



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

REVISION APPLICATION NO. 296 OF 2023

Mrs. Khursheed Keki Turel]
An adult Indian, aged 64 years,]
Occupation: Clinical Psychologist]
Domicile State of Maharashtra,]
Religion Zoroastrian, presently]
Residing at 628, Turel Terrace,]
3rd Floor, AB Homavazir Road,]
Dadar Parsi Colony]
Mumbai 400014] **... Applicant.**

Versus

1. State of Maharashtra]
through the Public Prosecutor,]
P.W.D. Building, Opp. High Court,]
Greater Mumbai.]
2. Mr.Keki Edulji Turel]
An adult Indian Age 72 years,]
Occupation: Neurosurgeon,]
Domicile : State of Maharashtra]
Religion Zoroastrian, presently]
Residing at 643 Gulshan Terrace,]
Rustom Tirandaz Road,]
Dadar Parsi Colony,]
Mumbai 400014] **... Respondents.**

Ms. Nuzhat Shaikh i/by Ms. Taubon Irani, for the Applicant.
Ms. Shilpa Gajare, APP for the Respondent-State.
Mr. Ashwin Shete a/w. Mr.Archit Jayakar and Mr.Rohit Jain i/by Jayakar and
Partners for the Respondent No.2.

Coram : Sharmila U. Deshmukh, J.
Reserved On : March 27, 2024.
Pronounced On : April 05, 2024.

JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of the parties.
2. Revision jurisdiction of this Court has been invoked under Section 397 of the Code of Criminal Procedure, 1973 (for short "*Cr.P.C.*"), challenging the judgment dated 13th June, 2023 passed by the Additional Sessions Judge, City Civil and Sessions Court, Greater Bombay in Criminal Appeal No.320 of 2020 dismissing the Appeal thereby confirming the order of Metropolitan Magistrate dated 21st October, 2020 partly allowing the application filed under Section 23 of the Protection from Women from Domestic Violence Act, 2005 (for short, "*DV Act*"). By order dated 21st October, 2020 protection orders were granted restraining the Respondent from committing any act of domestic violence or attempting to communicate in any form with the aggrieved person. The other reliefs sought in the application under Section 23 of the DV Act came to be rejected.
3. Facts necessary to be expounded are that the Applicant filed an application under Section 12 of the DV Act being C.C.No.2/DV/2018

seeking various reliefs under Sections 18, 19, 20, 22 and 23 of the DV Act. It was pleaded that the parties are married on 5th January, 1975 and there are two sons born from the said wedlock. The application alleges that the Respondent is a promiscuous man stating various incidents. It is contended the Respondent has refused to extend any financial support to the Applicant and her own resources are depleting. It was contended that the Applicant's matrimonial home is situated at 628, Turel Terrace, Dadar Parsi Colony.

4. An application came to be filed on 15th February, 2018 under Section 23 of the DV Act. It was contended that the Respondent had stopped financial support since 2009 and in 2012 the Respondent has voluntarily left their marital home and established independent residence at Gulshan Terrace located in Dadar Parsi Colony. It was contended that the Applicant is the joint owner in respect of the flat situated at Balaji Garden Tower and that the Respondent was attempting to rent out the said flat without the knowledge and consent of the Applicant. The interim application sought the following reliefs:

"a) This Hon'ble Court be pleased to appoint a protection officer for the safety of the Applicant and directing the Respondent not to commit domestic violence on the Applicant u/s.18(a), (b), (d), (e), (f) and (g) of PWDV Act;

b) Till the hearing and final disposal of this application, this Hon'ble Court may be pleased to restrain the Respondent from taking any woman in to the jointly owned matrimonial home of the Applicant being 643 Gulshan Terrace, Rustom Tirandaz Road, Dadar Parsi Colony, Mumbai 400014 u/s. 19 of the said Act;

c) Pending the hearing and final disposal of the application pass an order restraining the Respondent from disposing off the assets as mentioned in the complaint, being the matrimonial assets acquired during the matrimony u/s. 19(1), (a), (c), (d), u/s.19 (2), u/s.19(3), u/s.19(5), u/s.19(8) of the PWDV Act;

d) Pending the hearing and final disposal of the application pass an order to permit the Applicant to sell the flat situated at flat no.1001, 10th floor, Balaji Garden Tower "A", 42/47 off Bhau Daji Road, Kings Circle, Matunga, Mumbai 400 019 so as to enable her to sustain herself with the money received u/s 19 of the said Act."

