



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL WRIT PETITION NO.852 OF 2023

Ranjana W/o Sanjay Kathwate
Aged about 53 Years Occ: Service,
R/o. HIG-16, Flat No. 13, Mhada
Colony, Near Sankalp Pathalogy Lab,
Nandanvan, Nagpur.

....PETITIONER

...V E R S U S...

Sanjay S/o Bhimrao Kathwate
Aged 59 years; Occupation- service,
R/o. C/o, Prabhakar Laxman Bhasme,
Plot no. 148, Kamgar Nagar, Opp. NIT
Garden, Nagpur-440024

...RESPONDENT

Ms Meera Kshirsagar, Advocate for petitioner.
Shri A.D. Patil, Advocate for respondent.

CORAM: M.W. CHANDWANI, J.
DATED : 22.03.2024

ORAL JUDGMENT:

. **Rule.** Rule is made returnable forthwith. Heard finally
with the consent of learned counsel appearing for the parties.

2. It is not necessary to go into the matrix of the case in
detail, suffice to say that the petitioner has filed proceedings
under section 12 of the Protection of Women from Domestic
Violence Act, 2005 against the respondent, which is pending on
the file of Additional Chief Judicial Magistrate, (Special Court for
D.V. Act), Nagpur.

3. On 16.06.2022, evidence in the form of affidavit came to be filed by the petitioner. Thereafter, the petitioner moved an application below Exhibit-25 for permission to amend the petition by adding some facts on the ground that the respondent has sold the house in which she has expended 50% of the cost of construction. The said house has been sold by respondent behind the back of the petitioner and without her permission. The application for amendment came to be rejected by the learned Additional Chief Judicial Magistrate by the impugned order, mainly on the ground that the proposed amendment was within the knowledge of the petitioner on the date of filing of the complaint under Section 12 of the DV Act, and the amendment will change the nature of the pleadings.

4. It is a matter of record that the application for DV proceedings has been filed on 01.04.2023 and on 16.06.2022, evidence in the form of affidavit has been filed. During the course of arguments, it is informed by the learned counsel for the respondent that the house in question has been sold on 15.12.2022. Thus, it appears from the face of record itself that the said house has been sold after filing of the affidavit, muchless after filing of the complaint under Section 12 of the DV Act. Therefore,

reasons given by the learned Magistrate are not appealing, rather are factually incorrect.

5. The objections raised by the learned counsel for the respondent are on the ground that under the garb of amendment, the petitioner has introduced a new case. During the course of arguments, on one hand the learned counsel for the respondent submits that petitioner has already pleaded in broader form regarding the facts i.e. detail of expenses made by her on the house which now she wants to bring on record. If that be so, then the argument of the learned counsel for the respondent that new facts and new cause of action are being introduced do not hold water. The petitioner has already pleaded regarding the expenses that she allegedly made in the construction of house. Now she wants to plead that the house is sold by the respondent which is a subsequent fact. Further, it is submitted that under the garb of PWDV proceedings, she wants to get the facts which have already been pleaded in the suit approved. Again for the same reason referred above, this argument is not sustainable. Objection is also raised on the ground that a time barred claim is being tried to introduce. Let me state, this is an application for amendment and only permission to plead certain facts which she will have to prove

is sought and the respondent will get an opportunity to counter these facts by filing reply as well as by cross-examining her. Therefore, I do not find force in the objection raised by the learned counsel for the respondent.

6. Considering the fact that the reason given by the learned Magistrate is factually incorrect and in view of above, the impugned order is not sustainable in the eyes of law. Therefore, it needs to be quashed and set aside. Accordingly, impugned order dated 08.09.2023 passed below Exhibit-25 in Criminal Miscellaneous Application No.1446/2021 by the learned Additional Chief Judicial Magistrate, (Special Court for D.V. Act), Nagpur is hereby quashed and set aside.

7. The application below Exhibit-25 in Criminal Miscellaneous Application No.1446/2021 is allowed.

Rule is made absolute in above terms.

JUDGE

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