

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 1081 OF 2017**

Rosina Vijay Mehra	...Applicant
Versus	
Vijay Baldev Mehra & Anr.	...Respondents

Mr. Archit Jayakar with Mr. Rahil Jhaveri, Mr. Amogh Joshi and Ms. Aakanksha Agrawal I/b Jayakar & Partners for the Applicant

Mr. Mohan Rao for the Respondent No. 1

Mr. S. V. Walve, A.P.P for the Respondent No.2-State

CORAM : REVATI MOHITE DERE, J.
MONDAY, 15th JANUARY, 2018

P.C. :

1 Heard learned counsel for the parties.

2 By this application, the applicant-wife has impugned the order dated 28th September, 2017 passed by the learned Additional Sessions Judge, City Civil and Sessions Court, Greater Mumbai in Criminal Appeal No. 527 of 2017, only to the extent, that the interim relief granted below Exhibits 3 and 7 dated 14th March, 2012 was not revived.

3 Learned counsel for the applicant submitted that the learned Sessions Judge while allowing the criminal appeal filed by the applicant for setting aside the order dated 12th May, 2017, by which the proceedings were dismissed for want of prosecution, also ought to have revived and restored the interim relief granted to the applicant below Exhibits 3 and 7 dated 14th March, 2012.

4 Learned counsel for the respondent No.1 submitted that the respondent No. 1 is regularly paying maintenance to the applicant as awarded by the trial Court vide order dated 14th March, 2012 and that the respondent No.1 has also not taken any steps to dispossess the applicant, till date. He submitted that the interim relief passed below Exhibits 3 and 7 dated 14th March, 2012 was not revived by the learned Additional Sessions Judge, considering the conduct of the applicant and since the DV proceedings were pending since 2013. He submitted that in fact, the residence where the applicant stays does not solely belong to the respondent No. 1 but the said property also belongs to the respondent No.1's brothers.

5 Perused the papers. The applicant has filed DV proceedings in the Court of the learned Additional Chief Metropolitan Magistrate, 40th Court, Girgaon, Mumbai, as against the respondent No. 1. In the interim application filed by the applicant in the DV proceedings, the applicant had sought interim maintenance for herself and for her sons and had also sought a direction that the respondent No. 1 be restrained from disturbing her possession in Flat No. B-41, Darshan Apartment, till the disposal of the main application, alongwith other reliefs. The learned Additional Chief Metropolitan Magistrate, 40th Court, Girgaon, Mumbai, vide order dated 14th March, 2012 granted interim maintenance to the applicant and her two sons from 1st January, 2012 till the disposal of the main application. The learned Judge also restrained the respondent No. 1 from disturbing the applicant's possession over flat No. B-41, Darshan Apartment, till the disposal of the main application. Several litigations were filed by the applicant apart from the DV proceedings. There have been several rounds of talks of settlement between the parties after the said interim order was passed. On 12th May, 2017, the learned Magistrate dismissed the applicant's DV complaint for want of prosecution.

6 Being aggrieved by the said order dated 12th May, 2017, the applicant challenged the same before the Sessions Court in appeal. The learned Sessions Judge vide order dated 28th September, 2017 was pleased to quash and set-aside the order passed by the learned Metropolitan Magistrate dismissing the applicant's DV complaint/application and as such was pleased to restore CC No. 2485/SS/2011. The learned Sessions Judge, however, for reasons set out in the said order, did not revive/restore the interim relief granted by the learned Magistrate vide order dated 14th March, 2012 below Exhibits 3 and 7.

7 Learned counsel for the applicant assures that the applicant will appear before the learned Magistrate, either in-person or through her Advocate, on the dates given by the learned Judge. The said statement is accepted. The applicant is staying at the aforesaid residence i.e. flat No. B-41, Darshan Apartment with her two children. Without going into the merits, whether the residence where the applicant is residing with her children, belongs to the respondent No.1 only or also to his brothers, suffice to say, that in the peculiar facts of this case and in the interest of justice, the learned Sessions Judge having restored the application/DV

complaint, also ought to have restored the interim relief granted by the trial Court on 14th March, 2012.

8 Accordingly, the application is allowed. The impugned order dated 28th September, 2017 passed by the learned Additional Sessions Judge to the extent, that it did not restore/revive the interim relief dated 14th March, 2012 is quashed and set-aside. The interim relief dated 14th March, 2012 passed by the learned Magistrate shall continue to operate till the disposal of the main DV application/complaint.

9 Application is accordingly disposed of on the aforesaid terms.

10 All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.