

Arun

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8794 OF 2022**

Malaika Ameet Mirchandani ...Petitioner
Versus
Ravina Mahendra Mirchandani & Ors ...Respondents

**WITH
WRIT PETITION NO. 8447 OF 2022**

Ameet Mahendra Mirchandani ...Petitioner
Versus
The State of Maharashtra & Ors ...Respondents

ARUN
RAMCHNDRA
SANKPAL

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Ms Aneeta M Vasani, *for the Petitioner in WP/8447/2022.*
Mr Shanay Shah, *with Sheetal Pandya & Twinkle Bhalghat, for the
Petitioner in WP/8794/2022.*
Ms PN Diwan, AGP, *for the State.*
Mr Omprakash Pandey, *with Suchita Pandey & Pramila Prajapati,
for Respondent No.1 in WP/8794/2022.*

**CORAM G.S. Patel &
 S.G. Dige, JJ.
DATED: 17th January 2023**

PC:-

1. Writ Petition No. 8794 of 2022 is filed by one Malaika Ameet Mirchandani. The 1st Respondent is her mother-in-law, Ravina Mahendra Mirchandani. The 2nd Respondent is her estranged

husband, Ameet Mahendra Mirchandani. The 3rd Respondent is the Presiding Officer of the Tribunal constituted under the Maintenance and Welfare of Parents and Senior Citizens Act 2007.

2. The other Writ Petition No. 8447 of 2022 is filed by Ameet against the State, Ravina and Malaika.

3. Malaika challenges an order of 2nd June 2022 by the Presiding Officer of the Tribunal constituted under the Maintenance and Welfare of Parents and Senior Citizens Act 2007. A copy of that order is annexed as Exhibit “A” to Malaika’s Petition. The operative portion is at pages 30 to 31. This was on an application filed by Ravina against her son, Ameet and daughter-in-law, Malaika, seeking that they be asked to vacate an immovable property named Orchid Building, St Francis Avenue, Hasnabad Lane, SV Road, Santacruz (West), Mumbai 400 054. This is a structure of three floors. There is some confusion about the actual arrangement of spaces within this building. We will come back to that shortly.

4. By the impugned order, the 3rd Respondent, the Presiding Officer, accepted Ravina’s application and directed both Ameet and Malaika to vacate the Orchid Building premises with their family and personal belongings. Both of them were directed not to disturb Ravina. Ameet and Malaika were directed to make their own arrangements for alternate accommodation.

5. The order seems not to take into account or weigh in the balance that Malaika had in separate proceedings under the Protection of Women from Domestic Violence Act, 2005, on 23rd March 2022 (page 62 of her Writ Petition), obtained an order that

her possession of the first floor was not to be disturbed. This is where the controversy arises in regard to the structure itself. Mr Pandey says that these are not three self-contained separate units. It is one single undivided house. The kitchen is on the second floor. On the first floor, for which Malaika has an order from the DV Court, there is no residential apartment but only a living room. The only bedroom is on the third floor. The entire unit is actually one without segregated or demarcated apartments. There is a single kitchen, a single bedroom and a single living room.

6. For his part, in his Petition Ameet has challenged the same order. But we are now told that he has vacated the premises entirely and has shifted to Pune. There are matrimonial disputes between him and Malaika. A mediation was attempted under orders of this Court by Mr Naushad Engineer, learned Advocate of this Court. There is a mediation failure report.

7. A few weeks ago, we thought there might be a possibility of settling of all disputes. Ameet says he is a resident of or has property in Singapore. He and Malaika have two adult daughters. The question was of separating property between them. Ameet says he is no longer interested and has vacated the Orchid Building premises. He prefers not to press his Petition. Ameet's Petition No. 8447 of 2022 is thus dismissed as withdrawn.

8. This leaves Malaika's Petition. Ravina is of course opposing her but it is not possible to assist Mr Pandey for Ravina in regard to the DV Court order. The DV Court order itself does not prima facie seem to have taken into account or properly appreciated the configuration of Orchid Building.

9. Before us, all have agreed that this is in fact the configuration of Orchid Building as noted above.

10. We see no reason to interfere with the impugned order except to the extent of observing that it clearly cannot override an order passed by the DV Court in a jurisdictionally competent proceeding. Apart from anything else, the DV Court order was prior in time, and, necessarily, even if the two jurisdictions be run in parallel, the second order would be subject to the first as the Supreme Court itself has recently held in *S Vanitha v Deputy Commissioner, Bengaluru Urban District and Others*.¹

11. It is therefore for Mr Pandey on behalf of Ravina to approach the DV Court (where Ravina was undoubtedly a party) and to obtain suitable orders. A copy of this order may be placed before that Court as well.

12. In the light of this, Writ Petition No. 8794 of 2022 filed by Malaika is disposed of in forgoing terms.

13. There will be no order as to costs.

(S.G. Dige, J)

(G. S. Patel, J)

1 2020 SCC OnLine SC 1023.