

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.12820 OF 2016

Niloufer Ahmed Ebrahim ... Petitioner
Vs.
Ahmed Ebrahim ... Respondent

Ms Seema Sarnaik for Petitioner.
Ms Shirin Merchant i/b. Mr. Hitesh P. Vyas for Respondent.

CORAM : R. G. KETKAR, J.
DATE : SEPTEMBER 27, 2018

P.C. :

Heard Ms Sarnaik, learned Counsel for the petitioner and Ms Merchant, learned Counsel for the respondent at length.

2. This Petition takes exception to the order dated 08.09.2016 passed by the learned Judge, Family Court No.5, Pune below exhibit-50 in P.A.No.103 of 2013. By that order, the learned trial Judge partly allowed the application filed by the respondent herein and directed the petitioner herein to pay Rs.20,000/- per month towards rent of the flat situate at 706, Nightingale, Raheja Woods, Nightingale, Kalyaninagar, Pune (for short 'said flat') from September 2015 till the decision of main petition. The petitioner is further directed to comply formalities by executing leave and licence agreement.

3. The petitioner has instituted proceeding for obtaining decree of divorce under Sections 2(ii), 2(iv), 2(viii)(a) and (d) of the Dissolution of Muslim Marriages Act, 1939 by dissolving the marriage solemnized between the parties on 16.05.1981, among other prayers. During the pendency of this proceeding, respondent filed application exhibit-50 inter alia contending that he is a retired person aged about 64 years. He

has rented the said flat to the petitioner herein as a tenant. As the petitioner wanted to stay separately and move into the said flat, respondent terminated the leave and licence agreement with the tenant. The petitioner moved in the said flat. It was agreed between the parties that within 2 months of moving in the said flat by the petitioner, the respondent will enter into a leave and licence agreement. However, the petitioner did not enter into leave and licence agreement. In paragraph 3 of the application, it is asserted that after discussion in the Court about settlement, the petitioner suddenly had stopped paying rent. The respondent has not agreed to this proposition. The property is solely owned by the respondent and son Adnan. Thus, the respondent is entitled to the rent from the petitioner. The respondent, therefore, prayed inter alia, for direction to the petitioner to complete the legal formalities of entering into a leave and licence agreement and for further direction to pay a deposit of Rs.1,00,000/- as also a rent of Rs.20,000/- per month.

4. The petitioner filed reply resisting that application. It was contended that in the year 2010, the respondent insisted that the petitioner should transfer her share of their jointly owned flat at Raheja Woods in Kalyani Nagar, Pune (said flat) to him. The petitioner refused to do so. The petitioner ultimately transferred her share to son Adnan, who was then 24 years of age. The said flat is standing in the joint name of the respondent and son Adnan. It was further contended that she was paying him the rent because otherwise the respondent would not have let her stay there. Initially, she was paying rent of Rs.20,000/- per month to the respondent since January 2012 till mid 2012. Thereafter, the petitioner requested to reduce the rent because she could not afford the same and the respondent had agreed to this proposition. The petitioner started paying Rs.10,000/- per month to the respondent. The petitioner started paying the society charges, property taxes as also balance amount

of society's major repair charges. The petitioner is still paying the said charges to the society.

5. The petitioner further contended that respondent is living in a flat at B2 Ganga Fortune, Koregaon Park Lane No.6, Pune 411006, which is jointly and equally owned by the petitioner and the respondent. The petitioner, therefore, has every right to stay in the premises at B2 Ganga Fortune, Koregaon Park Lane No.6, Pune 411006 provided respondent shifts in the said flat. As the marriage between the parties still subsists, she has every right to stay in a flat owned by her husband that is the respondent and their son who never objected to the mother living there. The respondent has no legal right to claim rent from the petitioner as she is still his wife.

6. By the impugned order, the learned trial Judge has partly allowed the application. In paragraph 4, the learned trial Judge noted that the said flat is jointly owned by the respondent and his son. The petitioner admitted that she was giving Rs.20,000/- per month towards rent to the respondent towards rent and staying there. She had stopped paying rent @ Rs.20,000/- per month to the respondent. The contention of the petitioner that as per the agreement between the parties she has to bear society maintenance charges, property taxes, repairing charges, etc., and therefore, she is not paying the rent was not substantiated by producing cogent documentary proof. The learned trial Judge partly allowed the application as indicated earlier.

