

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.2220 OF 2023

IN

FAMILY COURT APPEAL(ST)NO. 5942 OF 2023

Mrunal w/o Bhushan Kulkarni

..Appellant/Applicant

Versus

Bhushan s/o Natha Kulkarni

..Respondent

Mr.Abhishek Kulkarni, with ***Mr.Sagar Wakale,***
Advocates for the Appellant/Applicant/wife.

Mr.Vikas Shivarkar, ***Advocates for the Respondent-***
husband.

Mrs.Mrunal Bhushan Kulkarni, ***Appellant-wife is***
present in Court.

Mr.Bhushan Natha Kulkarni, ***Respondent- Husband***
is present in Court.

CORAM : B. P. COLABAWALLA &
SOMASEKHAR SUNDARESAN, JJ.
DATE : JANUARY 17, 2024

P.C.

The above Interim Application is filed seeking the following reliefs:-

- A) This application be allowed;
- B) Pending hearing and final disposal of present Family Court Appeal, Temporary injunction be granted restraining respondent, his sister Vidya Kirve/relatives of any other person/agent from dispossessing

the appellant from her residential flat R/o
Plot no.3, Survey no.18 Vardesai Society,
Ingle Nagar Warje Jakat Naka, Warje
Malwadi Pune.

2 The above Appeal is filed by the Applicant/Appellant-wife challenging the order dated 3rd February, 2023 passed by the learned Family Court, Pune in Petition PA-1215/2018. By the impugned order, the Divorce Petition filed by the husband was granted and the counterclaim of the wife seeking restitution of conjugal rights was dismissed.

3 The relief sought in the present application is on the basis that the flat mentioned in prayer clause (b) of the Interim Application is her matrimonial home and she ought not to be dispossessed from the said till the disposal of the above Appeal.

4 The learned counsel appearing on behalf of the Applicant submitted that initially, the Family Court, during the pendency of the proceedings before it, on 14th August, 2019 passed an interim injunction restraining the husband and his relatives or any other person on his behalf from dispossessing the wife from the residential flat. He submitted that thereafter this order was vacated by order dated 17th January, 2023 because the wife did not

take appropriate steps as per the order dated 6th October, 2022. The order dated 6th October, 2022 basically directed the wife to take necessary steps to join the sister of the husband because prayer clause (c) of the application before the Family Court also sought to restrain the sister from dispossessing the wife. The learned counsel submitted that in these circumstances, the Respondent-husband be restrained from dispossessing the Appellant-wife from her matrimonial home because if the aforesaid relief is not granted, she would have no roof on her head.

5 On the other hand, the learned counsel appearing on behalf of the Respondent-husband submitted that the house in which the wife is staying does not belong to him. It originally belong to his father and after the passing of his father, the same has been bequeathed to his sister. He submitted that in fact the sister has initiated proceedings not only to restrain the Appellant-wife from entering and/or using the said flat but also seeking possession of the same. He submitted that granting any injunction restraining the Respondent-husband from dispossessing the Appellant-wife from the said flat would be useless because he is not the owner of the same.

6 We have heard the learned counsel appearing for the parties. We have also perused the papers and proceedings in the above Interim Application. It is not in dispute that the said flat was the matrimonial home of the Appellant-wife. It is also not in dispute that the Appellant-wife has been residing in the said flat since the time she was married to the Respondent-husband. Once this is the case, we are of the view that pending the hearing and final disposal of the above Appeal, the Respondent-husband ought to be restrained from dispossessing the Appellant-wife from her matrimonial home. We say this because it is the case of the Respondent-husband himself that he is not the owner of the said flat and has got nothing to do with the same. If this is the case, there would be no question of allowing the Respondent-husband to forcibly or illegally dispossess the Appellant-wife from her matrimonial home. We may hasten to add that this restraint order is passed only against the Respondent-husband and not any other party. Any proceedings filed against the Applicant/wife by the sister of the Respondent-husband shall be decided on its own merits and in accordance with law, uninfluenced by this restraint order.

7 The above Interim Application is disposed of in the aforesaid terms. However, there shall be no order as to costs.

8 This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[SOMASEKHAR SUNDARESAN, J.] [B. P. COLABAWALLA, J.]