

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

WRIT PETITION NO.9600 OF 2025

Mrs.Suvita Shetty Age – 41 years, Occupation : Housewife R/at. Flat No.302, Lotus Heights, Road No.15, Gandhi Maidan, Chembur (E), Mumbai- 71.Petitioner	}	Petitioner
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Versus

Sunil Shetty Age – 53 years, Occupation – Service, Currently residing at Henjagdamba Bhavan, Room No.9, G.K. Marg, Lower Parel, Mumbai – 400 013. Permanent Address: Flat No.302, Lotus Heights, Road No.15, Gandhi Maidan, Chembur (E), Mumbai – 71.	}	Respondent
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Mr.Ramesh Lalwani, Ms.Sadhna Lalwani, Mr.Apoorv V. Singh,
Mr.Manish Pasale and Mr.Hirday Surve i/b. Mr.Rakesh Rahate,
Advocate for the Petitioner.

Ms.Sushmita Sherigar, Advocate for the Respondent.

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CORAM : MANJUSHA DESHPANDE, J.

DATED : 26.08.2025.

JUDGMENT :

1. Rule. Rule made returnable forthwith.
2. Writ Petition is taken up for final disposal with the consent of parties.

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3. The petitioner–wife, feeling aggrieved by the order passed by the Judge, 4th Family Court, Mumbai, below Exhibit 6 dated 13th June, 2025, has approached this Court in its supervisory jurisdiction under Article 227 of the Constitution of India.

4. The Petitioner and Respondent, who are husband and wife, due to turbulence in their marriage, are estranged since 2018. The petitioner–wife, feeling aggrieved with the order restraining her from obstructing, interfering with or preventing the Respondent from peacefully entering, residing in and accessing flat No.302, Lotus Heights, Road No.15, Gandhi Maidan, Chembur (East), Mumbai, until final disposal of the main Petition or further orders, has approached this Court. Vide impugned order, it is further directed that the Respondent–husband should be permitted to re-enter and reside in the said flat on the condition that he shall not disturb or interfere with the peaceful residence of the Petitioner and their minor daughter. Both the parties are directed to maintain peace, and not to engage in any form of coercion, harassment or threat against each other, either directly or through a third party. In order to eliminate any possibility of controversy, the Respondent is directed to install Closed-Circuit Television Cameras (CCTV) within a period of 7 days from date of re-entry into the shared premises at his own expense. The CCTV

installation is limited only to the purpose of monitoring common areas of the premises. There is an express bar for installing the CCTV Camera, in private or personal spaces such as bedrooms, bathrooms, etc. With some more incidental conditions regarding CCTV coverage, the impugned order has been passed by the Judge, Family Court, Mumbai.

5. The factual matrix of the case are that, the Petitioner and Respondent were married on 20th April, 2006, and after marriage they started residing at Malad. It is the claim of the Petitioner that, the flat at Malad was purchased in the name of Respondent-husband out of the funds provided by the Petitioner's mother. While the Respondent claims that he bought the flat at Malad from his own funds. After selling the said flat at Malad, they bought a new flat i.e. flat No.302, Lotus Heights, Chembur, Mumbai. A daughter is born from the wedlock on 5th February, 2010, while they were residing together at Lotus Heights, Chembur.

6. According to the Petitioner the relations between them started straining due to differences and incidents of domestic violence against her. When she returned from Mangalore after her religious tour on 17th May, 2020, she could not open their matrimonial house, as the Respondent-husband had changed the locks of the house at Lotus Heights. When she inquired with the

Respondent, she did not receive any response, as a result of which she was constrained to file a non-cognizable complaint. She had to enter the house with the police aid, by breaking open the locks. Though the Petitioner tried to reconcile with the Respondent, she did not receive any positive response. Instead, the Respondent filed a Divorce petition under Section 13(1)(i-a) of the Hindu Marriage Act, 1955, on the ground of cruelty, praying for dissolution of marriage with prayer for injunction to re-enter the flat.

