
(2018) 01 BOM CK 0151
In the Bombay High Court
Case No : 143 of 2015

Mrs. Vira Chatur Kripalani

APPELLANT

Vs

Mr. Chatur Tahilram Kripalani

RESPONDENT

Date of Decision : 25-01-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 125
Family Courts Act, 1984 — Section 19, Section 19(4)
Protection of Women From Domestic Violence Act, 2005 — Section 20, 22, 18

Citation : (2018) 01 BOM CK 0151

Hon'ble Judges : R. M. Savant, Sandeep K Shinde

Bench : Single Bench

Final Decision : Disposed Of

Judgement

1. The above Family Court Appeal came to be admitted on 16/9/2015. The same is directed against the judgment and order dated 22/4/2015 passed by the Learned Judge of the Family Court whereby the Petition being No.E98/ 2013 filed by the Appellant under Section 125 of CrPC along with Sections 18, 20 and 22 of the Protection of Women from Domestic Violence Act, 2005, came to be dismissed.

2. In the above Appeal, the Appellant has filed the instant Civil Application No.258 of 2015, claiming the following interim reliefs pending the above Family Court Appeal: (a) Pending the hearing and final disposal of the Appeal, the Respondent be directed to pay Rs.30,000/per month to me by way of interim maintenance.

(b) Pending the hearing and final the Hon'ble Court may be directed the Respondent to allow me to stay in my matrimonial house at Pune being Flat No.A204, Gera Landmark, Kalyani Nagar, Pune 411006.

3. To the above Civil Application, the Respondent husband has filed an Affidavit in Reply dated 21/9/2016, in which, in paragraph 7 he has taken an objection to the maintainability of the above Family Court Appeal under Section 19 of the

Family Courts Act 1984, on the ground that the said Petition No.E98 of 2013 was filed by the Appellant under Section 125 of the CrPC and Sections 18, 20 and 22 of the Domestic Violence Act, 2005. He has thereafter reproduced Section 19 of the Family Courts Act in verbatim so as to buttress his case of the above Family Court Appeal being not maintainable.

4. The above Civil Application had come up before a Division Bench of this Court on 14/12/2017. On the said day though the Respondent had not appeared, the Division Bench considered the reply filed on behalf of the Respondent and recorded as under:

On a reading of the reply filed by the respondent, we find much force in the objection raised on behalf of the respondent that the appellant would not be entitled to file an appeal against the order passed under Chapter IX of the Code of Civil Procedure, 1908 in view of the provisions of Sections 19(2) and 19(4) of the Family Courts Act, 1984. We, prima facie, find that the prayer made by the applicant before the Family Court for grant maintenance of Rs.30,000/per month was made under the provisions of Section 125 of the Cr.P.C. Also, against a final order passed under the provisions of the Protection of Women from Domestic Violence Act, 2005, an appeal would lie to the Court of Sessions in view of the provisions of Section 29 of the Act of 2005. Since we are prima facie inclined to uphold the preliminary objection raised on behalf of the respondent, the learned Counsel for the appellant seeks some time to find out the case law on the aforesaid aspect. Hence, stand over after Christmas Vacations.

That is how the hearing as regards the objection in respect of the maintainability of the above Family Court Appeal is before us for consideration.

5. In the context of the said objection raised on behalf of the Respondent, it would be apposite to reproduce Section 7(2) of the Family Courts Act and Sections 18, 20, 22 and 26 of the Domestic Violence Act:

Section 7(2) of the Family Courts Act 7(2) Subject to the other provisions of this Act, a Family Court shall also have and exercise(a) the jurisdiction exercisable by a Magistrate of the first class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 (2 of 1974) and (b) such other jurisdiction as may be conferred on it by any other enactment Sections 18, 20, 22 & 26 of the Domestic Violence Act

18. Protection orders.-The Magistrate may, after giving the aggrieved person and the respondent an opportunity of being heard and on being prima facie satisfied that domestic violence has taken place or is likely to take place, pass a protection order in favour of the aggrieved person and prohibit the respondent from-

