



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIM. REVISION APPLICATION NO. 267 OF 2022

Mr. Subhash Ramnath Pandey,	]	
aged : 65 years, Indian Inhabitant,	]	
presently residing at : B-104, First Floor,	]	
Indrolok Apartment, Apna Ghar Unit No.16,	]	
Co-op. Hsg. Society Ltd, Oshiwava,	]	
Near Lokhandawal Circle, Andheri (West),	]	
Mumbai 400 053.	]	...Applicant.

Versus

1.	The State of Maharashtra,	]	
	Through Public Prosecutor,	]	
	Criminal Appellate Side,	]	
	High Court, Bombay.	]	
		]	
2.	Mrs. Madhu Subhash Pandey,	]	
	aged : 60 years, an adult Indian	]	
	Inhabitant, residing at Flat No. 1503/	]	
	1504, Bianca Towers, 15 th Floor,	]	
	Yari Road, Andheri (West),	]	
	Mumbai 400 601.	]	...Respondents.

Ms. Poonam Ankleshwarai for the applicant.

Ms. T. F. Irani for respondent no. 2.

Ms. Shilpa Gajare, APP for respondent no. 1.

Coram : Sharmila U. Deshmukh, J.

Reserved on : March 18, 2024

Pronounced on : March 28, 2024.

Judgment :

1. Rule. Rule made returnable forthwith and taken up for final

disposal with consent of the parties.

2. By this revision application, exception is taken to order of Appellate Court dated 22nd March, 2022 modifying Clause 4 of the order dated 22nd November 2021 passed by the Metropolitan Magistrate in an interim application filed under section 23 of the Protection of Women from the Domestic Violence Act [for short, “the DV Act”].

3. Clause 4 of the trial Court’s order and the modified Clause 4 and 4A of the Appellate Court’s order reads thus:

Clause (4) of the trial Court’s order :

“Respondent is hereby ordered that he shall not disturbed the possession of the applicant in the property of Anand Ashram, Gram Gauriya, Deeh Pratapgarh Road, Mungra, Badshapur, Johnpur (U.P.)”

Clause (4) and Clause 4(a) of the Appellate Court’s order :

“(4) Respondent Mr. Subhash Ramunath Pandey is hereby ordered that, till the final adjudication of the C. C. No. 152/DV/2020, he shall not disturb the residential right of the Applicant Mrs. Madhu Subhash Pandey in the property of Anand Ashram, Gram Gauriya Deeh, Pratapgarh Road, Mungra, Badshapur, Johnpur (UP), in the main part of the bungalow i.e. two bedrooms on ground floor of said bungalow, adjacent to master bedroom and the kitchen, kitchen and pooja room for common use. Those are shown in the map of the Trust Deed in

black writing and red sketch-pen marks made by Ld. Advocate for Respondent No. 2 which is kept at Exhibit X with the order and it be termed as a part of the order for convenience. He would also not restrict her to use two parkings and a servant quarter. He would not restrict her to use the hall for ingress and egress, except for sitting. He would not restrict her access to the generator room only for the purpose of electricity facility, in case she needed.”

“4(a) However, it is clarified that kitchen and pooja room would not be in her exclusive possession, but would be used in common. It is also clarified that this order would be operational, when she would be staying over there and in her absence, she would have the exclusive possession of one bedroom for keeping her articles, if she required. She will not have access to other constructions and landscape in said Anand Ashram.”

4. Although during the hearing voluminous documents are placed on record, none were referred to during the hearing and for our purpose, what is relevant is the application filed under the provisions of DV Act, interim application under section 23 of the DV Act, reply of applicant and the orders passed by trial Court and the appellate Court.

