
(2009) 08 BOM CK 0060

In the Bombay High Court

Case No : Criminal Revision Application No. 590 of 2008

Archana Hemant Naik

APPELLANT

Vs

Urmilaben I. Naik and Another

RESPONDENT

Date of Decision : 25-08-2009

Acts Referred:

Protection of Women From Domestic Violence Act, 2005 — Section 1, 12, 18, 19, 19(1)

Citation : (2010) CriLJ 751

Hon'ble Judges : A.S. Oka, J

Bench : Single Bench

Advocate : Anjali Helekar, for the Appellant; C.M. Kothari, for the Respondent

Judgement

A.S. Oka, J.—The revision applicant is an applicant in an application u/s 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the said Act). In the said application, the applicant had impleaded six opponents. The first opponent Hemant is the husband of the applicant. The applicant married to said Hemant on 9th May 1986. The second opponent in the said application is the brother-in-law of the revision applicant. The fourth opponent is the wife of the second opponent. The third opponent is the mother-in-law of the revision applicant. The third opponent in the said application has been impleaded as the first respondent in this revision application. The fifth opponent in the said application u/s 12 of the said Act is the sister-in-law of the revision applicant. The sixth opponent in the application is the husband of the fifth opponent.

2. According to the case made out by the revision applicant, she was residing along with her husband and her in-laws in the house by the name Jagan Villa at Nani-Daman. According to the case of the revision applicant, on 22nd June 2004 in the afternoon, she was assaulted and thrown out of the said house by her husband. It is alleged that the revision applicant was working as a teacher and while she was staying with her husband, her entire salary was being taken by her husband and in-laws and therefore she has no savings. In the application, she

has referred to the criminal complaint filed by her as well as a petition for divorce filed by her husband against her. By filing the said application u/s 12 of the said Act, she claimed maintenance from her husband. She also claimed house accommodation or share of her husband in her father-in-law's two bungalows by the name Jagan Villa and Mani Villa at Nani Daman. In the said application u/s 12 of the said Act, the revision applicant applied for interim order u/s 23 of the said Act. The said application was opposed by the opponents to the said application. A reply was filed by the opponents to the said application for contesting the said application. The allegations made by the revision applicant were denied in the said reply. It was contended that the proceedings against the said Act can be initiated only against the male persons and therefore, the proceedings as against the opponent Nos. 3,4 and 5 was not maintainable. It was contended that the opponent No. 1-husband has no title to the houses in respect of which reliefs were claimed. It is contended that the opponent No. 1 was residing in the house of his mother, i.e, the first respondent herein and therefore the house in respect of which relief was sought by the revision applicant cannot be termed as a shared household. The learned Magistrate by order dated 5th March 2008 granted interim relief directing the husband of the revision applicant to allow the residence of the applicant with him in house 14-113/C (hereinafter referred to as the said house). The learned Magistrate directed the opponent No. 2 Manoj and his sister Varsha not to create any panic in any form of harassment to the applicant. The husband was directed to observe and follow the order. The officer in charge of Nani Daman police station was directed to make available one male and one female constable to the applicant as per her demand for her protection. The protection officer was directed to assist the revision applicant for enforcement of the order.

3. The first respondent (mother-in-law of the revision applicant) preferred an appeal for challenging the said order. The main contention in the appeal was that the first respondent purchased two plots at Narayan Park, Nani Daman under a sale deed dated February 1998 and thereafter, she had constructed the said house bearing No. 14/113/C (Jagan villa). The case is that the said house is exclusively owned by her.

4. By Judgment and Order dated September 2008, the Appeal was allowed by setting aside the order of the learned Magistrate to the extent to which it affected the first respondent and other female opponents. The main application as against the female opponents was dismissed. The learned Sessions Judge held that the proceedings u/s 12 of the said Act was not maintainable against female persons in view of Section 2(q) of the said Act. The learned Judge held that the documents placed on record show that the first respondent was the owner of the said house and therefore, the said house cannot be treated as a shared household.