7. The husband has resided separately after the incident of breaking locks by the Petitioner in May 2018. It is claimed by him that he was prevented from entering the matrimonial house. The Respondent-husband filed Interim Application for injunction at Exhibit-6. The Petitioner filed her reply to the Interim Application for injunction on 14th August, 2019. The categorical stand of the Petitioner was that, the grant of the injunction would result in her mental harassment. It would be against the well-being of the minor child, if they are forced to stay with the Respondent in the same house.

8. Heard the learned Advocates for the respective parties. The learned Advocate for the Petitioner, Mr. Lalwani, submits that the Petitioner has challenged the order on the ground that, the

statutory rights of the Petitioner under the Protection of Women From Domestic Violence Act, 2005, as well as safety of the Petitioner along with her minor daughter, are endangered. He further submits that the Judge, Family Court has totally disregarded the fact that the Interim Application filed by the Respondent was rejected by the Family Court on 7th October, 2019, on the ground that such relief cannot be granted at an interim stage. A similar relief was claimed by the Respondent before the Bombay City Civil Court in Suit No.1370 of 2019, in which Notice of Motion No.4276 of 2018 was dismissed on 20th July, 2019. This fact has been suppressed by the Respondent in the proceedings before the Family Court.

9. It is submitted that considering that the Respondent has not resided in the matrimonial house at Lotus Heights for almost 7 years and 2 months. The learned Judge has committed an error, by not taking into account the changed circumstances due to passage of time. The Respondent has already made his alternate housing arrangement, on the other hand, the Petitioner has no other place to go along with her young daughter, who is now 15 years old. She has no source of income. Her husband has not yet paid a single penny to her towards maintenance, except some contribution towards the tuition fees of her daughter. His entire

income is at his own disposal. In spite of filing the Divorce Petition in the year 2018 itself, he has not taken steps for final disposal of the petition. The Respondent has admitted of keeping vigilance on the Petitioner and her daughter resulting into filing of FIR under the POCSO Act, 2010 against the employee of Respondent-husband, raising serious safety concerns.

10. The relationship between the Petitioner and the Respondent is strained beyond reconciliation as there is complete distrust between the parties. The idea of installation of CCTV Cameras in the common areas of the house itself is violative of her right of privacy, more so, in view of the presence of a teenage daughter of 15 years. The relationship between the parties is so explosive that staying together in the same house will only amount to building anxiety and further animosity between the parties. The order impugned has resulted in prejudicing and affecting her statutory rights under the Protection of Women From Domestic Violence Act and causing prejudice to the welfare of the minor daughter. The Family Court has failed to adequately address the issue of welfare of the minor daughter who has been residing in the matrimonial home, and is settled in her educational and social environment surrounding her residence. If the Respondent-husband is allowed to co-habit, it would risk her emotional well-being and it would

psychologically harm the child.

11. The learned Advocate submits that the reliance of the Court on the registered sale deed which stands in the name of the Respondent to grant him relief of re-entry in the house is causing prejudice to her rights to reside in the flat under the DV Act. Right to reside in the shared household under the DV Act does not require ownership of the shared household. The Respondent has deliberately delayed the divorce proceedings by not filing affidavit of evidence within appropriate time. The interim application is being used to harass the Petitioner.

12. Per contra, the learned Advocate Ms.Sherigar for the Respondent has opposed the Writ Petition. According to the Respondent, he has filed Petition for divorce under Section 13(1) (i-a) of the Hindu Marriage Act, 1955. In the petition he has made a prayer, seeking direction to the Petitioner to prevent her from restraining, refusing or preventing his peaceful entry, use and occupation of the flat situated at Building 302, Lotus Heights, Road No.15, Gandhi Maidan, Chembur (East), Mumbai, and directed the Petitioner to hand over the keys to the Respondent herein immediately. It is his case that the marital relationship between him and the Petitioner deteriorated significantly in April 2018. On 23rd April, 2018, the Respondent abruptly blocked the Petitioner

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on WhatsApp and also ceased all communication with him by refusing to take his calls. His access to his daughter is also cut off by the Petitioner. The Petitioner has threatened the Respondent of filing false police complaints in order to make him comply with her demands. On 2nd May, 2018, the Petitioner left their matrimonial house for Mangalore without informing him.