5. The application came to be resisted by the Respondent denying the allegation and contending that due to cruelty and harassment of the Applicant, he was constrained to leave Turel Terrace flat and there is no domestic relationship with the Applicant. He further contended that the Applicant has no right or claim in Gulshan Terrace Flat as the same is bought entirely from his saving and is not a shared house, as Applicant never lived in it.

6. The Trial Court by order dated 21st October, 2020 partly allowed the application granting protection order prohibiting the Respondent

from committing any act of domestic violence while rejecting the other reliefs. It was held that the Applicant has made out a *prima facie* case of domestic violence and therefore the further commission of the act is required to be prohibited. The relief of injunction from taking any woman in Gulshan Terrace flat was rejected by holding that there is no pleading about the Applicant having resided in Gulshan Terrace flat and it will have to be established that the Gulshan Terrace Flat was "shared household". The Trial Court held that the flat at Gulshan Terrace cannot be said to be a shared house. The Trial Court further held that there is no document to support the case of the Applicant that a particular woman was residing in Gulshan Terrace Flat and there is a difference between visiting and residing. The Trial Court in view of the bar under Section 19(b) held that no order of removal can be passed against a woman.

7. As regards the relief sought in respect of flat at Balaji Garden, the Trial Court held that by way of interim relief the Applicant has not claimed any monetary relief and therefore she is not in immediate and dire need of money and granting permission to sell may give rise to other complications. It was further held that under Section 19 of the Act the claim can be restricted to residence right only and there is no issue about the residence of the Applicant and denied the relief of

sale of Balaji Graden Tower flat.

8. As against this, an appeal came to be filed before the Sessions Court. The Sessions Court vide the impugned judgment dated 13th June, 2023 considered the consent terms executed in Criminal Writ Petition (St.) No.3156 of 2020, which were brought on record by the Applicant. The Sessions Court considered the clauses of the consent terms regarding the agreement which have been arrived at between the Applicant and the Respondent agreeing to pay maintenance as also the admission of joint ownership of flat situated at Gulshan Terrace. The Appellate Court from the record available held that the Applicant and the Respondent are having the equal share in the Gulshan Terrace flat. The Appellate Court observed that the Applicant has not impleaded the woman alleged to be taken by the Respondent No 1 to the flat at Gulshan Terrace and there is no clarity as to in what capacity the aforesaid lady visits the flat, and, held that blanket injunction cannot be granted. It was further held that the right of the parties to deal with a sale of immovable property cannot be adjudicated by way of interim application and rejected the Appeal.

9. Heard Ms. Irani, learned counsel for the Applicant, Ms.Gajare, learned APP for the Respondent-State and Mr. Shete, learned counsel for the Respondent No.2.

10. Ms. Irani, learned counsel for the Applicant would submit that the application makes out a clear case of economic abuse apart from the verbal and emotional abuse. She submits that under Section 18(e) of the DV Act, the injunction as sought under prayer clause (b) restraining the respondent from taking any woman to the Gulshan Terrace flat could be granted. She would further submit that the definition of "*respondent*" under Section 2(q) would also include a woman and in the same breath would contend that the bar under Section 19(b) would not apply as the particular woman does not fall within the definition of Respondent under Section 2(q) of DV Act. She submits that the permission to sell the flat situated at Balaji Garden flat can be granted under sub-Section (e) of Section 18 of the DV Act. Pointing out to the consent terms which were executed between the parties, she submits that the agreement to pay the maintenance would indicate the need of money. She submits that it was agreed that Balaji Garden Flat would be given on leave and license which indicates the Applicant's need of money. She would further submit that due to non compliance of the consent terms by the husband, by virtue of Clause 2.12 of the consent terms, the proceedings kept in abeyance i.e. the DV proceedings stood revived. She would further submit that the trial Court erred in holding that the flat in Gulshan Terrace is not a shared household by pointing out to the definition of

