

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.35 OF 2024

Veena Manoj Vara

...Petitioner.

Versus

Kishore Govind Vara And Ors

...Respondent.

Adv. Manasi Save for the Petitioner.

Adv. Shivaji K. Farakate for Respondent No. 1.

Adv. Geeta Mulekar, APP for the Respondent-State.

Coram : Sharmila U. Deshmukh, J.

Date : May 8, 2024.

P. C. :

1. By this Petition the challenge is to the order dated 28th August, 2023 to the extent that it rejects the Application for interim maintenance.

2. The facts of the case are that the Petitioner had filed an Application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (D.V. Act) seeking various reliefs under Section 17, 18, 19, 20, 22 and 23 of the D. V. Act. By order dated 17th December, 2015, the Trial Court had granted interim maintenance of Rs. 15,000/- for the Petitioner and her two children. The Respondent No. 1 who was the husband of the Petitioner expired on 19th February 2016 and the Respondent No. 2 therein who was the mother-in-law expired on 14th March, 2018

3. Subsequently, an Application came to be filed by the Petitioner under Section 25(2) of the D. V. Act seeking modification of the

interim order dated 17th December, 2015. The contention of the Petitioner was that after the death of her husband the liability would shift upon Respondent No. 3 therein who was the brother-in-law to pay the maintenance. It was contended that she was not given share in the ancestral properties and they have no shelter and fixed deposit receipts were more than Rs.47 lakh are standing in the name of the deceased husband. Respondent No. 3 and 4 who are the brother-in-law and sister-in-law were pressurizing the Petitioner to leave the flat. It was further contended that there was no source of income and interim maintenance of Rs. 1,00,00/- was claimed from Respondent No. 3 and 4 as well as educational expenses of the elder daughter.

4. The Application came to be resisted by Respondent No. 3 and 4 denying that they have liability to pay the maintenance. It was contended that there was no direction against the Respondent Nos. 3 and 4 in the interim order of 17th December, 2015 to pay the maintenance and there is no challenge by filing Appeal. It was contended that the fixed deposit receipts are in the name of father-in-law of the Petitioner but they have not received any share. It was contended that they do not wish to exclude the share of Petitioner in the fixed deposit receipts and appropriate relief can be sought in the appropriate forum. It was denied that the property in Lindi Tanzania is the joint property of Respondent No. 1 and 3. It was contended that house property as well as two flour mills at Tanzania, saw mill at Lindi is exclusive property of Respondent No. 3.

5. The Trial Court upon consideration of the contentions of the parties rejected the Application which came to be challenged before the Appellate Court. The Appellate Court held that as far as the claim for maintenance is concerned, the claim would stand as against the

brother-in-law only if it is prima facie shown that the brother-in-law and her deceased husband was carrying out joint business and after the death of the husband of the Petitioner the brother-in-law is receiving the income from the joint business . The Appellate Court considered the contention of the brother-in-law that he never resided in Lindi Tanzania and he was residing at Daressalam and carrying on his sole business. The Appellate Court noted the findings in the order dated 17th December, 2015 passed by the Trial Court that there is no proof relating to joint properties and business. The Appellate Court held that in the absence of any cogent material to show that the brother-in-law is receiving any income from the joint business in which the Petitioner has any interest, he cannot be made liable to pay any maintenance to the Petitioner.

6. Heard Ms. Save, learned counsel for the Petitioner and Mr. Farakate, learned counsel for Respondent No. 1.

7. Learned counsel for the Petitioner would submit that in the Application filed under Section 12 of the D. V. Act apart from her husband and mother-in-law, brother-in-law and sister-in-law were made the parties and upon death of her husband as an order of maintenance was passed on 17th December, 2015, an Application for modification came to be made seeking maintenance as against brother-in-law. She would further point out the pleading in the D.V. Application contending that the Respondents are financially well settled in their life and have properties all over the country. She points out the properties listed in paragraph No. 26 which includes the matrimonial house where the Petitioner is residing presently at Ghatkopar and the properties in Lindi, Tanzania and properties at Mkuranga Daressalam as also the vehicles. She would further submit

that in paragraph No. 27 of the Application it is stated that the Respondent No. 1 husband was doing business in his individual name and in his family name and he has also invested huge amount in business. She submits that after the death of her husband, the Petitioner wife does not have any source of income and her children's educational expenses were made with great difficulty. She submits that the act of domestic violence demonstrated is that as the Petitioner was pressurized in leaving the shared household and has also suffered from economic abuse as there was no provision for her maintenance. She submits that the prima facie case was proved by the Petitioner and thus burden was upon the brother-in-law to show that there was no joint business. She would further submit that no affidavit of disclosure was filed by Respondent No. 3 brother-in-law. She further submits that she is not aware of the properties and businesses which are abroad and that the same will have require evidence to be led. However, at the interim stage, the Petitioner and her children are entitled to maintenance.

