

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

WRIT PETITION NO. 2187 OF 2021

1. Vinod Kumar Rammurat Yadav
Aged about 43 years, Occ : Services
2. Mrs. Chanda Vinod Yadav
Aged about 42 years.
Both are Indian Inhabitant Residing at
Room No. 17, Ground Floor, Satyaki Nagar,
Pandurang Budhkar Marg, Lower Parel,
Mumbai – 400 013. ... Petitioners

Versus

1. Gaumatidevi Rammurat Yadav
of Mumbai, Adult, Aged about 68 years
claiming to be residing at Room No.17
situated at Room No.17, Ground floor,
Satyaki Nagar, Pandurang Budhkar Marg,
Lower Parel, Mumbai – 400 013.
Whereas in fact residing at Songra
Tal Machlisahar Dist. Jaunpur (U.P.)
2. The State of Maharashtra ...Respondents

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Mr. Anand Mishra i/by Mr. Ashok M. Saraogi, Advocate for the
Petitioners.

Mr. Ajay Jaiswal, Advocate for Respondent No.1.

Mr. A. R. Patil, APP for the Respondent No.2 – State.

CORAM : PRAKASH D. NAIK, J.
DATE : 17th JUNE, 2022.

PER COURT:

1. The Respondent No.1 in both these petitions is the mother of
Petitioner No.1. She has initiated the proceedings under the
Domestic Violence Act before the Court of learned Metropolitan
Magistrate.

2. The learned Metropolitan Magistrate, 13th Court, Dadar,
Mumbai vide order dated 8th March, 2021 has disposed of the
proceedings in C.C. No.82/DV/2014 by passing the following
order:

ORDER

“ 1.The respondent No.1 shall pay an amount of Rs.5,000/-
per month to the applicant towards maintenance amount from
the date of restoration of original application after dismissed
in default.

2. The respondents jointly and severally shall pay an amount of Rs.20,000/- (Rs. Twenty Thousand Only) towards compensation to the applicant, within a period of one month from the date of this order.
3. The respondents shall remove themselves from the house room No.17 standing in the name of husband of applicant Rammurat Bhagwatidin Yadav within a period of one month.
4. The respondent are prohibited from causing any kind of violence to the applicant themselves or through nobody else.
5. Copy of order be send to concern police station for execution.
6. Copy of order be provided to the applicant free of cost.
7. No order as to cost.”

3. Criminal Writ Petition No.2187 of 2021 has been preferred before this Court challenging the order dated 16th January, 2021 passed by the Court of Metropolitan Magistrate, 13th Court, Dadar, Mumbai forfeiting the right of the Petitioners to participate in the further proceeding.

4. It is pertinent to note that, by subsequent order which is under challenge in Writ Petition No.2188 of 2021, the proceedings initiated by Respondent No.1 by which the Court of Metropolitan Magistrate under the Domestic Violence Act have come to an end.

5. This Court vide order dated 6th October, 2021 granted interim relief qua clause No.3 of order dated 8th March, 2021. The said order was subsequently vacated on 14th December, 2021. Thereafter, vide order dated 17th January, 2022, the interim relief granted on 6th October, 2021 was restored.

6. The Petitioners in both these petitions have filed additional affidavit in support of the petitions. The Petitioners have contended that vide order dated 3rd September, 2015 passed by the Civil Court, the defendants therein were restrained from disturbing the plaintiff's joint possession. The plaintiff in the said suit was the Petitioner No.1 in this proceeding. It is submitted that in spite of order of the Civil Court, the learned Magistrate had passed an order directing the Petitioner to vacate the premises.

7. Learned counsel for Respondent submitted that the petitions are not maintainable before this Court. In Writ Petition No.2188 of 2021, the trial Court has passed the final order and the Petitioners ought to have resorted to remedy of appeal provided under Section 29 of the Domestic Violence Act. It is submitted that the order of maintenance has not been fully complied by the Petitioners. The submissions advanced by the learned counsel for Petitioner are urged for the first time.

8. It is relevant to note that the proceedings before the learned Magistrate had come to an end by final order dated 8th March, 2021. The Petitioner has remedy of appeal under Section 29 of the Act. The learned counsel for Petitioners contended that, in view of peculiar facts of this case and more particularly on account of order

passed by the trial Court forfeiting the right to participate in the proceedings, the Petitioners have approached this Court. The submissions of the learned counsel for Petitioners cannot be accepted. Statutory remedy of providing appeal is existing under Section 29 of the Domestic Violence Act. The submissions advanced before this Court could be advanced in the appeal if preferred by the Petitioners. The remedy of appeal cannot be bypassed. Criminal Writ Petition No.2187 of 2021 is challenging the order dated 16th January, 2021 passed by Court of Metropolitan Magistrate, 13th Court, Dadar, Mumbai. Since the proceedings have come to an end, this petition does not survive.

9. In the light of statutory remedy under Section 29, the Petitioners are at liberty to prefer an appeal before the appropriate Court challenging the final order dated 8th March, 2021. It is also open to the Petitioners to urge issue raised in Criminal Writ Petition No.2187 of 2021. In the light of the aforesaid observations, I pass the following order.

ORDER

- i) Criminal Writ Petition No.2187 of 2021 and Criminal Writ Petition No.2188 of 2021 stand disposed of.
- ii) The Petitioners are at liberty to prefer an appeal before the Sessions Court under Section 29 of the Domestic Violence

Act challenging the impugned order dated 8th March, 2021. It will be also open to raise the contention of the Petitioners which is subject matter of order dated 16th January, 2021 in the appeal.

iii) The interim order dated 6th October, 2021 is continued for a period of six weeks.

(PRAKASH D. NAIK, J.)