



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 22 OF 2026

Surekha Keshav Kumbhar
Age: 35 Yrs, Occu : Household,
R/o. C/o. Laxman Chagan Kumbhar,
Galan Bk., Tq: Pachora, Dist. Jalgaon. **..PETITIONER**
[Orig.Applicant in DV Case]

VERSUS

- 1] The State of Maharashtra
- 2] Keshav Natthu Kumbhar
Age: 40 Yrs, Occu : Retired & Business,
R/o. Motha Kumbharvada,
Balaji Chowk, Parola,
Dist : Jalgaon. **.. RESPONDENTS**

...

Mr.Swapnil S. Patil, Advocate for the petitioner
Mr.A.S.Shinde, APP for the respondent-State
Mr.S.V.Suryawanshi, Advocate for the respondent no.2

...

WITH
CRIMINAL WRIT PETITION NO. 24 OF 2026

Surekha Keshav Kumbhar
Age: 35 Yrs, Occu : Household,
R/o. C/o. Laxman Chagan Kumbhar,
Galan Bk., Tq: Pachora, Dist. Jalgaon. **..PETITIONER**
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- 1] The State of Maharashtra

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Mr.Swapnil S. Patil, Advocate for the petitioner
Mr.A.S.Shinde, APP for the respondent-State
Mr.S.V.Suryawanshi, Advocate for the respondent no.2
...

CORAM : MEHROZ K. PATHAN, J.

Reserved on : 09.02.2026

Pronounced on : 26.02.2026

ORDER :

1] The petitioner has filed the present Writ Petitions thereby praying for quashing and setting aside the judgment and order dated 03.12.2025 passed by the Ad-hoc DJ-1 & ASJ, Jalgon (hereinafter referred to as Appellate Court for the sake of brevity) in Criminal Appeal No.53/2025 and further to dismiss the said Criminal Appeal No.53/2025 by restoring and confirming order dated 12.06.2025 passed by the learned Judicial Magistrate First Class, Pachora, (hereinafter referred to as the Trial Court) below Exh. 28A and 30A in D.V. Application No.17/2022.

2] The learned counsel for the petitioner submits that vide application below Exh. 27, the petitioner has prayed for residence order in shared household under Section 19 of the Protection of Women from Domestic Violence Act, 2005 [for short 'DV Act']. The said application was disposed of by the learned trial Court vide order dated 09.10.2024 by giving liberty to both the parties to adduce evidence in respect of relief of residence order under Section 19 of the D.V. Act for final hearing. The respondent–husband, namely, Keshav Kumbhar has filed an Appeal challenging the order dated 09.10.2024 being Criminal Appeal No.124/2024. During pendency of the appeal, the respondent–husband had executed a sale deed in favour of his nephew Yogesh Suryawanshi with an attempt to defeat the petitioner's right to reside in the shared household vide registered sale deed No.12139/2024 dated 21.11.2024.

3] The petitioner was constrained to file application for amendment in D.V. Application No.17/2022

below Exh. 28A and another application Exh.30A for permission to add transferee nephew of respondent no.2 Yogesh on record under Section 2 (q) of the D.V. Act. The learned trial Court, after calling say of the respondents and hearing both sides at length, has decided the said applications vide separate orders dated 12.06.2025.

4] The respondent no.2, being aggrieved by order dated 12.06.2025 passed by the learned trial Court allowing the application below Exh. 28A and 30A, had filed an appeal being Criminal Appeal No.53/2025 and Criminal Appeal No.54/2025, respectively. The learned Appellate Court, vide its order dated 03.12.2025, has set aside the order dated 12.06.2025 passed below Exh. 28A and 30A with direction to the learned trial Court to proceed in accordance with the law without the impermissible amendments under the provisions of D.V. Act. The petitioner–wife was granted liberty to file appropriate proceedings before the Civil Court or the Family Court. The petitioner (wife) had thus, challenged the said order dated

03.12.2025 passed by the Ad-hoc DJ-1 & ASJ, Jalgaon in both the Appeals i.e. Criminal Appeal No.53/2025 and 54/2025.

5] The learned counsel for the Petitioner Shri Swapnil Patil submits that the orders dated 12.06.2025 passed by the Trial court clearly records that the provisions under Section 19 of the D.V. Act gives right of shelter to the aggrieved person, is a benevolent provision for women, and also considered that the said original application did not contain property number, its area and location of the shared household, as such complainant wife intends to incorporate those details of shared household in her main petition and no prejudice would be caused to the husband if such application is allowed.

