

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 1475 OF 2018

1. Jayshree w/o Shrawan Kharat,
Age 39 years, Occ. Service.
2. Shravan @ Baban Kishan Kharat,
Age 40 years, Occ. Service.

Both r/o. Padmavati Road, Chaitainy
Nagar, Opposite I.I.T. market Pavai,
Mumbai - 400076

... **Petitioners**

VERSUS

1. Anita w/o Raju Kharat,
Age 26 years, Occ. Household,
R/o. Greves Company Road,
Ambedkar Nagar, CIDCO,
Aurangabad.
2. Satyabhama w/o Kishan Kharat,
Age 60 years, Occ. Household,
R/o. Juinagar, Section - 25,
Flat No. 9, Bharat Society, B-2,
Nerul, Navi Mumbai.

... **Respondents.**

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Advocate for Applicant : Mr. Jivan J. Patil.
Advocate for Respondent No. 1 : Mr. Sandanshiv M.B.
Advocate for respondent No. 2 : Mr. A.B. Jagtap.

CORAM : MANGESH S. PATIL, J.
RESERVED ON : 21/09/2019
PRONOUNCED ON : 25/09/2019

JUDGMENT :

Heard. Rule. The rule is made returnable forthwith. The learned advocate Mr. Sandanshiv waives service for respondent No. 1. At the request of both the sides the matter is heard finally at the stage of admission.

2. The respondent No. 1 filed a proceeding before the learned J.M.F.C. Aurangabad under section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred as to 'D.V. Act') against her husband, the petitioners herein who are the brother-in-law and brother-in-law's wife and the respondent No. 2 herein who is her mother-in-law seeking various reliefs under different provisions of the D.V. Act. The learned Magistrate by the judgment and order dated 14.01.2015 allowed the application partly. He directed the respondents No. 2 to 5 therein to pay her maintenance at the rate of Rs. 3000/- per month and also issued a direction in the nature of injunction restraining them from obstructing and objecting her stay in the flat stated to be the shared household. It may be mentioned herein that though the respondent No. 1 in the original complaint was arrayed being the husband of the respondent No. 1, since he has been admittedly not traceable, the matter proceeded in his absence and the impugned order was directed only against the rest of the respondents.

3. It appears that the respondent No. 2 in the original proceeding who was the father-in-law of respondent No. 1 had died during pendency of the proceeding. The respondents No. 1, 3, 4 and 5 preferred appeal under section 29 of the Domestic Violence Act before the Sessions Court. By the impugned judgment and order the learned Additional Sessions Judge dismissed the appeal. Hence this Writ Petition.

4. The learned advocate for the petitioners vehemently submitted that the two Courts below have not considered the evidence in the proper perspective. There was no sufficient proof that the rest of the respondents apart from the husband were in domestic relationship with the respondent No. 1-wife as defined under section 2(f) of the D.V. Act. The petitioners who are the brother-in-law and his wife were residing separately and not sharing the house and therefore no liability could have been fixed on them. He further submitted that there was sufficient record to show that the husband of the respondent No. 1 had gone missing in May 2011. There was not enough material and evidence before the two Courts below to show that the respondent No. 1 and the petitioners herein had shared the house at Nerul. Therefore the Courts below could not have granted any relief to her as contemplated under section 19 of the D.V. Act in

respect of that flat which was not a shared household within the meaning of Section 2(s) of the D.V. Act. The appreciation of evidence by the two Courts below is perverse and arbitrary and should be interfered with in this proceeding.

5. The learned advocate also submitted that the complaint filed by the respondent No. 1 under section 498A, etc. of the Indian Penal Code against all her matrimonial relations has been dismissed and they have been acquitted and therefore that is a circumstance to show that there was no domestic violence.

6. The learned advocate for the respondent No. 1 submitted that there was ample evidence before the Courts below to show that she was cohabiting with her husband in the same flat at Nerul wherein even the petitioners were residing and cohabiting with them. They were served with the notices of the original proceeding on the same address. There was specific averment about it in the original application. She had in detail alleged as to how she was subjected to domestic violence and was not allowed to reside in the flat at Nerul. She has duly supported her such allegations by leading cogent and reliable evidence and the two Courts below have taken consistent and plausible view by correct appreciation of the evidence and this Court should not intervene in exercise of the writ jurisdiction in such

concurrent findings of facts.