13. On 17th May, 2018, in the absence of the Respondent, the Petitioner along with her brother, broke into the flat and created a scene in the residential society. Since 17th May, 2018, he has been forcibly and illegally kept out of his own house, which was purchased in his name in 2008. On 10th June, 2018, both of them were called in the police station, and the Petitioner was explained that the Respondent cannot be restrained from entering his own house. Despite this, he has been denied entry by the Petitioner. The Petitioner has changed the locks of the house and she has also refused to open the door. The Petitioner has filed police complaints against him. He was threatened by the Petitioner that, if he did not agree to transfer the flat in her favour, and pay an amount of Rs.50,000/- towards monthly maintenance, she will file false complaints against him. He has voluntarily remained out of the house to defuse the tension. Since 17th May, 2018, till the date of filing a Petition, he was prevented from entering the house. He had

taken shelter in a guest house for which he is required to spend huge amount. It is submitted that after enduring the acts of cruelty at the hands of the Petitioner and threats of false complaints, the Respondent is left with no other alternative but to seek remedy from the Court of law.

14. It is submitted that the Petitioner has treated him with utmost cruelty, due to which he is under constant pressure. Despite the behaviour of the Petitioner, the Respondent continued to be patient in the hope that the Petitioner would realize her mistake and change her attitude and behaviour towards him. Since the behaviour of the Petitioner became increasingly inhuman and wicked, he was forced to file the Petition for divorce. Though he had filed application for interim injunction vide Exhibit-6 it was dismissed by the Family Court *vide* order dated 7th October, 2019. This Hon'ble Court *vide* order dated 14th June, 2024 has quashed the order dated 7th October, 2019, by directing to decide the matter afresh after hearing the parties. Thus, the application is heard and impugned order is passed.

15. The directions of the High Court underscores the importance of just and suitable adjustments without being influenced by earlier orders. The Respondent submits that it is his categorical case that, in spite of being owner of the house, which is a

matrimonial house of the parties, he has been restrained by the Petitioner from entering it and thereby causing great hardship to him. In spite of the fact that he is owner of two houses, both the properties are in possession and control of the Petitioner. She, along with their daughter, is residing in their matrimonial house and the other flat has been given on rent. Hence, he is seeking relief of restraining the Petitioner from his entry and peaceful possession of the house, along with her and their daughter. He has no intention to dispossess the Petitioner from her matrimonial house. His only prayer is that he should be allowed entry in the house owned by him without any resistance from the Petitioner.

16. After hearing the respective counsel at length, from the pleadings of the parties and the arguments made on their behalf, what transpires is that, The Application filed by the Respondent dated 30th June, 2018 came to be decided on 13th June, 2025, i.e. almost after 7 years of filing of application. Following reliefs are granted by the Judge, Family Court, *vide* impugned order dated 13th June, 2025, which are reproduced herein below:

“A. The Respondent is hereby restrained by way of temporary injunction from obstructing , interfering with, or preventing the Petitioner from peacefully entering, residing in, and accessing Flat No.302, Lotus Heights, Road No.15, Gandhi Maidan, Chembur East, Mumbai - 400 071, until final disposal of the
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main petition or further orders.

B. The Petitioner is permitted to re-enter and reside in the said flat, on the condition that:

I. He shall not disturb or interfere with the peaceful residence of the Respondent and the minor daughter.

C. Both parties are directed to maintain peace and shall not engage in any form of harassment, coercion, or threat against each other, either directly or through third parties.

D. The Petitioner shall, at his own expense, install Closed Circuit Television (CCTV) cameras within a period of seven (07) days from the date of re-entry into the shared premises.

1. The installation of such CCTV cameras shall be strictly limited to monitoring only the common areas of the premises, including but not limited to the main entrance, and any other mutually agreed upon shared spaces, for the purposes of ensuring safety, security, and transparency.

