

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.9485 OF 2021
IN FCA/75/2019

BHUSHAN ASHOKRAO DOLAS
VERSUS
SAVITA BHUSHAN DOLAS

Mr.Hemant Surve, Advocate for the applicant.
Mrs.A.S.Rasal, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE &
S.G. MEHARE, JJ)

DATE : NOVEMBER 23, 2021

PER COURT :

1. We have extensively heard the learned Advocates for the applicant and the respondent.
2. By this civil application, the applicant/original appellant before us has put forth prayer clause A as under :-

"A. By allowing the present application, pending hearing and final disposal of the Family Court Appeal, the respondent be mandatorily prohibited from forcibly entering into the matrimonial home, assaulting the inmates, damaging their reputation, making a show in the locality, forcibly taking away

the belonging of the matrimonial relations and / or other allied acts which would hurt the life and limb, property and reputation of the husband and matrimonial side;"

3. There is no dispute that the petition No.A-530/2016, filed by the appellant seeking judicial separation, has been dismissed by the impugned judgment dated 28/08/2019 delivered by the learned Family Court, Aurangabad. As against the said judgment, the Family Court Appeal is before us. During the pendency of the said proceedings before the learned Family Court, an interim order below Exh.27, which was the application filed by the respondent, was passed by the learned Family Court on 08/11/2017 vide which Exh.27 was allowed and mandatory injunction was clamped against the wife with a direction that she should remove herself from the matrimonial home within 15 days from the date of the said order.

4. It is undisputed that the wife preferred WP No.13594/2017 seeking protection against the said order and the learned Single Judge Bench of this Court passed an order on 21.11.2017 directing the parties to maintain status-quo as on date. By virtue of the said interim order, the wife's occupation of the matrimonial home is protected by the

learned Single Judge.

5. The learned Advocate for the appellant/husband submits that since the main proceedings have been dismissed before the learned Family Court, WP No.13594/2017 filed by the wife in which she has been granted protection by the learned Single Judge Bench, is rendered infructuous. We are afraid that we cannot accept this submission for the reason that the petition is still on record of this Court and until the learned Single Judge passes an order disposing off the writ petition as being infructuous and until the interim protection is vacated, the wife would continue to be protected.

6. The learned Advocate for the husband submits that in the interregnum, the wife had moved out of the matrimonial home and she has then gatecrashed into the home and committed violence. Thereafter she has preferred several FIR's against the family members of the husband. She needs to be restrained from committing such violent acts.

7. This civil application has been filed in the Family Court Appeal

pending before us in which the cause of action is the impugned judgment of the learned Family Court dismissing the petition filed by the husband seeking judicial separation. If any act is committed by any party, which amounts to an offence under the provisions of the IPC, the Cr.P.C. would take care of such grievance if complaints are filed with the concerned police station under the provisions of the Cr.P.C. We cannot deal with these complaints as regards who has committed violence, whether there is any act of trespassing etc. in this appeal. A statutory remedy is available to the aggrieved party and we, therefore, need not entertain this civil application.

8. This civil application is therefore disposed off. Parties are at liberty to avail of statutory remedies as are permissible in law with regard to the rival claims of violence.

9. List the appeal for admission hearing on 16/12/2021.

(S.G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)