

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

WRIT PETITION NO.922 OF 2023

Rekha Anandrao Ranbhare,
Age 62 years, Occupation: Agricultural/Business,
R/o. House No.38/2, Yashwant Naik Nagar,
Hupari, Tal. Hatkanangale, Dist: Kolhapur 416 203 ...Petitioner

Versus

1. State of Maharashtra

2. Mayuri Vinayak Ranbhare, Age 34 years,
Occupation: None , R/o. Near Datta Process,
Jawahar Nagar, Ichalkaranji, Tal: Hatkanangale,
District Kolhapur 416 117

3. Parshuram Shankarrao Ranbhare,
Age 42 years, Occupation: Business,
House No.38/2, Yashwant Naik Nagar,
Hupari, Tal. Hatkanangale, Dist: Kolhapur 416 203

4. Swati Parshuram Ranbhare,
Age: 39 years, Occupation: Business,
House No.38/2, Yashwant Naik Nagar,
Hupari, Tal. Hatkanangale, Dist: Kolhapur 416 203 ...Respondents

Mr. C. G. Gavnekar a/w. Mr. Ashutosh C. Gavnekar for the
Petitioner.

Ms. Shilpa Gajare, APP for Respondent No.1.

Mr. Pawan Tiwari i/b Mr. Shantanu Kalekar for Respondent No.2.

CORAM : SHARMILA U. DESHMUKH, J.

RESERVED ON : 7th MARCH, 2024

PRONOUNCED ON : 21st MARCH, 2024

JUDGMENT :

1. **Rule.** Rule made returnable forthwith and heard finally with consent of parties.

2. By this petition the challenge is to the order dated 24th January 2023 passed by the Additional Sessions Judge, Ichalkaranji, District Kolhapur in P.W.D.V. Appeal No.35/2021 allowing the appeal and quashing and setting aside the order of the 2nd Judicial Magistrate, First Class, Ichalkaranji, District Kolhapur dated 28th October, 2021 passed in an application filed under Section 23 of DV Act in P.W.D.V. No.60/2020.

3. Shorn of unnecessary details the facts of the case are that an Application under Section 12 bearing P. W. D. V. No.60/2022 was filed by Respondent No.2 herein on 12th October 2020 claiming reliefs under Sections 18, 19, 20 and 22 of the Protection of Women from Domestic Violence Act, 2005. The Respondents impleaded in the said application were the present Petitioner who is the mother-in-law of Respondent No 2, the biological son of the Petitioner given in adoption as Respondent

No 2 and the wife of the Respondent No 2 as Respondent No.3. Interim Application below Exhibit 4 was filed by the Respondent No.2 herein under Section 23 of the DV Act seeking interim maintenance of Rs.1 Lakh and restraining orders against the Petitioner and Respondent Nos.3 and 4 from transferring or creating any third party interest in the properties mentioned in Annexure A to the main Application. The Petitioner and Respondent Nos.3 and 4 resisted the Application by filing their reply. The Trial Court by order dated 28th October 2021 rejected the Interim Application. As against the rejection of the Interim Application, Miscellaneous Criminal Appeal No.35/2021 was preferred by Respondent No.2. By the impugned Judgment dated 20th July 2022 interim maintenance of Rs.1 Lakh was granted. This order was challenged by the Petitioner by way of Writ Petition No.3366 of 2022. By order dated 14th November 2022, this Court allowed the petition and quashed and set aside the order dated 20th July 2022 and directed the Additional Sessions Judge to decide the appeal afresh after considering paragraph Nos.77 and 93 of the Apex Court judgment in case of ***Rajnesh Vs. Neha, 2021 (2) SCC 324*** and on the basis of affidavit filed by both the parties. Affidavits of Disclosures of Assets and Liabilities came to be filed by the parties. By the impugned order dated 24th January 2023, the Additional Sessions Judge directed the Petitioner herein to pay monthly maintenance

of Rs.60,000/- to Respondent No.2 from the date of filing of the Application till final disposal.

4. Heard Mr. C. G. Gavnekar, learned counsel for the Petitioner, Ms. Shilpa Gajare, APP for Respondent No.1 and Mr. Pawan Tiwari, learned counsel for Respondent No.2.

