

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9627 OF 2022

Taufique Nazir Fansupkar and Ors. ..Petitioners
V/s.
Nazrana Nazir Fansupkar ..Respondent

Mr. Qureshi Zaid for the Petitioners.
Mr. Hakim Salim A.R. a/w Ms. Mariyan Khatkhatay for the
Respondent.

CORAM : C.V. BHADANG, J.

DATE : 19 AUGUST 2022

P.C.

. The challenge in this petition, is to the order dated 06.06.2022 passed by the learned Metropolitan Magistrate at Mumbai in Criminal Case No. 64/DV/2021. By the impugned order, application Exh. 20 filed by the Petitioner for cross-examination of the Respondent at the stage of deciding the interim application, has been rejected.

2. Petitioner No.1 and the Respondent are husband and wife. Petitioner No.2 and 3 are the in-laws of the Respondent.

3. The Respondent has filed proceedings under the Protection of Women from Domestic Violence Act, 2005 against the

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Petitioners which are pending before the learned Metropolitan Magistrate Court at Mumbai in Criminal Case No. 64/DV/2021. The Respondent has also filed an application for interim relief and in support thereof an affidavit along with statement of assets has been produced on record. The Petitioners are yet to file their statement of assets.

4. The Petitioners filed application Exh. 20 for cross-examination of the Respondent. A perusal of said application shows that the Petitioners intend to cross-examine the Respondent as they are disputing the genuineness of the claim made generally and the statement of assets filed by the Respondent.

5. The application was opposed on behalf of the Respondent.

6. The learned Metropolitan Magistrate Court has found that unless and until the Respondent filed an affidavit in lieu of Chief Examination, there was no occasion for the Petitioners to seek cross-examination of the Respondent. In that view of the matter, the application has been rejected.

7. I have heard the learned counsel for the parties. Perused record.

8. It is submitted by the learned counsel for the Petitioners that the proceedings under the said Act are predominantly of a civil nature. For this purpose, reliance is placed on the decision of the Full Bench of this Court in *Nandkishor Pralhad Vyawahare v/s Sou. Mangala w/o Pratap Bansar*¹. It is therefore, submitted that the provisions of Order XIX Rule 1 to 6 of CPC would apply conferring the right on the Petitioner to cross-examine the Respondent. He submitted that there is no other mode by which the Petitioners can demonstrate the falsity of the claim of the Respondent.

9. The learned counsel for the Respondent has submitted that there is no provision for seeking cross-examination of the Respondent at interim stage which application is required to be decided on the basis of the affidavit and the statement of the assets. It is pointed out that the Respondent has already produced her statement. However Petitioners are yet to produce their statement of assets.

10. I have considered the submissions made. There cannot be any manner of dispute, as held by the Full Bench of this Court in *Nandkishor*(supra) that proceedings under the Act of 2005 are predominantly of a civil nature. Thus, even assuming that the provisions of Order XIX of CPC would apply, I do not find that it would take the case of the Petitioners any further. It can be seen

1 Criminal WP No. 578 of 2011

that interim applications are normally decided on the basis of the affidavits. The objection and purpose of grant of such interim application/s is to give immediate relief/succour to the aggrieved party. Thus normally the Court would be slow in calling upon the parties to subject themselves for cross-examination by the adversary while deciding the application for interim relief. I would hasten to add that I do not propose to lay down principle of universal application that in no case such permission can be granted. It is necessary to emphasis that normally the application seeking interim relief will have to be decided on the basis of the affidavits filed.

11. Coming to the present case, the Petitioners are yet to file their affidavit supported by the statement of assets and liabilities. The Petitioners have not shown any acceptable reason for directing the Respondent to subject herself for cross-examination. The learned counsel for the Petitioners strenuously urged that the Petitioner No.1 is residing abroad and the Respondent is staying with her in-laws and is operating the accounts of the Petitioner No.1. If that be so, the said aspect can be demonstrated on the basis of the bank entries, not requiring any cross-examination at this stage. I find that no case for calling the Respondent for cross-examination is made out on facts in the present case. I have gone through the impugned order. It does not suffer from any infirmity, so as to require interference.

12. The petition is without any merit and is accordingly dismissed with no order as to costs.

C.V. BHADANG, J.