



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**919 CIVIL APPLICATION NO. 12728 OF 2021 IN RAST/13192/2021 WITH
RAST/13192/2021**

**WITH
REVIEW APPLICATION STAMP NO. 13192 OF 2021 IN WP/516/2021**

**UJWALA HARIBHAU UPLENCHWAR @ UJWALA RAMESH ANANTWAR
VERSUS**

RAMESH GOVINDRAO ANANTWAR

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**Advocate for Applicant : Mr. V. D. Sapkal, Senior Advocate i/b. Mr. Pavan P.
Uttarwar**

Advocate for Respondent / Sole : Mr. P. N. Kalani

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CORAM : ARUN R. PEDNEKER, J.

DATE : 7th May, 2024

ORDER :

1. Civil Application No. 12728/2021 is filed for condonation of delay of 79 days caused in the filing the review application. For the reasons stated in the application, the application is allowed. Delay of 79 days caused in filing the review application is condoned.

2. By way of present review application, the review applicant/wife is seeking review of the judgment and order dated 14.1.2021 passed by the learned Single Judge of this Court in Writ Petition No. 516/2021 and also seeks to quash the impugned order dated 24.3.20221 passed below Exh. 69, issuing possession warrant by the Family Court, Nanded in Regular Darkhast No. 8/2019.

3. Heard the learned counsel for the respective parties.

4. Mr. V. D. Sapkal, Senior Advocate instructed by Mr. Pavan P. Uttarwar, learned counsel for the review applicant submits that the Division Bench, by it's order dated 05.07.2018, at para 8, while allowing the appeal filed by the husband, had modified clause 4 of the order passed by the family court

dated 09.10.2017 and directed the petitioner - husband not to take possession of house occupied by the respondent - wife, situated at Hudco, Nanded for a period of six months except in accordance with law. Thereafter, there is no further direction passed by any authority to hand over the possession of the flat to the husband. As such in execution proceedings without an order of the Court, the flat occupied by the applicant wife should not have been directed to be handed over to the husband.

5. Mr. V. D. Sapkal, Senior Advocate instructed by Mr. Pavan P. Uttarwar, learned counsel for the review applicant further submits that the order passed by the trial court, so also, by the Division Bench would indicate that the possession could be taken over by the husband only by following the process in accordance with law. He further submits that there was injunction order under the provisions of the Protection of women from Domestic Violence Act, 2005, passed on 08.11.2017, and unless the stay order is vacated in accordance with law and a decree is passed seeking eviction, the possession of the house could have not been handed over to the respondent - husband and, as such, he submits that the order passed by this court dated 14.01.2021 in Writ Petition No.516 of 2021, there is error on the face of the record in terms of mis-interpreting the order of the Division Bench, so also, mis-interpreting the order passed under the Protection of women from Domestic Violence Act, 2005. He submits that in absence of any decree, directing the wife to vacate the house there can be no execution and thus, on the face of record there is an error in the judgment.

6. Having considered the submissions of the review applicant, it is to be noted that the Division Bench while passing the order dated 5.7.2018 in Family Court Appeal No. 60/2017, whereby judgment dated 9.10.2017 of the Family Court Nanded in Petition No. 385/2014 was challenged, has referred clause (3) and (4) of the impugned order, which is as under :-

"3. Petitioner is ordered to pay permanent alimony @ Rs.10,000/- per month to respondent from the date of this

order until she remarries or until she is proved to be capable of maintaining herself.

4. Petitioner is restrained from interfering into the possession of respondent over his house situated in Hudco, Nanded, except in accordance with law."

7. The Division Bench of this Court by order dated 5.7.2018 upheld the above clause (3), however, modified clause (4). The relevant portion is at para 8 of the order, which is as under :-

"8.....Considering these facts and findings and merit in submission of the learned counsel appearing for the appellant, we are of the opinion that indulgence of this Court is warranted in clause 4 of the order dated 09.10.2017 by modifying clause 4 and by directing the petitioner restraining from interfering in the possession of the respondent over his house situated in Hudco, Nanded for a period of six months excepted in accordance with law six months of the date of order of this Court, the appeal is allowed partly and disposed of accordingly."

8. Thus, the Division Bench of this Court, while hearing the appeal filed against the order passed by the Family Court, modified clause (4) as above of the order passed in divorce petition. In the Family Court Appeal No. 60/2017, the Division Bench of this Court has confirmed the divorce and ordered to pay permanent alimony at the rate of 10,000/- per month. After a gap of six months, in terms of clause (4) of the modified order, the husband filed the execution application, seeking possession of house before the Family Court. The Family Court, Nanded vide order dated 29.1.2020 in R.D. No. 8/2019 has observed that once the respondent/wife has received permanent alimony in terms of the judgment of the Division Bench referred above, which includes food, clothing, residence, education and medical attendance and treatment, the respondent/wife had no further right to hold the possession of the house of the husband and his son also has right to stay in the flat and that the order passed under the Domestic Violence Act and order passed by the Family Court in divorce proceeding stand modified and accordingly, the Family Court in R.D. No. 8/2019 directed the

respondent wife to hand over the possession of the house/flat to the husband.

9. The order is passed by the Family Court was challenged before the Single Judge of this Court in Writ Petition No. 516/2021. The same was dismissed vide order dated 14.1.2021. This Court in Writ Petition No. 516/2021 by order dated 14.1.2021 has observed that, the petitioner/wife was granted permanent alimony at the rate of 10,000/- per month from the date of the order until she remarries or until she is proved to be capable of maintaining herself. The Division Bench modified clause (4) of divorce decree and husband was permitted to take over possession of the house after the period of six months in accordance with law.

10. Thus, this Court has held that the order passed by the Family Court in divorce proceedings stood modified in terms of the order of the Division Bench of this Court. The learned Single Judge of this Court has also held that the order passed by the Magistrate under P.W.D.A.V. No. 44/2016 does not survive in the light of the judgment and order passed by the Division Bench of this Court vide order dated 5.7.2018 in Family Court Appeal No. 60/2017. Once it is held that the order passed under the P.W.D.A. V. No. 44/2016 does not survive, so also the wife was receiving permanent alimony, there is no misinterpretation of the order of the Division Bench. Thus, it cannot be said that this Court misinterpreted the judgment of the Division Bench in Family Court Appeal No. 60/2017 dated 5.7.2018 and the wife has to be necessarily evicted from the property occupied by her, by seeking an order of eviction.

11. In view of the same, no ground as such is made out for review. The learned Single Judge of this Court has considered the judgment of the Division Bench and held that the review applicant has no right to stay in the house of the husband beyond the period of six months from the date of the judgment of the Division Bench i.e. 5.7.2018 and has dismissed the writ petition, challenging the order passed passed by the Family Court in R.D. No. 8/2019. There is no error on the face of the record, no ground is made

to review the impugned order passed by the learned Single Judge of this Court in Writ Petition No. 516/2021. In the result, the review petition is dismissed.

[ARUN R. PEDNEKER, J.]

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