

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH : NAGPUR**

**CRIMINAL WRIT PETITION NO.774/2018**

Shri Arun S/o Ramkrishna Pawade

..Vs..

Smt. Nilima Wd/o Parkash Pawade and others

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Office Notes, Office Memoranda of Coram,  
appearances, Court's orders of directions  
and Registrar's orders  
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Court's or Judge's orders

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Shri A.A. Choube, Advocate for the petitioner.  
Ms. S.V. Kolhe, A.P.P. for respondent No.5.  
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**CORAM : Z.A. HAQ, J.**

**DATE : 21.8.2018.**

1. Heard.
2. The original non-applicant No.1 takes exception to the orders passed by the subordinate Courts, rejecting the application filed by him praying that the complaint filed by the present respondent Nos.1 to 4 under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short "the Act of 2005") be dismissed.
3. According to the petitioner the civil suit for partition and separate possession of the properties belonging to the joint family is pending and the rights of the parties would be decided in the civil suit, and therefore, the claim made by the respondent Nos.1 to 4 under Section 12 of the Act of 2005 cannot be entertained. According to the petitioner (original non-applicant No.1) the proceedings under Section 12 of the Act of 2005 are predominantly of civil nature. To

support the submission, the Advocate for petitioner has relied on the judgment given by the Full Bench of this Court in the case of *Nandkishor Pralhad Vyawahare V/s. Mangala W/o Pratap Bansar* reported in **2018(3) Mh.L.J. 913.**

4. After going through the impugned orders, I find that the subordinate Courts have dealt with all the relevant aspects in the right perspective. The petitioner has not been able to point out any patent illegality or perversity of such nature which necessitates interference by this Court in the extraordinary jurisdiction. Apart from this I find that the respondent Nos.1 to 4 have sought certain reliefs in the proceedings under Section 12 of the Act of 2005, which are not claimed in the civil suit.

In view of the above, the writ petition is **dismissed.**

5. The respondent Nos.1 to 4 are legal representatives of real brother of petitioner, the respondent No.1 being widow and respondent Nos.2 to 4 being daughter and sons of deceased brother of petitioner; the proceedings are pending since 2012. The application (Exh. No.74) praying that the complaint be dismissed was filed in 2015. The facts on record suggest that the application is filed by the petitioner to protract the matter. The Advocate for the petitioner has submitted that the application (Exh. No.74) is filed after this Court granted liberty to the petitioner to file such

application while disposing Criminal Application (APL) No.355/2014 on 30<sup>th</sup> January, 2015. Criminal Application (APL) No.355/2014 was filed by 5 persons who were shown as non-applicants in the complaint filed before the Special Court to challenge the order passed by the trial Court on the application (Exh. No.40) praying that the complaint be rejected. This Court partly allowed the Criminal Application (APL) No.355/2014 and quashed the complaint against the non-applicant Nos.2 to 5. This Court did not grant the prayer made by the present petitioner and refused to quash the proceedings against him.

6. After going through the judgment delivered in Criminal Application (APL) No.355/2014, I find that the claim of the petitioner that this Court granted him liberty to file fresh application praying for dismissal of the complaint at the *limine* stage, cannot be accepted.

7. Considering the facts of the case, the petitioner is directed to pay an amount of Rs.10,000/- (Rs. Ten Thousand) to the respondent Nos.1 to 4 by demand draft and produce receipt of it on record of the trial Court within one month. Though the respondent Nos.1 to 4 are not appearing before this Court, the petitioner is directed to pay costs to them as the disposal of complaint filed by them is unnecessarily delayed because of the tactics of petitioner.

**JUDGE**