5. Facts required to be explicated are that CC No.152/DV/2020 was filed by respondent no.2 under section 12 of the DV Act seeking reliefs under sections 17, 18, 19, 20, 22 and 23 of the DV Act. An interim application came to be filed under section 23 of the DV Act *inter alia* seeking ad interim order under Section 17(1) and (2) of DV

Act in respect of Flat No.1503/1504, Bianca Tower, 15th Floor, Yari Road, Andheri (West), Mumbai (Bianca Tower) and for restraining order against the Applicant disturbing the possession of the respondent No. 2 from Bianca Tower and Anand Ashram, Gram GauriyaDeeh Pratapgraph Road, Mungra Badshahpur, Jaunpur, U.P. (Anand Ashram Property) under Section 19 (1) (a) of DV Act. The application came to be resisted by the Applicant.

6. The trial Court vide order dated 22nd November, 2021 partly allowed the interim application and restrained the applicant from dispossessing or in any manner disturbing the possession of respondent no.2 in the shared house being Bianca Tower and also restrained the applicant from disturbing the possession of respondent no.2-wife in the Anand Ashram Property. As against this an appeal was filed bearing Criminal Appeal No.181 of 2021 under section 29 of the DV Act which came to be partly allowed and Clause 4 of the trial Court's order came to be modified.

7. Heard Ms. Poonam Ankleshwaria, learned counsel appearing for the Applicant and Ms. T. R. Irani, learned counsel appearing for respondent no. 2.

8. Ms. Ankleshwaria, learned counsel for the applicant would

submit that the Applicant has no grievance against the protection granted in respect of Bianca Apartment as the same was shared household and the grievance is only as regards restraining order passed in respect of Anand Ashram property. Pointing out to the averments made in the the application under section 12 of the DV Act, she submits that it is the Respondent No.2's own case that the shared household is Bianca Apartment. She would submit that the applicant has been ousted from Bianca Apartment since the year 2018 and the said premises are in the exclusive possession of the son of applicant and respondent no.2. She would further submit that the Applicant is owner of Anand Ashram property and he had purchased a small portion in the name of respondent no.2. She would further contend that in the year 2019 a trust deed came to be registered with the Sub Registrar Office on 30th April, 2019 and the Anand Ashram property was leased to the Swami Vivekanand Trust And Research Centre under a registered lease deed. She would submit that as the property has now been leased to the said trust, the same no longer constitutes a shared household even assuming that in the past the same was the shared household of respondent no.2. She would further submit that by virtue of the impugned orders, respondent no.2 and the son have taken over the exclusive possession of the property at Bianca Tower as also the Anand Ashram property leaving

the applicant homeless. She would further submit that respondent no.2 has virtually taken charge of the entire property including the property leased to the trust and it has become difficult for the applicant even to visit Anand Ashram property. She would further submit that as the Anand Ashram property was not the shared household of respondent no.2, the same could not be the subject matter of residence order under section 19 of the DV Act.

9. *Per contra* Ms. Irani, learned counsel appearing for respondent no.2 wife would submit that by the application under section 12 of the DV Act, specific residence orders were sought under section 19 of the DV Act restraining the applicant from forcibly dispossessing or in any manner disturbing the possession of respondent no.2 over Bianca Tower as well as the Anand Ashram property. She would further contend that the admitted position is that Anand Ashram is situated on Plot Nos. 471, 466, 643, 644, 645, 646, 650 and 651 and out of the said plots, part of Plot Nos. 466 and 471 stands in the name of respondent no.2. She would further submit that in the absence of any consent of respondent no.2, who is the joint owner of Anand Ashram property, the property could not have been leased by the Applicant. She would further point out that the applicant is the lifetime president of the said trust and his two brothers and nephew are the

three other trustees of the said trust and as such it is clear that the trust has been formed by the family members only for the purpose of depriving respondent no.2 from the use of said property. She would further submit that the trust deed was not produced before the trial Court and came to be produced for the first time before the appellate Court. She would further submit that the Anand Ashram property is the shared household and residence orders could have been passed in respect of the said property. She would further submit that the appellate Court has modified the order and has permitted respondent no.2 to reside in the portion of Anand Ashram property and as such the equities are balanced pending the hearing and final disposal of the main application.