5. Mr. Gavnekar, learned counsel for the Petitioner would submit that there is no subsisting domestic relationship between Petitioner and Respondent No.2 as Respondent No.2 and her husband were residing separately by pointing out the averments in the application filed under Section 12 of DV Act. He would further submit that the husband of Respondent No.2 had bequeathed his properties to the Petitioner by Will dated 27th March 2018 and unless the Will is set aside in an appropriate proceedings the Petitioner is the owner of the properties. He would submit that the Sessions Court has wrongly delved into the issue of validity of the Will when not required and has held that the Will has been executed under suspicious circumstances. He would further submit that by virtue of the Will the properties became the properties of the Petitioner and no interim order of payment of maintenance can be granted against the Petitioner. He would further

submit that it is specific case of the Petitioner that she is not having any source of income and there is no material to show that the properties which came into her hands under the Will were fetching any income. He submits that the Trial Court has considered the said issue and has rejected the Application by holding that the Respondent No.2's financial position was sound. He submits that the order of the Appellate Court proceeds on an assumption that this Court by order dated 14th November 2022 had remanded the matter only to decide the quantum of maintenance and not entitlement. He submits that the Appellate Court has held that the power looms and silver business of Respondent No.2 are not in her possession without there being any material on record. He submits that the silver business is not with the Petitioner however the power looms are with the Petitioner. Pointing out to the Income Tax returns which are annexed from page 269 onward, he submits that the Respondent No.2 has source of income. He submits that it is open for Respondent No.2 to shift the power looms standing in her name from the property belonging to the Petitioner. He would further admit that some of the properties have been alienated by gift deed executed by the Petitioner in favour of Respondent No.3's son. He would further submit that the Appellate Court has failed to consider that the Respondent No.2 has source of income as she had been paid a sum of about Rs.30 Lakhs and was receiving monthly interest

thereon.

6. *Per contra*, Mr. Tiwari, learned counsel for Respondent No.2 would submit that order of 14th November 2022 did not disturb the findings on entitlement. He would submit that Income Tax Returns would show that the income of the Respondent No.2 was around Rs. 18 Lakhs p.a. at the time when her husband was alive and she was working with his assistance. He submits that even from the amount of insurance policies, the Petitioner is claiming 1/2 share in respect for which she has initiated civil proceedings. He would submit that the properties of the parties is an indication about the status of the parties and a sum of Rs.10,000/- to Rs.15,000/- received as interest could not be said to be sufficient for the Respondent No 2's sustenance.

7. Rival contentions now fall for determination. I have considered the submissions and perused the records.

8. Before proceeding further it would be appropriate to refer to the stated object of the DV Act which is to provide for more effective protection of the rights of women guaranteed under the Constitution, who are victims of violence of any kind occurring within the Family. To

give teeth to achieve the stated object of DV Act, Section 3 of the DV Act gives an expansive definition to domestic violence which includes not only physical abuse but also sexual abuse, verbal and emotional abuse and most pertinently it includes Economic abuse which is defined as deprivation of all or any economic or financial resources to which the aggrieved person is entitled and prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy including access to shared household. The provisions of Sections 18, 19, 20 and 22 read with Section 23 of the DV Act empowers the Trial Court to grant the reliefs even at the interim stage to ensure that there is no continuing act of domestic violence, that the residence of the aggrieved person is protected and that appropriate provision for maintenance of the aggrieved person is made. It is also settled that an act of domestic violence is *sine qua non* for the purpose of grant of any interim relief.

9. With this background the facts of the present case will have to be considered. The undisputed position is that the Respondent No.2 is the daughter-in-law of the Petitioner who was married to the Petitioner's son in the year 2007. The Respondent No.2's husband expired on 12th January 2019 and on 12th October 2020 an Application under Section 12

of DV Act was filed. It was pleaded in the Application that the husband of Respondent No.2 became addicted to liquor and thereafter, the Petitioner and Respondent No.3 started residing in the house of Respondent No.2 and her husband and till date they are residing in Respondent No.2's house. It is further pleaded that after the death of her husband, the Petitioner and Respondent Nos.3 and 4 stopped talking to Respondent No.2 and restrained Respondent No.2 from entering the shop from where the business of silver was carried out. It is pleaded that Respondent No.2 was subject to verbal abuse by Petitioner and Respondent Nos.3 and 4 and was forced to leave the matrimonial house on 20th February 2019 and go back to her parents house. It is pleaded that the Petitioner and Respondent No.3 have illegally taken possession of movable and immovable properties including the business of Respondent No.2's husband and has not made any provision for maintenance of Respondent No.2. It was pleaded that since January 2019, the Petitioner and Respondent No.3 have taken over the textile business as well as the gold and silver business of Respondent No.2's deceased husband.

