

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4442 OF 2025**

Angellina Arenja Aged about 44 years Hindu Inhabitant Permanently residing at 6C, Balmoral Hall, Mount Mary Road, Bandra (West), Mumbai – 400050 Occupation : Housewife	}	Petitioner
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Versus

Nitij Arenja Aged about 47 years Hindu Inhabitant, Presently residing at 1204, Signia Pearl G Block, Bandra – Kurla Complex, Mumbai - 400051	}	Respondent
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Mr. Prabhjit Jauhar a/w Ms Tanvi Wagle, Ms. Anushka Pavaskar and Mr. Ajinkya Udane, Advocates for the Petitioner.

Mr. Atul Damle, Senior Advocate a/w Mr. Sumanth Anchan i/b Mr. Hrishikesh Amembal, Advocates for the Respondent.

CORAM : MANJUSHA DESHPANDE, J.

RESERVED ON : 14th JULY 2025

PRONOUNCED ON : 14th AUGUST 2025

J U D G M E N T

1. The Petitioner challenges the order dated 10th March 2024 passed by the Family Court at Bandra, Mumbai (below Exhibit – 19 and 20) in the Divorce Petition No. A-447 of 2022. The Petitioner and the Respondent are husband and wife. The

Respondent-husband instituted Divorce proceedings against the Petitioner-wife which are pending before the Family Court at Bandra. The marriage between the Petitioner and the Respondent was solemnized as per Hindu rites and customs, on 8th December 2002 at New Delhi. After marriage they resided at Balmoral Hall, Mount Mary Road, Bandra (West), Mumbai. They have two children out of the wedlock born on 6th January 2006 and 18th May 2008 respectively. It is alleged that the Petitioner has suffered grave mental agony and domestic violence alongwith economic abuse at the hands of the respondent and his relatives. He is also guilty of parental alienation, as the minor children have been alienated from the the Petitioner. The Respondent has brainwashed the children and has used them as pawns against the her. Because of the sufferings caused to her by the Respondent she has filed a Divorce Petition bearing No. HMA/ 1044/2022 before the Family Court, South, Saket, New Delhi.

2. It is alleged that the Respondent has deserted her in February 2022, and left the matrimonial home alongwith two children. Since then the Respondent is staying in a rental apartment alongwith two children and he has never returned to the matrimonial home till date. It is submitted that the fact about

leaving matrimonial home in February 2022 has been admitted by the Respondent in his pleadings in the cases filed by him and in his written statement in Divorce Petition bearing No. HMA/1044/2022. According to her, he is enjoying a luxurious and affluent life, while she has been left to deal with the situation on her own without any resources. She is being deprived of her necessary amenities of which she has become accustomed to while residing with the Respondent. As a result of severe mental agonies suffered by her, she was required to undergo therapy session since mid 2022.

3. It is alleged that on 29th July 2022, all of a sudden the Respondent barged into her matrimonial house and inquired with the maids, whether the lock of the main door has been changed. He thereafter warned the Petitioner to vacate the matrimonial home or else face the consequences. She thereafter filed the Divorce Petition before the Family Court at Saket, New Delhi. The Respondent also filed Divorce proceedings before the Family Court at Bandra, Mumbai. The Petitioner received notice of the said Divorce Petition on 5th September 2022. The Petitioner-wife and the Respondent-husband have filed the Divorce proceedings against each other.

4. It is the case of the Petitioner that, though there was an order of restraint issued by the Family Court at Saket, New Delhi vide order dated 20th August 2022 and 20th September 2022 in the Divorce Petition filed by her, the Respondent in breach of the said orders, has installed CCTV Cameras in the living room of their house and has also changed the locks of the main door and one of the bedrooms with the sole intention to dispossess the Petitioner.

On 28th October 2022, the Respondent has intentionally and forcefully tried to trespass into the matrimonial home and has intimidated the Petitioner and her mother of dire consequences. He has threatened the Petitioner and her mother giving them an ultimatum to leave the house, for which she has also filed a complaint at Hill Road Police Station.

5. In view of criminal intimidation and intentional dispossession by the Respondent, from her matrimonial home, the Petitioner was constrained to file an application before the Family Court at Saket, New Delhi for initiation of action against the Respondent– husband for committing disobedience of the orders passed by the Family Court at Saket, New Delhi.

