

AGK

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

WRIT PETITION NO.1103 OF 2022

Rashi Manish Singal,

Age 50 years, Occu. Housewife,

Residing At A-101, Palm House,

16, Mogul Lane, Mahim,

Mumbai – 400 016

... Petitioner

V/s.

Manish Om Prakash Singal,

Age 47 years, Occupation Service,

Residing at A-101, Palm House,

16, Mogul Lane, Mahim,

Mumbai – 400 016

Presently residing at

804, Aditya Elegance,

T.H. Kataria Marg, Mahim (West),

Mumbai – 400 016

... Respondents

Mr. Abhijit Sarwate with Mr. Hardev K. Aidhen i/by Mr.
Ajinkya Udane for the petitioner.

Mr. Mohit Bhardwaj for the respondents.

CORAM : AMIT BORKAR, J.

RESERVED ON : JANUARY 13, 2023

PRONOUNCED ON : JANUARY 30, 2023

JUDGMENT:

1. The petitioner/wife is challenging order dated 16th December 2021 passed below Exhibit 11 by the learned Family Court, Bandra, Mumbai in P.A. No.719 of 2021, thereby permitting the husband to sell his flat to clear outstanding home loan. The impugned order further directs the wife to choose suitable two Bedroom-Hall-Kitchen (2 BHK) flat on rental accommodation for herself and daughter within thirty (30) days and in case of failure, it directs the husband to pay amount of Rs.50,000/- towards rental charges.

2. The petition arises out of petition for divorce filed by the husband. On 20th December 1996 marriage between petitioner and respondent was solemnized. Out of the said wedlock, they have two daughters (Kaira Alias Riya and Ira) born on 17th February 1998 and 26th August 2005 respectively. Presently, Kaira Alias Riya is around 24 years and Ira is 16 years of age.

3. During pendency of divorce proceedings, the husband filed an application stating that he had obtained a loan from bank for purchase of the flat in question. He had paid forty-four (44) installments amounting to Rs.1,15,35,700/- along with interest. The term of loan was initially till 15th August 2022 but now it is advanced to 15th April 2029. Due to Covid-19 restrictions, he could not go back to his workplace in United Kingdom and compelled to stay in India. Now he is unable to meet EMI obligation of the bank and expenses of two households. He, therefore, offered 2 BHK rental flat to the wife and daughters in

the vicinity of present flat along with security deposit for the said flat. According to him, he can afford rent of Rs.40,000/-around the vicinity of the existing flat. In case, the bank initiates recovery proceedings against the husband, his financial credibility/credit record would be damaged. He, therefore, offered flats at places mentioned in the application in nearby area. Due to refusal of wife, he filed application before the Family Court seeking direction against wife to choose alternative rental accommodation. The prayers in the application are as under:

“a) The Hon’ble Court be pleased to direct the Respondent to choose an alternative rental accommodation of a 2 BHK flat for herself and the daughters from the list already provided by the Petitioner vide his email dated 26th April 2021 which is at Annexure-2 to this Application;

IN THE ALTERNATIVE

a1) The Hon’ble Court be pleased to direct the Respondent to acquire a suitable 2 BHK rental accommodation of her own choosing in the vicinity of Mahim, Mumbai for herself and both daughters with a onetime refundable security deposit capping to Rs.2,00,000/- and monthly rent ranging between Rs.40,000/- to Rs.50,000/-;

b) The Hon’ble Court be pleased to direct the Respondent to vacate Flat No.A-101 and A-104, Palm House, 16, Mogul Lane, Mahim, Mumbai – 400 016;

c) The Hon’ble Court be pleased to restrain the Respondent from changing the interiors of the said flat viz. Flat No.A-101 & A-104, Palm House, 16, Mogul Lane, Mahim, Mumbai – 400 016 and carrying out any modification such as changing the locks of the house or using it for commercial purposes;”

4. The respondent/wife contested the application by stating that the applicant has raised mortgage loan to purchase shares. It

is a plan to oust wife from the matrimonial home. Since she is residing in matrimonial house for long, she is used to that environment. She denied that the husband is facing financial crisis.

5. I have heard learned advocates for both sides. On perusal of the impugned order, it appears that the order balance rights of both sides. It is well settled that the wife has a right to lead similar life style as that of the husband. However, she has no right to impede sale of flat owned by husband if husband provides similar alternative accommodation in vicinity. If husband is ready to provide alternative rental accommodation having similar advantages, she cannot refuse it on the ground that she is habituated in the existing flat.

6. Learned advocate for the wife expressed apprehension that the husband may not pay the rental amount if she shifts to rental accommodation, resulting in her eviction. In response, husband has filed undertaking in this Court stating that he shall pay rent of alternative premises on monthly basis as per order dated 16th December 2021 passed by the Family Court and he shall abide by the said undertaking until further orders. The said undertaking is taken on record and is accepted.

7. Learned advocate for the petitioner next submitted that the Family Court has granted relief which was not prayed for. The said submission appears to be attractive at the first blush but on deeper scrutiny it pales into insignificance. The relief in the application is a direction to the wife to shift to rental accommodation. Such relief could be molded as rightly done by the Family Court, by

granting permission to the husband to sell the premises in question and keeping Rs.2 crore in the nationalized bank in fixed deposit which shall not be liquidated without permission of the Family Court. The direction is issued to the wife to choose suitable 2 BHK flat on her own in the vicinity at Mahim, Mumbai. In my opinion, to balance equities between the parties, permission to sell the disputed flat was required to be granted. The offer by husband to the wife to select any property up to rent of Rs.40,000/-, subject to condition that she vacates the suit premises is, in my opinion, bona fide offer. The material on record shows that the husband has continued to pay EMI of suit premises even after separation of petitioner and respondent. This indicates that the intention of husband is not to evict petitioner from suit premises but to shift her to alternative accommodation which is suitable for her. The undertaking dated 13th January 2023 takes care of rights of wife. The husband has been made aware of the consequences for breach of this undertaking. Hence, in my opinion, the equitable order passed by the Family Court needs no interference.

8. The writ petition is, therefore, dismissed. No costs.

9. At this stage, learned advocate for the petitioner seeks continuation of ad-interim relief for eight (8) weeks. On perusal of the impugned order, I find that the order takes care of rights of both the sides and, therefore, the prayer for continuation of ad-interim relief is rejected.

(AMIT BORKAR, J.)