7. In support of this Petition, Ms Sarnaik submitted that the marriage between the parties still subsists. The said flat is the matrimonial home of the petitioner. In any case, it is a shared household as per the Protection of Women from Domestic Violence Act, 2005 (for short 'D.V.

Act'). The respondent, therefore, cannot claim any amount towards licence fee / rent. She submitted that initially, she was paying Rs.20,000/- per month, which was, by agreement, reduced to Rs.10,000/- per month as the petitioner is paying society charges. The petitioner is still paying the society charges, property taxes and balance of society's major repair charges. Ms Sarnaik invited my attention to paragraphs 11 and 12 of the affidavit in reply dated 07.02.2018 of the respondent. In paragraph 10, respondent also accepted that the petitioner was paying rent @ Rs.10,000/- per month. Ms Sarnaik submitted that the said flat is in the joint name of the respondent and son Adnan. He has sent email on 05.12.2016 to the effect that he has no objection for petitioner staying in the said flat so long as she would like and he does not want any rent or compensation from her. For all these reasons, she submitted that the impugned order deserves to be set aside.

8. On the other hand, Ms Merchant supported the impugned order. She submitted that the learned trial Judge rightly held that no material was produced by the petitioner in support of the petitioner's contention that there was settlement between the parties to the effect that petitioner should stop paying the rent to the respondent. She, therefore, submitted that no case is made out for interfering with the impugned order.

9. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. It is not in dispute that the said flat stands in the name of the respondent and Adnan. It has also come on record that petitioner is residing in the said flat from March 2012, that is to say, after coming into force of the D.V. Act. If at all it is the claim of the petitioner that it is a shared household or a matrimonial home, she was not required to pay any amount to the respondent. Notwithstanding coming into force of the D.V. Act, there was agreement between the parties to the effect that

petitioner will pay Rs.20,000/- per month to the respondent. The learned trial Judge has observed in paragraph 4 that petitioner admitted that she was giving Rs.20,000/- per month towards rent to the respondent and was staying there. That apart, the petitioner came with the case that there was settlement before the Court and it was agreed between the parties that the petitioner should stop paying the respondent and bear all the society charges. It at all there is a settlement before the Court, obviously, it has to be in writing and the Court has to record satisfaction about the settlement, being legal and valid. No such material is produced to that effect. It is, therefore, cannot be said that as there was settlement before the Court between the parties, petitioner stopped paying rent to the respondent. Equally, there is no material to show that there was agreement between the parties for reduction in amount of Rs.20,000/- to Rs.10,000/- per month. Ms Sarnaik submitted that Adnan has sent email dated 05.12.2016, and therefore also, petitioner is not liable to pay any amount to the respondent. It is not possible to accept this submission. There is no such agreement between the petitioner and the respondent for not charging any amount to the petitioner.

10. During the course of hearing, I inquired with Ms Merchant as to whether in terms of paragraph 2 of the reply filed by the petitioner to the present application, respondent is agreeable to shift to the said flat so as to enable the petitioner to stay at B2 Ganga Fortune, Koregaon Park Lane No.6, Pune 411 006, which is jointly owned by the parties. Upon taking instructions from the respondent, who is present in the Court, Ms Merchant states that respondent is not agreeable to the said suggestion. The petitioner is welcome to stay jointly with the respondent. The petitioner is not agreeable to this proposal. In view thereof and for the reasons recorded in the impugned order, I do not find that any case is made out for interfering with the impugned order. Hence, Petition fails and the same is dismissed.

11. At this stage, Ms Sarnaik orally applies for continuation of the ad-interim order dated 24.01.2017. That ad-interim order was passed only after hearing the petitioner while issuing notice to the respondent. As the Petition is now finally disposed of, I do not find that the request made by Ms Sarnaik is reasonable. Hence, oral application is rejected. Order accordingly.

(R. G. KETKAR, J.)

Minal
Sardip
Parab

Minal Parab