6. According to the Petitioner, in March-April 2024 she had undertaken repair, maintenance and repainting work of her matrimonial home. During the repairs and maintenance, she had sent certain piece of furniture for repolishing. On 23rd January 2025, while she was sending the double bed, headboard with two side tables for repolishing through the movers and packers, the security-guard of the building on instruction of the Respondent refused to open the main gate of the building and stopped the passage of the tempo. Thereafter, the Respondent's office staff called her and made false allegations of disposing the Respondent's furniture. Though she tried to explain that the furniture was merely sent for polishing, false allegations are made by the Respondent. Considering the allegations made by the Respondent, she asked the packers and movers to return the said furniture to the Respondent. Accordingly it was returned to the Assistant of the Respondent, who has collected the furniture and stored it in the flat no. 13A of the same building which is owned by the family of the Respondent.

7. After the incident of 23rd January 2025, the Respondent filed an application for injunction at Exhibit - 20 on 29th January 2025, in Divorce Petition No. 447 of 2022 filed by him which is

pending before the Family Court at Bandra with following prayers; (i) for injunction restraining the Petitioner from dispossessing the Respondent from the matrimonial home, and (ii) to permit the Petitioner to reinstate all his fixtures and furniture as per list Annexure- 'G'. The application at Exhibit-20 was heard alongwith the application at Exhibit-19 filed for appointment of the Court Commissioner, with prayer to conduct inventory of furniture and fixtures in the matrimonial home. Both the application were heard and decided vide common order dated 10th March 2025.

8. In an elaborate order the learned Judge Family Court at Bandra, allowed the application for injunction (below Exhibit-20) and appointment of Court Commissioner (below Exhibit-19). Vide the impugned order dated 10th March 2025, the learned Judge has restrained the Petitioner from dispossessing the Respondent from the matrimonial home situated at Flat No. 6-C, Balmoral Hall, Mount Mary Road, Bandra (West), Mumbai, without following the due process of law. With further directions that the present Petitioner shall not interfere with Respondent's peaceful possession and occupation of the premises and the Respondent was permitted to reinstate his furniture and

household belongings as enlisted in per Annexure- G to his application. The Judge, Family Court, further restrained the Petitioner from removing, disposing of, or obstructing the Respondent's reinstatement of his belongings in the matrimonial house.

9. Insofar as application (below Exhibit – 19) for appointment of Court Commissioner is concerned, one Advocate – Swati Mukadam is appointed as Court Commissioner, to conduct the inventory of all the furniture, fixtures and household articles in the matrimonial home. The Court Commissioner is directed to conduct the visit in the presence of both the parties and their legal representatives for preparing an inventory which will be videographed and photographed in order to maintain the transparency.

10. Heard Mr. Prabhjit Jauhar, learned counsel for the Petitioner and Mr. Atul Damle, learned senior counsel for the Respondent.

11. It is submitted by Mr. Prabhjit Jauhar, learned counsel for the Petitioner that, the order passed by the Family Court at

Bandra, Mumbai is without jurisdiction and the relief granted to the Petitioner is beyond the prayer made by him.

12. The grant of aforementioned reliefs has been challenged by the Petitioner on the ground that, the Petitioner has never restrained the Respondent from entering house, therefore there is no question of granting relief in the nature of restraining the Petitioner from dispossessing the Respondent, from his place of residence i.e. 6-C, Balmoral Hall, Mount Mary Road, Bandra (West), Mumbai. According to the Petitioner, in fact, the Respondent has deserted her and left the matrimonial home alongwith the two children in February 2022, and has started residing in a rental apartment situated at 1204, Signia Pearl, BKC, Bandra (East), Mumbai alongwith the two children. After he has left with the two children in February 2022, he has never resided in the matrimonial home till date. This position has been admitted by the Respondent in his various pleadings in the pending proceedings between the parties.

13. It is submitted that the Petitioner had undertaken repairs and renovation works of her residence, and as a part of such renovation on 23rd January 2025, when she was in process of

sending the double bed headboard and two side tables for repolishing to the agency, the security-guard of the building, stopped the passage of the tempo of the movers and packers. When she was informed about it, she requested the security-guard not to harass her. Only when she threatened of police complaint, the gates were opened by the security-guard and allowed the tempo to leave the building premises. Thereafter, the tempo with the furniture returned inside the gate of the building, and handed over to Mr. Ajay Goswami, along with the helpers. Now the said furniture is stored in Flat No. 13A of the same building, which is owned by the Respondent's family.

