

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APL) NO. 230 OF 2020

Munna @ Laxmansingh Jaysingh Bais

vs.

Rimabai Jaysingh Bais and another

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. M. P. Kariya, Advocate for applicant.
Mr. Raghav Bhandakkar, Advocate for respondent No.1
Mr. S. D. Sirpurkar, APP for respondent No.2 State.

CORAM : MANISH PITALE J.

DATE : 29/07/2021

Hearing was conducted through Video Conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. By this application, the applicant has challenged order dated 28/05/2018, passed by the respondent No.2 – Sub Divisional Officer under Section 145 of the CrPC, whereby the applicant has been told to vacate the house in question along with his family. The respondent No.1 is the mother of the applicant. It is contended on behalf of the applicant

that such a direction could not have been given under Section 145 of the CrPC.

3. This Court while issuing notice took into consideration the relationship between the parties and the claim made by the rival parties in respect of the said house. While issuing notice on 04/03/2020, to balance the inter se rights, this Court passed the following interim order :-

"8. To balance the inter se rights, the following order is passed as an interim order :

(i) The petitioner shall hand over the peaceful possession of the entire 1st floor of the residential house comprising five rooms, and shall not interfere in the use thereof, by respondent 1, in any manner.

(ii) The respondent 2 – Sub Divisional Officer shall ensure that a police officer / constable from the jurisdictional police station visits the residence of the respondent 1 to ensure that this order is complied with and that the respondent 1 is not put to any harassment.

(iii) The learned Addl.P.P. is requested to telephonically inform the Sub Divisional Officer this order and to further request the Sub Divisional Officer to communicate this order to respondent 1.

(iv) The Sub Divisional Officer shall ensure that this order is complied with within 72 hours."

4. The respondent No.1 entered appearance through counsel. The learned counsel appearing for the applicant submitted that in terms of the aforesaid interim order, he had abided by the same by taking steps to hand over peaceful possession of the entire first floor of the house to the respondent No.1, but she did not come forward to take possession thereof.

5. On the other hand it was submitted by the learned counsel appearing for the respondent No.1 that the said respondent apprehended danger from the applicant and therefore, the interim order could not be worked out.

6. When this application was taken up for hearing on the last occasion, after hearing the parties for some time, this Court gave an opportunity to the parties to explore possibility of an amicable settlement, considering the fact that the applicant is admittedly the son of respondent No.1. Thereafter, on 22/07/2021, this Court passed the following order :-

“Hearing was conducted through Video Conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. The learned counsel for the rival parties submit that their clients are agreeable to the

interim arrangement made by this Court by order dated 04/03/2020, till such time that the competent Civil Court decides the respective rights of the parties concerning the residential house.

3. This Court is of the opinion that after affidavits are placed on record by the parties to that effect, it would be appropriate for this Court to dispose of the present application and the parties would also have to then abide by statements made on affidavits before this Court. Let the affidavits be filed by the parties by the next date of listing.

4. List the application for further consideration on 27th July, 2021."

7. Pursuant thereto the applicant, as well as the respondent No.1 have filed affidavits before this Court. In the affidavit filed by the applicant it is stated that he has no objection to the aforesaid interim order being confirmed and the said arrangement continuing till the competent Civil Court decides the inter se rights of the parties in respect of the said house. Additionally, it is stated that since the first floor can be reached after climbing of about 30 steps of a stair case, the applicant was open to shifting to the first floor and handing over possession of the ground floor to the respondent No.1.

8. In the affidavit filed on behalf of the respondent No.1, it was stated that she is willing to take possession of the first floor in terms of the interim order of this Court proposed to be confirmed. It is further submitted in the affidavit that the daughters of the respondent No.1 may be permitted to access the first floor only in order to help the respondent No.1, peacefully enjoying the premises of the first floor.

9. The learned counsel for the applicant submitted that the daughters of respondent No.1, who happened to be his sisters could certainly access first floor, but this ought not be construed as concession on the part of the applicant as regards the inter se rights in the house property, till the competent Civil Court decides the respective rights of the parties.

10. In view of the affidavits filed by the applicant and the respondent No.1 before this Court, this application is disposed of by confirming the interim arrangement manifested in the interim order dated 04/02/2020 quoted above.

11. Accordingly, the respondent No.1 shall take peaceful possession of the first floor of the house

and the applicant shall continue to reside with his family on the ground floor. The daughters of the respondent No.1 may access the first floor to assist their mother i.e. respondent No.1 in enjoying the premises on the first floor.

12. It is made clear that the said direction does not express any opinion of this Court on the rights of the daughters in the said house property. It is expected that the applicant, as well as the respondent No.1 shall peacefully reside in the said house, in the portions of the premises in their possession as per the said interim order being confirmed today. The said arrangement shall continue till the competent Civil Court decides the inter se rights of the parties.

13. Needless to say the observations made in the impugned order by respondent No.2, as well as the Sessions Court in revision, shall not influence the competent Court in deciding the inter se rights of the respective parties.

14. Application stands disposed of in above terms.

JUDGE