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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

942 CRIMINAL APPLICATION NO. 148 OF 2023

1. Shakuntala w/o Dattarao Pandit,
2. Rahul Dattarao Pandit,
3. Dhammapal s/o Dattarao Pandit ...Applicants

Versus

Sujata w/o Arun Pandit ...Respondent

Mr. M. M. Parghane, Advocate for the Applicants
Mr. R. D. Thorat, Advocate for the Respondent (*through V.C.*)

...

CORAM : R. M. JOSHI, J.

DATE : 15.12.2023

PER COURT :

1. Heard finally by consent of both sides.
2. At the outset, learned counsel for the applicants on instructions does not press relief to the extent of applicant Nos. 1 and 3. Hence, application is dismissed as not pressed against them.
3. As far as applicant no. 2 is concerned, it is the contention of the learned counsel for the applicants that as per the allegations in the complaint made by Respondent before the Judicial Magistrate First Class

under the Protection of Women From Domestic Violence Act, 2005, there is no specific averment with regard to applicant No.2 staying in joint family with Respondent.

4. Learned counsel for the applicant No.2 submits that without their being domestic relationship as contemplated by Section 2(a) of Protection of Women from Domestic Violence Act (for short 'D.V.' Act) proceeding came to be filed against him with a view to cause harassment to the applicant no. 2. According to him, applicant no. 2 never shared domestic relationship with respondent. Thus, the proceeding under the D.V. Act is not tenable against him.

5. Learned counsel for the respondent strongly opposed the application by drawing attention of the Court to the allegation made against him in the complaint.

6. In order to enable a woman i.e. aggrieved person to file proceeding under D.V. Act, existence of 'domestic relationship' may be at any point of time, is *sine qua non*.

7. Provisions of the D.V. Act defines aggrieved person. Section 2(a) of the D.V. Act reads thus:

“aggrieved person” means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent.

. It further defined domestic relationship under Section 2(f), which reads thus:

“domestic relationship” means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family.

8. According to these definitions, domestic relationship between aggrieved person and respondent is *sine qua non* to maintain an proceeding under DV Act. In order to constitute relationship between two persons as domestic relationship, they must live or at any point of time lived together in a shared household when they are related by consanguinity, marriage or through a relationship in the nature of marriage, adoption or are family members living together as joint family.

9. Perusal of application filed by Respondent before Magistrate shows that there is no averment that applicant no. 2 herein ever lived with Respondent in aforesaid relationships and is in domestic relationship with the respondent. Thus, the essential condition of living together at least at any point of time is not met with, in order to maintain any proceeding

against them.

10. Thus, this Court find substance with the contention that the applicant no. 2 did not share domestic relationship with the respondent. The proceeding in question cannot be allowed to be continued against the applicant no. 2 as it would be abuse of process of Court. In the result, the application stands partly allowed in terms of prayer clause 'B' *qua* applicant no. 2. Hence, proceeding bearing Criminal M.A. No. 86/2022 filed under Sections 18, 19, 20, 22 and 23 of Protection of Women from Domestic Violence Act is quashed *qua* Applicant No. 2.

11. Fees of Mr. R. D. Thorat, learned Counsel appointed for Respondent is quantified @ Rs. 6,000/- (Rupees Six Thousand only) to be paid by High Court Legal Services Sub-Committee, Aurangabad.

(R. M. JOSHI, J.)

shp/-