

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

CRIMINAL APPLICATION NO. 715 OF 2024

Hussain Azim Khan And Ors. ...Applicants

Versus

Zarin Hussain Khan And Ors. ...Respondents

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Mr. Ali Kaashif Khan Deshmukh a/w Adv. Hitanshi Gajaria,
Snigdha Khandelwal, for the Applicants.

Mr. A. A. Palkar, A.P.P. for the Respondent – State.

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CORAM : AVINASH G. GHAROTE, J.
DATE : 21st JUNE 2024

P.C.:

1. The application questions the order dated 07.02.2024 passed by the learned Additional Chief Metropolitan Magistrate, Mumbai by which the Applicants have been restrained from disturbing peaceful possession of respondent No.1 and the children from Room No.9 Deluxe Chawl No.2, Group No.4 , Tagore Nagar, Vikhroli, Mumbai (East) Mumbai-83 and so also granting 15,000/- per month to the respondent No.1 and the three minor sons, which amount includes the expenses for education and otherwise of the children.

2. learned counsel for the Applicants upon instructions makes a statement that in so far as the first part of the impugned order dated 07.02.2024 is concerned, the Applicants would not take the law into their hands, but in case they desire to evict the respondent No.1 from the said premises would do so only by following due process of law by instituting proceedings for eviction in the Court of law, and not otherwise.

3. In so far as the claim regarding maintenance is concerned, the learned counsel contends that the respondent No.1 has married respondent No.2 and therefore is not entitled for maintenance. That plea at the most, if established, would dis-entitle the respondent No.1 from maintenance, however, the Applicants still would be liable to pay maintenance for the three minor children. The claim of marriage of the respondent No.1 with respondent No.2 is based upon a photograph at page-48 and the Whats-app chats at page-49. In my considered opinion these two documents do not demonstrate the factum of marriage, which will have to be established by leading cogent evidence in the proceedings

under Section 125 of the Cr.P.C.

4. Since it is not disputed that there are three children even if the claim of the respondent No.1 for maintenance is ignored, still the amount of Rs.15,000/- would be reasonable as maintenance for three children, who are growing up. Considering which, I am not inclined to interfere with the impugned order. The application is therefore without any merits and is dismissed.

(AVINASH G. GHAROTE, J.)