



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 3747 OF 2023

Rambhau @ Rajabhau Savlaram Bende
and Others.

...Petitioners.

Versus

State of Maharashtra and Another.

...Respondents.

*Ms. Anima Mishra i/b SBG Law for the petitioner.
Mr. Gurudas Gorwadkar for the Respondent No. 2.
Ms. Geeta Mulekar, APP for the Respondent-State.*

Coram : Sharmila U. Deshmukh, J.

Date : April 29, 2024.

P. C. :

1. Heard.
2. By this petition, challenge is to the order dated 12th April 2023 passed by the Appellate Court in Criminal Appeal No. 232 of 2022 filed under Section 29 of the Protection of Women from Domestic Violence Act, 2005 [for short "the DV Act"] dismissing the appeal filed by the Petitioners assailing the residence order passed by the JMFC, Nashik thereby restraining the Petitioners from obstructing the Respondent No.2 from entering into the shared household and restraining them from evicting her till the final disposal of application.

3. During the pendency of proceedings, the Petitioner No. 1 had expired and the Petitioner Nos.2 and 3 who are the brothers-in-law of the Respondent No. 2 have prosecuted the present petition.

4. In the proceedings filed under the DV Act by the Respondent No.2, an application was filed under Section 23 of the DV Act contending that after the death of her husband in the year 2013 and after the death of her mother-in-law in September 2020, the Petitioners were pressurizing the Respondent No. 2 to leave and vacate the matrimonial house. As such the application came to be filed seeking interim injunction restraining the Petitioners from evicting her from the shared household. The application came to be resisted by the Petitioners contending that the husband of the Respondent No. 2 had purchased two flats and the Respondent No. 2 is the owner of said two flats and she has given the same on rent and seeks to reside in the shared household.

5. The trial Court upon consideration of the material noted that the Respondent No. 2 was residing with her husband till he expired in the year 2013 and thereafter she was residing there with her mother-in-law till 2020. The trial Court also noted that the Petitioner No. 2 and 3 were settled in Kota and Pune respectively and after returning from Kota, the Petitioner No.2 was residing separately. The trial Court

noted that the property being a share household is a two storey bungalow in which the Respondent No. 2 is residing along with her daughter. The trial Court noted decision of the Apex Court in ***S. Vanitha v. Dy. Commissioner, Bengaluru [2020 SCC OnLine SC 1023]*** and held that the fact that two other flats are owned by the Respondent No.2 would not disentitle her to the right of residence in the shared household. As against this, an appeal was preferred by the Petitioners before the Appellate Court which confirmed the findings of the trial Court and dismissed the appeal.

6. Heard Ms. Mishra, learned counsel appearing for the Petitioner and Mr. Gorwadkar, learned counsel appearing for the Respondent No.2.

7. Learned counsel appearing for the Petitioners submits that the Respondent No. 2 is having three residential properties which have been rented out by her as such she does not have any right in the shared household. She submits that the said fact was suppressed by the Respondent No.2 and thus the trial Court and the Appellate Court have passed residence order in favour of the Respondent No. 2.

8. *Per contra* learned counsel appearing for the Respondent No. 2 points out paragraph 15 of the order passed by the Magistrate

wherein it is clearly mentioned that though two small flats are owned by the Respondent No. 2, they are given on rent on leave and license basis. He submits that the submission is therefore incorrect that the ownership of two flats was suppressed by the Respondent No. 2. This submission is countered by learned counsel appearing for the Petitioners by contending that it was not two flats but three properties which are owned by the Respondent No. 2.

9. Considered the submissions and perused the record.

10. It is not disputed that the property which is Shivneri Bungalow, Navmangal CHS Ltd, ITI Colony, Nashik is the shared household of the Respondent No. 2 within the meaning of Section 2(s) of the DV Act. Considering that the property constitutes shared household, under Section 17 and Section 19 of the DV Act, the Respondent No. 2 has a right to reside in the same and to the relief of restraining orders against dispossession. Merely because the Respondent No. 2 is owner of certain properties will not disentitle her of her right to reside in the shared household. The trial Court and the Appellate Court have rightly passed residence orders restraining the Petitioners from obstructing the right of the Respondent No. 2 to reside in the shared household. The renting of the alternate flats for the purpose of generating income cannot be to the detriment to the Respondent No.

2. Considering the stated object of DV Act, the orders of trial Court and the Appellate Court deserve no interference particularly when photographs produced on record show that the bungalow is a 2 storey premises in which the Respondent No. 2 has been staying along with her daughter for past many years.

11. In the light of discussion above, there is no merits in the petition. Petition stands dismissed.

12. In view of the disposal of Writ Petition, nothing survives for consideration in the pending interim applications and the same stand disposed of.

[Sharmila U. Deshmukh, J.]