

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

**CRIMINAL APPLICATION NO. 342 OF 2019  
IN  
WRIT PETITION NO. 5206 OF 2017**

Sunita Mahadev Dhuri ...Applicant

vs.

Vilas Mahadeo Dhuri and ors. ...Respondents

Mr. S.V. Sadavarte for the Applicant.

Mr. P.K.Torane for the Respondents.

**CORAM : REVATI MOHITE DERE, J.**

**DATE : 07<sup>th</sup> February, 2020**

PC:

1. Heard learned counsel for the parties.
2. By this application the applicant seeks the following substantial relief;

b) By issuing an appropriate order for modification of the order dated 17.1.2018 passed by this Hon'ble Court in Cr. W.P. No.5206 of 2017, this Hon'ble Court be pleased to grant leave to withdraw the statement made by the Applicant before this Hon'ble Court in Paragraph No.4 of the order and be pleased to grant permission to set out/create third party interest in the suit room on such terms and conditions as may be stipulated by

this Hon'ble Court;

3. Perused the papers. By an order dated 17.1.2018 the aforesaid writ petition was admitted and pending the writ petition, the interim relief was granted. The said order reads thus:

*“2. In the meantime, till the next date, the effect and operation of the order dated 1<sup>st</sup> November, 2017, passed by the learned Additional Sessions Judge, City Civil and Sessions Court, Greater Bombay in Criminal Appeal No. 457 of 2017, by which the learned Additional Sessions Judge set aside Clauses (E) and (F) of the order dated 17<sup>th</sup> May, 2017, passed by the learned Metropolitan Magistrate, 15<sup>th</sup> Court, Mazgaon, Mumbai, is stayed. Accordingly, the respondents shall comply with Clauses (E) and (F) of the order dated 17<sup>th</sup> May, 2017 passed by the learned Metropolitan Magistrate, 15<sup>th</sup> Court, Mazgaon, Mumbai;*

*3. Respondent Nos. 1 and 2 are directed to remove themselves, within one week from today from Flat No.112, 1<sup>st</sup> floor, B-1, Omkar, Dr. Basaheb Ambedkar Road, Shree Samarth Hanuman Path, Kalachowky;*

*4. Learned counsel for the petitioner, on the*

*instructions of the petitioner, who is present in Court, states that she will not sell or create any third party interest in the said property i.e. Flat No.112, 1<sup>st</sup> floor, B-1, Omkar, Dr. Babasaheb Ambedkar Road, Shree Samarth Hanuman Path, Kalachowky, till the disposal of this petition. Statement accepted;*

5. *Liberty is granted to the parties to move an application for modification of the said order, in case, there is change in the relationship between the petitioner and the respondent Nos. 1 and 2.”*

4. Pursuant to the said order in terms of Clause (3) respondent Nos. 1 and 2 vacated the premises of the petitioner. The respondents have also complied with the order dated 17.5.2018 passed by the learned Metropolitan Magistrate, 15<sup>th</sup> Court, Mazgaon. Learned counsel for the petitioner on the instructions of the petitioner who is present in Court does not dispute the same i.e. the respondent Nos. 1 and 2 have vacated the premises and that the respondent No.1 is paying maintenance.

5. Today, the learned counsel for the petitioner is seeking modification of the aforesaid order dated 17.1.2018, inasmuch as, it records the statement of the petitioner that she will not sell or create any third party interest in the flat No.112, 1<sup>st</sup> floor, B-1, Omkar, Dr. Babasaheb Ambedkar

Road. Kalachowky, till the disposal of the petition. As learned counsel for the petitioner, on the last date stated that the respondent Nos. 1 and 2 were keen on purchasing the said property, time was granted. The petitioner had also no objection, if the respondent Nos. 1 and 2 wanted to purchase the said property.

6. Today, the learned counsel for the respondent Nos. 1 and 2 states that the respondents are not in a position to purchase the said property. He further on instructions states that, the respondent Nos.1 and 2 have no objection if the petitioner sells the said property. The respondent No.1 is present in Court and reiterates the same.

7. Since the petitioner intends to sell the said property for taking care of her ailments due to old age and since she wants to move to her native place after selling the room, the application is allowed in terms of prayer clause (b). Accordingly, the petitioner is now permitted to sell her premises.

8. Application is allowed in the aforesaid terms and accordingly disposed of.

9. All parties to act on an authenticated copy of this order.

**REVATI MOHITE DERE, J.**