14. Mr. Prabhjit Jauhar, learned counsel for the Petitioner submits that, the Petitioner has never tried to dispossess the Respondent, therefore there is no question of passing any order preventing his dispossession. Even otherwise, the Respondent had already left the matrimonial home in February 2022 itself. The said position has been admitted by the Respondent in his written statement filed in his Divorce Petition bearing HMA No. 1044/022 before the Family Court, Saket, New Delhi. More particularly, in the averment made by the Respondent in the Writ Petition filed before the High Court at Delhi, which is annexed to

the Writ Petition. In paragraph 11 of the said Writ Petition he has categorically stated that in the year 2022, due to deteriorating relations between the parties, he was constrained to shift to his father's rented accommodation. Similarly, even before the Family Court at Saket, New Delhi, in reply to the application under Section 24 of the Hindu Marriage Act, in paragraph no. 2 it is stated by the Respondent that, he was forced to shift to his father's rented accommodation.

15. Before the High Court of Delhi in MAT APP (FC) of 2024, in the Appeal filed by the husband he has averred that, the parties have started living separately in Mumbai from 2022, the husband was compelled to move out of their matrimonial home with both the children, so as to protect them from the toxic environment created by the wife, since then he is residing in the rented accommodation of his father.

16. It is strenuously contended that, it is the consistent stand of the Respondent-husband in the various proceedings that, he was forced to move out of their matrimonial home. It can be therefore discerned that the Respondent was not residing with the Petitioner in the matrimonial home since February 2022. In such

circumstances, the prayer made by the Respondent to restrain the Petitioner from dispossessing him from his place of residence viz 6-C, Balmoral Hall, Mount Mary Road, Bandra (West), Mumbai is not maintainable.

17. It is submitted that though the litigation between the parties started on 16th February 2022, the application is filed by the Respondent in the year 2025, which is without any cause of action. So far as the other relief to permit the Petitioner to reinstate all his fixtures and furniture as per list Annexure– G is concerned, that would be in nature of mandatory injunction. It is further submitted that the Respondent-husband wants to enter the matrimonial house with the aid of the order of permanent injunction when, in fact, his prayer should have been for mandatory injunction, since he had already left the house, and thus is not in possession of the house.

18. The learned counsel for the Petitioner submits that there is no cause of action for the Respondent, to file the suit seeking injunction. Considering the averments made by the Respondent in the various proceedings reiterating that he has left the matrimonial house in February 2022, neither there is *prima facie*

case nor balance of convenience lies in his favour. The Respondent has failed to establish the irreparable loss that would cause to him if the injunction is not granted in his favour. Therefore, the Respondent is not entitled for the relief granted in his favour by the Judge, Family Court at Bandra, Mumbai vide order dated 10th March 2025, which deserves to be quashed and set aside.

19. The learned Counsel for the Petitioner has placed reliance on the judgment of ***Balkrishna Dattatraya Galande V/s. Balkrishna Rambharose Gupta and Anr. {(2020) 19 SCC 119}*** in support of his submission that a person who is seeking prayer of permanent injunction restraining the defendant from disturbing possession of the plaintiff, can only be granted when he proves that he was in lawful and actual possession on the date of filing of suit. The burden lies on a person who claims relief, to prove that, he was in actual and physical of the property on the date on which the suit is filed.

20. *Per contra*, Mr. Atul Damle, learned senior counsel appearing for the Respondent husband submitted that, due to the hostile atmosphere in the house and the mental torture the

Respondent was constrained to leave his house. Even if he is residing in a rented premises with his parents, he has not given up his residence. According to the learned counsel for the Respondent, he was always in possession of the matrimonial home. He is joint owner of the matrimonial home alongwith his brother Anuj Arenja. He is paying the maintenance bills of the premises which are occupied by the Petitioner.

21. The learned senior counsel, relies on the maintenance bill dated 15th April 2024, Mahanagar Gas bill for the period 6th July 2024 to 5th September 2024 and tax bill for the period 1st April 2024 and 31st March 2025 to establish his possession. Learned senior counsel submits that, the matrimonial home belongs to the Respondent and in capacity of owner he is paying the taxes, maintenance bills as well as gas connection charges of the said premises, which proves his possession. Though the Respondent had shifted in February 2022, he used to frequently visit in his house. His bedroom was in his exclusive possession. All his personal belongings, furniture, articles and other accessories were kept in his matrimonial home. It is his categorical stand that, though he had shifted from his house he has never attempted to

dispossess the Petitioner from the premises which was their matrimonial home.

