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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 120 OF 2023

Mudashir F.Darbar & Anr.

..... Petitioners

VERSUS

The State of Maharashtra & Ors.

..... Respondents

Mr.Karansingh Rajput a/w. Mr.Fauzan Shaikh and Mr.Anukul Sheth
for the Petitioners.

Ms.M.R.Tidke, APP for the State – Respondent No.1.

Mr.Faran Khan a/w. Mr.Vishal P. i/b. Mr.Jayesh Mestry for the
Respondent Nos. 2 and 3.

Mr.Mudashir F. Darbar, Petitioner present in Court.

Mr.Firoz Yusuf Darbar, Respondent present in Court.

CORAM: RAJESH S. PATIL, J.

DATE : 5th DECEMBER, 2023

P.C. :-

This writ petition is filed by the petitioner no.1 who is the son of
the respondent no.2 and the brother of the respondent no.3.

2. The respondent no.2 (mother) and the respondent no.3 (sister)
filed a domestic violence complaint under Sections 12, 19 and 20 of the
Protection of Women from Domestic Violence Act, 2005 against the

present applicant nos. 1 and 2 before the 69th Metropolitan Magistrate Court, Sewri (now Mazgaon), Mumbai. In the said domestic violence complaint, the following prayers were sought which reads as under :-

- (a) The Respondent Nos. 1 and 2 should be restrained from entering in the house premises of Applicant's immediately henceforth as well as from visiting the Society of Applicants as per the provisions of Section 19 of the Domestic Violence Act.
- (b) That the Applicant and her husband should be protected as a Senior Citizens as per the provisions of Senior Citizens Act, 2007.
- (c) That the Respondent No.1- Son, should be directed to pay Rs.50,000/- for legal expenses to the Applicant and her husband to take assistance of welfare expert to proceed the matter as per section 15 of Protection of Women from Domestic Violence Act, 2005 and Senior Citizens Act, 2007.
- (e) That this Hon'ble Court be pleased to pass an order directing to the Respondent No.1 – son, to pay Rs.10,000/- to the Applicants an by way of medical expenses as per the provision of the Domestic Violence Act, 2005 and Senior Citizens Act, 2007.
- (f) That the Respondent No.1 - son, should be directed to pay Rs.15,000/- per month as interim maintenance to the Applicants as the provision of Section 23 of Domestic Violence Act, 2005 and Senior Citizens Act, 2007.
- (g) This Hon'ble Court be pleased to grant interim and ad-interim relief in terms of prayer (a) to (h) above as early as possible;

(h) Such other and further relief as this Hon'ble Court may deem fit and proper.

3. The 69th Metropolitan Magistrate Court, Mazgaon, by its order dated 11 May, 2022 issued notice to the respondent (the present applicant) in C.C.No. 33/DV/2022. The said order of issuance of the notice was challenged by the present applicant by way of Criminal Appeal No. 393 of 2022 before the Sessions Court at Mumbai. The Sessions Court by its order dated 23 November, 2022 dismissed the Criminal Appeal No. 393 of 2022 on account of maintainability.

4. Subsequently, by an order dated 28 November, 2022, the 69th Metropolitan Magistrate Court, Mazgaon granted interim relief thereby restraining the present applicant nos. 1 and 2 from entering into the house of the complainant and causing any kind of domestic violence till the final decision of the interim application filed by the complainant below Ex.4.

5. The present criminal writ petition challenges the order dated 23 November 2022 passed by the Sessions Court in Criminal Appeal No. 393 of 2022 and also the order dated 28 November 2022 passed by the

69th Metropolitan Magistrate Court, Mazgaon in C.C.No. 33/DV/2022.

6. After the matter was argued for some time, the parties who are closely related to each other, the petitioner no.1 being the only son of the respondent no.2, who also has three sisters have agreed before this Court that suffice will be the purpose if the petitioner no.1 and the petitioner no.2 agree not to visit/enter the house where the respondent no.2 (mother) along with her husband and the respondent no.3 are residing i.e. house at 4th Floor, 117, Mamaji House, Ibrahim Rehmatullah Road, Near Jabbari Hotel, Bhendi Bazar, Mumbai – 400 003.

7. Learned counsel for the respondent nos. 2 and 3 also submits before this Court on instructions from his clients who are present in the Court along with the husband of the respondent no.2 that if the petitioner nos. 1 and 2 voluntarily give an undertaking to this Court that they will not visit/enter the house of the respondent no.2, the one situated at 4th Floor, 117, Mamaji House, Ibrahim Rehmatullah Road, Near Jabbari Hotel, Bhendi Bazar, Mumbai – 400 003, they are ready not press the prayer clauseS (b) to (h) of their domestic violence

application C.C.No. 33/DV/2022, pending before the 69th Metropolitan Magistrate Court, Mazgaon.

8. Further he also submits that a civil suit being S.C. Suit No. 1974 of 2021 filed by the petitioner should also be withdrawn by him as an notice of motion moved in the suit was rejected by the City Civil Court at Mumbai.

9. As the parties have already agreed that they are ready to give an undertaking to this Court, this Court hereby records the undertaking given by the parties and disposed off the criminal writ petition with following directions :-

(i) The prayer clause (a) of the DV Complaint No. 33/DV/2022, pending before the 69th Metropolitan Magistrate Court, Mazgaon is hereby disposed off by making the prayer clause (a) absolute. Prayer clause (a) reads as under :-

(a) The Respondent Nos. 1 and 2 should be restrained from entering in the house premises of Applicant's

immediately henceforth as well as from
visiting the Society of Applicants as per
the provisions of Section 19 of the
Domestic Violence Act.

(ii) Rest of the prayer clauses (b) to (h) of DV
Complaint No.33/DV/2022, hereby disposed off as not
pressed.

(iii) SC Suit No. 1974 of 2021 pending before the City
Civil Court at Mumbai is also hereby disposed off as not
pressed.

(iv) The complaints filed by either of the parties i.e.
the petitioner and the respondent nos. 2 and 3, so also
the other family members of the respondent no.2 i.e.
Mr.Firoz Yusuf Darbar will also not be pressed by the
parties and the same are also disposed off.

10. Criminal writ petition is disposed off accordingly.

11. Parties to act on the authenticated copy of this order.

[RAJESH S. PATIL, J.]

This order is corrected as per Speaking to Minutes of the order dated 5 January, 2024.