2. It is expressly clarified that under no circumstances shall CCTV cameras be installed in any private or personal spaces such as bedrooms, bathrooms, or any other area that may directly or indirectly infringe upon the personal privacy of the Respondent. The right to privacy, as enshrined under Article 21 of the Constitution of India, shall be strictly respected and preserved at all times.

3. Furthermore, the access to the live feed and recorded footage of the said CCTV cameras shall be provided on an equal and shared basis to both the Petitioner and the Respondent.

4. The footage shall be accessible through a mutually agreed digital platform or cloud-based storage system, with secure login credentials being provided to both parties simultaneously.

5. Any attempt by either party to misuse or manipulate the

footage, obstruct access, or alter the camera settings in a manner that compromises transparency or invades the privacy of the other party shall be deemed a violation of this direction and may entail appropriate legal consequences.

E. The above directions shall remain in force until further orders or until final disposal of Petition A No. 1794 of 2018.

F. There shall be no order as to costs.”

17. The Respondent is the owner of the house. After the fallout between the parties, due to deteriorated relationship, he has been residing away from the Petitioner since May 2018. Though he has filed petition for divorce on 30th June, 2018 with, interim application below Exhibit 6. The Application Exhibit-C was dismissed by the Family Court vide order dated 7th October, 2019. Being aggrieved by the said order, Respondent has preferred Writ Petition No.A 1794 of 2018 before this Court in which the order passed in Interim Application below Exhibit-6, has been set aside and the directions have been given to hear the application afresh.

18. The Application Exhibit-6 is an application seeking injunction, hence the principles for grant of injunction would be applicable on all fours. Order 39 Rule 1 and 2 of the CPC provides for grant of injunction. The key considerations, while granting injunctions are:

- (i) Whether the Applicant has made out a *prima facie* case;
- (ii) Whether balance of convenience lies in favour of the Applicant;
- (iii) Whether the Applicant would suffer irreparable loss if injunction is not granted in his favour.

19. In order to determine whether a *prima facie* case exist, the present status of the parties and the prevailing circumstances are required to be evaluated. Since May 2018, the Respondent has been residing away from the matrimonial house, having made his own arrangements. This situation has continued for more than six years. Both parties are now settled in their respective positions, awaiting the decree of divorce. The present Application for injunction is being considered pending the divorce proceeding. The relationship between the parties is irreconcilable and beyond repairs. several complaints have been filed by them against each other. One of such order has even reached upto the Hon'ble Supreme Court. On this background, the question is whether the relief claimed by the Respondent could have been granted by the Court at this stage.

20. In the affidavit of assets and liabilities, the Respondent has disclosed ownership of three properties—two in Mumbai and one at

Mangalore. He now seeks re-entry into the flat at Lotus Heights, Chembur, which was the shared household between the parties. The other flat at Tilaknagar, Chembur, was admittedly let out on rent by the Petitioner. Despite allegations of cruelty, threats, police complaints, and ill treatment at the hands of the Petitioner, it seems strange that the Respondent desires to return to the same household with the Petitioner. This claim is inconsistent with his own stand. Admittedly, the Respondent is the owner of all the properties mentioned in the affidavit of assets and liabilities and he can very well claim his ownership on all those properties. Therefore, instead of insisting upon re-entry in the matrimonial house at Lotus Heights, Chembur, the Respondent could have very well claimed possession of other flat owned by him at Tilaknagar, Chembur. In view of the choice available with the Respondent, his claim for re-entry in the matrimonial house on the background of their estrangement for six years and the intervening events that have occurred does not bode well, his claim for re-entry into the shared household does not inspire confidence. In the earlier round, his application has been dismissed by the Family Court and, this Court has remanded the matter back without expressing any opinion on merits of the case, to decide it afresh.

21. Upon such remand, the learned Judge, Family Court,

Bandra, Mumbai ought to have considered the changed circumstances, to assess whether a *prima facie* case existed. Considering that both the parties are now settled separately in their own surroundings. No *prima facie* case is made out for grant of the relief by unsettling, the settled position of the parties, held by them for a long duration. The interim prayer granted will continue till the disposal of Divorce case. Under such circumstances, the enforcement of ownership right of the Respondent could not have been basis of passing of impugned order.

