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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**17 CRIMINAL APPLICATION NO.2928 OF 2018
WITH WP/1316/2018**

**MOHAN S/O. MADANRAO MUNDE
VERSUS
VARSHA W/O. MOHAN MUNDE AND OTHERS**

Mr. A. N. Nagargoje, Advocate for the applicant
Mr. P. M. Nagargoje, Advocate for the respondent
Nos. 1 and 2

CORAM : N. R. BORKAR, J.

DATE : 25-10-2021

P. C.

. Criminal Application No. 2928 of 2018 and Criminal Writ Petition No. 1316 of 2018 are filed against one and the same order dated 20-08-2018 passed by the Additional Sessions Judge in Appeal No. 91 of 2018. The respondent No.1 in criminal application No. 2928 of 2018 has filed an application under the provisions of Protection of Women from Domestic Violence Act for various reliefs.

2. During pendency of the said application, the respondent No.1 had filed an application at Exh.

19 inter-alia praying that the applicant in Criminal Application No. 2928 of 2018 be restrained from transferring or alienating the flat No. 103, KAH-4-9, Building No. KAHG, Celebration Housing Society, Sector 16, 17, Kharghar, Navi Mumbai. One more application at Exh. 23 was filed by the respondent No.1 inter-alia praying that she be permitted to stay in the said flat. The learned Magistrate rejected both the applications. Against the said orders of the learned Magistrate, the appeal was filed before the Sessions Court. The learned Additional Sessions Judge by its order dated 20-08-2018 partly allowed the appeal and the order below application at Exh. 19 was set aside and prayer made therein was allowed. The order passed below application at Exh.23 was, however, confirmed.

3. Present Criminal Application No. 2928 of 2018 is filed against the order of the learned Sessions Court allowing the prayer made in the application of Exh.19 and writ petition No. 1316 of 2018 is filed by the respondent No.1 confirming the order passed below application at Exh. 23.

4. I have heard the learned counsel for the

applicant and the learned counsel for the respondent No.1.

5. The learned counsel for the applicant submits that the appellate court erred in allowing the prayer in application at Exh.19. It is submitted that the flat in question is already sold and therefore there arises no question of restraining the application from creating third party interest. It is submitted that order passed by the learned appellate court to the extent of allowing the prayer made in the application at Exh.19 needs to be set aside. On the other hand learned counsel for the respondent No.1 submits that the appellate court allowed the application at Exh.19 rejecting this contention of the applicant. It is submitted that considering the facts and circumstances, the order passed by the appellate court to the extent of allowing application at Exh. 19 needs no interference.

6. Admittedly, the order of appellate court is not stayed by this court. The order is, thus, in operation since last three years. I am, therefore, not inclined to interfere with the order of the

appellate court allowing the prayer made in the application at Exh. 19 and instead, the learned Magistrate can be directed to decide the main application filed by the respondent No.1 in stipulated time.

7. As regards the rejection of the application at Exh.23 by the learned Magistrate and confirmed by the appellate court it requires no interference as in the main application the prayer is made for separate residence at Aurangabad or alternative the payment of rent. In the result, following order is passed:

ORDER

- i. Both the matters are dismissed.
- ii. The learned Magistrate shall endeavour to decide the application No. PWDV No. 505 of 2017, as early as possible and in any case within nine months from the date of receipt of copy of this order.
- iii. The learned Magistrate shall decide the

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application pending before it on its own merits without being influenced by the observations if any made by the revisional court or by this court.

iv. All the contentions are kept open.

[N. R. BORKAR, J.]

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