

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

**Criminal Writ Petition No. 2510 Of 2021**

Shefali Mohan Ayyangar

**.....Petitioner**

**V/s.**

Shobhana Murlidhar Ayyangar  
and anr.

**...Respondents**

\* \* \* \*

Mr. Rizwan Merchant A/W. Ms. Gayatri Gokhe and Ms.  
Zainba Abdi, i/by. Rizwan Merchant & Associates,  
advocate for the petitioner.

Ms. Nazhat Shaike Chimte, Advocate for respondent no.1.

Mr. A.D. Khamkhedkar, APP for State-respondent no.2.

**CORAM : SANDEEP K. SHINDE, J.**

Thursday, 9<sup>th</sup> September, 2021.

**P.C. :**

1. Heard.

2. This petition challenges the maintainability of proceedings instituted by the respondents under Section 12, 17, 18, 19 and 23 of the Protection of Women from

Domestic Violence Act (hereinafter called “the D.V. proceedings” for short).

3. The proceedings were instituted by mother-in-law against her daughter-in-law, where the following reliefs are sought :

*“a. Pending the hearing and final disposal of the application pass the right to reside in Apartment II, which she legally owns u/s. 17(1) and (2) of PWDV Act;*

*b. This Hon’ble Court be pleased to appoint a protection officer for the safety of the Applicant and directing the Respondent not to commit domestic violence on the Applicant u/s. 18(a), (b), (d), (e), (f) and (g) of PWDV Act;*

*c. Pending the hearing and final disposal of the application, be pleased to pass an order restraining the Respondent from dispossessing or in any other manner disturbing the possession of the Applicant from Apartment II, whether or not the Respondent has a legal or equitable interest in the shared household u/s. 19(1)(a) of the PWDV Act;*

*d. This Hon'ble Court be pleased to pass an order directing the Respondent to remove herself from Apartment II and shift to Apartment I while granting her children, Sarah & Arsh Ayyangar, the right to reside at Apartment II at will u/s. 19(1)(b), (c), (d), u/s. 19(2), u/s. 19(3), u/s. 19(5) u/s. 19(8) of the PWDV Act;*

*e. This Hon'ble Court be pleased to pass an order directing the respondent to pay Rupees one crore as compensation for mentally harassing and maligning the Applicant and her family members for over 15 years.*

*f. For any other and further relief this Hon'ble Court deems fit and proper in the interest of justice."*

4. It may be stated;

(i) petitioner's husband owns a flat at Dahisar which is described as "Apartment No.2".

(ii) Another flat at Borivali was jointly purchased by the petitioner and her husband.

(iii) Later, husband relinquished his undivided share in the said flat in favour of petitioner. Therefore petitioner is owner of the flat at

Borivali. It is described as “Apartment No.1”;  
and

(iv) respondent and her husband, own a flat at  
Borivali and it is in possession of the respondent,  
her husband and her younger son.

5. Mr. Merchant, learned Counsel for the petitioner, would argue that provisions of Section 19(1)(b) of the D.V. Act, empowers and enables the Magistrate to pass a, ‘residence order’, including the directions, to the respondent to remove himself, from the shared household; however, directions cannot be issued against any person who is woman. Thus, argued that, on plain reading of the provisions of Section 19(1)(b) with proviso, prayer clause (d) was not sustainable. All the same, learned Counsel for the respondent, on instructions, submits that, amendment application has been moved by the complainant, seeking deletion of part of prayer clause (d). Statement is accepted.

6. Viewing the facts of the case and in terms of the provisions of Section 19 of the Act, prayer, seeking removal of the respondent from Apartment No.1 was clearly not sustainable. Prayer in clause ‘d’ is composite prayer. Its later part, implies that the complainant was seeking

directions, to shift her daughter-in-law to a Flat at Borivali i.e. in Apartment No.2. This prayer being in contrast to proviso to Section 19(1)(b) of the D.V. Act, was not sustainable.

7. Insofar as, other prayers are concerned, Mr. Merchant, fairly submits, that he may be granted liberty to move the trial Court for the appropriate reliefs, in respect of other reliefs. He submitted, that the petitioner is a cancer patient and therefore the trial Court may be directed to decide application, if any, preferred by him, expeditiously. In consideration of the submissions advanced by the Counsel for the parties, following is the order;

### **ORDER**

(i)Prayer clause 'd' in D.V. Complaint No.205/DV/2017 on the file of Metropolitan Magistrate, 68<sup>th</sup> Court, Borivali, Mumbai is struck-off.

(ii)Petitioner, is granted liberty to apply for such reliefs before the trial Court, and if such an application is moved, the trial Court shall decide the same as expeditiously as possible, in accordance with law.

(iii)The complainant (respondent herein) is granted liberty to amend the application including the prayer/s.

8. The petition is disposed of in the aforesaid terms.

NEETA  
SHAILESH  
SAWANT

Digitally  
signed by  
NEETA  
SHAILESH  
SAWANT  
Date:  
2021.09.22  
16:53:36  
+0530

**(SANDEEP K. SHINDE, J.)**