

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO. 229 OF 2018

Reshmi R. Salgaonkar

..... Petitioner

V e r s u s

Prakash Rama Salgaonkar & 3 Ors.

..... Respondents

Mr. Gaurish Agni, Advocate for the Petitioner.

Mr. A. D. Bhobe, Advocate for the Respondent nos. 1, 2 and 4.

Coram :- **NITIN W. SAMBRE, J.**

Date : **15th March, 2021**

ORAL ORDER

Heard respective Counsel for the parties.

2. Criminal Case No. 17/DVA/2015/A, was initiated by the applicant under Section 12 of the Domestic Violence Act, 2005, which came to be dismissed vide impugned order passed by the learned JMFC, Mapusa, on 19th July, 2016.

3. An appeal, Criminal Appeal No. 104 of 2016, against the aforesaid order also came to be dismissed on 30.04.2018. The basis for dismissal of the claim of the applicant was that the applicant-wife cannot claim right of

residence in the property/house of In-laws. This state of view is expressed rightly so at the relevant time by the Courts below in the impugned orders based on the judgment in the matter of ***S. R. Batra and anr. vs. Taruna Batra***, reported in ***(2007) 3 SCC 169***.

4. The submissions of the learned Counsel for the applicant are that the said view expressed by the Apex Court appears to be an incorrect view in the light of judgment in the matter of ***Satish Chander Ahuja vs. Sneha Ahuja*** reported in ***(2021) 1 SCC 414***.

5. My attention is invited to the findings recorded to that effect by the Apex Court in paragraph 64, which reads thus:

"64. In paragraph 29 of the judgment, this Court in *S.R. Batra Vs. Taruna Batra (supra)* held that wife is only entitled to claim a right to residence in a shared household and a shared household would only mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member. The definition of shared household as noticed in Section 2(s) does not indicate that a shared household shall be one which belongs to or taken on rent by the husband. We have noticed the definition of "respondent" under the Act. The respondent in a proceeding

under Domestic Violence Act can be any relative of the husband. In event, the shared household belongs to any relative of the husband with whom in a domestic relationship the woman has lived, the conditions mentioned in Section 2(s) are satisfied and the said house will become a shared household. We are of the view that this court in S.R. Batra Vs. Taruna Batra (supra) although noticed the definition of shared household as given in Section 2(s) but did not advert to different parts of the definition which makes it clear that for a shared household there is no such requirement that the house may be owned singly or jointly by the husband or taken on rent by the husband. The observation of this Court in S.R. Batra Vs. Taruna Batra (supra) that definition of shared household in Section 2(s) is not very happily worded and it has to be interpreted, which is sensible and does not lead to chaos in the society also does not commend us. The definition of shared household is clear and exhaustive definition as observed by us. The object and purpose of the Act was to grant a right to aggrieved person, a woman of residence in shared household. The interpretation which is put by this Court in S.R. Batra Vs. Taruna Batra (supra) if accepted shall clearly frustrate the object and purpose of the Act. We, thus, are of the opinion that the interpretation of definition of shared household as put by this

Court in S.R. Batra Vs. Taruna Batra (supra) is not correct interpretation and the said judgment does not lay down the correct law."

6. In the aforesaid background, the submissions are that the judgments impugned are not sustainable thereby dismissing the DVA proceedings as same are based on an incorrect view of law as was prevailing at the relevant time.

7. The learned Counsel for the respondents would urge that there are certain subsequent developments such as filing of injunction suit in which temporary injunction in relation to part of the property is already ordered against the applicant. His further contention is that both the in-laws have already expired and, in the aforesaid background, the property in question would dwell on the legal heirs/successors. He would also try to submit that in view of impugned orders and non-joining husband as a party-respondent, one can read between the lines that the proceedings are misdirected.

8. I have considered the rival submissions. Apparently, it can be inferred from the judgment of Apex Court in the matter of **Satish Ahuja** (supra)

that the judgments impugned in the petition cannot be sustained particularly when the said judgments are exclusively based on the view as was taken by the Apex Court in the matter of ***S. R. Batra*** (supra), which is reversed in the judgment of ***Satish Chander Ahuja*** (supra).

9. It is also required to be noted that apart from the legal issue, the Courts below had no occasion to consider the rival claims of the parties but for the issue referred above.

10. As such, in my opinion, it would be appropriate not to dwell in the controversy as it is based on the factual matrix. The parties will have an opportunity to canvass the same before the Court below, which is the Court of first instance.

11. In the aforesaid background, the present application stands allowed in terms of prayer clause A and B.

NITIN W. SAMBRE, J.