

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

CRIMINAL REVISION APPLICATION NO. 322 OF 2022

Nita N. Shah And Anr. ...Applicants
Versus
Hasumati Rasiklal Shah And Anr. ...Respondents

....

Mr. Vivek Kantawala a/w Amey Patil, Mr. Vivek Sharma, Mr. Jash Vyas
i/b M/s Vivek Kantawala and Company, Advocate for the Applicant.

Mr. Vivek Sharma, Advocate for Respondent No.1.

Mr. Arfan Sait, APP for the Respondent – State.

CORAM : PRAKASH D. NAIK, J.
DATE : 13th SEPTEMBER, 2022.

PER COURT:

1. The Applicant had taken exception to the order dated 5th August, 2022, passed by the Sessions Court in Criminal Appeal No.205 of 2022 and order dated 31st March, 2022 passed by the Court of Metropolitan Magistrate, 48th Court, Girgaon, Mumbai in Case No.2473/SS/2011.

2. The Respondent No.1 is mother of Applicant No.2. The Applicant No.1 is wife of Applicant No.2. The Respondent No.1 has initiated the proceedings against the Applicants under Section 12 of the Protection of Women from Domestic Violence Act (hereinafter referred to as D. V. Act).

3. The grievance of Respondent No.1 is that, she is a senior citizen. She is widow, she is registered owner of flat situated at

501, Girnar building, 69-A, Tardeo Road, Mumbai where she was residing since past several years but due to Acts of the Applicants, she had to vacate the same and reside with her daughter and son-in-law. The Applicants are her son and daughter-in-law. They are responsible for committing Domestic Violence against her. The Applicants were married on 11th June, 1979. The Respondent No.1 and the Applicants were having compatibility issues and the Respondent No.1 had reluctantly accepted the tantrums and bad behavior of the Applicant herein. The husband of Respondent No.1 had expired on 2nd November, 2000. After his death, the behavior of Applicants towards Respondent No.1 became worse and they made her life a living hell. The husband of Respondent No.1 had left behind will dated 13th January, 2001. He had bequeathed 50% of his property in favour of Respondent No.1. This was not appreciated by the Applicant No.2 and whenever Respondent No.1 asked her share, the Applicant No.2 used to behave in violent manner. It is further alleged that, after demise of husband, the Applicant No.1 had control over and access to all the assets of her deceased husband like cheque books, pass books, cash, shares of many reputed companies and personal belonging of deceased. The Applicant No.2 had siphoned off used money from the savings banks account of the husband of Respondent No.1. The Applicant

No.2 in order to deprive Respondent No.1 of her share in the property of her deceased husband made her forcefully sign documents, whereby the Applicant No.2 withdrew money lying in the account of late Rasiklal Shah. He refused to furnish the details of money withdrawn and gave share of Respondent No.1 when called upon, knowing that, the Respondent No.1 is widow and helpless, the Applicants used to deprive her with any of the daily needs and used to see to it that, no person would assist Respondent No.1. In this manner the Applicants would mentally and physically torture Respondent No.1 and make her life miserable. The Respondent No.1 could not bear suffering meted out to her by applicants and therefore, she was constrained to file complaints with Tardeo Police Station dated 15th February, 2006, 22nd February, 2006, 10th March, 2006 and 9th October, 2006. On receipt of the complaints the applicants were called upon by Tardeo Police Station to behave properly which they did for some time but again went back to their old way and made life of Respondent No.1 miserable. She tried her level best to bring peace harmony in the shared house hold but the applicants refused to change their attitude and continued their misbehaviour with Respondent No.1. The Applicant No.2 is habitual drunker and picks up fight under one or the other pretext with Respondent No.1 with an intention to

the make her stay impossible in her share residence. The Applicant No.2 on one instance in the year 2010 under influence of liquor, held Respondent No.1 by her neck and threatened to strangle her if she does not sign documents transferring all her property in his name. On 15th December, 2010 she was physically abused and traumatized by applicants. She requested her daughter and son-in-law who lives in nearby building for help. Since it was a family dispute the Respondent No.1 did not precipitate the matter and did not file complaint earlier. The applicants have damaged various articles and fitting in shared house hold of Respondent No.1. She apprehend danger to her life at the instance of the applicants. The applicants are bent on making the life of Respondent No.1 miserable and there is imminent threat to her life. She apprehends that, the applicants would jointly or individually cause immense harm and threat to her life. Whenever she resides in the shared house hold and therefore, the Applicants were directed to remove themselves from the shared house hold so that there is no threat to the life of complainant. The applicants herein be restrained by order and injunction to enter share house hold as there is a threat to the life of complainant. Unless order of injunction is granted, there is an apprehension that the applicants might alienate, dispose off or create third party rights with a view to defeat or jeopardizes

claim of Respondent No.1 or for undue harassment to her and cause grave harm, irreparable loss, prejudice and injury to her. The Respondent No.1 prayed for orders under section 19(a)(b)(e) and (f) of Protection of Women from Domestic Violence Act. It was also alleged that Respondent No.1 is a senior citizen aged about 79 years. She is suffering from numerous ailments like diabetes, blood pressure, slipped disc and other age related disease etc. She should be adequately compensated for mental trauma and agony caused to her. Her dividend income is not enough to take care of her day to day expenses. The Applicant No.2 has huge source of money and earning nearly Rs.90,000/- per month.

