Order be pleased to restrain and injunct the Respondent-Husband from

marrying again;

(c) pending the hearing and final disposal of this Family Court Appeal, this Hon'ble Court by its Order be pleased to restrain the Respondent and/or parents of the Respondent and/or the person/s claiming under by and through the Respondent from evicting the Applicant and minor daughter Jhanvi from the matrimonial house i.e. Flat No.H-303, Niranjani Co-operative Housing Society Ltd., Chikooowadi, Borivali (West), Mumbai 400 092.

2           It is noted that on 20 July 2018, this Court has already stayed the decree of divorce. It is not in dispute that the aforesaid Flat No.303 was the matrimonial home of the parties. It is also not in dispute that pending the Petition before the Family Court, there was interim order restraining the husband from evicting the wife from the said Flat No.303 notwithstanding the contention of the husband that the said Flat No.303 belongs to his parents. Learned Counsel for the wife fairly states that she is seeking relief only as against the husband.

3           Learned Counsel for the husband, on the other hand, pointed out Paragraphs 10 and 11 of the affidavit in reply to the Civil Application, which read as under :

“10.       I submit that after the Family court's order of divorce the applicant's parents are shifted to Flat No.A-203, 2<sup>nd</sup> Floor, Aishwarya CHS Ltd., Off Link Road, Chikooowadi, Borivali (W), Mumbai - 400092 in the month of May 2018,

which is nearby Flat No.H-303, Niranjana CHS Ltd., Chikooowadi, Borivali (W) after giving their Dombivali 2BHK flat on rent which is even otherwise for the applicant as her only brother is mentally challenged. Moreover at the time of the proposal of the marriage the applicant's father told to my parents that they will give the Dombivali flat to the applicant, and they along with their mentally challenged son will go and stay at their ancestral house at Kerala.

11. It is not the case of the applicant that she is deprived of shelter/accommodation for the reason that her parents have already orally gifted their 2BHK ownership flat at Dombivali during the finalization of the marriage. The applicant is having only one brother who is mentally challenged, being under the care of her parents who have already decided to go to native place at Kerala to stay in their ancestral property who have their undivided right, title and interest in respect of the said property of land with a house. (both parents of the applicant is having ancestral property of land with house) I am annexing herewith biodata submitted by the applicant's father at the time of proposal of her marriage with the respondent and the same is marked as **Exhibit-D** wherein the details of the said property is shown. I submit that if the situation is precarious the applicant is entitled to sell it off and buy another flat of her choice. I submit that I am not having any immovable property neither in Mumbai nor in native place whereas the applicant is also having share in the immovable property belonging to her parents, which has been disclosed at the

time of marriage.”

4           In our view, the contention of the husband that the parents of the wife have shifted to Borivali which is closer to the Flat No.H-303 after renting their two-bedroom flat at Dombivli, even if accepted, cannot be a factor to deny reliefs to the wife. There is nothing on record to show that the wife owns a flat near Flat No.H-303 or otherwise. As a matter of fact it is specifically stated in the Civil Application by the wife that she and her minor daughter are not having any other alternate accommodation in the city except the matrimonial Flat No.H-303.

5           We record the statement of the learned Counsel for the Respondent-husband that he will continue to pay a sum of Rs.4,000/- per month as maintenance for the daughter during the pendency of the Appeal. It will however be open for the wife to apply for enhancement, if so advised.

6           In the circumstances, we pass the following order :

(I)   The husband is restrained from evicting the Applicant-wife and the minor daughter from Flat No.H-303, Niranjana Co-operative Housing Society Ltd., Chikoowadi, Borivali (West), Mumbai - 400 092 pending the hearing and final disposal of the Appeal.

(II)   The directions contained in para 3 of the operative part of impugned order are stayed.

(III) The Civil Application to stand disposed of.

(IV) We clarify that the suit which is pending in the Small Causes Court filed by the parents of the husband shall be decided on its own merits and without being influenced by this order.

**(S.C. GUPTE, J.)**

**(A.A. SAYED, J.)**