10. The pleadings demonstrate the specific case of not only verbal and emotional abuse but also economic abuse by way of depriving the Respondent No 2 of the properties and business of her late

husband and also the business carried out by the Respondent No 2. Whether the same is substantiated by the Respondent No 2 is the question of trial. However at this stage, from the pleadings in the Application *prima facie* case of domestic violence is made out.

11. The response of the Petitioner and Respondent Nos.3 and 4 is that the Respondent No.2 has received the insurance policy of Rs.13,58,700/- and had also transferred in her favour the amount of Rs.7,92,230/- standing to the bank account of the deceased husband and has also received a policy amount of Rs.3 Lakhs and as such has sufficient income. It was further pleaded that the Respondent No.2 and her husband were residing separately and were carrying on independent businesses. There is therefore an admission on record that the businesses were conducted by the Respondent and her husband independently and enjoying the profits received therefrom.

12. The Trial Court considered the Affidavits of Disclosures of Assets and Liabilities which stated that neither the Petitioner nor the Respondent No.2 had any source of income. The Trial Court further considered that the Respondent No 2 is having funds amounting to Rs.25,50,950/- and also gold jewellery of about 3.25 gms. The Trial

Court considered the Will of the Respondent No 2's husband produced by the Petitioner by which all his properties were bequeathed to the Petitioner. The Trial Court held that by virtue of the Will the properties were the Petitioner's properties and the Respondent No.2 was not entitled to claim maintenance from the properties of the Petitioner and rejected the Application.

13. The Appellate Court on remand observed that the order of this Court directed the Appellate Court to adjudicate the dispute about quantum of maintenance. The Appellate Court examined the issue of Will of the husband of the Respondent No.2 and held that the same appears to be suspicious. The Appellate Court adjudicated the quantum of maintenance by taking into consideration the guidelines of *Rajnish vs. Neha (supra)* and observed that the Petitioner is in possession of the properties of not only the Respondent No. 2 but also the properties left behind by Respondent No 2's deceased husband. On the basis of the properties as well as the Income Tax Returns which were filed on record the Appellate Court held that the businesses of Respondent No. 2 and her husband were running into profits and earning high profits. As regards the lavish life style the Appellate Court considered that the Respondent No. 2 was residing in a well furnished bungalow and considering the

status of the parties, granted monthly maintenance of Rs.60,000/-.

14. Two issues will arise for consideration. First is whether the Petitioner is liable to pay maintenance to the Respondent No 2 and if the answer to the first issue is in the affirmative then the quantum of maintenance which can be granted. Coming to the first issue as regards the liability of the Petitioner to pay maintenance to the Respondent No 2, the Respondent No 2 has come with a specific case that after the death of her husband, the Respondent No 2 was not only subject to abuse by reason of which she was forced to leave the matrimonial house and take shelter in her parents house but that the Petitioner and the Respondent Nos 3 and 4 have taken illegal possession of her immovable properties including her silver business and textile business. The learned counsel for the Petitioner on specific query put by this Court has admitted that three power looms standing in the name of the Respondent No 2 and four powerlooms standing in the name of husband of the Respondent No 2 are in Petitioner's possession. He has however denied that the Respondent No.2's independent business of silver is with the Petitioner. Upon perusal of the Will executed by the Respondent No 2's husband, it appears that in the gold and silver business and textile business being run by him, the Respondent No 2 was having a share apart from the silver business which

was run by the Respondent No 2 independently. As the Respondent No 2 is residing at her parents house at Ichalkaranji, it cannot be said that she is conducting her independent silver business at Hupri. The Petitioner although has denied that the silver business of the Respondent No 2 is not being run by her, the gold and silver business as well as the textile business in the profits of which the Respondent No 2 is entitled to a share are being run by the Petitioner.