4. The Respondent No.1 preferred an application for interim relief under section 12, 17, 18(a)(b)(d)(e) and (g), 19 (1)(a)(c) (d), (5), (7), (20) (1)(2), 22 and 23 of Protection of Women from D. V. Act 2005.

5. The Applicants (Respondent No.1 & 2 in the impugned proceedings) filed written statements before the trial Court denying the allegations along with documents.

6. The Respondent No.1 filed affidavit-in-lieu of examination in chief and reiterated her grievance. She was cross examined by the opponents on 18th January, 2014 and 16th October, 2014 and 29th November, 2014. The learned Magistrate vide order dated

31st March, 2022 partly allowed the Application preferred by Respondent No.1.

7. It was declared that, the Respondent No.1 (Applicant in impugned proceeding) is having right to live in the shared house hold. Byway of extension order she is permitted to reside in the shared house-hold and the Applicants (Respondents in the impugned proceedings), were directed to remove themselves from the shared house-hold within two months and deliver the possession to Respondent No.1 herein. Byway of Protection order, the Applicants were restrained from causing Domestic Violence to Respondent No.1.

8. The order dated 31st March, 2022 was challenged by the Applicants before the Court of Sessions by preferring an Appeal. The applicants herein had preferred Criminal Writ Petition No.1802 of 2022 before this Court seeking time bound disposal of Appeal No. 2054 of 2022 pending before the Sessions Court. This Court vide order dated 27th May, 2022 directed the Sessions Court to dispose off the Appeal finally on or before the 30th July, 2022 both the parties were directed to co-operate with the Sessions Court for expeditious disposal off the appeal since the appeal itself directed be expeditiously, both the parties were maintained status quo till the disposal of appeal. The appeal was finally heard and by order

dated 5th August, 2022, the Appeal was dismissed.

9. Learned Advocate for the Applicants urged as follows.

- a. The impugned orders are contrary to law.
- b. The Courts below have overlooked Section 19 of the D. V. Act. As per the said provisions only male Respondent can be removed from the premises. Women cannot be dispossessed. The Applicant No.1 is the women. The Court overlooked Section 2(q) of the said Act.
- c. The impugned proceedings are initiated by Respondent No.1 at the behest of sister of Applicant No.2.
- d. There is no evidence for Domestic violence.
- e. The allegations of Domestic Violence were not proved. The Respondent No.1 has not discharged burden of proving the allegations in accordance with Section 101 of the evidence Act.
- f. The Applicants has a right to occupy the premises. They were residing at the said premises since last several years. This fact is fortified by the

several documents on record. The Applicants cannot be dispossess from the premises.

g. The Respondent No.1 did not urge that, she is not in a position to maintain herself. The proceedings relates to share in the property. The provisions of D. V. Act., are misused.

h. The evidence of complainant is cryptic. It does not specify instances of the alleged Domestic Violence.

i. From the cross examination of Respondent No.1 it can be seen that, she does not even know the contents of the complaints. The complaints were filed at the behest of her daughter. The reasons assigned by the Court of Sessions with regards to burden under Section 101 of the evidence Act are erroneous. The Court has observed that, the proceedings are required to be determined on the basis of preponderance of probability. The Applicant No.2 is son of Respondent No.1, the Applicant No.1 is wife of Applicant No.2.

j. *The reliance is placed on the decision in*

the case of Prabha Tyagi Vs. Kamlesh Devi 2022

SCC online SC 607.

10. Learned Advocate for Respondent No.1 submitted as follows:-

- i. There are concurrent findings of both the Courts below that there is Domestic violence.
- ii. Both the Applicants have subjected the Respondent No.1 to Domestic Violence. The will does not indicate that the flat belongs to the Applicant No.2. The claim of the Respondent No.1 about ownership of the flat is not denied in any manner by the Applicants by adducing any evidence.
- iii. There is no infirmity in the impugned orders passed by the Court of learned Magistrate and the learned Sessions Judge.
- iv. Applicant No.1 is wife of Applicant No.2. By resorting to section 19 and Section 2(q) it cannot be said that, the Applicant No.1 cannot be dispossessed from the premises. The entire arguments of the Applicants is about right of the Applicant No.1 without dealing with the right of

Applicant No.2. The Applicant No.2 is trying to seek Protection by claiming right to continue to reside in the premises through Applicant No.1.

v. Both the Courts below has assigned reasons for directing the Applicants to remove themselves from the premises. It is also observed that it is also responsibility of the Applicant No.1 to maintain Applicant No.2.