8. *Per contra* learned counsel for the Respondent would support the impugned order and submits that the disputes started between the parties upon the Respondent husband contracting second marriage in Lindi Tanzania whereupon the Petitioner returned to India and started staying in the premises at Ghatkopar. He submits that the Petitioner has no right to reside the said in the premises which is owned by Respondent No. 3

9. Considering the submissions and perused the record.

10. In the Application under Section 12 of the D. V. Act, the specific pleading of the Applicant is that, Respondent No. 1 was doing

business in his individual name and his family name and and that there is no single dependent on the Respondent husband since beginning and all are having their own independent and separate source of income. The submission assumes importance in light of the contentions which are sought to be advanced before this Court. The claim of the Petitioner is that there were joint businesses of the Petitioner's husband i.e. Respondent No. 1 and the brother-in-law i.e. Respondent No. 3 by reason of which the Respondent No. 3 is in possession of the assets belonging to the Respondent husband out of which the Petitioner is entitled to receive maintenance. For the purpose of showing the same, there is admittedly no material on record. On the contrary, the specific case is that the Respondents were having their independent sources of income as well as their separate businesses. Even for the purpose of demonstrating a prima facie case there should at least be an averment in the proceedings that joint businesses were being carried out by the husband and the brother-in-law, so as to be entitled to be maintained out of the income of joint businesses. Even if it is assumed that the shared house at Ghatkopar was to be occupied by the Petitioner after she left the company of the Respondent No. 1 at Lindi Tanzania and came back in India, in view of Section 17 of the D. V. Act she is entitled to reside in the shared household and thus, as far as that aspect is concerned, there is no infirmity in the order.

11. For the purpose of grant of interim maintenance, the Trial Court has by the order of 17th September, 2015 rightly passed the order of maintenance as far as the husband is concerned. Pertinently the order of maintenance was for a sum of Rs. 15,000/- which order was accepted. Considering that the maintenance of Rs. 15,000/- was

passed, the submission that there are huge properties in foreign countries prima facie cannot be accepted. After the death of her husband an application for modification has been filed now seeking maintenance from the brother-in-law. For that purpose firstly it will have to be shown that the Respondent No. 1 i.e. her husband and Respondent No. 3 were carrying on joint business. As already discussed above the pleadings in the Application point out a situation otherwise.

12. In that view of the matter, the Trial Court and the Appellate Court has rightly held that in the absence of any cogent material to demonstrate the said fact, it cannot be presumed that there are joint properties and business. It is the contention of the Respondent No. 3 that he did not reside at Lindi Tanzania and he was residing at Daressalam and carrying out his sole business. As regards the properties which according to the Petitioner was standing in the name of her husband or the father-in-law it is open for the Petitioner to adopt appropriate remedies in the Civil Court and seek share in the property as per the law of succession. For the purpose of grant of any relief under the D. V. Act prima facie it has to be shown that the acts of domestic violence are committed by the Respondent no. 3 and secondly, that there were properties of her husband which are in the possession of the brother-in-law out of which she is entitled for maintenance. In the absence of any such evidence no order of maintenance can be passed against the brother-in-law.

13. As regards the reliance on the decision of this Court in the case of ***Devmani Thakkar And Ors. vs. State of Maharashtra And Anr. [in Cri.REVN No. 152 of 2019]*** in the facts of the case, an application was filed wherein it was specifically contended that there was a joint

business of all the family members and they had resided together in the joint family. It was in the facts of that case, this Court has held that as far as whether there was joint business or whether the parties were residing together will have to be decided on merits finally and cannot be considered for the purpose of interim order of maintenance. What is distinguishable in the said case is that there was specific pleading in the Application as regards the joint business and joint residence which is lacking in the present case.

14. As regards the decision of the Orissa High Court irrespective of the fact that the said decision is not binding upon this Court, in facts of that case, the Court had observed that the husband has a right in the joint family property and after the death of the husband the opposite party has acquired such right and since she was not given her share in the joint family properties, the monthly maintenance was rightly granted. In the said decision also the key words are joint family properties. In the present case, it is not found that there was any joint family property of the Respondent No. 1 and 3.

15. As regards the decision of the Apex Court in the case of ***Ajay Kumar vs. Lata @ Sharuti And Ors.***, even in that case the business was being carried out jointly that of appellant and his brother and prima facie case was pointed out of the joint family business and the maintenance was granted. The facts of the case are clearly distinguishable and as such, do not assist the Petitioner's case.

16. In light of the above discussion there is no merit in the Petition. Petition stands dismissed.

[Sharmila U. Deshmukh, J.]