



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APL) NO. 1207/2019

Sanjay Purushottam Patil and Ors. Vs. Kasturabai Purushottam Patil and anr.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. J. B. Gandhi, Advocate for applicants.
Mr. M. V. Rai, Advocate for non applicant no.1.
Ms S. Haider, A.P.P. for non applicant no.2.

CORAM : **ANIL L. PANSARE, J.**
DATE : **31.08.2023**

Heard.

The applicants are legal representatives of one Purushottam Patil. Non applicant no.1 claims to be the wife of Purushottam. According to her, she married Purushottam on 17.06.2016. She then states that Purushottam expired on 15.11.2018. After his death, she went to the house of present applicants, who are non applicants before the trial Court. She stayed with the applicants till the post death rites of Purushottam were performed. Thereafter, she has been driven out of the house by the applicants. On the basis of these allegations, she filed an application under the provisions of the *Protection of Women From Domestic Violence Act, 2005* (for short the 'Act') against the applicants.

Learned counsel for the applicants submits that Purushottam had filed petition under Section 11 of the Hindu Marriage Act, 1955, seeking declaration of nullity of marriage. However, pending those proceedings,

Purushottam expired. Thereafter, the applicants joined proceeding as legal representatives. However, the Court has dismissed the petition on the ground that right to sue does not survive but by granting liberty to the applicants to seek appropriate declaration by approaching the appropriate Court of law. The applicants, thereafter, approached the Civil Court and have successfully obtained decree of nullity of marriage solemnized between Purushottam and respondent no.1.

He further submits that the non applicant no.1 had, on earlier occasion, filed application under the provisions of the Act against Purushottam being Criminal Application No.41/2017 before the Judicial Magistrate First Class, Motala. He submits that the applicants were not made party in the said proceeding. The said proceeding stood abated once Purushottam expired. Learned counsel for the applicants has accordingly argued that the non applicant no.1 has suppressed the material facts. He further submits that the ingredients of domestic relationship as regards the applicants is absent and, therefore, the application is not maintainable.

Learned counsel for non applicant no.1, however, submits that the non applicant no.1 is a helpless lady. She has been driven out of the house by the applicants. She has stayed with the applicants for some time and thus she was in a domestic relationship with the applicants. The proceedings are maintainable and cannot be thrown out at the threshold.

Section 2(f) of the Act of 2005 reads thus:

“2.(a) to (e)

(f) domestic relationship” means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family.”

Thus, the relationship between the parties ought to be such where parties lived together and were related by consanguinity, marriage or through a relationship in the nature of marriage, adoption or are family members living together as joint family.

In my considered view, the non applicant no.1 does not fall in any of these categories. The only scope was her residing together as family member but even it is not the case of the non applicant no.1. The non applicant no.1 states that the applicants are her stepsons. It is not her case that she was residing with the applicants as a family member of a joint family. What has been said is that after the death of Putushottam, she went to the house of the applicant and stayed for the time till Purushottam's post death rites were performed which included the 13th day and immediately thereafter she has been driven out. It is not the case of non applicant no.1 that she resided together with the applicants as a family member of joint family.

That being so, even if the case of the non applicant no.1 is accepted to be true on the face of

record, the essential ingredients of domestic relationship are absent and in absence of the same, it would not be permissible for the non applicant no.1 to allege domestic violence against the applicants. The applicants have thus made out a case to grant relief in terms of prayer clause (1), which reads thus:

“It is therefore most humbly prayed that Hon’ble Court be pleased to exercise the inherent jurisdiction and call for the record of Misc. Cri.Case No.10/2019 form the file of Judicial Magistrate First Class, Motala, Dist. Buldhana, which is filed under Sec. 12,18,19, 20, 22 and 23 of the Protection of Women From Domestic Violence Act, 2005, and the proceedings be quashed as not maintainable by holding that there is no domestic relationship at any time in between the applicants and the respondent no.1, by allowing the petition, in the interest of justice.”

At this stage, learned counsel for the applicants has invited my attention to the order passed by this Court wherein an interim arrangement was made pending Regular Civil Suit No.30/2019. The non applicant no.1 was put in possession of two rooms on the ground floor of the premises where the applicants are residing, with a rider that if the decision in the suit is adverse to the non applicant no.1, she shall vacate the said portion.

Non applicant no.1 submits that she has preferred appeal. However, no interim relief has been granted. It further appears that on 05.07.2023, the counsel for non applicant no.1 sought one month’s time

to vacate the premises. A further request made by her on 10.08.2023 seeking extension of time to vacate the premises, has been rejected. It appears that non applicant no.1 has not yet vacated the premises and she is not paying heed to the orders passed by this Court. In the circumstances, last opportunity is granted to the non applicant no.1 to vacate the premises and the same shall be vacated by 08.09.2023, failing which the non applicant no.1 shall be tried for the aggravated contempt of this Court.

The application is accordingly disposed of in the above terms.

List the application on 11.09.2023 for the purpose of compliance of this order.

(Anil L. Pansare, J.)