5. By order dated 20th April 2009, this revision application was ordered to be disposed of finally at the stage of admission. The learned Counsel for the

applicant submitted that the learned Sessions Judge has committed an error by holding that an application u/s 12 of the said Act was not maintainable against the female relatives of the husband. She pointed out that the reference in Section 2(q) of the said Act to the relatives of the husband is also to the female relatives of the husband. She pointed out the proviso to sub Section 1 of Section 19 of the said Act which provides that the order under Clause (b) directing the respondent to remove himself from the share household cannot be passed against any person who is a woman. The learned Counsel submitted that the very fact that the said proviso finds place in the said Act shows that the an action is maintainable against the female relatives of the husband except where a relief under Clause (b) of sub Section 1 of Section 19 has been prayed for. She submitted that the learned Sessions Judge has narrowly construed the definition of Section 2(s) of the said Act. The very purpose of enacting the said Act will be defeated if the narrow interpretation put by the learned Sessions Judge to the provisions of the said Act is accepted. She, therefore, submitted that the impugned order of the learned Sessions Judge is perverse.

6. The learned Counsel for the first respondent placed reliance on the decision of the Apex Court in the case of S.R. Batra and Another Vs. Smt. Taruna Batra, . He submitted that in view of the said decision, merely because the applicant stayed with her husband in the house of the first respondent, the said house does not become a shared household within the meaning of Section 2(s) of the said Act. He pointed out that the Apex Court has held that in order to claim right to a house as a shared household, the house must belong to the husband or it must have been taken on rent by the husband. A house which is owned by the joint family of which the husband is a member can also be a shared household. He submitted that no such right has been established by the revision applicant and on the contrary the documentary evidence on record shows that the said house was exclusively owned by the first respondent. Relying upon another decision of in the case of Vimalben Ajitbhai Patel Vs. Vatslabeen Ashokbhai Patel and Others, , he submitted that the entire burden was on the revision applicant to prove that the house was a shared household. He placed reliance on the decision of Madhya Pradesh High Court in case of Ajay Kant and Others Vs. Smt. Alka Sharma, . He submitted that the Madhya Pradesh High Court held that the proceedings u/s 12 of the said Act was maintainable only against an adult male person. He also relied upon the decision of Andhra Pradesh High Court in the case of Meenakuru Renuka and Ors. v. Menakuru Mona Reddy and Anr. AIR 2009 (NOC) 1544. He submitted that the said High Court held that the complaint u/s 12 as against the female relatives of the husband was not maintainable.

7. I have carefully considered the submissions. The proceedings under the said Act is to be initiated by way of making an application to the court of a Magistrate. The application is to be filed by an "aggrieved person". The application can be also filed by the protection officer or by any other person on behalf of the aggrieved person. An "aggrieved person" has been defined by Clause (a) of Section 2. An aggrieved person can be any woman. A woman can be an

aggrieved person who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent. u/s 2 of the said Act, "domestic violence" has been defined by Clause (g) which provides that "domestic violence" has the same meaning assigned u/s 3.

Section 3 reads thus:

3. Definition of domestic violence-For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it

(a) harms or injuries or endangers the health, safety, life, limb or wellbeing, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b)harasses, harms, injuries or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c)has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in Clause (a) or Clause (b); or

(d)otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

Explanation I - For the purposes of this section

(i) "physical abuse" means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

(ii) "Sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

(iii) verbal and emotional abuse. includes

(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and

(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

(iv) "economic abuse" includes

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved

person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the lands or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Explanation II-For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes "domestic violence" under this section, the overall facts and circumstances of the case shall be taken into consideration.

4. The word - respondent. has been defined by Section 2(q) which reads as follows:

2(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..

8. The first part of Clause (q) provides that the respondent means any adult male person who is or has been in domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under the said Act. The proviso carves out an exception to the rule that a respondent can be only adult male person. It provides that either an aggrieved wife or female living in relationship in the nature of marriage may also file a complaint against the relative of the husband or male partner. Reference to the male partner in the proviso is because the proviso applies to a female living in relationship in the nature of marriage. Thus, the aggrieved wife or female to whom the proviso to Section 2(q) is applicable, can file a complaint against a relative of the husband or a relative of her male partner. The proviso carves out an exception to the definition of respondent in Section 2(q). In the two cases where proviso is applicable, an application u/s 12 will lie even against a relative of the husband or male partner, as the case may be. It is important to note that the proviso refers to a relative and not to a male relative. The definition of domestic relationship u/s 2(f) is very wide. However, a domestic relationship between a wife and a husband or a female and a male partner are the only two categories included in

the proviso to Section 2(q). The question to be decided is - whether a relative of the husband or a relative of the male partner referred to in the proviso to Clause (q) of Section 2 can only be a male relative?.

9. Under the said Act, different kinds of reliefs can be granted to the aggrieved persons. The said reliefs are as under:

- (a) Protection order u/s 18 for prohibiting acts of domestic violence.
- (b) Residence orders u/s 19, in relation to a shared household
- (c) Monetary reliefs u/s 20 in the nature of medical expenses or maintenance etc.
- (d) Custody orders u/s 21 relating to children; and
- (e) Compensation orders u/s 22.