the “*shared household*” under section 2(s) of the DV Act. She submits that the finding of the Appellate Court that the permission for sale of Balaji Garden flat is contrary to consent terms is erroneous as the consent terms were rendered null and void due to non compliance.

11. *Per contra*, Mr. Shete learned counsel for the Respondent would submit that the reliefs which can be granted under the provisions of the DV Act are enumerated in Sections 18 to 22 of the DV Act and the prayer clauses (b) and (d) do not fall within the ambit of the said provisions. Pointing out to the cause-title of the application, he would submit that the residence of the Applicant is shown as Turel Terrace whereas that of the Respondent is shown as Gulshan Terrace. He submits that in paragraph No.9 of the Interim Application, there is specific contention that the Respondent has established an independent residence at Gulshan Terrace and therefore, the same is not the shared household as the parties never resided together at Gulshan Terrace. He submits that the reliefs are extremely vague and blanket injunction is sought restraining the Respondent from taking any woman which apart from not being maintainable cannot be granted being vague. He submits that there is no apprehension of alienation of the assets expressed in the application under Section 23 of the DV Act and therefore, no restraining orders can be passed as

far as the prayer clause (c) is concerned. He submits that the impugned order is in consonance with the decision of this Court in the case of ***Abhijit Bhikaseeth Auti vs. State of Maharashtra and Anr.*** reported in **2008 SCC OnLine Bom 1388**. He relies upon the decision of the Apex Court in the case of ***Satish Chander Ahuja v. Sneha Ahuja***, reported in **(2021) 1 SCC 414** to emphasis the definition of “shared household” under Section 2(s) of the DV Act and would submit that Gulshan Terrace would not constitute a “shared household”.

12. He would further submit that there is distinction between relief sought under Section 17 and Section 19 of the DV Act and the decision in the case of ***Prabha Tyagi v. Kamlesh Devi*** reported in **(2022) 8 SCC 90**, considered the right to reside under Section 17 and it is in that context the Apex Court held that the same would include not only actual residence but also constructive residence in the shared household. He submits that there is no relief claimed under Section 17 of the Act in respect of the Gulshan Terrace.

13. In rejoinder, Ms. Irani, learned counsel for the Applicant would point out to the photographs which are annexed to the Application to contend that the photographs indicate that the Respondent is taking a particular woman to the residence at Gulshan Terrace. She would further submit that the Applicant had addressed communication to

the Chairman of Balaji Garden calling upon them not to grant any NOC for sale, transfer or lease, leave and license in respect of Balaji Garden flat. She submits that the decision of this Court in the case of ***Sreelekha Rajit Moitra v. Rajit Moitra and Anr.***, delivered on **21st February, 2024** in ***Criminal Writ Petition (St.)No.23905 of 2023***, supports her case as regards seeking relief under Sections 19(b) and (c) and would contend that strict rules of pleadings are not applicable to the Application under DV Act.

14. Rival contentions now fall for determination.

15. First and foremost, it is necessary to determine the nature of interim reliefs which can be granted under Section 23 of DV Act. The Section reads thus:

“23. Power to grant interim and ex parte orders.—

(1) In any proceeding before him under this Act, the Magistrate may pass such interim order as he deems just and proper.

(2) If the Magistrate is satisfied that an application prima facie discloses that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the Respondent may commit an act of domestic violence, he may grant an ex parte order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under section 18, section 19, section 20, section 21 or, as the case may be, section 22 against the respondent.”

