

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

14 CRIMINAL WRIT PETITION NO.1712 OF 2018

1. Manju w/o Vijaykumar Hibare,
Age 33 years, Occ. Household,
R/o. At Present Eknath Nagar,
D.P. Road, Bhakti Construction,
Beed, Tq. & Dist. Beed.
2. Swara D/o. Vijaykumar Hibare,
Age 3 years, Minor Under
Guardianship of petitioner No. 1
Mother- Manju w/o Vijaykumar
Hibare, r/o. At present Eknath
Nagar, D.P. Road, Bhakti Construction,
Beed, Tq. & Dist. Beed. ... **Petitioners.**

VERSUS.

Vijaykumar s/o Dattatraya Hibare,
Age 33 years, Occ. Private Service,
R/o. H. No. 34, Kumthanaka,
Vanugopal Nagar, Solapur, Tq. &
Dist. Solapur. ... **Respondent.**

...
Advocate for Petitioners : Mr. Deshpande Milind K.
Advocate for Respondent : Mrs. Zaware Suvarna M.

CORAM : MANGESH S. PATIL, J.

DATE : 20/09/2019

JUDGMENT :

Heard. Rule. The rule is made returnable forthwith. The learned advocate Mrs. Zaware waives service for the respondent. On the request of both the sides the matter is heard finally at the stage of

admission.

2. The petitioner No. 1 is the wife of the respondent and the petitioner No. 2 is their minor daughter. In a proceeding initiated by the petitioners under Section 12 of the Protection of Women From Domestic Violence Act, 2005 (hereinafter referred to as 'D.V. Act'), by application (Exhibit 38), the petitioners claim that the respondent is the owner of a flat in Anushka Residency, Uttam Nagar, Kondave Dhavade Tq. Haveli District Pune. The petitioners and the respondent were staying in that flat. However later on the respondent assaulted the petitioner No. 1. Thereafter he kept the petitioners in his bungalow at Solapur. The flat in Pune is a shared household within the meaning of section 2(f) of the D.V. Act. They sought direction under section 17 to direct him to allow them to reside in one of the three rooms in the flat. The respondent contested that application by his say (Exhibit 42). After hearing both the sides, the learned Magistrate by the order dated 30.05.2018 rejected the application. Being aggrieved by such rejection the petitioners preferred Criminal Appeal in the Sessions Court. By the impugned order, the learned Sessions Judge dismissed the appeal. Hence this petition.

3. The learned advocate for the petitioners vehemently submitted that the shared household includes any house either owned

or taken on rent where the couple had resided as husband and wife. Since there is no dispute that the respondent owns the flat in Pune and when there is a specific averment in the application that at some point of time the petitioners and the respondent had resided in that flat, that was sufficient material to grant an interim relief to the petitioners particularly when she has been required to stay in her parental house at Beed. The learned advocate sought to place reliance on following decisions.

- (i) Abhijit Bhikaseth Auti Vs. State of Maharashtra and another, in Criminal Writ Petition No. 2218 of 2007 decided on 16th September, 2008, by this Court (Bombay Bench).
- (ii) V. D. Dhanot Vs. Savita Bhanot, in Special Leave Petition (CRL) No. 3916 of 2010 decided on 7th February, 2012 by the Supreme Court.
- (iii) S.R. Batra and another Vs. Smt. Tarun Batra in Civil Appeal No. 5837 of 2006 decided on 18th December, 2006, by the Supreme Court.
- (iv) Razak Khan and others Vs. Smt. Shahnaz Khan, in Criminal Revision No. 68 and 112 of 2008, decided by Madhya Pradesh High Court on 25th March 2008.
- (iv) Manmohan Aitavar Vs. Neelam Manmohan Aitavar, II (2017) DMC 806 (SC).

4. Per contra, the learned advocate for the respondent submits

that merely because the respondent is owner of the flat one cannot draw any inference at this preliminary stage of the main proceeding under Section 12 of the D.V. Act that the flat is a shared household when he has denied the fact. In the absence of any material on record even to draw such an inference, the two Courts below had found that being a disputed question of fact, it was better left to be decided during the hearing of the main proceeding as to if the flat can be said to be a shared household. Faced with the situation, the learned Sessions Judge has rightly directed the main proceeding to be expedited while dismissing the appeal preferred by the petitioners on the very ground that the question whether the flat can be said to be a shared household being a disputed question the parties would have to lead evidence to substantiate their rival contention. The view taken by the learned Sessions Judge is reasonable one based on the fact situation of the matter. A care was taken by issuing a direction to expedite the matter.

5. The learned advocate for the respondent further submits that though the learned Sessions Judge by the order dated 23.10.2018 had directed the main proceeding under section 12 of the D.V. Act to be expedited, the petitioner No. 1 has till date not stepped into the witness box. Therefore, even for this reason, the Writ Petition may be

dismissed.

6. I have carefully gone through the papers. One need not delve much at this juncture as to what is meant by a shared household as defined under Section 2(f) of the D.V. Act. There are catena of judgments dealing with the issue. However, whether the flat in question can be regarded as a shared household is a disputed question of fact. Though the petitioners are claiming that at some point of time the parties were staying in that flat, it has been disputed by the respondent. Being a pure question of fact whether the couple had resided in that flat at any point of time, no conclusion can be drawn merely on the basis of some surmises and conjectures.

7. It is in these peculiar facts and circumstances that the learned Sessions Judge has rightly observed that being a disputed question of fact, evidence would be required to decide it conclusively. The learned Sessions Judge also took care to direct the main proceeding to be expedited. The interim relief being claimed by the petitioners could have been granted only when there would have been some material to prima facie show that the flat in Pune is a shared household. Merely because the respondent is the owner of the flat that would not ipso facto be sufficient to conclude that it is a shared household. Therefore, the view taken by the learned Sessions Judge is clearly a plausible view

in the facts and circumstances of the case and cannot be said to be either perverse or arbitrary to enable this Court to interfere by exercising the writ jurisdiction.

8. Apart from the above state of affairs, as is pointed out by the learned advocate for the respondent, inspite of the direction by the learned Sessions Judge to expedite the hearing of the main proceeding, the petitioner No. 1 has not taken any steps in that direction and has not yet even stepped into the witness box. This indeed is a material circumstance particularly when the writ jurisdiction of this Court is being sought to be invoked which is a discretionary relief.

9. Considering the entire conspectus of the matter the Writ Petition is liable to be dismissed.

10. The Writ Petition is dismissed. The rule is discharged.

(MANGESH S. PATIL, J.)

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