10. u/s 23 of the said Act, power to grant interim and ex parte ad-interim orders in terms of Sections 19, 20, 21 or 22 of the said Act has been conferred on a Magistrate. It must be borne in mind that in view of the definition in Section 2(q), normally the respondent can only be an adult male person. By virtue of proviso, in certain cases to which the proviso applies, any relative of the husband or male partner, as the case may be, can be a respondent. As stated earlier, proviso applies when the aggrieved person is a wife or a female living in a relationship in the nature of marriage. If such aggrieved wife or female files a complaint, she can do so even against a relative of the husband or a relative of the male partner, as the case may be. The question is whether such relative can be a female. In this context it will be necessary to consider Section 19 of the said Act which reads thus:

19. Residence orders - (1) While disposing of 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 -

- (a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;
- (b) directing the respondent to remove himself from the shared household;
- (c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;
- (d) restraining the respondent from alienating or disposing off the shared household or encumbering the same ;
- (e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or
- (f) directing the respondent to secure same level of alternate accommodation for

the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances require:

Provided that no order under Clause (b) shall be passed against any person who is a woman.

11. As per the proviso to Section 2(q), in case of any aggrieved wife or a female living in a relationship in the nature of marriage, the relative of the husband or male partner can be a respondent. If a wife or a woman to whom the proviso is applicable is compelled to seek residence order in respect of a shared household only as against the male relatives of her husband or male partner, as the case may be, the order u/s 19 of the said Act will be completely ineffective in as much as the female relatives of the husband or the male partner occupying the shared household will continue to disturb possession of such wife or such female of the shared household, or may continue to prevent entry of such aggrieved wife or female to the shared household. On plain reading of the proviso to Section 2(q) it is clear that a relative referred to in the proviso is not only a male relative. The main section specifically uses the word "male". Even the proviso refers to "male" partner. Therefore, whenever the legislature intended, the word "male" has been used in the main section and its proviso. But while referring to relative of the wife or the woman referred to in proviso, the word "male" has not been used. In case of two domestic relationships covered by proviso to Section 2(q) viz; (i) relationship between wife and husband and (ii) a relationship in the nature of marriage between a female and her male partner, the respondent can be any relative of the husband or male partner. It cannot be the intention of the legislature that the "relative" in the proviso can only be a male relative. This fact is abundantly clear from the proviso to sub Section 1 of Section 19. The legislature has clarified by the said proviso that an order in terms of Clause (b) of Sub-section (1) of Section 19 cannot be passed against a person who is a woman. The very fact that proviso to Sub-section (1) of Section 19 has been enacted shows that an order under some other clauses of Sub-section (1) of Section 19 except Clause (b) can be passed against a woman who is a relative of the husband or the male partner to whom the proviso to Section 2(q) applies. If a narrow interpretation is put to proviso to Section 2(q) to the effect that the relative referred to therein is only a male relative, the aforesaid proviso to Sub-section (1) of Section 19 becomes meaningless. If it is accepted that in no case a relief u/s 19 can be granted against a woman, then the said proviso to Sub-section (1) becomes redundant. The legislature contemplated that the residence order under Sub-section (1) of Section 19 could be passed even against any female who is a relative of a husband or a relative of a male partner referred to in the proviso to Section 2(q) and therefore, the proviso to Sub-section (1) has been enacted to prevent an order of dispossession under Clause (b) being passed against a woman relative of the husband or a male partner.

12. Under Clause (a) of Sub-section (1) of Section 19 the respondent can be restrained from disturbing the possession of the aggrieved person of the shared

household whether or not the respondent has any legal or equitable interest in the shared household. In a case where an aggrieved person is a wife or a female referred to in proviso to Sub-section 2(q), if the relative of the husband or the male partner was to include only the male relative, the grant of residence order in terms of Clause (a) will serve no purpose and will become redundant as such order will not bind the female relatives of the husband or the male partner, as the case may be, who are residing in the shared household. The same is the case with the residence order under Clause (c) of sub section (1).