15. Even if it is accepted that under the Will of the deceased husband the Petitioner has been bequeathed the immovable properties and the share of the son in the business by the Respondent No.2's husband, the Respondent No 2 has right to reside in the matrimonial house, the right of use which has been deprived by the Petitioner and Respondent Nos.3 and 4. The Respondent No 2 is also deprived of the benefit of her share of profit in the gold and silver business and textile business by the Petitioner. It is not case of the Petitioner that the businesses have come to a standstill. It is thus evident that the Petitioner by stating that she has no source of income have suppressed the profits received from the businesses. As the Petitioner is in control of the gold and silver business as well as the textile business, in which the Respondent No.2 admittedly has a share, the Petitioner is liable to pay maintenance to

the Respondent No 2 who is not having any source of income after being forced to shift to her parent's house at Ichalkaranji.

16. It is the specific case of Respondent No. 2 that she has been restrained from participating in her own silver business as well as textile business and gold and silver businesses which were being run by her and her husband. The Respondent No 2 has been subject to economic abuse by the Petitioner is thus entitled to seek maintenance from the Petitioner. The contention of Petitioner that by virtue of the Will she has become the owner of the bequeathed properties will not wipe out her liability towards Respondent No.2 considering the entitlement of the Respondent No.2 to the business of gold and silver and textile business. Even the Will acknowledges the share of Respondent No.2 in the businesses and that the same should remain the property of Respondent No. 2. The admitted position is that the textile businesses and the gold and silver business is in possession of the Petitioner which is evident from the submission made that the Respondent No.2 can take the powerlooms and as regards the gold and silver business, the contention is that the Respondent No.2 has not been prohibited from participating in the said business. However what was required to be done is to ensure that the Respondent No.2 is paid her share out of the profits from the said

businesses which has not been done by the Petitioner. As the businesses in which the Respondent No. 2 is entitled to profit sharing is in possession of the Petitioner, *prima facie* liability of the Petitioner to pay maintenance to Respondent No.2 is established.

17. As I have held that the Petitioner is liable to pay maintenance to the Respondent No 1, the next issue to be considered is the quantum of maintenance. Guidance can be sought from the decision of ***Rajnish vs. Neha***- where it has been held thus:

“ *The factors which would weigh with the Court inter alia are the status of the parties; reasonable needs of the wife and dependent children; whether the Applicant is educated and professionally qualified; whether the Applicant has any independent source of income; whether the income is sufficient to enable her to maintain the same standard of living as she was accustomed to in her matrimonial home; whether the Applicant was employed prior to her marriage; whether she was working during the subsistence of the marriage; whether the wife was required to sacrifice her employment opportunities for nurturing the family, child rearing, and looking after adult members of the family; reasonable costs of*

litigation for a non-working wife.

On the other hand, the financial capacity of the husband, his actual income, reasonable expenses for his own maintenance, and dependant family members whom he is obliged to maintain under the law, liabilities if any, would be required to be taken into consideration, to arrive at the appropriate quantum of maintenance to be paid. The Court must have due regard to the standard of living of the husband, as well as the spiralling inflation rates and high costs of living. The plea of the husband that he does not possess any source of income ipso facto does not absolve him of his moral duty to maintain his wife if he is able-bodied and has educational qualifications.

A careful and just balance must be drawn between all relevant factors. The test for determination of maintenance in matrimonial disputes depends on the financial status of the Respondent, and the standard of living that the Applicant was accustomed to in her matrimonial home. The maintenance amount awarded must be reasonable and realistic, and avoid either of the two extremes i.e. maintenance awarded to the wife should neither be so extravagant which becomes

oppressive and unbearable for the Respondent, nor should it be so meagre that it drives the wife to penury. The sufficiency of the quantum has to be adjudged so that the wife is able to maintain herself with reasonable comfort.”

18. The submission of learned counsel for the Petitioner is that the Appellate court has misread the order of this Court dated 14th November 2022 and has decided the quantum without deciding the entitlement. Perusal of the order dated 14th November 2022 would indicate that this Court observed that the Revisional Court had not supplied the reasons for arriving at the conclusion of quantum of maintenance and that it is necessary that the Revisional Court should adjudicate the quantum of maintenance by taking into consideration the mandate of the Apex Court in the case of ***Rajnish vs. Neha (supra)***. In the operative part of the order this Court had directed the Session Court to decide the appeal afresh after taking into consideration the Apex Court judgment in the case of ***Rajnish vs. Neha (supra)*** and on the basis of affidavits filed by both the parties. Perusal of order would indicate that the entitlement of the Respondent No. 2 for maintenance was not disturbed and as no reasons were supplied for arriving at the conclusion of quantum of maintenance, the matter was remanded. Irrespective of the said

position, perusal of the impugned judgment would indicate that the Appellate Court had framed the point of entitlement of Respondent No. 2 as well as the quantum. Although the findings of the Appellate Court on the aspect of the validity of the Will cannot be sustained, the finding that the Respondent No. 2 is not able to participate in the businesses as they are in possession of Respondent No.1 cannot be faulted with.

