

AGK

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

WRIT PETITION NO.976 OF 2022

Khushboo Soumitra Khandelwal ... Petitioner

V/s.

Soumitra Rajeev Khandelwal & Anr. ... Respondents

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**WITH
WRIT PETITION NO.1476 OF 2022
WITH
WRIT PETITION NO.2593 OF 2021
WITH
WRIT PETITION NO.2792 OF 2021**

Soumitra Rajeev Khandelwal & Ors. ... Petitioners

V/s.

Khushboo Khandelwal & Anr. ... Respondents

**WITH
INTERIM APPLICATION N.3348 OF 2021
IN
WRIT PETITION NO.2593 OF 2021**

Khushboo Soumitra Khandelwal ... Applicant

V/s.

Soumitra Rajeev Khandelwal & Ors. ... Respondents

Mr. K.H. Giri with Ms. Dhinika Jain, Mr. Gaurav Borse
and Mr. Pratik Yadav for the petitioner/wife.

Mr. Shashvat H. Jariwala i/by Auroma Law for the
petitioner/husband.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 2, 2022

P.C.:

A) WP Nos.1476/2022, 976/2022, 2593/2021 & IA3348/2021:

- 1.** Writ Petition No.1476 of 2022 is filed by the husband challenging order below Exhibit 47 rejecting application seeking direction against the wife to shift herself to the new premises in view of redevelopment of the building wherein she was having shared household.
- 2.** Writ Petition No.976 of 2022 is filed by the wife challenging rejection of application below Exhibit 49 seeking direction against husband to provide alternative accommodation.
- 3.** Learned Metropolitan Magistrate rejected both the applications by order dated 19th January 2022. Both parties filed appeal before the learned Sessions Court. Both the appeals are dismissed by the learned Sessions Court.
- 4.** During the pendency of the present proceedings, the wife has vacated the premises in the shared household in relation to which the husband had filed application below Exhibit 47. Therefore, in so far as application below Exhibit 47 is concerned, the relief has become infructuous.
- 5.** In so far as the application below Exhibit 49 filed by the wife is concerned, the Courts below rejected the application considering the fact that on the date of passing of the order, the wife was residing in shared household and, therefore, both the Courts below rejected the application of the wife.

6. The material change in the circumstance in the form of wife having vacated the shared household as the said flat was situated in a building which was to be redeveloped. The application below Exhibit 49 filed by the wife needs to be considered afresh.

7. Writ Petition No.2593 of 2021 is filed by the husband, father and mother-in-law challenging order of interim maintenance of Rs.50,000/- (Rupees Fifty Thousand Only) per month which has been granted by the learned Magistrate and confirmed by the learned Sessions Court.

8. On perusal of the orders of both the Courts below, it appears that both the Courts have arrived at the amount of Rs.50,000/- (Rupees Fifty Thousand Only) based on guesswork. As per the judgment of the Apex Court in **Rajnish v. Neha** reported in (2021) 2 SCC 324 some guesswork is permissible. It appears that the order passed by the learned Magistrate had been passed on the same date of the judgment in **Rajnish** (supra).

9. In that view of the matter, interim maintenance can be granted in the light of the principles laid down by the Apex Court in paragraphs 77 to 92 of the judgment in **Rajnish** (supra) by considering affidavits filed by both parties as per paragraph 70 of the said judgment.

10. In that view of the matter, all writ petitions are disposed of by following order:

- a) Application below Exhibit 47 is disposed of as infructuous;
- b) Application below Exhibit 3 is remanded to the learned

Metropolitan Magistrate;

c) The learned Chief Metropolitan Magistrate shall transfer applications below Exhibit 49 and Exhibit 3 in C.C. No.388/DV/2019 to any other Metropolitan Magistrate having jurisdiction to entertain the applications, as it is informed that the concerned Metropolitan Magistrate, 10th Court, Andheri, Mumbai is on long leave;

d) The learned Chief Metropolitan Magistrate shall pass appropriate orders transferring applications below Exhibit 49 and Exhibit 3 in C.C. No.382/DV/2019 before 12th December 2022;

e) The Court to which the application below Exhibit 49 in C.C. No.382/DV/2019 is transferred shall decide the same within one (1) month from the date of appearance of the parties;

f) The Court to which the application below Exhibit 3 in C.C. No.382/DV/2019 is transferred shall decide the same within three (3) months from the date of appearance of the parties;

g) The parties shall appear before the learned Metropolitan Magistrate on 16th December 2022;

h) Till the application below Exhibit 3 in C.C. No.382/DV/2019 is decided, the husband shall continue to pay interim maintenance at the rate mentioned in the impugned order, i.e. Rs.50,000/- (Rupees Fifty Thousand Only) per month.

11. Writ Petition Nos. 1476 of 2022, 976 of 2022 and 2593 of 2021 are disposed of in above terms. No costs.

12. In view of this, Interim Application No.3348 of 2021 does

not survive and is disposed of as infructuous.

B) Writ Petition No. 2792 of 2021:

13. The order impugned in this writ petition arises out of Criminal Appeal No.87 of 2021 thereby partly modifying the order dated 8th July 2021 passed by the learned Metropolitan Magistrate, 10th Court at Andheri, Mumbai below Exhibit 36 in C.C. No.382/DV/2019. The interim order is in relation to Flat No.B/804, Green Acres, Juhu Karmayog Coop. Housing Society, Limited, JVPD Scheme, Vidyanidhi Marg, Vile Parle (West), Mumbai 400 049.

14. Undisputedly, the wife has vacated the said flat as the said building is under redevelopment. If that be so, nothing remains to be adjudicated in the present petition.

15. The writ petition is, therefore, disposed of as infructuous. No costs.

(AMIT BORKAR, J.)