

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

CRIMINAL WRIT PETITION NO.1921 OF 2022

Anil Bhikaji Bhagare .. Petitioner
v/s.
Lata Patilbuva Kanase And Ors. .. Respondents

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Mr. Vishwanath Patki, i/b. Ahya Kewal Bharkumar for the Petitioner.

Mr. Deepak T. Raut, for Respondent No.1.

Mr. R.M. Pethe, APP, for State.

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CORAM: R.G. AVACHAT, J.

DATE : 6 FEBRUARY 2023.

P.C:-

This writ petition is preferred for quashing of proceedings in Criminal Miscellaneous Application No.331 of 2021 instituted for various reliefs under the Protection of Women from Domestic Violence Act, 2005 (D.V. Act).

2. Heard. The Petitioner herein is owner/landlord of a flat, wherein Respondent No.1/original applicant resides. The quashment of the D.V. proceedings, so far as against the present Petitioner is concerned, is asked for mainly on the ground that the Petitioner is not a relative of the husband of Respondent No.1. He, being a stranger, to

the family of the Respondent/applicant, no proceedings for any of the reliefs under the D.V. Act could be instituted against him. Judgment of this Court in *Mrs. Dimple Khanna & Anr. vs. Anita Advani & Anr.*¹ was also relied on. The terms such as aggrieved person, domestic relation, respondent and shared household appearing in Section 2 of the D.V. Act were relied on, with an ultimate submissions for allowing the petition.

3. Learned Advocate for the Respondent/applicant reiterated the averments in the application and affidavit-in-reply.

4. Considered the submissions advanced. It is true that the Petitioner is noway related to the Respondent/applicant or her husband. He is as such a stranger to the family of the Respondent/applicant. Learned Advocate for the Petitioner was, therefore, justified in contending that no relief could be asked for under D.V. Act. This Court, in first blush, was in agreement with the submissions made by learned Advocate.

Admittedly, the residential flat, in which the Respondent/applicant resides, is owned by the Petitioner. It is his case that he let out the said flat to the Respondent/original applicant at a monthly rent. It is his further case that he has acquaintance with the husband of the

¹ Criminal Writ Petition No.4196 of 2012 dated 9 April 2015.

Respondent/applicant and, therefore, he inducted her in his flat only for shorter period of not more than six months. On the other hand, the averments in the application suggest that the Respondent/applicant and her husband (Respondent No.2) were residing together as husband and wife in the flat belonging to the present Petitioner. The Respondent/applicant, in her application, has, inter alia, prayed for relief in the nature of restraint order against her husband and even present Petitioner from creating any third party interest in the residential premises and even from evicting her therefrom.

5. After having considered the submissions made by learned Advocate for the Petitioner, this Court called upon him to make a statement on instructions that the Petitioner/landlord would not evict the Respondent/applicant from his flat without following due process of law. Learned Advocate did not make such statement. He adverted this Court's attention to three notices issued by Municipal Corporation, suggesting the building, in which the flat is situated, has become dilapidated and dangerous for habitation. In an affidavit-in-reply filed by the Respondent/applicant it has been averred that due to non-payment of electricity charges by her husband/Respondent No.2, the electricity supply of the flat has been discontinued and even electricity meter has been removed. She has, therefore, moved an application before the trial court, for seeking direction to clear arrears of electricity bill.

6. From the facts and circumstances of the case, although the present Petitioner, being a stranger to the family of the Respondent/applicant, has necessarily to be before the trial court in the nature of a proper party, if not a necessary party. It is common knowledge that for restoration of essential supply, such as electricity, water connection, etc., consent of a landlord is required. In the case in hand, the Respondent/applicant has been residing in the flat owned by the Petitioner herein. According to her, it is her matrimonial home, taken on rent by her husband. She has every right to continue to stay therein, until evicted by following due process of law. The Petitioner did not make a statement, as was expected by this Court (*supra*). The Respondent/applicant apprehends that she may be evicted forcibly. It is reiterated that, in the given facts and circumstances of the case, although the Petitioner is not a family member of the Respondent/applicant, his presence as a party respondent before the trial court is proper. This Court is, therefore, not inclined to quash and set aside the D.V. proceedings qua the Petitioner herein.

7. The petition stands dismissed.

(R.G. AVACHAT, J.)