

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.5792 OF 2018

Aditi Sudhir Salunke ... Petitioner
Vs.
Sudhir Krishna Salunke and others ... Respondents

WITH
WRIT PETITION NO.521 OF 2019

Sudhir Krishna Salunke and others ... Petitioners
Vs.
Aditi Sudhir Salunke ... Respondent

Ms S. A. Mudbidri for Petitioner in W.P.No.5792 of 2018 and for Respondent in W.P.No.521 of 2019.

Mr. Darryl Paul Barretto for Petitioners in W.P.No.521 of 2019 and for Respondents in W.P.No.5792 of 2018.

CORAM : R. G. KETKAR, J.
DATE : APRIL 4, 2019

P.C. :

Heard Ms Mudbidri, learned Counsel for the petitioner in Writ Petition No.5792 of 2018 as also for the respondent in Writ Petition No.521 of 2019 and Mr. Barretto, learned Counsel for the petitioners in Writ Petition No.521 of 2019 and for the respondents in Writ Petition No.5792 of 2018 at length.

2. Writ Petition No.5792 of 2018 is instituted by Aditi Sudhir Salunke (for short 'Aditi'). Writ Petition No.521 of 2019 is instituted by Sudhir Krishna Salunke (for short 'Sudhir'). These Petitions are directed against the order dated 19.11.2018 passed by the learned Additional Sessions Judge, City Civil & Sessions Court, Mumbai in Appeal No.258 of 2018. By that order, the learned Sessions judge partly allowed the appeal preferred by Aditi and directed Sudhir to pay Rs.5,000/- per

month to Aditi towards alternate accommodation from the date of the application till disposal of the main application.

3. Aditi filed application under Section 23 of the Protection of Women from Domestic Violence Act, 2005 (for short 'D.V. Act'). By order dated 12.03.2018, the learned Metropolitan Magistrate, 61st Court Kurla, Mumbai allowed the application and directed Sudhir to pay Rs.3,500/- per month for alternate accommodation to Aditi from the date of application till disposal of the main application. The learned Magistrate also restrained Sudhir from causing any type of violence including physical or mental to Aditi by this protection order till disposal of the main application. Sudhir was directed to give bond under Section 19 of the D.V. Act. Aggrieved by this order, Aditi preferred Appeal No.258 of 2018 before the Sessions Court. By the impugned order, the Appellate Court partly allowed the appeal, as indicated earlier. It is against this order, Aditi has instituted Writ Petition No.5792 of 2018 and Sudhir has instituted Writ Petition No.521 of 2019.

4. In support of the Petition filed by Aditi, Ms Mudbidri submitted that Aditi is not interested in getting Rs.5,000/- per month towards alternate accommodation. Instead of that she may be permitted to occupy room 1/12, Anandibai Kadam Chawl, Bhatwadi, Ghatkopar (West), Mumbai 400 084 (for short 'said premises'). She submitted that earlier, Sudhir had instituted Petition seeking divorce. By order dated 24.06.2008, the Petition was dismissed. Aggrieved by that order, Sudhir instituted Family Court Appeal No.190 of 2008 in this Court. By order dated 03.03.2009, this Court dismissed the appeal. She submitted that the order dismissing the Petition for divorce filed by Sudhir has attained finality. After dismissal of the said Appeal, consent terms for reconciliation were filed on 05.08.2010. The parties decided to stay together at the said premises. Aditi thereafter filed application for

withdrawal of application for maintenance on the terms and conditions set out in that application. Ms Mudbidri submitted that Aditi was however, thrown out of the said premises. Aditi thereafter filed application under Section 23 of the D.V.Act for maintenance and residence order. The Courts below instead of providing for accommodation, directed Sudhir to pay Rs.3,500/- (as per the order of the learned magistrate) and Rs.5,000/- (as per the order of the learned Sessions Judge). She submitted that instead of giving money, Sudhir may be directed to provide alternate accommodation as claimed in the application. She, therefore, submitted that Petition requires consideration.

5. On the other hand, Mr. Barretto submitted that the learned Sessions Judge was not justified in enhancing the amount from Rs.3,500/- to Rs.5,000/- per month towards alternate accommodation. He, therefore, submitted that the order passed by the learned Sessions Judge may be set aside.

6. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. By order dated 12.03.2018, the learned Magistrate directed Sudhir to pay Rs.3,500/- per month for alternate accommodation. In paragraph 17, the learned trial Judge noted that there is domestic violence to Aditi. Dispute is going on between the parties since 2001. In the year 2012, from 29.11.2012 to 17.12.2012, Aditi started to reside in matrimonial home. It was further observed that as there is long standing dispute between the parties, it is not just to permit Aditi to stay in the same house with Aditi. Hence, the separate house, alternate house accommodation is the real answer but in Mumbai it is not very easy to give alternate accommodation. The learned Magistrate, therefore,

observed that the house rent is the real answer and awarded Rs.3,500/- per month for alternate accommodation. The said order is not challenged by Sudhir. Aditi filed appeal before the Sessions Court.

7. In so far as the order of the learned Sessions Judge is concerned, in paragraph 13, the learned Sessions Judge observed that the learned Magistrate has rightly exercised his discretion by not granting the residence order. The amount awarded by the learned Magistrate was, however, meagre. Considering the capacity of Sudhir, the learned Sessions Judge awarded Rs.5,000/- per month. Ms Mudbidri invited my attention to the assertions made in paragraph 6 of the application where it is contended that Sudhir is earning around Rs.50,000/- from his milk business. He is also working in one Balasaheb Chavan Gym and earning and earning more than Rs.10,000/-. However, no material is produced for substantiating the said contention. She was not in a position to demonstrate the earning capacity of Sudhir. In view thereof, no case is made out for interfering with the impugned order. Hence, Petitions fail and the same are dismissed. Order accordingly.

(R. G. KETKAR, J.)

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