

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

CIVIL WRIT PETITION NO.6327 OF 2021

Mrs. Dimple Parag Thakkar Petitioner
Versus
Mr. Parag Chandrakant Thakkar Respondent

Dr. Ujay P. Warunjikar, for the Petitioner.
Dr. Rohini S. Pandit, the Respondent.

CORAM :SARANG V. KOTWAL, J.

DATE : 25th FEBRUARY, 2022

P.C. :

1. The Petitioner has approached this Court challenging the order dated 17th October, 2020 passed in the Petition No.A-2343/2016 passed below Exh.12 and 25 by the Family Court at Bandra, Mumbai. The prayers made in the Application through Exh.12 were manifold. The first prayer was for directions to the Respondent-husband not to dispossess the Petitioner from the matrimonial house situated at Mira Road, or in alternate to pay for accommodation charges which are mentioned in that prayer, for compensation for loss of Shreedhan, the cost of Rs,2,00,000/- for prosecuting the above Petition before that Court, and for compensation under Section 22 of the Protection of Women From Domestic Violence Act, 2005 (for short, the DV Act). The learned Judge in the impugned order, gave directions to the Respondent to pay Rs.8,000/- per month to the Petitioner and Rs.4000/- per

month to the child towards interim maintenance from the date of filing of that Application below Exh.12 till further orders.

2. Heard Dr. Ujay P. Warunjikar, learned counsel for the Petitioner and Dr. Rohini S. Pandit, learned counsel for the Respondent.

3. Dr. Ujay P. Warunjikar, learned counsel for the Petitioner-wife submitted that during the pendency of this Writ Petition before this Court, the Respondent-husband voluntarily enhanced the maintenance granted to child from Rs.4000/- to Rs.7000/-. Therefore, as of today, the Petitioner-wife is supposed to get Rs.8,000/- per month for the Petitioner and Rs.7,000/- per month for child. He submitted that the learned Judge of the Family Court erred in not considering the prayer for relief in respect of the residential house for the Petitioner-wife. He submitted that the observations made in paragraph 6 of the impugned order are not in accordance with law.

4. Learned counsel appearing for the Respondent submitted that the learned Judge had observed that the Application did not show any details of domestic violence and it was very vague on material aspects. Therefore, the learned Judge has rightly not considered the prayer regarding household accommodation.

5. I have considered these submissions. I have perused the Application as well as the impugned order passed therein.

6. The Application is made by the Petitioner-wife below

Exh.12. In that Application, she had prayed for directions to the Respondent-husband to grant free unobstructed access to the Applicant to her matrimonial home. In the alternative, she prayed for a separate accommodation for herself and her daughter. Leave and license fee of Rs.35,000/- and leave and license deposit of Rs.1,50,000/- were claimed. The Petitioner in her Application has stated that their daughter was studying in 1st standard in Cambridge School, Kandivli East. The Petitioner required Rs.30,000/- for her own maintenance and Rs.30,000/- for the maintenance of her daughter. The Petitioner-wife does not have any source of income to maintain herself and her daughter.

7. The definition of the Domestic Violence is given in Section 3 of the DV Act, sub clause (a), which reads thus :

3. Definition of domestic violence.- For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it -
 - (a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse;

The economic abuse is defined in clause (iv) of Explanation I of Section 3. It is an inclusive definition. The clause reads thus :

(iv) "economic abuse" includes--

- (a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or

custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, house hold necessities for the aggrieved person and her children, if any, *stridhan*, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared house hold and maintenance;

- (b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her *stridhan* or any other property jointly or separately held by the aggrieved person; and
- (c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Explanation II mentions that for the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes “domestic violence”, the overall facts and circumstances of the case shall be taken into consideration.

8. Therefore, when the Petitioner-wife has prayed for maintenance as well as for access to the matrimonial house, she has pleaded in paragraph 10 that she was treated like stranger and and was compelled to return back to her parent’s house. She was deprived access to the matrimonial house. Thus, the prayer as well as the pleadings in respect of maintenance claimed by the

Petitioner-wife for herself and her daughter covers this definition of the domestic violence. Therefore, the observations of the learned Judge in paragraph 6 that “it is vague on material aspects” may not be correct.

9. The learned Judge had further observed that as far as Section 19 of the DV Act is concerned, the Court was empowered to pass reliefs under the DV Act at the time of passing decree and at the interim stage, the Court could not consider the injunction in respect of immovable property, compensation etc. This observation is directly against the provisions of Section 23 of the DV Act which reads thus:

23. Power to grant interim and *ex parte* orders – (1) In any proceeding before him under this Act, the Magistrate may pass such interim order as he deems just and proper.
- (2) If the Magistrate is satisfied that an application *prima facie* discloses that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he may grant an *ex parte* order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under section 18, section 19, section 20, section 21 or, as the case may be, section 22 against the respondent.

10. Significantly, having noticed these two aspects, the learned Judge has granted interim maintenance to the Petitioner-wife and her daughter. These observations are in conflict with the observations in paragraph 6 of his order. Therefore, considering

all these, the impugned order cannot be sustained. Therefore, I am inclined to set it aside. I am remanding this matter back for a fresh consideration on all aspects raised by the Petitioner-wife in her Application before that Court. Of course, in the changed circumstances, due to passage of time, the Petitioner-wife is entitled to show the current status of the parties and necessities of herself and her child, who is going to school as of today as mentioned earlier.

11. Hence, the following order;

- (i) The order dated 17th October, 2020 passed by the Family Court at Bandra, Mumbai below Exh.12 and 25 is set aside.
- (ii) Both these Applications below Exh.12 and 25 shall be considered a fresh by the learned Judge, Family Court at Bandra, Mumbai.
- (iii) The Petitioner-wife can point out the change in the circumstances and necessities.
- (iv) Considering that the school fees of the child needs to be paid, this particular aspect can be dealt with the learned Judge on urgent basis by way of an interim measure.
- (v) The Application below Exh.12 and 25 shall be decided as expeditiously as possible and in any case, within six months from today.
- (vi) The interim arrangement which is continued till

today shall continue till the disposal of the Application below Exh.12 and 25.

(vii) The Writ Petition is disposed in the aforesaid terms.

(SARANG V. KOTWAL, J.)