10. Rival contentions now fall for determination of this Court.

11. The submissions are restricted only to the extent of restraining orders passed against the Applicant from disturbing the possession of the respondent no.2 over part of Anand Ashram Property. Vide prayer clause (c) specific relief under Section 19(1)(a) of DV Act was sought by respondent no.2 in respect of Anand Ashram Property. Section 19(1)(a) of DV Act empowers the Magistrate to pass residence orders restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared

household irrespective of whether the respondent has legal or equitable interest in shared household.

12. The contention of Ms. Ankeleshwaria is firstly that Anand Ashram property is not the shared household and secondly that the same has been leased to a Trust and thus no residence orders could be passed in favour of respondent no.2. Coming to first contention, it will be apposite to refer to the definition of shared household under Section 2 (s) of DV Act which reads thus:

“(s) “shared household” means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household.”

13. The definition of “shared household” came up for consideration of Apex Court in case of ***Satish Chander Ahuja vs Sneha Ahuja [(2021) 1 SCC 414]***. In the context of determining whether the shared household has to be read to mean that shared household can only be that household which is household of joint family in which husband

of the aggrieved person has a share, the Apex Court held that the definition of shared household falls in two parts and the definition is exhaustive and shall cover only those household which fall within the purview of the definition and no other. The first part means a household where the aggrieved person has lived or at any stage has lived in a domestic relationship with the respondent and the second part includes a household which is owned either jointly by the aggrieved person and the respondent or owned by either of them in respect of which the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity.

14. In the present case, the domestic relationship between the parties is not disputed. If the pleadings as regards the Anand Ashram property is considered it is pleaded by respondent no.2 that from the year 1993 onwards the applicant started buying immovable properties and had purchased a plot of 5-6 acres and named it Anand Ashram. It is further pleaded that the applicant had built a small house on Anand Ashram and thereafter had converted the small house into a bungalow of 7,000 square feet which got completed in the year 2010. It is pleaded that respondent no.2 along with the applicant had stayed at Anand Ashram bungalow which is also her shared household and after shifting to Mumbai's shared household, respondent no.2 visited

Anand Ashram property with the applicant during his election and also intermittently due to her health related issues as per the medical advice. It has not been disputed by learned counsel appearing for the applicant that the respondent no.2 used to visit Anand Ashram property, although according to her, the same was in the year 2008, May 2013 and 2014.

15. The impugned judgment notes the pleading of the Applicant that the respondent no.2 would stay with him in the proposed museum temporarily used as guest house, when she visited his native place to attend family functions or weddings etc. It is thus evident that the parties had resided together in the Anand Ashram property. The Apex Court in the case of ***Satish Chander Ahuja (supra)*** considered the expression “lives or have at any point of time lived” appearing in Section 2(s) of DV Act and held in paragraph no. 66 to 68 as under:

“66. The use of the expression “at any stage has lived” immediately after words “person aggrieved lives” has been used for object different to what has been apprehended by this Court in para 26. The expression “at any stage has lived” has been used to protect the women from denying the benefit of right to live in a shared household on the ground that on the date when application is filed, she was excluded from possession of the house or temporarily absent. The use of the expression “at any stage has lived” is for the above purpose and not with the object that wherever the

aggrieved person has lived with the relatives of husband, all such houses shall become shared household, which is not the legislative intent. The shared household is contemplated to be the household, which is a dwelling place of aggrieved person in present time.....”

