

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL WRIT PETITION NO.5019 OF 2025

Manisha Ganesh Gharge

...Petitioner

Versus

Ganesh Maloji Gharge

...Respondent

Ms. Sarika Mhatre, for the Petitioner.

Mr. Vinay M. Bhate a/w Sandeep Mahadik, for the Respondent.

CORAM: MADHAV J. JAMDAR, J.

DATED: 29th APRIL 2025

P.C.:

1. Heard Ms. Mhatre, learned Counsel appearing for the Petitioner and Mr. Bhate, learned Counsel appearing for the Respondent.

2. The challenge in this Writ Petition filed under Article 227 of the Constitution of India is to the order dated 20th January 2025 passed by the learned Judge, Family Court No.2, Mumbai below Exhibit-31 in Petition No. A-2744 of 2018. The said Application bearing Exhibit-31 has been filed for setting aside order dated 17th September 2021 by which the Petition is directed to be proceeded without written statement and thereafter no cross order is passed.

3. It is the main contention of the Petitioner that the Petitioner has been thrown out of the matrimonial home in the year May 2018. At that time age of the son was 15 years and daughter was pursuing 2nd year Engineering. It is the submission that the Petitioner is a teacher and

therefore has limited income. She has to look after both the children and heavy expenditure was required for the educational expenses and other maintenance charges. It is admitted position that the Petitioner and the children are not staying with the Respondent since 2018 and nothing has been paid by the Respondent-husband towards the maintenance of children.

4. Mr. Bhate, learned Counsel appearing for the Respondent has relied on various receipts issued by the educational institutions. However, all those receipts are of the year 2015, 2016 and 2017. He submits that after 2018 no demand has been made by the wife for maintenance and therefore nothing has been paid to the Petitioner for maintenance of the children.

5. However, perusal of the record shows that the Petitioner filed an Application bearing No.199 of 2018 under the provisions of the *Protection of Women from Domestic Violence Act, 2005* (“**DV Act**”) before the Court 24th MM Court, Mumbai and the Respondent-husband was directed to pay the school fees of the children and to deliver her belongings. The position on record shows that after the said order has been passed by the learned Metropolitan Magistrate nothing has been paid to the Petitioner mother towards educational expenses. Mr. Bhate, learned Counsel states that Respondent-husband was of the opinion that if receipts of said educational expenses are produced then he would

have paid the said expenses. However, in any case the admitted position on record shows that the Respondent father has not contributed a single farthing towards the educational expenses and other maintenance charges of the children at least since 2018. Thus, in this background of the matter it is necessary to consider the reasoning given by the learned Judge of the Family Court in the impugned order which is in Paragraph No.7 reads as under :-

“7. Coming to the reasons assigned in this application, respondent claims that she was rendered shelterless, she was having responsibility of the children and she was busy in discharging the responsibilities. On this pretext, she claims that she could not attend the Court. She quotes financial hardship as the reason for her absence. This is apparently unreliable. Because, admittedly respondent is a teacher. She must be having some income. Assuming for a moment that in the initial stage she faced financial hardships, but her presence in the matter on several dates denotes that she was capable to spare time. Secondly, alongwith the reply petitioner has produced copy of the sale deed dated 16.03.2019 whereby respondent has sold Plot No.41 at Village Jalalpur for consideration of Rs.12,00,000/-. It means, she had received a substantial amounts of the sale proceeds. Hence, it cannot lie in the mouth of respondent that she was unable to pursue this matter and take diligent steps due to financial difficulties.”

6. The learned Judge has completely overlooked very significant factor that after 2018 Respondent father has not paid anything to the maintenance of the children as well as for the educational expenses of the children. The children were taking education of Engineering which requires considerable expenses.

7. It is the contention of Mr. Bhate, learned Counsel appearing for

the Respondent that no Court has passed order regarding maintenance of the children. However, it is required to be noted that the Respondent is a father of the children and therefore it is his duty to pay the said amount.

8. As far as the sale of the property by Petitioner wife for an amount of Rs.12,00,000/- is concerned, learned Counsel appearing for the Petitioner states that the said entire amount is required for the educational expenses of daughter. In any case the position on record shows that single handedly mother has maintained the children from her modest salary as a teacher and for that purpose she has to sale the property in his possession for Rs.12,00,000/-. Thus, it is very clear that the impugned order dated 20th January 2025 has been passed without taking consideration these aspects.

9. Accordingly, impugned order dated 20th January 2025 passed by the learned Judge, Family Court No.2, Mumbai below Exhibit-31 in Petition No. A-2744 of 2018 is quashed and set aside. Resultantly, order by which it is directed that the proceeding be proceeded without written statement of the Petitioner is quashed and set aside.

10. Learned Counsel appearing for the Petitioner states that the said Petition before the learned Family Court No.2, Mumbai is on 14th May 2025 and on that date the written statement will be filed before the learned Family Court.

11. As far as no cross order is concerned the Petitioner is at liberty to file appropriate Application before the learned Trial Court seeking to set aside/recall of said order. If such Application is filed, the learned Trial Court to decide the same in accordance with law.

12. Accordingly, the Writ Petition is disposed of in above terms with no order as to costs.

[MADHAV J. JAMDAR, J.]