16. Section 23 empowers the Magistrate to grant interim and ex parte orders under Sections 18, 19, 20 and 21 or as the case may be under Section 22 against the Respondent upon arriving at a *prima facie* satisfaction of commission of act of domestic violence or even a likelihood of commission. Section 23 restricts the reliefs which may be granted under Section 23 of DV Act to the ones under Sections 18, 19, 20 and 21 or as the case may be under Section 22 and no further. Protection orders may be granted under Section 18, residence orders under Section 19, monetary reliefs under Section 20, custody orders under Section 21 and compensation orders under Section 22. Sections 18 to 20 further enumerates the varied reliefs which may be granted under the said sections.

17. Coming to the reliefs sought by the Applicant in her application under Section 23 of the DV Act the same reads thus:

- "a) This Hon'ble Court be pleased to appoint a protection officer for the safety of the Applicant and directing the Respondent not to commit domestic violence on the Applicant u/s. 18 (a), (b), (d), (e). (f) and (g) of PWDV Act;*
- b) Till the hearing and final disposal of this application, this Hon'ble Court may be pleased to restrain the Respondent from taking any woman in to the jointly owned matrimonial home of the Applicant being 643 Gulshan Terrace, Rustom Tirandaz Road, Dadar Parsi Colony, Mumbai*

400014 u/s 19 of the said Act;

- c) Pending the hearing and final disposal of the application pass an order restraining the Respondent from disposing off the assets as mentioned in the complaint, being the matrimonial assets acquired during the matrimony u/s 19 (1), (a), (c), (d), u/s. 19 (2), u/s. 19 (3), u/s. 19 (5) u/s. 19 (8) of the PWDV Act;*
- d) Pending the hearing and final disposal of the application pass an order to permit the Applicant to sell the flat situated at flat no. 1001, 10th floor, Balaji Garden Tower "A", 42/47 off Bhau Daji Road, Kings Circle, Matunga, Mumbai 400 019 so as to enable her to sustain herself with the money received u/s 19 of the said Act;*
- e) For any other and further reliefs this Hon'ble Court deems fit and proper in the interest of justice and equity."*

18. Prayer Clause (a) has been granted and prayer clause (b) to (d) have been refused. Prayer clause (b) would indicate that what is sought by the Applicant is a blanket injunction restraining the Respondent from taking any woman in Gulshan Terrace Flat. Whether the Magistrate under Section 23 of DV Act is empowered to grant blanket injunction of the nature sought by the Applicant will have to be tested. Section 18 and 19 of DV Act provides for the prohibitory orders which can be passed by the Magistrate. According to Ms. Irani, the relief under prayer clause (b) can be granted under

Section 18(e). It is clear from reading of sub section (e) of Section 18 that the same provides for issuing prohibitory orders from alienating the assets. The Applicant's case is not of alienation of Gulshan Terrace flat and what is sought is restraining orders from taking any woman in the said flat. The said relief could have been relatable to the residence orders which can be passed under Section 19 of DV Act which empowers passing of restraining orders from dispossessing the aggrieved person from shared household, directing the respondent to remove himself from the shared household, restraining the respondent or any of his relatives from entering any portion of shared household where the aggrieved person resides and so on. More particularly sub section (c) of Section 19 could have been invoked to seek restraining orders, the caveat being that the Applicant is residing in Gulshan Terrace flat. In that event, the prohibition from entering into that portion of shared household could have been granted as against the Respondent or any of his relatives. It is the Applicant's own pleading that the Respondent in the year 2012 had left the marital home and established an independent residence at Gulshan Terrace and that she is residing at Turel Terrace. As such, even under Section 19 of DV Act the relief sought under prayer clause (b) could not have been granted.