6] The learned counsel for the petitioner further submits that the procedural order of allowing amendment could not have been challenged in an appeal as it is almost a settled law that the appeal under Section 29 of the D.V. Act against the procedural order of allowing amendment is

not maintainable as held by the Bombay High Court in the case of **Abhijit Bhikaseeth Auti Vs. State of Maharashtra and another** in Criminal Writ Petition No.2218 of 2007, decided on 16.09.2008 [reported in 2009 (1) BomCR (Cri) 845] that :

“An appeal under section 29 will not be maintainable against the purely procedural orders such as orders on application for amendment of pleadings, orders refusing or granting adjournments, order issuing witness summons or orders passed for executing the orders passed under the said Act. The learned counsel, therefore, submits that the appeal itself was not tenable. The observations of the First Appellate Court are non est as it lacks jurisdiction to entertain under Section 29 of the D.V. Act against procedural order of allowing amendment.”

7] The learned counsel further submits that the amendment application of the petitioner was allowed by order dated 12.06.2025, exercising powers under Order 6 Rule 17 of the CPC. The proposed amendment did not change the nature of the application under Section 19 of the D.V. Act or application filed before the trial Court by the petitioner wife. The trial Court, by order dated 12.06.2025,

has observed that as the cross examination of the applicant is yet not commenced, amendment would not cause any prejudice to the respondents and as such may be allowed.

8] The learned counsel for the petitioner, therefore, submits that the First Appellate Court has unnecessarily gone into the details of the contract law, property law, matrimonial law and held that the amendment creates third party dispute by adding nephew, who is not concerned with the property, with the observations that the amendment is not related to the domestic violence allegations, the proceeding is likely a property dispute in disguise. The learned Appellate Court has wrongly applied the distinction principle between productive relief versus the property adjudication by holding that matrimonial property does not automatically make it property dispute and make it domestic. The Appellate Court has wrongly entertained the Appeal against a procedural order passed by the trial Court, thereby rejecting the amendment made by the petitioner. The

impugned order therefore, needs to be quashed and set aside thereby restoring the order dated 12.06.2025 passed by the trial Court below Exh.28A and Exh.30A in D.V. Application No.17/2022.

9] As against this, the learned counsel for the respondent submits that earlier application filed by the petitioner under Section 19 of the D.V. Act came to be rejected by the trial Court vide order dated 09.10.2024 by passing a detailed order. The petitioner had again filed such application without there being any substance. The applications filed by the applicant– petitioner herein under the garb of only amending application is virtually claiming substantial rights in the shared household, and therefore, cannot be said to be a procedural amendment, which would rule out any appeal to be entertained under Section 29 in view of the judgment of the Single Bench of the Bombay High Court in the case of **Abhijit Bhikaseth Auti Vs. State of Maharashtra & another** [supra]. The application below Exh. 28A does not even make a mention of transfer of the suit

property in the name of the Yogesh and as such prayer for inserting Yogesh is already waived in such application. The Civil Procedure Code applies to the proceedings under the D.V. Act Order II Rule 2 provides suit to include the whole claim wherein as per sub-rule 2, the plaintiff may not be allowed to make claim which was already relinquished earlier and subsequent amendment to that effect would, therefore, be prohibited. Proviso to the order VI Rule 17 prohibits any amendment after commencement of the trial. The learned counsel for the respondent further submits that the petitioner herein has already filed civil suit in respect of the suit properties for claiming various claims. Order II Sub-Rule (2) of Rule 2 of Civil Procedure Code, reads as under :

2. Suit to include the whole claim. -

(1) ...

(2) Relinquishment of part of claim. - Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

Order VI Rule 17 of the Civil Procedure Code

reads as under :

17. Amendment of pleadings. -

The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

10] The learned counsel for the respondent therefore submits that portion which he has already omitted or relinquished cannot be allowed to be inserted now by way of amendment in violation of the proviso to Order VI Rule 17 as well as in violation of sub-rule (2) of Order II Rule 2 of CPC.

11] He further relies upon the provisions of Section 2 (q) of the Protection of Women from Domestic Violence

Act, 2005, which defines as under :

(q) “respondent” means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act :

Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner.

Thus, unless the petitioner is able to show that Yogesh is having domestic relationship with the petitioner–wife, the application for adding Yogesh could not have been allowed by the trial Court. The order passed by the trial Court is rightly quashed and set aside by the First Appellate Court, rejecting the amendment with direction to the trial Court to decide the trial in accordance with law without any such amendment and as per original pleadings in the D.V. application.