7. I have carefully gone through the judgments of both the Courts below and perused the record. It is trite that the High Court in exercise of the writ jurisdiction would be loath in exercising it when there are consisting findings of facts of the two Courts below and can step in only when there is a gross error or perversity in appreciation of the evidence. Bearing in mind this principle let us approach the case.

8. It is necessary to note at this juncture that the father-in-law has died during pendency of the proceeding and the mother-in-law has not preferred the present proceeding by joining in the array of the petitioners albeit she has been made a respondent No.2. It is also important to note that though admittedly the husband has been missing since the year 2011 and was merely made respondent No. 1 for the name sake, the title clause of the appeal shows that even he was made an appellant in the appeal preferred by the petitioners along with the mother-in-law.

9. Be that as it may, we now have to consider the case of the petitioners alone. According to them since before marriage they were residing separately and had not shared the flat at Nerul as a common household along with the respondent No. 1 at any point of time and

consequently it cannot be said that they were having any domestic relation with her within the meaning of Section 2(f) of the D.V. Act and the flat at Nerul cannot be said to be a shared household within the meaning of Section 2(s). Therefore the scope of the present Writ Petition is restricted in ascertaining whether the observations and conclusions of the two Courts below qua the petitioners are sustainable.

10 In their written statement they have specifically admitted that after the marriage the respondent No. 1 started cohabiting with her husband and the matrimonial relations in the flat at Nerul, albeit the petitioners herein contended that they have been residing separately else where since before such marriage. Therefore independent of this issue there is apparently no dispute that the flat at Nerul is a shared household. The definition of 'shared household' under Section 2(s) of the D.V. Act reads as under :

"shared household" means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title,

interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household.

Since even a past residence is sufficient, when it is admitted that after the marriage the respondent No. 1 along with her husband were cohabiting in the same flat which was being used as a flat of the joint family since it was purchased/acquired by the deceased father-in-law of the respondent No. 1, nothing further needed to be established to hold that it was indeed a shared household.

11. As far as the petitioners version that they have been residing else where since before the marriage of the respondent No. 1, an attempt was made to show that they have been residing in a Government premises at Pavai. But as has been rightly noticed by the learned Magistrate except such bald statement there was absolutely no material to show even prima facie that they have been staying in such Government premises. They have not produced any evidence about it, which they could have easily done. For this reason the learned Magistrate discarded the petitioners' version that they have been residing else where and not in the shared household at Nerul. Although the petitioner No. 2 herein had stepped in the witness box, in

the absence of any concrete or corroborative evidence on the record the learned Magistrate has rightly refuted the petitioners' contention that they were residing at Pavai. Consequently, an inference has been drawn that even they have been residing in the shared household as members of the joint family and thus are in domestic relationship with the respondent No. 1 within the meaning of Section 2(f) which reads thus :

"domestic relationship" means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family;"

As can be seen all the persons living in the same shared household as family members can be regarded as having domestic relationship. The respondent No. 1 had specifically averred that all of them were residing in the flat at Nerul including the petitioners and the petitioners have failed to meet such averment by leading cogent and reliable evidence.

12. The learned Additional Sessions Judge has correctly appreciated the facts and circumstances and has come to a plausible conclusion confirming the observations of the learned Magistrate.

13. Much emphasis was laid by the learned advocate for the petitioners in the observations in paragraph No. 14 and 17 of the judgment passed by the learned Additional Sessions Judge while arguing that the learned Additional Sessions Judge has not analysed the evidence and has only cursorily referred to it to draw some conclusion.

14. I am afraid, the submission of the learned advocate is not acceptable. The learned Additional Sessions Judge has clearly discussed the evidence and has drawn the inferences which according to him are deducible on the basis of the oral testimonies and the documents produced on record. According to learned Judge such oral and documentary evidence clearly demonstrated and substantiated the version of the respondent No. 1 that the flat at Nerul is a shared household within the meaning of section 2(s) of the D.V. Act.

16. Resultantly, I find no apparent error or illegality in the observations and the conclusions drawn by the two Courts below so as to enable this Court to interfere in such concurrent findings.

17. The Writ Petition is dismissed. Rule is discharged.

(MANGESH S. PATIL, J.)

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