19. For the quantum of maintenance to be commensurate with the standard of living, the Will produced on record is a relevant indicator. The properties of Respondent No.2's husband include various agricultural lands, non agricultural plots, house property admeasuring about 1800 square feet, open plots, textile business and business of gold and silver.

20. Upon considering the immovable properties owned by the parties as well as the fact of the textile businesses as well as gold and silver business which were run by Respondent No.2 and her deceased husband, it is *prima facie* evident that the businesses were successful and family was financially sound. The judgment of Trial Court indicates that in the Affidavit of Disclosure of the Petitioner, it is stated that the Petitioner does not have any source of income, whereas the position is that the gold

and silver business as well as the textile business is in possession of the Petitioner. It is therefore clear that the Petitioner has suppressed the income earned from the said businesses from the Court.

21. The whole purpose of filing of Affidavit of Disclosure is to eliminate to some extent the element of guess work but in cases where the parties choose to suppress their income even on oath, the Courts are constrained to consider the material on record and ascertain the quantum of maintenance. As of today, the immovable properties are in possession of Petitioner and Respondent No.2 is not been shown as running her own silver business or participating in gold and silver businesses or textile business. The sum of Rs.25 lakhs as also Rs.5 lakhs which has been deposited pursuant to the order of this Court aggregating to Rs.30 lakhs cannot be said to be a perennial source of sufficient income. The material which has come on record will indicate that the parties were living in a well furnished bungalow owning various immoveable properties and running successful gold and silver business and textile business. The same demonstrates the financial status of the parties and the high standard of living of the parties. The Income Tax Returns produced are of the assessment year 2018-2019, 2019-2020 and would not assist the case of the Petitioner. Although the Income Tax Return shows certain income,

the same cannot be said to be sufficient to maintain the standard of living which the Respondent No 2 is entitled.

22. The Trial Court considered that the Respondent No2 is having sum of Rs 25 lakhs, there are no dependents on the Respondent No 2 and her financial position is sound. The Trial Court held that the properties with the Petitioner are her self owned properties and it is not seen that the Petitioner is earning any income from the said properties which finding was unsustainable in absence of any contention that the businesses were at a standstill. The Appellate Court has rightly considered the relevant factors for arriving at the quantum of maintenance and has held that even if certain monthly interest of Rs.10,000/- to Rs.12,000/- is received, the same cannot said to be adequate, considering the properties and huge income which indicates the financial status of the parties. The Respondent No 2 being the wife is entitled to be maintained in the same standard of living to which she was living prior to the death of her husband. The Trial Court erred in holding that the Petitioner is not earning any income from the businesses when on the admitted position of gold & silver business and powerlooms being in her possession it is evident that the Petitioner has suppressed her income from the businesses particularly when it is not the case of Petitioner that the businesses have

been shut down. It is unfortunate that after the death of her husband, the Respondent No.2 has been left to fend for herself without making any provision for her maintenance even as per the Will which keeps intact her share in the businesses.

23. From the material which has come on record it cannot be said that there is any infirmity committed by the Appellate Court while granting monthly maintenance of Rs.60,000/- per month. I find no reason to interfere with the impugned judgment. Petition is devoid of merits and stands dismissed.

24. At this stage, request is made for continuation of ad-interim relief which was operating since 23rd March 2023 in favour of the Petitioner for further period of 4 weeks. Learned counsel for the Respondents opposes the said request. As the ad-interim order is operating since March, 2023, I am inclined to extend the same for further period of 4 weeks from the date of uploading of the Judgment.

25. Needless to clarify that the observations made herein are only for the purpose of testing the validity of the impugned judgment.

The Trial Court is requested to decide the proceedings on its own merits and uninfluenced by the observations made herein.

(SHARMILA U. DESHMUKH, J.)