67. The entire scheme of the Act is to provide immediate relief to the aggrieved person with respect to the shared household where the aggrieved person lives or has lived. As observed above, the use of the expression “at any stage has lived” was only with intent of not denying the protection to aggrieved person merely on the ground that aggrieved person is not living as on the date of the application or as on the date when the Magistrate concerned passes an order under Section 19. The apprehension expressed by this Court in para 26 in *S.R. Batra v. Taruna Batra* [*S.R. Batra v. Taruna Batra*, (2007) 3 SCC 169 : (2007) 2 SCC (Cri) 56], thus, was not true apprehension and it is correct that in event such interpretation is accepted, it will lead to chaos and that was never the legislative intent. We, thus, are of the considered opinion that shared household referred to in Section 2(s) is the shared household of aggrieved person where she was living at the time when application was filed or in the recent past had been excluded from the use or she is temporarily absent.”

68. The words “lives or at any stage has lived in a domestic relationship” have to be given its normal and purposeful meaning. The living of woman in a household has to refer to a living which has some permanency. Mere fleeting or casual living at different places shall not make a shared household. The intention of the parties and the nature of living including the nature of household have to be looked into to find out as to whether the parties intended to treat the premises as shared household or not. As noted above, the 2005 Act was enacted to give a higher right in favour of women. The 2005 Act has been enacted to provide for more effective protection of the rights of the women who are victims of violence of any kind occurring within the family.....”

16. In light of the enunciation of law in case of **Satish Chander**

Ahuja (supra), if the pleadings are considered the applicant and the respondent no. 2 were residing in the Anand Ashram property in the past and after shifting to Bianca Tower in Mumbai, the Applicant and the respondent no.2 used to reside in Anand Ashram Property whenever they used to visit their native place. As indicated above, the definition of shared household under Section 2(s) means a household where the parties "*lives or at any stage has lived*" in a domestic relationship and also includes a household owned jointly by the aggrieved person and the Respondent. It is settled that for the residence to constitute shared household the residence need not be *in praesenti* but will include past residence also. The pleadings *prima facie* discloses past residence of the Applicant and respondent no.2 at Anand Ashram Property. It is *prima facie* evident from the record that Anand Ashram property satisfies the requirement of the first part as well as the second part of definition of "shared household" under Section 2 (s) of D.V. Act.

17. The contention of learned Counsel for the applicant is that the application of respondent no.2 mentions Bianca Tower as shared household and therefore no residence order can be passed in respect of Anand Ashram property overlooks the position that the statutory definition of shared household has to be given effect. Irrespective of

whether Bianca Tower is described as shared household considering residence order being sought under Section 19 of DV Act in respect of Anand Ashram Property, it is incumbent upon the Courts to examine whether the Anand Ashram Property would also constitute shared household. The Courts have rightly held that the Anand Ashram Property constitutes shared household. That apart, there is a specific pleading in paragraph no. 32 of the application of the respondent no.2 that the applicant and respondent no.2 resided together at Anand Ashram Property which is also her shared household. The respondent no.2 was thus entitled to seek residence orders under Section 19(1) (a) of DV Act in respect of Anand Ashram Property.

18. The next submission advanced is that the Anand Ashram property has been leased to a Trust named Swami Vivekanand Memorial Trust and Research Centre. A copy of lease deed is on record and the recitals indicates that the lease has been executed by the applicant claiming to be absolute owner of Anand Ashram Property which is described as residential farm house which can be used for charitable, religious or academic activities. To the lease deed is annexed the layout plan at 'Annexure I' which describes the property as covered boundary in which exists guest house, main bungalow, servant quarter, cattle shed, dog sheds, garages. Despite

being aware that part of the land on which the structures are erected stand in the name of the respondent no.2, the lease has been executed by the applicant as the exclusive owner. The execution of the lease deed amounts to alienating the joint property of the applicant and respondent no.2 without the consent of the respondent no.2.

19. The Appellate Court has gone into the terms of Trust Deed and has noted that the applicant has arranged himself to be the *ex officio* President of the said trust for his life and his decision is final and binding on the board of trustees. The Appellate Court has further held that although Anand Ashram is sought to be made public trust property, the entire domain would be that of the applicant. The Appellate Court has scrutinised the photographs and videos from the pen drive, which shows that Anand Ashram property is still being used mostly for the residential purposes. The Appellate Court has considered the contention that the Anand Ashram property has been converted into large structure and the guest house is now changed and has granted right of residence only in main part of the bungalow.

