

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.1050 OF 2022

Vikas Vinod Singh

...Petitioner

vs.

Madhavi Vikas Singh and Another

...Respondents

**VISHAL
SUBHASH
PAREKAR**

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VISHAL SUBHASH
PAREKAR
Date: 2022.04.30
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Mr. Shaikh Irfan Alim, for the Petitioner

Mr. Manjunath Hegde a/w. Mr. Vipul Naik, for the complainant.

Ms. Anamika Malhotra, APP for the State.

CORAM : N. J. JAMADAR, J.

DATE : APRIL 29, 2022

P.C.:

1. Heard the learned counsel for the petitioner and the learned counsel for respondent No. 1.

2. The petitioner-husband assails the order passed by the learned Additional Sessions Judge in Criminal D.V. Appeal No. 34 of 2021 dated 14th March, 2022 whereby the appeal came to be dismissed affirming the ex-parte order passed by the learned Magistrate under section 29 of the Protection of Women from Domestic Violence Act, 2005 directing the petitioner herein to allow the respondent to reside in the shared house, Flat No. 2, Lata Singh Chawl, Near Ramleela Maidan, Marol Pipeline, Andheri (E), Mumbai 59 till further orders.

3. The respondent No. 1 has preferred a complaint under the Protection of Women from Domestic Violence Act, 2005 against the petitioner and his relatives. In the said complaint an application for ex parte interim relief (Exhibit 5) came to be filed. By an order dated 27th August, 2020 after noting that the respondent No. 1 has entered appearance and yet did not file reply and that the applicant therein had made out a prima facie case, learned Magistrate passed an interim order, inter alia, directing the respondents therein to allow the applicant/wife to reside in the shared house.

4. The appeal preferred by the petitioner came to be dismissed by the learned Additional Sessions Judge on the premise that the application for interim relief was yet to be finally decided and at that stage, interference was not warranted.

5. Mr. Shaikh, learned counsel, submits that the petitioner was not given an efficacious opportunity of hearing and the ex parte order came to be passed during the Covid 19 pandemic. It was submitted that the petitioner apprehends that the moment the respondent No. 1 enters the house of the petitioner, there would be further complaints lodged against the petitioner and his relatives. The learned counsel thus submits that the execution and operation

of the ex parte order passed by the learned Magistrate be stayed till the interim application is decided by the learned Magistrate. It was further pointed out that respondent No. 1 has taken out an execution application and it is listed tomorrow.

6. The learned counsel for respondent No. 1 controverted the aforesaid submissions.

7. In the backdrop of the limited nature of controversy, the view of the appellate Court that since the interim application still awaits final adjudication, at this juncture, interference in the ex parte interim order was not warranted, is wholly justifiable.

8. A situation cannot be countenanced where a wife is kept out of the shared house and at the same time an order of residence passed by the learned Magistrate under the Domestic Violence Act, 2005 is stayed. The petitioner/ husband is enjoined to make a provision for residence of the destitute wife. Therefore, in the event the petitioner desires that the execution and operation of the order passed by the learned Magistrate be stayed, till the decision on the application (Exhibit 5) for interim relief, the petitioner must adequately compensate the respondent No. 1 towards the provision

for residential accommodation.

9. Mr. Shaikh, learned counsel for the petitioner, on instruction, submits that the petitioner is ready to make a provision towards the residential accommodation of respondent No. 1, provided a reasonable time is given to the petitioner.

10. In view of the aforesaid consideration and submission, the petition stands disposed with the following directions.

11. The petitioner shall pay a sum of Rs. 10,000/- per month towards the provision for residential accommodation to the respondent No. 1/wife from the date of the order i.e. 27th August, 2020 till the final decision on the Interim Application (Exhibit 5).

12. The arrears be paid within a period of one month from today.

13. In the meanwhile, subject to the aforesaid payment within the said period, the execution and operation of the order passed by the learned Magistrate on 27th August, 2020 to the extent of allowing the applicant to reside in the shared house stands stayed till the final decision on the application for interim relief (Exhibit 5).

14. It is hereby made clear that if the amount is not paid within the said period of one month, this order would stand vacated automatically and respondent No. 1/wife would be at liberty to execute the order dated 27th August, 2020 in accordance with law.

15. If the amount is paid, the same shall be adjustable against monetary relief which the learned Magistrate may order towards the residence provision.

16. It is hereby made clear that the observations hereinabove are made for the limited purpose of consideration of this petition in the context of prayer for stay to the order passed by the learned Magistrate and learned Magistrate shall not be influenced by any of the observations while deciding the interim application or the complaint lodged by respondent No. 1.

17. Petition disposed.

(N. J. JAMADAR, J.)