(a) committing any act of domestic violence;

(b) aiding or abetting in the commission of acts of domestic violence;

- (c) entering the place of employment of the aggrieved person or, if the person aggrieved is a child, its school or any other place frequented by the aggrieved person;
- (d) attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral or written or electronic or telephonic contact;
- (e) alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the respondent, including her stridhan or any other property held either jointly by the parties or separately by them without the leave of the Magistrate;
- (f) causing violence to the dependants, other relatives or any person who give the aggrieved person assistance from domestic violence;
- (g) committing any other act as specified in the protection order.

20. Monetary reliefs.-

1. While disposing of an application under subsection (1) of section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include but is not limited to-

- (a) the loss of earnings;
- (b) the medical expenses;
- (c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and
- (d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force.

(2) The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.

(3) The Magistrate shall have the power to order an appropriate lump sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require.

(4) The Magistrate shall send a copy of the order for monetary relief made under subsection (1) to the parties to the application and to the incharge of the police station within the local limits of whose jurisdiction the respondent resides.

(5) The respondent shall pay the monetary relief granted to the aggrieved person

within the period specified in the order under subsection (1).

(6) Upon the failure on the part of the respondent to make payment in terms of the order under subsection (1), the Magistrate may direct the employer or a debtor of the N respondent, to directly pay to the aggrieved person or to deposit with the court a portion of the wages or salaries or debt due to or accrued to the credit of the respondent, which amount may be adjusted towards the monetary relief payable by the respondent.

22. Compensation orders.-In addition to other reliefs as may be granted under this Act, the Magistrate may on an application being made by the aggrieved person, pass an order directing the respondent to pay compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by that respondent.

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 subsection (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.

(3) In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief.

Before proceeding to analyse the aforesaid statutory provisions, it would be relevant to refer to the Petition No.E98 of 2013 filed by the Appellant. The cause title of the said Petition reads thus: Petition for maintenance u/s 125 of Criminal Procedure Code, 1973 read with Section 18, 20 and 22 of the Protection of Women from Domestic Violence Act, Paragraph 27 of the said Petition which comprises prayer clauses reads thus:

(a) The Respondent be directed to pay a sum of Rs.30,000/per month to the Petitioner as permanent maintenance.

(b) Pending the hearing and final disposal of the Petition, the respondent be directed to pay Rs.30,000/per month to the petitioner by way of interim maintenance.

(c) The Respondent be directed to pay to the petitioner Rs.10,00,000/for mental and emotional distress.

(d) The Respondent be directed by this Hon"ble Court to allow the petitioner to stay in her matrimonial house at Pune being flat No.204, Gera Landmark, Kalyani Nagar, Pune 411006.

(e) Pending the hearing and final the Hon''ble Court may be directed the Respondent to allow the petitioner to stay in her matrimonial house at Pune being flat No.204, Gera Landmark, Kalyani Nagar, Pune 411006.

(f) Adinterim and interim reliefs in terms of prayer clauses (b) and (e)

6. Hence a reading of the said Petition being E98 of 2013 discloses that the same was filed for maintenance under Section 125 of the CrPC read with Sections 18, 20 and 22 of the Domestic Violence Act. The relief sought vide prayers comprised in paragraph 27 therefore are ascribable to the said provisions. The first question therefore arises is the jurisdiction of the Family Court to try the application under Sections 18, 20 and 22 of the Domestic Violence Act. The Family Court derives the jurisdiction to try the application under Section 125 of the CrPC on account of Section 7 of the Family Courts Act and especially subsection(2) thereof. In so far as an application under Sections 18, 20 & 22 of the Domestic Violence Act is concerned, Section 26 of the Domestic Violence Act enables an aggrieved person to seek any reliefs referred to in sub Section (1) of the said Section 26 in any legal proceedings before the Civil Court, Family Court or the Criminal Court. Hence in the instant case, by virtue of Section 7(2) of the Family Courts Act, the proceedings under Section 125 of the CrPC lie before the Family Court. In view of Section 26 of the Domestic Violence Act the reliefs claimed under Sections 18, 19, 20, 21 and 22 can also be sought before the Family Court if there is any legal proceeding before the Family Court. The Family Court therefore exercises jurisdiction in respect of an application made under Sections 18, 19, 20, 21 and 22 of the Domestic Violence Act by virtue of Section 26 of the Domestic Violence Act, if the reliefs sought vide the said application are in addition to the reliefs sought in any other proceedings before the Family Court. Hence in the instant case the additional relief claimed under the Domestic Violence Act can be said to be an adjunct to the relief claimed in the proceedings under Section 125 of the CrPC which the Family Court has undoubtedly the jurisdiction in view of Section 7(2) of the Family Courts Act.

