

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2018

CORAM

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

Crl.O.P.No.7279 of 2013
and MP.No.1 of 2013

Tharagaraman

... Petitioner

Vs.

1. Rani
2. Saravanan
3. Suseela
4. Renuga
5. Maheswari

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to set aside the interim order dated 06.02.2013 passed in C.M.P.No.816 of 2013 on the file of the Judicial Magistrate at Sirkazhi.

For Petitioner : Mr.K.Thiruvengadam

For R1 : M/s.N.Alamelu mangai

For R2 to R5 : No appearance

O R D E R

This petition has been filed by the second respondent to quash the order passed by the learned Judicial Magistrate, Sirkazhi in C.M.P.No.816 of 2013, dated 06.02.2013.

2. The first respondent herein has filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (herein after referred to as the Act) seeking certain reliefs. In the said petition itself, the first respondent herein has asked to restrain the respondents therein from dispossessing her from the shared household.

3. The learned Judicial Magistrate, Sirkazhi, has passed an interim order on 06.02.2013 restraining the respondents 1 to 3 therein from preventing the petitioner therein to enter into the shared household and also issued notice to the respondents 1 to 5 returnable by 11.02.2013. Challenging the said order, the second respondent therein has filed the present petition.

4. At this juncture, it would be relevant to refer to Section 23 of the Act, which reads as follows:

'23. Power to grant interim and ex-parte orders.- (1) In any proceeding before him under this Act, the Magistrate may pass such interim order as he deems just and proper.

(2) If the Magistrate is satisfied that an application prima facie discloses that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he may grant an ex-parte order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under section 19, section 20, section 21 or, as the case may be, section 22 against the respondent.

5. From the aforesaid provisions, it is clear that an ex-parte interim order can be granted on the basis of the affidavit in such form, as may be prescribed in respect of the reliefs which can be granted under Sections 18, 19, 20, 21 and 22 of the Act.

6. Section 2 (m) of the Act defined that 'Prescribed' means prescribed by rules made under the Act. Rule 6(4) of the Protection of Women from Domestic Violence Rules, 2006 (herein after referred to as the Rules) reads thus:-

'(4) The affidavit to be filed under Sub-Section (2) of Section 23 shall be filed in Form -III.

7. Rule 7 of the Rules also insists that the affidavit shall be in Form-III which reads as follows:-

'7. Affidavit for obtaining ex-parte order of Magistrate:- Every affidavit for obtaining ex-parte order under Sub-Section (2) of Section 23 shall be filed in Form-III.

8. In this case admittedly, the first respondent herein has not filed any affidavit but the learned Judicial Magistrate has granted interim order. Further, it appears that the learned Judicial Magistrate has not directed the respondent herein to file a separate application for interim reliefs. It appears that in the main petition itself, the learned Judicial Magistrate has granted an interim order. The said procedure is not proper. Further, in the impugned order, Magistrate has

stated that already the first respondent herein was thrown out from the shared household and in such a case, the learned Judicial Magistrate should not have passed an order restraining the respondents therein from preventing the petitioner therein to enter into the shared household. Under Section 19(1)(a) of the Act, the Magistrate can pass an order restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household. In other words that if the aggrieved person is in possession of the shared household, then the Magistrate can pass an order restraining the respondent from dispossessing her or disturbing her. If already, she was dispossessed, as per section 19(1)(f) of the Act, the Magistrate can pass an order directing the respondent to secure same level of alternate accommodation for the aggrieved person. In this case as already stated that the first respondent herein was already dispossessed from the shared household. Therefore, the impugned order is liable to be set aside.

9. In the result, this petition is allowed. The interim order passed by the Judicial Magistrate, Sirkazhi in CMP.No.816 of 2013 dated 06.02.2013 is set aside. Considering the fact that the above CMP is pending from the year 2013, the learned Judicial Magistrate, Sirkazhi is directed to pass final order in C.M.P.No.816 of 2013 within a period of three months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

msrm

To

1. The learned Judicial Magistrate,
Sirkazhi.

2. The Public Prosecutor
High Court of Madras.

+1cc to Mr.K.Thiruvengadam, Advocate Sr.68083
+1cc to Ms.N.Alamelu mangai, Advocate Sr.68206

Cr1.O.P.No.7279 of 2013
and MP.No.1 of 2013

srg 14/11/2018