12] The learned counsel for the petitioner Shri. Patil relies upon the judgment in the case of **Hiral P. Harsora and Ors. Vs. Kusum Narottamdas Harsora and Ors.** reported in

2016 GoJuris (SC) 760 to submit that Section 2 (q) of the D.V. Act is struck down holding the same to be unconstitutional. The learned counsel further relies upon the judgment in the case of **Kunapareddy @ Nookala Shanka Balaji Vs. Kunapareddy Swarna Kumari & Anr.** Reported in **2016 GoJuris (SC) 551 = 2016 (11) SC 774** to submit that if power to amend complaint/application etc. is not read into the provisions of D.V. Act, the same would defeat purpose. If the amendment did not change original nature of the complaint, the amendment can be allowed. The learned counsel for the petitioner has further relied upon the judgment of the Bombay High Court in the case of **Abhijit Bhikaseth** [supra] to submit that an appeal under Section 29 shall not be maintainable against the purely procedural orders like a order allowing amendment of pleadings.

13] Relying upon the aforesaid submissions, the learned counsel for the petitioner submits that the amendment application filed by the petitioner below Exh.

28A does not change nature of the complaint and as per the said application, only details of the shared household is to be incorporated in the main application along with consequential amendment in the prayer clause whereas other application below Exh. 30A was only to add Yogesh (son of respondent no.5 Kalpana) as respondent, who is a member of the family of the husband and falls under definition of respondent under D.V. Act.

14] The learned counsel for the petitioner, therefore, submits that taking into consideration law laid down by the Bombay High Court, the appeal under Section 29 could not have been entertained by the First Appellate Court and thus the impugned order dated 03.12.2025 is liable to be quashed and set aside on this ground alone. Even on merits the learned First Appellate Court has given erroneous reasoning to allow the appeal. The learned Appellate Court has held that amendment seeks to adjudicate the property right which is outside the scope of the D.V. Act and relief sought involves complex property

law questions requiring civil court adjudication. The learned counsel, therefore, submits that on merits also the impugned order dated 03.12.2025 passed by the Ad-hoc DJ-1 and ASJ, Jalgaon is liable to be quashed and set aside, thereby allowing the petitioner to amend the main application as per order dated 12.06.2025 allowing application for amendment and addition of Yogesh as respondent no.6.

15] As against this, the learned counsel for the respondent relies upon the judgment of the Hon'ble Apex Court in the case of **Satish Chandr Ahuja Vs. Sneha Ahuja** reported in **AIR 2020 SC 5397** to submit that for identical claim, the petitioner has already filed civil suit bearing RCS No.764/2024 with prayer for cancellation of gift deed dated 23.12.2021 with further declaration that gift deed dated 23.12.2021 is not binding upon the plaintiff-wife-Surekha. The plaintiff-wife-Surekha has further prayed for cancellation of the sale deed dated 21.11.2024 executed by the husband in favour of the Yogesh and further declaration

that the sale deed is not binding upon the plaintiff and her legal heirs. It is further submitted that the petitioner has also filed amendment applications under Order 1 Rule 10 and Order VI Rule 17 of the CPC, thereby seeking appropriate amendment, which is allowed by the CJJD and JMFC, Nashik vide order dated 13.02.2025. It is further submitted that vide order dated 25.11.2025, there is already status quo order operating in favour of the plaintiff – Wife – Surekha. The order below Exh.49 passed by the trial Court, rejects the application for prayer to restrain respondent nos. 1 to 6 from alienating shared household i.e. survey Nos.79/2A and 79/4A situated at Bhagur Shivar, Deolali Cantonment Board Premises, Taluka and District Nashik, vide order dated 04.11.2025. Therefore, another application to amend D.V. proceedings was completely untenable. It is further submitted by the learned counsel for the respondent that in view of the alternate remedy being already pursued by the plaintiff–wife for getting her share in the shared household and for cancellation of the gift deed dated 23.12.2021 on the allegation of forcibly taking

signature of the plaintiff–wife and also amending suit to add subsequent purchaser, Yogesh, as respondent in the said suit and also prayed for cancellation of the sale deed in favour of the Yogesh, the applications for amendment below Exh.28A and 30A were, therefore, not maintainable in view of the judgment of the Hon’ble Apex Court in the case of **Satish Chandr Ahuja** [supra].