11. Learned Advocate for Respondent No.1 has relied upon the decision of the Apex Court of Delhi High Court in the case of *Ravneet Kaur Va. Prithpal Singh Dhingra* (2022) SCC online Del 594 AIR 2022 Del 55 : (2022) 288 DLT 269 : (2022) 1 DMC 728 : (2022) 2 HLR 150.

12. Having heard both the sides, I have also perused the documents on record. I do not find any infirmity in the impugned orders. The Respondent No.1 is mother of Applicant No.2 and mother in law of Applicant No.1. In her Application under Section 12 of the D. V. Act. as well as in the evidence, she has stated that, the Applicants have subjected to Domestic Violence Act. Her grievance is supported by the complaints forwarded to the police which are part of the record she has been examined by the Advocate for the Applicant. The cross examination is lengthy. It is

pertinent to note that, the Respondent No.1 is aged about 79 years. In the cross examination she has stated that the flat No.501 is purchased in 1975 or 1976. It was purchased by her husband. Her husband expired in November, 2000. He had left a will. At the time of purchase of flat, her father might have given her money which might have been used in the business and therefore, her share might have been put into the flat. In the application under Section 12 of the D. V. Act. The Respondent No.1 has stated that her husband had bequeathed 50% of the property in her favour. Instances of Domestic Violence are reflected in the Application under Section 12 of the said Act. She was residing in the flat premises in question till she was compelled to leave the premises by the Applicants. In the affidavit in evidence, she has stated that she is the registered owner of flat situated at 501, Girnar building, Tardeo Road, Mumbai, where she was residing since several years, she also stated that shared household purchased by her out of her funds and the same has been shown in the balance sheet and paid tax returns filed before the income tax authorities. She would produce the balance sheet and the will, tax return showing the share household belonging to her exclusively and the balance sheet of late husband showing that the flat belongs to her. She also deposed about the complaints dated 5th February, 2006, 22nd

February, 2006, 10th March, 2006 and 9th October, 2006, submitted to Tardeo Police Station. In the light of the averments in the affidavit in evidence and the documents produced by the Respondent No.1, it is clear that she was subjected to Domestic Violence.

13. According to the Applicants, in the cross examination the Respondent No.1 had admitted that, she do not recollect the contents of the present complaint. Her lawyer is engaged by her daughter. She do not know whether she had any meeting with her Advocate. The contents of the complaint might have been told by her daughter. Today she doesn't remember anything. She cannot narrate the single incident mentioned in the complaints against Applicant No.2. There might be dispute between her and Applicant No.2 in 2006, in respect partnership firm property. It is true that she had also filed the private complaint against Applicant No.2 and others. On the basis of such admission the evidence of Respondent No.1 cannot be discarded. In the further cross examination she has stated that, she cant explain the incident because of her age and she cannot recollect them. It is not true to say that, the present complaint is filed by her on the say of her daughter.

14. Taking in to consideration the material on record there is no reason to disbelieve the version of Respondent No.1. It is difficult to

accept the contention of the Applicants that, the Respondent No. 1 has not been able to discharge the burden under Section 101 of the Evidence Act. The object and scope of the provisions of Domestic Violence Act, the procedure to be adopted by the Court while adjudicating the Application preferred under Section 12 of the D. V. Act is required to be taken into consideration.

15. The submissions of the learned counsel for the Applicants that, the Respondent No.1 has not adhered to Section 101 of Evidence Act is devoid of merits. The Sessions Court has rightly observed that, both the Applicants have subjected the Respondent No.1 to Domestic Violence. The Respondent No.1 is a senior citizen aged 79 years. The Applicants are trying to take benefit of the provisions of Section 19 and Section 2(q) of the said Act, on the ground that, the Applicant No.1 is a lady and she cannot be disposes from the premises. In the facts of this case, I do not find any reason to deviate from the view taken by both the Courts below about the purported right of the Applicant No.1. She cannot take shelter of the aforesaid provisions. The Respondent No.1 had been occupying the premises since last several years. The premises belongs to her. The Applicant No.1 is wife of Applicant No.2. It is his responsibility to maintain her and provide accommodation to her. Hence, no case is made out to interfere in the impugned order.

Hence, I pass the following Order.

ORDER

- i. Criminal Revision Application No.322 of 2022 is rejected and disposed off.
- ii. The applicants shall remove themselves from shared household.
- iii. At this stage, learned Advocate for the applicants submit that the learned Magistrate had granted two months time to vacate the premises. The applicants intend to challenge this order before the apex Court. Hence, applicants may be granted two months to vacate subject premises.
- iv. Learned Advocate for respondent opposes the said prayer and submitted that at the most time to vacate premises may be granted up to 31st October, 2022.
- v. Considering the submissions of both sides applicants are granted time to vacate the subject premises till 15th November, 2022.

(PRAKASH D. NAIK, J.)