13 It must also be remembered that Section 2(q) specifically uses the word adult "male" member or "male" partner. If the intention of the legislature was that the relative of the husband or the male partner referred to in the proviso has to be only a "male" relative, the legislature would have specifically used the word "male" in the proviso. As set out earlier, there is another reason why the relative of the husband or male partner referred to in the proviso to Section 2(q) cannot be only a male relative. The said reason is that the proviso to Sub-section (1) of Section 19 clearly implies that the residence order in terms of any of the clauses of Sub-section (1) of Section 19 except Clause (b) can be passed against a respondent who is a woman. It is obvious from the the proviso to Section 2(q) that a woman can be a respondent only in a case where the aggrieved person is the wife or the female referred to in proviso to Clause (q) of Section 2. From the proviso to Sub-section (1) of Section 19 it becomes crystal clear that the word "relative" used in proviso of Section 2(q) is not restricted to a male relative of the husband or a male relative of the male partner. Therefore, the word "relative" in proviso to Section 2(q) includes a female relative.

14. The relevant part of the statement of objects and reasons of the said Act reads thus:

4 The Bill, inter alia, seeks to provide for the following

(i) It covers those women who are or have been in a relationship with the abuser where both parties have lived together in a shared household and are related by consanguinity, marriage or through a relationship in the nature of marriage or adoption. In addition, relationships with family members living together as a joint family are also included. Even those women who are sisters, widows, mothers, single women, or living with the abuser are entitled to legal protection under the proposed legislation. However, whereas the Bill enables the wife or the female living in a relationship in the nature of marriage to file a complaint under the proposed enactment against any relative of the husband or the male partner, it does not enable any female relative of the husband or the male partner to file complaint against the wife or the female partner..

Thus even the statement of objects and reasons also refers to `any relative' of the husband or the male partner. In my considered view, the - relative "within the meaning of proviso to Section 2(q) cannot be only a male relative and the relative referred to in proviso to Clause (q) of Section 2 can also be a female

relative of the husband or the male partner, as the case may be. Thus, when an aggrieved person is a person to whom the proviso to Section 2(q) is applicable, a respondent in the application u/s 12 can be a male or a female relative of the husband or the male partner, as the case may be. If an application u/s 12 is filed by such aggrieved person, i.e, the wife or the female to whom proviso to Section 2(q) is applicable, or is filed on behalf of such aggrieved persons, a female relative of the husband or the male partner can be a respondent. However, whether a relief can be granted against the female relative of the husband or the male partner will depend on the nature of the reliefs sought and the facts and circumstances of the case. As stated earlier, some of the reliefs such as a relief under Clause (b) of Sub-section (1) of the Section 19 can never be granted against the female relative of husband or the male partner. Similarly, as held by the Apex Court in the case of S.R.Batra (supra), a relief under Clause (f) of subsection (1) of Section 19 cannot be granted against a relative of the husband or the male partner. A relief can be granted against a female relative of a husband or a male partner only if a relief against such a relative is capable of being granted under Sections 18 - 22 of the said Act.

15. Perusal of the decisions of Madhya Pradesh and Andhra Pradesh High Courts shows that the aforesaid aspects have not been considered by the High Courts. To that extent the learned Sessions Judge has committed an error.

16. Now, it will be necessary to go back to the facts of the case. The applicant is claiming a relief in respect of a house which according to her is a shared household. It is observed in the impugned Judgment that documents placed on record which have not been disputed by the revision applicant show that the alleged shared household is standing in the name of her mother-in-law, i.e, the first respondent. A copy of the application u/s 12 filed by the revision applicant is placed on record. In the said application, it is alleged that the house was owned by the father-in-law who is no more. However, as held by the Sessions Court, the documents on record show that the house stands in the name of the mother-in-law. In view of the law laid down by the Apex Court in the case of S.R.Batra and Anr. (supra), while considering the application for interim relief, the learned Sessions Judge was right in holding that the documents placed on record prima facie show that the property claimed by the applicant is the property of her mother-in-law. It must be noted that the learned Judge was not finally deciding the application u/s 12 but was dealing with an application for interim relief. Therefore, it is not possible to find fault with the impugned order. However, the learned Sessions Judge has committed an error by ordering deletion of the names of the female relatives of the husband in as much as this case is covered by the proviso to Section 2(q) of the said Act.

17. Hence, I pass the following order:

i) That part of the impugned order, by which application u/s 12 of the said Act has been dismissed against the female relatives of the applicant, is quashed and set aside. It is clarified that the female family members of the husband will

continue to be respondents to the application.

ii) Rest of the impugned order stands confirmed.

iii) It is made clear that the learned trial Judge will decide the main application u/s 12 of the said Act without being influenced by the impugned order passed by the Sessions Court. The findings recorded by the Sessions Court are only prima facie findings.

iv) Revision Application is partly allowed in above terms.