

PMB

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

**WRIT PETITION NO.6443 OF 2021
WITH
INTERIM APPLICATION NO.3464 OF 2022
WITH
INTERIM APPLICATION ST. NO.12551 OF 2022**

Ranjana Deju Salian
alias Rekha Deju Salian
d/o. Late Deju Salian ..Petitioner
vs.
Akbar Nabirasul Shaikh and ors. ..Respondents

Ranjana Deju Salian, petitioner in person.
Mr. R. M. Pethe, APP for State.

CORAM : M. S. KARNIK, J.

DATE : OCTOBER 14, 2022.

ORAL ORDER :

1. Heard.
2. The party is appearing in person. She says that the Committee had refused her application to address this Court in person. Nonetheless, considering the age of the petitioner, I heard the petitioner. Upon going through the writ petition, understandably as the petition has been drafted by the petitioner, the same is not in a proper form and even the reliefs prayed in the petition are not tenable.

3. I therefore called upon the petitioner if she wants to engage the services of a lawyer or she could get assistance from the legal aid or even I could request a learned advocate to represent her pro-bono, which she refused and insisted that she wants to argue the matter herself. From her submissions, it appears that what she wants is a right of residence in the flat of her father-in-law. She submits that she residing separately from her husband since last 15 years and since then was not residing in the house which was owned by her father-in-law. I find that the application for maintenance was allowed by an order dated 04.01.2018 passed by the trial Court and respondent no.1 (husband) was directed to pay monthly maintenance of Rs.6,000/- per month as an interim maintenance to the petitioner and her children from the date of application i.e. from 11.10.2017 till the disposal of the main application. Further, respondent no.1 was directed to provide Rs.3,000/- towards rent per month from the date of application i.e. from 11.10.2017, till the disposal of main application for securing a separate accommodation of at least one room kitchen to the

petitioner. The order reads thus :-

"O R D E R

1. The application is partly allowed.
2. The respondent No.1 viz. Mr. Akbar Nabirasul Shaikh is directed to pay monthly maintenance of Rs.6,000/- p.m. as an interim maintenance to applicant viz. Smt. Ranjana Deju Salian @ Rehana Akbar Shaikh and her children from the date of application i.e. from 11.10.2017, till the disposal of main application.
3. The respondent No.1 is also directed to provide monthly rent of Rs.3,000/- p.m. from the date of application i.e. from 11.10.2017, till the disposal of main application for securing a separate accommodation of at least one room kitchen to the applicant."
4. The challenge in this writ petition is not to the order dated 04.01.2018 below Exhibit 9 awarding maintenance but the insistence of the petitioner is that she should be given a right of residence in the house of respondent no.1. So far as the order dated 04.01.2018 granting maintenance is concerned, the petitioner-wife has filed proceedings for enforcing the order and the trial Court has even issued a warrant of attachment. It is open for the petitioner to enforce the order dated 04.01.2018 granting her maintenance and the enforcement of such order would

obviously be taken to its logical conclusion. It is seen that the warrant is issued for attachment and sale of the flat mentioned therein belonging to respondent no.1. The petitioner again and again insisted that since the respondent no.1 is not paying her any maintenance, she should be given a right of residence and the respondent no.1 be directed to provide such residence. While refusing the application for residence order, the trial Court by its order below Exhibit 19 dated 19.04.2021 observed thus :-

"This is an application filed by the applicant for residence order with prayer to allow her to reside in the house owned by respondent no.2 situated at Flat no.702, SRA Co. Op. Hsg.Soc., Shankarwadi, Jogeshwari (E), Mumbai. Respondent no.2 is mother-in-law of the applicant. Respondent no.1 is husband of the applicant. Respondent no.1 resisted the application by filing his reply at Exh.20. He submitted that the house belongs to respondent no.2. He is not residing with respondent no.2. He is residing at other place with his second wife. He is jobless. I have heard the applicant in person and advocate of the respondents. I have heard the applicant in person and advocate of the respondents, I have gone through the record. Admittedly, the applicant is residing separately since last more than 15 years. There is no domestic relationship between the parties since last more than 15 years. The grounds of the application are also not clear and convincing. Considering the facts and circumstances of the case, I do not find it justifiable to allow the applicant to reside in the house owned by

her mother-in-law/respondent no.2 suddenly after 15-16 years. Therefore I find no substance in the application. Hence, the application is rejected.”

5. I see no reason to take a different view from the trial Court. The petitioner has been residing separately from the husband since last 15 years. According to the petitioner, the flat in question was owned by her father-in-law. As observed by the trial Court, the application has been made for the right to reside in the house of the respondent no.1 almost after 15 to 16 years of separation. It is not clear from the memo of the petition as to what reliefs are prayed for. In ordinary course, I would have rejected the petition as from the petition it is difficult to find out what the petitioner really challenges. It is in view of the oral submissions made by her that I proceeded to deal with this petition. I heard the petitioner only because she is appearing in person and appears to be distressed. I do not find any error in the order dated 19.04.2021 below Exhibit 19 passed by the trial Court.

6. It appears that the petitioner has also filed proceedings under Section 156(3) of the Code of Criminal

Procedure, 1973 for initiating criminal action against the respondents.

7. It is open for the petitioner to pursue her right to enforce the order of maintenance.
8. The Writ Petition is rejected. No costs.
9. The Interim Applications stand disposed of.

(M. S. KARNIK, J.)