22. The other aspect which needs to be considered is whether balance of convenience lies in favour of the Applicant seeking injunction. The Respondent's claim is based on the fact that he has been restrained from re-entering the house owned by him. He is constrained to reside outside his home by making his own arrangements. Hence, due to the prevailing circumstances it is causing great harm and prejudice to his right over the property. On the other hand, the Petitioner is claiming her right to reside in her matrimonial house in view of provisions contained in DV Act 2005. According to the Petitioner, she is settled in her home, since the birth of her daughter. Re-entry of the Respondent after such a long duration, on the backdrop of acrimonious relations, shared by

them will unsettle life of the Petitioner and their minor daughter. Considering that the divorce proceedings are still pending between the parties for adjudication, as a result of grant of relief to the Respondent, the same position will continue till the disposal of the divorce proceedings. Potential damage that is likely to be caused, to either of the parties is required to be compared. Due to the re-entry of the Respondent in the matrimonial home, on the background of acrimonious relationship shared by the parties, the situation is likely to worsen due to the volatile atmosphere.

23. Though the Respondent is owner of the property, forcing the parties to share the same household is neither likely to further any good cause nor prove convenient for the respondent. Assuming that his allegations of ill-treatment and threats given to him by the Petitioner have some substance, After weighing the potential harm and inconvenience that is likely to be caused to both the parties, the grant of interim injunction is not in the interest of either of the parties hence balance of convenience cannot be said to be in favour of the Respondent.

The learned Judge of the Family Court seems to be overwhelmed by the fact that, inspite of being owner of the house, Respondent was required to stay away from the house owing to

the circumstances. However, the learned Judge has lost sight of the fact that the Respondent owns one more house, which he claims that the Petitioner has given it on rent. The other house is also owned by the Respondent. Therefore, he could have very well claimed possession of the other flat.

24. The third factor for deciding the grant of temporary injunction is whether irreparable loss would be caused to the Applicant if interim relief is not granted in his favour. As stated above, the Application itself has been reconsidered after its dismissal in earlier round after a period of seven years. Therefore, there was no immediate necessity of granting temporary injunction. The efficacy of immediate relief was already lost due to passage of time. Both the parties have settled at their respective places where they were residing. Just because the Respondent is owner of the house, where the Petitioner is residing, the relief of re-entry to the Respondent has been granted by the learned Judge of the Family Court, Mumbai. There was no eminent danger of loss of ownership of the house, as the Petitioner is also entitled to reside in the house which is her matrimonial house. Therefore, no irreparable loss would have been caused to the respondent. Merely because the Respondent is owner of the property as per record and relying on some statements made by the Petitioner, in the early

days of their estrangement, when the Petitioner has stated that she has never prevented the Respondent's re-entry. The learned Judge, Family Court has granted relief to the respondent.

The conduct of the parties and approach against each other is very much part of record. Merely because the Respondent has not sought eviction of the Petitioner and considering his ownership, the learned Judge, Family Court has granted application filed by the Respondent. The Respondent has not demonstrated, as to in what manner irreparable loss would be caused to him if his application is not allowed. The learned Judge, Family Court has also failed to appreciate that the Respondent had prayed for similar relief before the City Civil Court by filing injunction application which was dismissed on 20th July, 2019. Despite this fact, being brought to the notice of the Judge, Family Court by the Petitioner, it has not been Addressed. Without taking into consideration the suppression of previous litigation, an order granting injunction is passed

25. Heavy reliance is placed on the willingness shown by the Respondent to install CCTV Cameras to ensure his presence does not interfere with the Petitioner's peaceful enjoyment of the premises. Treating it as a *bona fide* and balanced approach, on the background of the contradictions in the Petitioner's statement, the

learned Judge, Family Court has held that the allegations made by the Petitioner raises doubts on the credibility and consistency of her position. Hence, a view is taken by the learned Judge, that the Respondent cannot be deprived of his own house. It is held that, his prayer for co-residence would not cause any prejudice to the Petitioner.

