

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO.213 OF 2022

Shaikh Taher Shaikh Karim,
Age 50 years, Occu. Labour,
R/o. Ranjangaon, Taluka Gangapur,
District Aurangabad .. Applicant

Versus

Rehana Begum w/o. Shaikh Taher,
Age 40 years, Occu. Agri. and Household,
R/o. C/o. Yakub Burhan Shaikh
At Mategaon, Taluka Kannad,
District Aurangabad .. Respondent

...
Mr. Sameer F. Patel, Advocate for Applicant;
Mr. Sharad Shinde, Advocate for Respondent
...

CORAM : S. G. MEHARE, J.

DATE : 20-06-2023

ORAL JUDGMENT:-

1. Rule. Rule made returnable forthwith. By the consent of the learned counsel for the applicant and the learned counsel for the respondent, heard finally.

2. The applicant/husband has challenged the judgment and order against the order rejecting the application (Exhibit-13) filed in the application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short, "Act of 2005"), passed by the learned 19th Judicial Magistrate First Class,

Aurangabad in P.W.D.V.A.No.758 of 2019 dated 15.09.2020 and confirmed by the learned Additional Sessions Judge, Aurangabad, dismissing P.W.D.V. Appeal No.1 of 2021 by order dated 10.06.2022.

3. The applicant/husband had moved an application before the 19th learned Judicial Magistrate First Class, Aurangabad, that the petition filed by the respondent/wife was beyond the period of the limitation and Court at Aurangabad has no jurisdiction as she resides within the jurisdiction of Mategaon, Taluka Kannad, District Aurangabad.

4. The learned counsel for the applicant/husband has vehemently argued that the application was not tenable. She left the company of the applicant/husband in 2006. She had filed the proceedings for maintenance. She was not residing with the applicant/husband when the alleged domestic violence was caused. The case of the respondent/wife is concocted. The maintenance was already granted to her by the Court. The cause of action shown to file the proceeding is also false and concocted. Since the respondent/wife was not residing with the applicant/husband in a shared household, there is no question of committing domestic violence to her. He relied on the case of ***Nishant Hussain Versus Seema Saddique, LAWS (RAJ)-2012-9-114, September 21, 2012.***

5. The learned counsel for the respondent/wife would argue that both Courts had recorded correct findings that when the petition was filed, the respondent/wife was residing within the jurisdiction of Aurangabad. In support of her case, she had filed on record an agreement of lease. Therefore, Court at Aurangabad has jurisdiction. He would submit that so far as the issue of limitation is concerned, it is a mixed question of law and fact, which cannot be considered a preliminary issue. Therefore, the impugned orders are legal, correct and proper.

6. The respondent/wife had filed a petition before the Judicial Magistrate First Class, Aurangabad and contended that she is residing in Aurangabad. In support of her contention, she had filed a lease agreement to prove that she resides within the jurisdiction of Aurangabad Court.

7. Section 27 of the Act of 2005 provides for the jurisdiction of the Court of Judicial Magistrate First Class. It has been provided therein that the Court of Judicial Magistrate of the first class, within the local limits of which the person aggrieved permanently or temporarily resides or carries on business or is employed, has jurisdiction to entertain the proceeding for the said Act.

8. *Prima facie*, the lease agreement was the evidence before the Court to believe that the respondent/wife, the aggrieved person, was residing within the jurisdiction of the Court at

Aurangabad. Both courts have decided the issue of jurisdiction bearing in mind Section 27 of the Act of 2005. There appears to be no substance in the argument of the learned counsel for the applicant that the Courts have erred in not accepting the contention of the applicant/husband that the respondent/wife resides in Kannad Taluka.

9. The next limb of the argument of the learned counsel for the applicant/husband is that there was no domestic relationship subsisting between the parties at the time of the alleged domestic violence, and they were not residing in a shared household. This objection has been raised for the first time before this Court. Unless the evidence is led, the bare word of the applicant/husband cannot be believed that there was no domestic violence and they were not in a domestic relationship and resided in a shared household at the time of the alleged domestic violence.

10. As far as the issue of limitation is concerned, unfortunately, none of the courts below discussed the law on limitation. The learned Additional Sessions Judge, Aurangabad, has completely ignored the issue though some case laws were placed before it. The learned Judicial Magistrate First Class, Aurangabad, discarded the plea of limitation by giving the reason that the applicant is silent as to how the application was barred by the limitation. This seems an erroneous finding. However, the limitation is a mixed

question of fact and law, and such an issue may be decided on merit. Therefore, the reasons assigned by the learned Judicial Magistrate First Class, Aurangabad, on the point of limitation of filing the petition, require interference. In the facts and circumstances of the case, the opportunity needs to be granted to the applicant/husband to raise the said plea in his written statement and put it by leading the evidence.

11. In view of the above observations, the revision application is liable to be partly allowed. Hence, the order:-

ORDER

- i) The revision application is partly allowed.
- ii) The plea of limitation discarded by the learned 19th Judicial Magistrate, First Class, Aurangabad, is quashed and set aside.
- iii) A liberty is granted to the applicant/husband to raise the plea of limitation in his written statement.
- iv) The learned Judicial Magistrate First Class, Aurangabad, shall consider the issue of limitation on merit.
- v) R & P be returned to the Court of Learned Judicial Magistrate First Class, Court No.19, Aurangabad.
- vi) The application has been pending since 2019; hence, the proceeding is expedited, subject to the cooperation of both parties.
- vii) Rule is made absolute in above terms.

(S. G. MEHARE)
JUDGE