7. This is in our view can be the analysis of the statutory provisions which enable the Family Court to exercise the jurisdiction in so far as the additional reliefs referable to Sections 18, 19, 20, 21 and 22 of the Domestic Violence Act are concerned. The Appeals can be filed under Section 19(1) of the Family Courts Act against any judgment or order not being an interlocutory order of a Family Court, in this Court, both on facts and on law. The said subsection (1) is a nonobstante clause in as much as the same is notwithstanding anything contained in the Code of Civil Procedure or in the Code of Criminal Procedure. However, subsection (2) of Section 19 carves out an exception to the said non obstante clause. A reading of subsection (2) therefore indicates that no Appeal shall lie from a decree or order passed by the Family Court with the consent of the parties or from an order passed under Chapter IX of the CrPC. Hence in so far as a decree or order passed by the Family Court in a proceeding filed under Chapter IX of the CrPC is concerned, an Appeal would not lie.

8. The Learned Counsel appearing on behalf of the Applicant Mr. Thorat would contend that having regard to the nonobstante clause being subsection (1) of Section 19, the proceedings by way of a Revision cannot be filed against an order passed under Section 125 read with the relevant provisions of the Domestic Violence Act.

9. We are unable to accept the said contention urged by the Learned Counsel especially having regard to the clear terms in which subsection (2) of Section 19 is couched. As indicated above, the said subsection (2) carves out an exception in so far as the nonobstante clause is concerned. Inclusion of the words "or any order passed under Chapter IX of the Code of Criminal Procedure Code" in the year 1991 by amendment, in our view was to bring about uniformity in respect of the remedy available against an order passed under Section 125 as otherwise a litigant who files proceedings under Section 125 before a Criminal Court, would be entitled to file a Revision, whereas a litigant who files a proceeding under Section 125 before the Family Court could file an Appeal namely a Family Court Appeal in this Court as per the unamended SubSection of Section 19. Since the relief sought under Sections 18, 20 and 22 of Domestic Violence Act can be said to be an adjunct to the relief sought under Section 125 of CrPC and since by virtue of subsection (2) of Section 19 of the Family Courts Act, an Appeal is barred against an order passed under Section 125 of the CrPC, the remedy of the Appellant if any is to be found in Section 19(4) of the Family Courts Act, namely that the Appellant would have to file a Revision in this Court. We therefore uphold the preliminary objection raised by the Respondent as regards the maintainability of the above Family Court Appeal. We accordingly hold that the above Appeal is not maintainable and that the Appellant would have to file a Revision under Section 19(4) of the Family Courts Act, in this Court. The above Family Court Appeal is accordingly dismissed as not maintainable.

10. However, the Appellant is at liberty to file a Revision under Section 19(4) of the Family Courts Act, 1984. If any such Revision is filed, the fact that the Appellant was prosecuting the instant Family Court Appeal from May 2015 till this date, would be considered by the concerned Court, if the issue of limitation arises.

11. In view of the fact that the above Family Court Appeal is held as not maintainable, the above Civil Application is accordingly disposed of with liberty to claim the relief claimed in the Civil Application in appropriate proceedings.