

Vidya Amin.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION No. 529 OF 2018
IN
CRIMINAL REVISION APPLICATION NO. 478 OF 2015**

Maliet Rolphie Mathias & Ors. ... Applicants
vs.
Rolphie Mathias & Anr. ... Respondents

Mr. Gauri Godse, Advocate for the applicants.
Mr. Nitin P. Dalvi, Advocate for the respondent no.1/original
applicant in Revision Application.
Mr. A.R. Patil, APP for the respondent/State.

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: 15th April, 2019**

P.C. :

This Application is preferred by the applicant/wife and her major son against the respondent/husband, who is original applicant in Criminal Revision Application, for vacating interim relief granted on 8th March, 2016 by which the order dated 21st October, 2015 is confirmed in Criminal Revision Application No. 478 of 2015. In order to avoid the confusion, the parties are referred to as per their martial status.

2. The applicant/wife has filed the Application under the Domestic Violence Act, which is pending with the Metropolitan

Magistrate Court and now the main Petition is fixed for hearing on 22nd April, 2019. The interim order was passed in the said Domestic Violence proceedings by the learned Magistrate wherein interim relief praying for the prohibitory order of entering the house, i.e., Flat No. 10, Sandhya Dharmadaya Cooperative Housing Society was rejected. A prayer was also made in respect of Flat No. 10, Lourdes Villa, St. Pius "E" Cooperative Housing Society. However, this Court is not going to deal with the issue in respect of the flat at Lourdes Villa, as it is claimed by the applicant/wife that the said flat belongs to her mother and the learned counsel for the original applicant/husband has made a statement that "since the wife is staying there since 2013, he has no intention to go in that flat". This statement is accepted by the Court and therefore, this Court is not passing any order in respect of Flat No. 10 at Lourdes Villa, St. Pius "E" Cooperative Housing Society.

3. The learned Sessions Judge by its order dated 5th September, 2015 has allowed the interim prohibitory prayer made by the wife and directed the husband that he shall not enter Flat No. 10 Sandhya Dharmadaya Cooperative Housing Society Ltd., Mulund. This Court while entertaining this Revision Application

considered the case of the husband and has observed that the original applicant would be rendered without a shelter, in the eventuality that he is evicted from flat no. 10, Sandhya Dharmadaya Cooperative Housing Society, Mulund (West). It is also observed that in fact the applicant/wife is residing in another flat and therefore, the original applicant/husband cannot be restrained and rendered homeless by asking him not to have ingress to Flat No. 10, Sandhya Dharmadaya Cooperative Housing Society, Mulund. The said order was confirmed by order dated 8th March, 2016.

4. The present Application is moved by the wife seeking that the interim relief be vacated.

5. The learned counsel for the applicant/wife has submitted that the applicant/wife was residing in the said flat and she is the owner of the said flat, however, there is declaration by the City Civil and Sessions Court in Suit No. 2441 of 1997 by order dated 29th September, 2016 that the respondent/husband is 50% owner of the said flat. The learned counsel has submitted that the wife has challenged the said order in Appeal in this Court and the said matter is pending. The learned counsel submitted that the

applicant/wife, being the owner of the said flat, has every right to enter the said flat. The interim relief granted by this Court is misinterpreted by the respondent/husband. The order passed by the learned Sessions Judge is stayed by this Court, however, it does not mean that the applicant/wife is prohibited from entering the flat at Sandhya Dharmadaya Cooperative Housing Society. She submitted that the husband taking advantage of the said interim order has changed the lock and this led to prohibitory order against the wife from entering the said flat which is owned by her. The learned counsel further submitted that though her marriage with the respondent/husband still subsists, the respondent/husband has married with some other lady and the applicant has produced the certificate of their marriage, which is annexed therewith. She has further relied on the electricity bills paid by her where the electric meter stands in the name of wife. She also relied on the receipts issued by the Society for payment of maintenance charges of the year 2017 and 2018. She further submitted that the husband is not staying in the said flat and also in India but he is residing in U.K. The learned counselsubmitted that Flat at 10 Lourdes Villa stands in the name of applicant's mother, who expired on 8th March, 2019 and the applicant/wife has

siblings who also claim the said flat.

6. In reply, the learned counsel for the husband has submitted that the wife in the year 2013 herself has left the flat in dispute. The husband is having 50% of the ownership in the said flat. In fact in the year 2013, the wife herself has written a letter on 14th March, 2013 and also on 21st July, 2013 to the Society stating that she has applied to the Society for making her husband 50% joint owner of her flat. He further submitted that the order of the Civil Court declaring him 50% of the owner of the said flat is in his favour. The wife is not staying in the said flat but the husband is residing in the said flat and therefore, the husband has locked the premises. The wife has not prayed that she be allowed to enter the flat in the present Application but she has only prayer that the interim order is to be vacated. The learned counsel further submitted that the husband has kept all his belongings in the said flat and there is criminal case filed by the respondent/husband against the wife for breaking upon the lock in his absence and taking away his belongings. Under such circumstances, it is not fair to allow the wife to enter the flat.

7. In view of the submissions made by the learned counsel of

both the sides and considering the facts of the case and the order passed by the learned Judge of the Civil Court which is in force as on today declaring 50% of the share of both the parties in the flat in dispute; neither the husband nor the wife at this stage can be asked to stay out of the flat. Both have right to enter and occupy the said flat.

8. In view of this, I modify and clarify the interim order as follows:

- (i) Both the parties are allowed to enter and occupy the flat No. 10, Sandhya Dharmadaya Cooperative Housing Society, Mulund (West) from 23rd April, 2019 onwards, as the husband is arriving in India on 20th April, 2019;
- (ii) The husband shall make 4 sets of keys, two keys will be kept with him and two keys to be given to the wife.
- (iii) It is suggested that the parties may try to settle the matter amicably.

9. Criminal Application is disposed of.

(MRIDULA BHATKAR, J.)