22. On 23rd January 2025, he received a call informing him that, the Petitioner had called the packers and movers to remove the furniture, household articles, and his personal belongings from the house and those were packed in cartons with an intent to dispossess and dishouse him. The secretary of the building one Mr. Vijay Shetty informed him about it. Since he was at a far distance from the house, he requested his office person Mr. Ajay Goswami to reach the sight and stop the tempo from moving. However, his office staff could not stop the tempo from taking away his possessions. They are now kept at his parental home in the same building at house no. 13A, since the Petitioner did not allow the re-entry of the furniture inside their matrimonial home.

23. Mr. Damle, learned senior counsel contends that, the Secretary and the watchman of the building were witness to the incident and they have also filed affidavits to that effect. The incident had taken place while the Petitioner and the Respondent were in the process of mediation, as referred by the Hon'ble Delhi High Court. According to him, since the Petitioner has not allowed

the Respondent's furniture to be reinstalled in his matrimonial house he was constrained to file the application for injunction restraining the Petitioner from dispossessing him from his place of residence and also to permit him to reinstate all the fixtures and furniture as per the list given by him at Annexure – G.

24. Learned counsel for the Respondent has further drawn my attention to the contents of the reply of the Petitioner to the Interim Application filed by the Respondent for appointment of the Court Commissioner, to conduct the inventory of the Respondent's furniture and fixtures. In her reply, it is categorically mentioned by the Petitioner that, she had voluntarily offered to handover the Respondent's favourite teak wood study table and three paintings to him through his office staff since the Respondent had sentimental value and attachment to it.

25. It is contended that if the stand of the Petitioner is to be believed, there should not have been any objection on her part to reinstate the said furniture in their matrimonial house, when the tempo returned with the furniture alongwith the movers and packers. This conduct of the Petitioner itself speaks in volumes that she has been trying to dispossess the Respondent from his

own house. Had he really abandoned his matrimonial house, there was no reason for him to continue to pay the expenses of maintenance, property tax, gas connection etc. His claim of possession is fortified from the belongings which were present in the matrimonial house, which are attempted to be removed by the Petitioner. It is contended that the Secretary and Watchman of the building have sworn affidavits confirming that the Petitioner has attempted to remove the furniture and personal belongings of the Respondent without his consent. Undoubtedly, the incident of loading of the Respondent's furniture, personal belongings has taken place on 23rd January 2025, which only confirms that the Petitioner has tried to forcibly dispossess him from his matrimonial home.

26. It is the stand of the Respondent that he has only temporarily moved from the matrimonial home for the wellbeing of the children. It was never his intention to permanently abandon the matrimonial house or relinquish his legal right to reside in it. In fact, the conduct of the Petitioner in removing the furniture and belongings of the Respondent without his consent, is supported by the affidavits of witnesses which proves that he is still in ownership and possession of the said house. Unilateral removal of

the household articles without his consent has to be construed as an act of interference with his possession. The temporary absence or a change in residence for personal reason, cannot be construed to mean that he has permanently relinquished his right of access or residence in the property, of which he retains ownership and interest. Hence, the balance of convenience lies in his favour.

27. It is not in dispute that the legal right, title and interest of the property vests in his favour, thus his removal would cause undue hardship and instability, hence the Judge, Family Court at Bandra, Mumbai has rightly passed an order restraining the Petitioner from dispossessing the Respondent, from their matrimonial home and not to interfere with the Respondent's peaceful possession and occupation on the said premises. In view of the restraint order, the application for reinstating the furniture is a consequential relief which was required to be granted, since the Petitioner refused to reinstate the furniture which she has removed illegally. According to the learned counsel for the Respondent, the order passed by the Judge, Family Court at Bandra, Mumbai is just, proper and legal which does not warrant interference at the hands of this Courts in its jurisdiction under Article 227 of the Constitution of India.

28. After hearing the respective counsel for some time and upon going through the impugned order alongwith the prayer made in the application, the first and foremost question that needs to be decided before granting relief of a preventive order i.e. an order restraining the Petitioner from dispossessing the Respondent from his place of residence is that, whether he is in established possession of the premises from which his dispossession is to be prevented. In order to establish the possession of the Respondent it is submitted that, he is owner of the said premises alongwith his brother, hence he is in continued possession, in spite of shifting in the rented accommodation alongwith his children in February 2022. In support of his claim of possession, the Respondent places reliance on the property tax bills for the Period of 1st April 2024 to 31st March 2025, Mahanagar Gas bill for a period of 6th July 2024 to 5th September 2024 and maintenance bill dated 15th April 2024 for the period April to June 2024.