16] The learned counsel for the respondent, therefore, submits that the learned Appellate Court has taken into consideration scope of the amendment sought by the applicant–wife and therefore rightly held that relief sought by way of amendment involves complex property law questions requiring civil court adjudication and hence the amendment applications below Exh.28A and 30A are not tenable. The impugned order dated 03.12.2025 is passed by the Appellate Court after applying its mind to the relevant provisions of law and the judgment governing field by rightly allowing the Appeal, hence, the present Writ Petition is devoid of substance and the same liable to be

dismissed.

17] The learned counsel for the respondents submits that Yogesh, who is sought to be added as party respondent, does not have domestic relationship with the aggrieved person i.e. petitioner-wife and as such Yogesh could not have been allowed to be added as respondent in view of Section 2 (q) of the D.V. Act which mandates definition of respondent to be a person who is in domestic relationship with the aggrieved person.

18] I have gone through the order dated 12.06.2025 passed by the learned Judicial Magistrate First Class, Pachora, thereby allowing application at Exh. 28A and 30A to amend the main application under Order VI Rule 17 of the Civil Procedure Code and addition of Yogesh as respondent. I have also gone through the order dated 03.12.2025 passed by the Adhoc DJ-1 & ASJ, Jalgaon, thereby allowing the Appeals filed by the respondent-husband, rejecting amendment application filed below Exh.28-A and 30A.

19] Perusal of the order dated 09.10.2024 passed on an application filed under Section 19 of D.V. Act by the wife – Surekha i.e. the petitioner herein would show that the same was disposed of with liberty to the both the parties i.e. wife and husband to lead evidence in respect of relief of residence order sought under Section 19 of the D.V. Act by the petitioner wife. The learned JMFC, Pachora, vide its order dated 09.10.2024, had specifically observed that the Petitioner-wife was driven out of matrimonial house and was presently residing with her relatives, the provisions of Section 17 of the D.V. Act is not applicable in such situation. Thus, in the background of the fact that the respondent-wife was already driven out of the matrimonial house for which she was seeking residence order, the learned trial Court had held that the provisions of Section 19 of the D.V. Act would only apply. The learned trial Court has further held that while deciding an application under sub-section (1) of Section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order.

The learned Magistrate, therefore, found application under Section 19 of the D.V. Act as premature and liable to be decided only at the time of final hearing of the case. Holding that the parties are at liberty to adduce evidence in respect of relief of residence claimed under Section 19 of the D.V. Act at the time of final hearing.

20] The application Exh. 28A came to be filed by the petitioner, thereby seeking amendment to the main petition, incorporating necessary pleadings to lead her evidence to that effect. The said application Exh. 28A was filed by the petitioner seeking amendment to the main petition under Order VI Rule 17 of the CPC. The amendment sought by the petitioner-wife was only giving details of the shared household in the main application, which she did not raise in the earlier application moved before the Court. The earlier application was filed by the petitioner-wife in respect of the pleadings and material facts regarding gift deed dated 23.12.2021 allegedly executed by the husband by obtaining signature of the applicant-wife by

playing fraud. The said fact is pleaded in para no.5 of the main application but details of the shared household is not pleaded as also in the prayer clause u/s. 19 of D.V. Act prayer regarding possession of half portion of the shared household was not included in main application. Thus, to lead evidence regarding shared household as permitted by the trial Court vide its order dated 09.10.2024 it was necessary to amend the main application as well as prayer clause of the application filed by the Petitioner wife.

21] On the other hand, it would be seen that the First Appellate Court has allowed appeal by setting aside the well reasoned order dated 12.06.2025 passed by the trial Court only on the ground that respondent-wife has chosen wrong forum under the Domestic Violence to redress her grievance. It is held that the filing of the civil suit on the ground that the amendment seeks to adjudicate property right is outside the scope of the D.V. Act and the other amendment introduces a third party nephew unrelated to the domestic violence allegations. It was further held that

the relief sought involves complex property law questions requiring civil court adjudication. The First Appellate Court held that the appellant has proved that order passed by JMFC, Pachora below Exh.28A in D.V. Case No.17/2022 dated 12.06.2025 is beyond the scope of provisions of the D.V. Act and hence the Appeal came to be allowed. The Hon'ble Supreme Court in the case of **Satish Ahuja** (cited supra) has specifically observed that any relief available under D.V. Act may also be sought in a civil court. In my opinion, the reason given by the learned First Appellate Court in Criminal Appeal No.53/2025 is erroneous and the same is liable to be quashed and set aside.