20. From the record, it appears that the Lease Deed has been executed in the year 2019 in favour of the trust of which the applicant is the lifetime *ex officio* President for his lifetime with his decision

being binding on the Board of Trustees. It *prima facie* appears that despite execution of the lease deed the control over Anand Ashram property has been retained by the applicant. In such factual scenario where the applicant has leased the joint property to a Trust of which the applicant retains dominant control the right of the respondent no.2 to claim residence orders under Section 19(1)(a) of DV Act cannot be curtailed for the reason that the property has been leased to a Trust. Denying the use of Anand Ashram property to the respondent no.2 would constitute continuation of the economic abuse as defined under Section 3 of DV Act. The unilateral act of execution of lease deed in respect of a Trust of which the Applicant and his close family members are Trustees cannot be to the detriment of the respondent no.2, who has a right to reside in the said property. The Lease Deed appears to be recently executed in the year 2019 and the probability that the document has come into effect to impact the rights of the respondent no.2 in the said property cannot be ruled out. It however needs to be noted that the same is a *prima facie* observation based on the record available before this Court and will be tested only upon evidence being led.

21. The order is sought to be assailed on the ground that the applicant is having no other place of residence and the restraining

orders have rendered him homeless. It needs to be noted that the restraining orders prohibit the Applicant from dispossessing or disturbing the possession of aggrieved person over Bianca Apartment and Anand Ashram property and does not direct the applicant to remove himself from the shared household or from entering into any portion of the shared household.

22. The Appellate Court has specifically held that respondent no.2 will not have access to other construction and landscape in Anand Ashram property except the temple which is presumed to be open for public. No fault can be found with the order passed by the appellate Court as it is the common contention of both, the applicant as well as respondent no.2 that the bungalow has been built on Anand Ashram property and what has been granted to respondent no.2 is a right to reside in two bedrooms on the ground floor which is not a permanent order of residence but she is entitled to use the same whenever she comes to Jaunpur and in her absence to have one bedroom to keep her articles there. The Appellate Court has held that the same cannot be applied to other parts of the property constructed later on where the trust work can proceed. By this well reasoned order the Appellate Court has balanced the equities in as much as respondent no.2 has been granted the right of residence in two bedrooms and as

far as the property which is constructed later on is concerned, the trust work was permitted to proceed. The order being interim in nature has been rightly passed after taking into consideration the pleadings and the material which was brought on record. The contention of learned counsel appearing for the applicant that respondent no.2 cannot be permitted to use any part of Anand Ashram property cannot be accepted even if it is held that in respect of the larger structure, there is a lease deed executed in favour of the trust. By the impugned order, the Appellate Court has permitted the right of residence to respondent no.2 only in respect of certain rooms and has prohibited the use of property which was constructed later on where the trust work can proceed.

23. As regards the submission that there is no residence available for the applicant to reside, the affidavit of disclosure of the assets and liabilities filed by the Applicant and in particular page no.331 of the said affidavit discloses number of immovable properties owned by the applicant. In any event, grievance is sought to be raised only in respect of Anand Ashram property. The Appellate Court has restrained the Applicant from disturbing the respondent no.2's possession over certain rooms of the bungalow and has not prohibited the applicant from utilising the remaining portion of Anand Ashram

property.

24. It is settled that scope of Section 397 of Cr.P.C is very narrow and the revisional Court is required to consider the material only to satisfy itself about the legality and propriety of the findings. The order of the Appellate Court is a well reasoned order which has rightly considered the material on record and thus cannot be faulted with in exercise of revisional jurisdiction under Section 397 of Cr.P.C.

25. Having regard to the discussion above, there is no infirmity in the order of Appellate Court. The revision application being devoid of merit stands dismissed. Rule is discharged.

[Sharmila U. Deshmukh, J.]