29. Reliance is also placed on the photocopy of the share certificate of the Flat No. 6-C, Balmoral Hall, Mount Mary Road, Bandra (West), Mumbai. Though it is not disputed that, the Respondent is the owner of the property but considering the prayer made by him in the application, the Respondent is bound

to establish his possession. The Respondent has filed the application for injunction with the following prayers:

(a) Hon'ble Court be pleased to restrain the Respondent from dispossessing the Petitioner from his place of residence viz. 6-C, Balmoral Hall, Mount Mary Road, Bandra (West), Mumbai 50.

*(b) The Hon'ble Court be pleased to permit the Petitioner to reinstate all his fixtures and furniture as per list **Annexure "G"**;*

Unless a person is already in possession of the premises, such a prayer seeking order of restraint would not be maintainable. All through out the litigation between the parties the consistent stand of the Respondent has been that, he was constrained to leave the matrimonial house alongwith his children to his father's rented accommodation situated at 1204, Signia Pearl, "G" Block, BKC, Mumbai. Since then he is residing alongwith his children in the rented accommodation and continues to reside there. At the same time, he claims to be still in possession of the shared household with the Petitioner.

30. It is further claimed by the Respondent that the Petitioner has attempted unlawfully to dispossess him, by hiring movers to remove his belongings on 23rd January 2025.

31. From the categorical averments made by the Respondent about leaving the matrimonial house in February 2022, coupled with the statements made by him in the application about his personal belongings and furniture from his room being moved out of the house by the Petitioner clearly indicates that, he is not in possession of the matrimonial home. Though it is claimed by the Petitioner that she was sending the furniture for polishing during the works of repairs and maintenance, the fact remains that the furniture was not allowed to be reinstalled in the house by her. This fact is also not disputed by either of the parties.

32. Though admittedly the Respondent is the owner of the matrimonial house, however, considering the nature of prayer made by him is such that, it is necessary for him at the outset to establish that, in spite of shifting to the rented premises alongwith his children in his parents household, he is in continued possession of the house alongwith the Petitioner. It is also not denied by the Respondent that the Petitioner is in possession of the matrimonial house.

33. The incident of 23rd January 2025, which is narrated by the Respondent, which has given cause of action for him to file the

Application for injunction itself shows that, he has already been dispossessed from the matrimonial home. Therefore, the Respondent had failed to establish that he was still in possession of the matrimonial house. The prayer of the Respondent to restrain the Petitioner from dispossessing him from the shared household could not have been granted by the Judge, Family Court at Bandra, Mumbai. The fact of dispossession of the Respondent finds support from the affidavits of the watchman, the employee of the Respondent Mr. Ajay Goswami as well as the Secretary of the building, which fortifies the dispossession of the Respondent on 23rd January 2025.

34. It is trite law that if possession is proved, the court may issue injunction to restrain the defendant from interfering with the possession, however, if he fails to prove possession, suit may be dismissed even if one has a claim to the property. In the present case, the Respondent has failed to prove his possession. In fact, from the averments itself it can be evinced that the Respondent is not in possession, therefore, the question of grant of any relief of restraining the Petitioner from dispossessing him does not arise. In this regard it would be apposite to refer to the judgment of the

Hon'ble Supreme Court in case of ***Ramji Rai and Anr. V/s. Jagdish Mallah (Dead) through L.Rs. And Anr.***¹

The Hon'ble Supreme Court has categorically observed that, under Section 38 of the Specific Relief Act, 1963 an injunction restraining disturbance of possession will not be granted in favour of the plaintiff who is not found to be in possession. In the case of a permanent injunction based on production of possessory title in which the plaintiff alleges that he is in possession, and that his possession is being threatened by the defendant. If possession is not proved the suit is required to be dismissed.

35. Similarly, the other application filed by the Respondent (below Exhibit–19) is also allowed by the common order which is impugned in the present Writ Petitioner. The application (below Exhibit- 19) seeking appointment of Court Commissioner has been filed by the Respondent; with a view to reinstate his furniture and belongings in his matrimonial home which were removed without his knowledge and consent. Due to the removal of his belongings and furniture, it is necessary to conduct the inventory, of the articles which have been removed by the petitioner, and in order to ascertain about the articles moved out

1 AIR 2007 SC 900

of the house by the Petitioner, it is necessary to appoint the Court Commissioner. It is argued that though the articles which have been stored in the other house belonging to his parents in the same building, the applicant is not aware about the remaining articles removed from his room, therefore, in order to ascertain it is necessary to appoint the Court Commissioner.