22] The respondent – Yogesh is sought to be added in the main application only because the petitioner has transferred the property i.e. shared household being survey Nos.79/2A and 79/4A situated at Bhagur Shivar, Deolali Cantonment Board Premises, Taluka and District Nashik, immediately after order dated 09.10.2024 came to be passed by the learned JMFC, Pachora, allowing the parties

to lead evidence under Section 19 of the D.V. Act, filed by the petitioner – wife praying for residence. The said amendment is only consequential amendment as the respondent – husband has transferred the aforesaid suit property in the name of Yogesh on the basis of the alleged gift deed dated 23.12.2021, forcibly obtaining signature of the petitioner – wife. Yogesh is a relative [nephew] of the husband of complainant and falls under the definition of respondent under D.V. Act. Whether there was any domestic relationship with relatives is a matter to be decided after completion of evidence. The amendment praying for allowing addition of Yogesh as respondent is, therefore, necessary for effectively adjudicating the rights of the petitioner – wife, who has filed amendment application under the D.V. Act. The impugned order in Appeal No.54/2025 is therefore liable to be set aside.

23] In so far as the judgment relied upon by the respondent as regards alternate remedy being pursued by the petitioner – wife by filing civil suit is not maintainable in

view of the judgment in the case of **Satish Chander Ahuja** [supra]. It could be seen from the said judgment that the Hon'ble Supreme Court has specifically considered Section 26 of the D.V. Act in para no.94 and 95 as under :

"26. Relief in other suits and legal proceedings.-(1) Any relief available under Sections 18, 19, 20, 21 and 22 may also be sought in any legal proceeding, before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act.

(2) Any relief referred to in sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court.

"40. Section 26 of the 2005 Act has to be interpreted in a manner to effectuate the very purpose and object of the Act. Unless the determination of claim by an aggrieved person seeking any order as contemplated by the 2005 Act is expressly barred from consideration by a civil court, this Court shall be loath to read in bar in consideration of any such claim in any legal proceeding before the civil court....

24] Thus, taking into consideration aforesaid law on the subject, I am of the opinion that the learned trial Court has not committed any mistake on the point of allowing application for amendment, which is consequential in

nature and is allowed only to lead further evidence in pursuance to the order dated 09.10.2024 whereby application under Section 19 of the D.V. Act filed by the petitioner – wife came to be disposed of with liberty to the parties to lead evidence to that effect. It is almost a settled law that before leading any evidence, there has to be pleadings to that effect in the proceedings. The Hon'ble Supreme Court in the case of **Kunareddy @ Nookala Shanka Balaji [supra]** has laid down that if power to amend complaint / application etc. is not read into the provisions of the Domestic Violence Act, the same would defeat very purpose for which Act attempts to sub-serve itself, and has allowed amendment in the application.

25] The Bombay High Court in the case of **Abhijit Bhikaseth Auti [supra]** was pleased to hold that an appeal under section 29 will not be maintainable against the purely procedural orders such as orders on application for **amendment of pleadings**, orders refusing or granting adjournments, order issuing witness summons or orders

passed for executing the orders passed under the said Act etc.

26] Thus, taking into consideration every aspect of the matter, I am inclined to allow the present writ petitions. Hence, the following order :

ORDER

i] Both the Writ Petitions are allowed.

ii] The impugned order dated 03.12.2025 passed by the Ad-hoc DJ-1 & ASJ, Jalgaon in Criminal Appeal No.53/2025 is hereby quashed and set aside. The order dated 12.06.2025 passed by the learned Judicial Magistrate First Class, Pachora below Exh.28A is hereby confirmed.

iii] The impugned order dated 03.12.2025 passed by the Ad-hoc DJ-1 & ASJ, Jalgaon in Criminal Appeal No.54/2025 is hereby quashed and set aside. The order dated 12.06.2025 passed by the learned Judicial Magistrate First Class, Pachora below Exh.30A is hereby confirmed.

iv] The petitioner-wife was allowed to carry out the amendment within 14 days. The necessary amendment be

carried out by the petitioner expeditiously, if not carried out already.

v] The trial Court is requested to decide the application expeditiously.

vi] The Writ Petitions are allowed and disposed of in aforesaid terms with no order as to costs.

[MEHROZ K. PATHAN]
JUDGE

DDC