19. The provisions of Sections 18 to 22 of the DV Act would indicate that no power vests in the Magistrate to grant any such blanket injunction even if it is held that the premises is a jointly owned matrimonial house of the Applicant. Prayer clause (b) apart from being vague is not relatable to any of the reliefs which could be granted under Section 23 of DV Act. The decision of ***Abhijit Bhikaseth Auti vs State of Maharashtra & Anr*** (supra) has laid down that under Section 23 of DV Act, the Magistrate can grant ex-parte interim reliefs in terms of reliefs under Section 18 to Section 22 of DV Act. In view of the clear enunciation of law by this Court, as the relief sought in prayer clause (b) is not maintainable, the entire discussion whether the particular woman is impleaded or not and whether the proviso to Section 19(b) can be said to be applicable is irrelevant.

20. As far as prayer clause (d) is concerned, permission is sought to sell the flat situated at Balaji Garden so as to sustain herself. Considering the discussion above, as regards the powers of the Magistrate to grant interim orders in terms of Sections 18 to 22 of the DV Act, no provision is pointed out by which any such permission can be granted by the Magistrate to sell the flat. The pleadings in the application is that the Respondent is attempting to give the said flat on rent without the knowledge or consent of the Applicant. In the

face of such apprehension the Applicant could have sought restraining orders under Section 18(e) of the DV Act, which is not done.

21. As the prayer itself has been held to be not maintainable it is not necessary to consider the issue of consent terms or non compliance thereof to ascertain whether the Applicant is in dire need of money. The provisions of DV Act provide for necessary monetary reliefs to be granted in event of the aggrieved person requiring financial support. However under the guise of financial support, no relief of permission to sell the flat can be granted. It is open for the Applicant to seek the monetary reliefs as permissible under the provisions of DV Act. The Appellate Court has therefore rightly held the rights of the parties to deal with the immovable property cannot be adjudicated by way of interim application under the DV Act. As such the reliefs sought by prayer clause (b) and (d) of the application are clearly beyond the ambit of the powers of the Magistrate under the DV Act and therefore not maintainable.

22. As regards the issue as to whether the Gulshan Terrace flat is the *"shared household"* within the meaning of Section 2(s) of the DV Act, the Appellate Court has held that the Applicant and the Respondent are having equal share in Gulshan Terrace flat. This finding is not challenged by the Respondent. As this Court has already

held that the relief under prayer clause (b) is not maintainable, it is not necessary to go into the issue as to whether Gulshan Terrace Flat constitutes shared household. There is no relief sought under Section 17 of DV Act or under Section 19 of DV Act in respect of Gulshan Terrace Flat and thus it is not necessary for this Court to render a finding on the said issue.

23. As regards prayer clause (c) the restraining order is sought from disposing of the assets as mentioned in the complaint. There are no details given of the properties in respect of which the restraining orders are sought. Even if the strict rules of pleadings are not applicable to DV proceedings, there has to be clarity in the pleadings as to the properties in respect of which restraining orders are sought. A generalised prayer is sought against disposing of the assets mentioned in the complaint. Ms. Irani has not pointed out any pleadings in the application detailing the assets in respect of which the restraining orders are sought. In addition there has to be an apprehension expressed in the application that the properties are in the process of being alienated by the Respondent. Relief under Section 23 can be granted only upon a *prima facie* satisfaction being arrived at by the Magistrate that the Respondent is committing or has committed or there is likelihood of act of domestic violence being

committed. There is no such pleading pointed out to this Court and thus no relief as prayed for in prayer clause (c) could have been granted. The Courts have therefore rightly granted prayer clause (a) and rejected the other reliefs sought. Reliance placed by Ms. Irani on decision of this Court in the case of ***Sreelekha Rajit Moitra*** (supra) is mis-placed as it was rendered in a completely different fact situation and is inapplicable to the facts of the present case.

24. It is settled that the power under Section 397 of the Cr.P.C. is extremely limited and the revisional Court is required to consider the material on record only to satisfy itself about the legality and propriety of the impugned order.

25. In light of the discussion above, in the present case, there is no illegality in the order passed by the Metropolitan Magistrate and the Sessions Judge. As such, the revision application is devoid of merit and stands dismissed.

[Sharmila U. Deshmukh, J.]