36. While opposing the application for appointing a Court Commissioner, the Petitioner has opposed it on the ground that, it is an tactic to harass and intimidate her and infringe on her privacy and cause interference with her peaceful possession. According to the Petitioner, the process of preparing inventory would worsen her mental health. A report of the psychologist has been relied upon by the Petitioner.

37. As far as the application for the appointment of Court Commissioner is concerned, the Judge, Family Court at Bandra has discussed it in detail, in which the Judge has deprecated the practice adopted by the psychologist of causing interference in the judicial process, by suggesting the Court to refrain from passing order, due to potential emotional distress caused to her patient. It is rightly held by the learned Judge, that such recommendations

exceed the scope of duty of a Doctor of giving professional opinion. The learned Judge has rightly refused to take into consideration the medical opinion of the psychologist and has passed an order of appointment of Court Commissioner to conduct the inventory of all the furniture, fixtures and household articles in the matrimonial home at 6-C, Balmoral Hall, Mount Mary Road, Bandra, Mumbai. By way of abundant precaution, the Court Commissioner is directed to visit the premises in presence of both the parties and their legal representatives.

38. Appointment of Court Commissioner as provided under the Civil Procedure Code is governed by order 26 Rule 9 which reads thus:-

“9. Commissions to make local investigations.- *In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court:*

Provided that, where the State Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules.”

39. The application is filed by the Respondent on the background of the fact that, behind his back the articles from his room have been removed and he has been restrained from entering the house and reinstalling the articles. The application is filed for preparation of the inventory of the articles that could be still in his room and also assist the Court to arrive at a proper decision. Considering the nature of the allegations made by the parties against each other, it would certainly assist the Court while deciding the dispute between the parties. Though the Petitioner has opposed the application on the ground that it would cause her mental distress, which is supported by the report of the doctor, since much has been said by the Judge, Family Court at Bandra about the advisory jurisdiction exercised by the doctor, I do not find it necessary to take any other view, but agree with the learned Judge of the Family Court, about appointment of the Court Commissioner.

40. Though the Respondent is admittedly the owner of the house in view of his own averments, he has already shifted alongwith his children to his father's residence, therefore, I do not find any favour in the contention of the Respondent that he is still in possession of the matrimonial home. My view stands fortified

by the incident that has taken place on 23rd January 2025. When the belongings of the Respondent were removed from their matrimonial house resulting in his dispossession. While deciding the correctness of the impugned order, it would be necessary to ascertain about fulfillment of necessary conditions while granting injunction. Relief claimed in the application is that the Petitioner should be restrained from dispossessing him from the matrimonial home, and on the other hand he claims that his personal belongings alongwith furniture has been removed from the matrimonial home on 23rd January 2025. If the cause of action is considered, it is the removal of his personal belongings from his matrimonial house. On the background of the cause of action, the Respondent has made a prayer seeking direction to restrain the Petitioner from dispossessing him. Such prayer is not maintainable for the reason that, the Respondent himself has made an averment that, his belongings were removed from the house. Therefore, the fact of his dispossession is established from his own statements made in the interim application, which is supported by the affidavits of the persons in whose presence the belongings have been removed. Therefore, in my opinion the prayer made by the Respondent could not have been granted by

the learned Judge, Family Court at Bandra, Mumbai, in view of the unequivocal statement of the Respondent himself that he had shifted alongwith his children in February 2022 itself, and his belongings and furniture were removed on 23rd January 2025.

41. The Respondent has failed to prove that he continues to be in possession, hence his prayer to prevent his dispossession could not have been granted. So far as the application allowing the order appointing the Court Commissioner is concerned, I do not find any error in the order granting prayer of the Petitioner to that extent. Hence, the order to the extent of appointment of Court Commissioner is not interfered with.

42. As a result, the Writ Petition is partly allowed. The order granting prayers in application (below Exhibit- 20) filed by the Respondent in clause nos. 1 to 5 of the impugned order dated 10th March 2025 are quashed and set aside.

43. The Writ Petition is disposed off in above terms.

[MANJUSHA DESHPANDE, J.]

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