
(2013) 06 BOM CK 0171

In the Bombay High Court

Case No : Criminal Revision Application No. 54 of 2013

Sofiya Begum

APPELLANT

Vs

Ramsha Rahat

RESPONDENT

Date of Decision : 20-06-2013

Acts Referred:

Citation : (2014) MCR 115

Hon'ble Judges : T.V. Nalawade, J.

Bench : Single Bench

Advocate : Mr. Amit A. Yadkikar, Advocate, for the Applicants; Mr. G.R. Syed, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

T.V. Nalawade, J.—The revision is filed against the judgment and order of Criminal Appeal No. 26 of 2012, which was pending in the Court of Additional Sessions Judge, Nanded. This appeal was filed by present petitioners against interim orders made by Judicial Magistrate, First Class, Nanded in Special M.A. No. 59 of 2012. The said proceeding is filed under the provisions of Protection of Women from Domestic Violence Act, 2005. Both the sides are heard.

2. It is the case of respondent that present petitioner Nos. 1 and 2 are the parents of her husband and her husband left India within fifteen days from the date of her marriage. The husband is not returning to India and no provision is made for her maintenance. It is her case that house property bearing No. 10/145 situated at Labour Colony, Nanded is standing in the name of present petitioner Nos. 1 - Sofiyabegum, but respondent is in possession of this premises. She contended before Magistrate that Sofiyabegum is trying to dispossess her from the property to defeat her rights. Interim relief was claimed and J.M.F.C. has prevented Sofiyabegum from alienating the property. She is restrained from removing the respondent Ramsha Rahat from this property and the petitioners are prevented from entering the premises, which is in possession of Ramsha Rahat.

3. This interim order of J.M.F.C. was challenged in the appeal. The Sessions Court has dismissed the appeal by observing that it is open to the present petitioners to approach the Magistrate, produce relevant record and apply for cancellation of order. The learned counsel for petitioners submitted that the order under section 19 cannot be made against a woman. It was submitted that admittedly, the house property is standing in the name of Sofiyabegum and so such order could not have been made against Sofiyabegum. He relied on the case reported as 2007 ALL SCR 908 [S.R. Batra and Anr. v. Smt. Taruna Batra]. The Apex Court has made some observations with regard to application of this Act as against the father-in-law and mother-in-law and particularly, in respect of section 17 and 19 of the Act.

4. This Court has gone through the definition of "shared household" given under section 2 (s) of the Act, which is as under :-

"(s) "shared household" means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household; "

This Court has also gone through the provisions of section 17 of the Act. This provision is as under :-

"17. Right to reside in a shared household.- (1) Notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same.

(2) The aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law. "

It is the case of Ramsha Rahat that she is in possession of the aforesaid house. In view of the provision of section 17 (2) of the Act, if she is able to show the possession, then she can be evicted from the house only in accordance with the procedure established by law. This provision and the case of Ramsha Rahat needs to be kept in mind. Thus, this case needs to be decided on the facts of the case and further, it needs to be kept in mind that it was only interim order, which can be cancelled, if the petitioners are able to show to the same Court that the order could not have been made.

5. In view of the aforesaid circumstances, this Court holds that it is open to the petitioners to go before the Magistrate and apply for cancellation of order made

against them. As it is interim arrangement, this Court holds that no interference is warranted in the order made by J.M.F.C. and the petition stands dismissed. The matter before the J.M.F.C. is to be expedited and in any case within two months from the date of receipt of this order.