

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition (ST) NO. 4644 OF 2019

Mr. Ajit Gopalakrishnan Pillai	...Petitioner
<i>Versus</i>	
Mrs. Manju Ajit Pillai	...Respondent

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Mr. T.S. Ingle, i/b. Mr. Sunil N. Nair, Advocate for the Petitioner.

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CORAM : R. G. KETKAR, J.

DATE : 15th FEBRUARY, 2019

P.C.

1. Not on board. At the request of Mr. Ingle taken up for admission.
2. Heard Mr. T.S. Ingle, learned counsel for the petitioner, at length.
3. This Petition takes exception to the order dated 26.11.2018 passed by the learned Judge, 4th Family Court, Mumbai below Exhibit-7 in Petition No.A.2102/2018. By that order, the learned trial Judge partly allowed the application filed by the respondent herein in the following terms:

- “2. The husband/respondent is directed to first make arrangement for accommodation of his wife at the place of her residential area to her satisfaction as soon as possible.
3. Till such alternate arrangement is made as directed above, the husband-respondent and the owner of the flat No.B-1, 601, Ashok Towers, Ashok Nagar, Military Road, Udyan Complex, Marol, Andheri (East),

Mumbai 72 Mr. Shamsi Mohammed Amir Mohammed Arif and Mrs. Zahida Amir Shamsi, through their Power of Attorney holder, Mr. Shamsi Mohammed Arif, are directed not to compel wife to vacate the premises i.e. flat No.B-1, 601, Ashok Towers, Ashok Nagar, Military Road, Udyan Complex, Marol, Andheri (E), Mumbai 72.

4. The respondent-husband is directed to pay rent of the said flat.
5. The order is passed under order 39 rule 1 of Civil Procedure Code r/w sec. 94 of Civil Procedure Code, r/w sec. 17 and 19 of Protection Women from Domestic Violence Act, 2005, r/w sec.9 of Family Court Act, 1955.
6. Copy of this order be sent to the power of attorney of landlord Mr. Shamsi Mohammed Arif, on his address mentioned vide pursis Exh. 25.
7. The order is dictated and declared in open Court in the presence of the learned counsels for the both the parties. They shall note the order.”

4. Mr. Ingle has invited my attention to paragraph-6 of the petition at page-16, which reads thus :

“(6) The petitioner husband even after passing of the impugned order has contacted the estate agent and got the information about availability of 1 BHK residential flats in the same locality namely (1) Blossom, 301/B wing, Marol, Military Road, Andheri East, Mumbai, (2) Omkar CHS B/502, Near Suncity, MIDC, Marol, Andheri East, Mumbai, (3) Omkar CHS, B/502, Near Suncity, MIDC, Marol, Andheri East, Mumbai which the petitioner is ready to provide as alternative accommodation to the respondent-wife. The petitioner has already paid the License fee for the flat No.601 upto 31st January, 2019.”

5. Mr. Ingle submitted that after passing of the impugned order, the petitioner has contacted the Estate Agent and has got the information about

availability of 1 BHK residential flats in the same locality. The petitioner file appropriate application before the trial Court within two weeks from today offering 1 BHK flat to the respondent. If such an application is made, the respondent may be directed to take inspection of said flats and submit her response before the trial Court. He submitted that the learned trial Judge may be directed to dispose of application within four weeks from presentation of the application.

6. In view thereof, on the motion made by Mr. Ingle, the petition is allowed to be withdrawn with liberty to file application before the trial Court for modification of the impugned order by offering the premises mentioned in paragraph-6, as extracted hereinabove, or any other 1 BHK residential flat in the same locality to the respondent. If such premises are offered, the learned trial Judge will ascertain the readiness and willingness of the respondent. If she is ready and willing, the learned trial Judge shall direct the respondent to take inspection of the premises offered by the petitioner and submit her response before the trial Court. The trial Court thereafter shall dispose of the application within four weeks. All contentions of the parties on merits are expressly kept open. In case, the respondent is not ready and willing to accept 1 BHK residential flat, in that event the petitioner is at liberty to apply for recalling this order and for reviving this petition. Order accordingly.

(R. G. KETKAR, J.)