26. The statement of the Petitioner relied by the Learned Judge, Family Court was made immediately after the Petition for divorce had been filed by the Respondent. It was a period during which there was a possibility of settlement between the parties. The statements made by the Petitioner during such period were taken into account after a passage of almost four years when circumstances have drastically changed and the relations between the parties have deteriorated with irretrievable breakdown of their marriage.

27. One more aspect of the matter which needs to be appreciated is that he owns two houses in Mumbai, one that is subject matter of the present Writ Petition and the other is rented by the Petitioner. In spite of owning these two houses, he has made a prayer for restraining the Petitioner from opposing his entry into the house in which the petitioner is residing. On one hand the Respondent is making allegations that he has been harassed and threatened by

the Petitioner, there have been various complaints and N.C. registered by the parties against each other, Various incidents have been narrated by the Respondent according to which there have been threats given by the Petitioner, there is use of foul language by her; apprehension for safety of his life has been expressed by the Respondent from the Petitioner and her family members.

28. In the Petition for divorce categorical averments are made by the Respondent that “the Petitioner’s conduct and misdeeds have been so improper, so as to constitute irretrievable breakdown of marriage and hence the Respondent cannot live with the Petitioner except at the risk of his life and career which was having a devastating effect on Respondent’s mental health. The Petitioner’s conduct as aforesaid is reprehensible, amounting to mental cruelty, torture, agony, callousness, negligence and deliberate harassment.” On such background he has filed the divorce proceedings, and has made a prayer for re-entry in the shared household with the petitioner.

29. The above averments made by the Respondent in his Petition for divorce does not go well with his prayer seeking directions to share the matrimonial house with the Petitioner and their daughter. The learned Judge, has totally ignored the fact that

the Respondent himself has left the house. Though the allegations are made by the parties against each other for changing the lock of the house, the fact remains that since May 2018, the Respondent is not living with the Petitioner. Though the Respondent has claimed that he is not seeking eviction of the Petitioner from the house, and he is only claiming that he should be allowed to re-enter the house and share the house with the Petitioner, the circumstances do not warrant grant of such relief for the reason that as on date, there is a tumultuous relationship between the parties. If at all the Respondent is allowed to enter the house, it would further create complex situation resulting in day-to-day confrontation with each other. The installation of CCTV is not going to change the feelings and grudge held by the parties against each other. CCTV is not going to be a deterrent for any, incident likely to occur while sharing the household. Since the Petitioner is residing in the said house since long along with her young daughter, she is in settled position in the said house. Installation of CCTV Cameras though directed to be installed to safeguard and ensure that no explosive situation should arise between the parties, the fact remains that the Petitioner is residing with the young daughter of 15 years in the house. The CCTV Cameras would certainly curtail free-movement in the house and it would infringe on their right to privacy while residing in the house. The persons

residing in a house cannot confine themselves to their rooms, the common areas always require to be used freely by the persons living in the said house, constant surveillance by the CCTV Cameras would make the parties uncomfortable.

This Court while remanding the matter back to the family court, has directed to decided the application afresh on its own merits. While deciding the matter on merits, the Judge, Family court has failed to take into account the changed circumstances, due to passage of time. As a result, there was no *prima facie* case for the respondent. The practical difficulties likely to arise are not foreseen while passing the order. The rights of the parties with respect to property, would be a matter of adjudication of right of the parties, while deciding Divorce petition. Therefore No irreparable loss is likely to cause to the respondent it relief of re-entry is not granted

30. The Impugned order dated 13th June, 2025 passed by the Judge, Family Court, Mumbai, below Exhibit- 6 being contrary to the key considerations for grant of injunction, and having failed to satisfy those considerations, deserves to be quashed and set aside, accordingly Rule is made absolute in terms of prayers Clause (a).

[MANJUSHA DESHPANDE, J.]

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