

(2018) 04 BOM CK 0110
In the Bombay High Court
Case No : WRIT PETITION NO.13144 OF 2017

SWATI VEDANT JATIA

APPELLANT

Vs

VEDANT JATIA

RESPONDENT

Date of Decision : 20-04-2018

Acts Referred:

Protection of Women from Domestic Violence Act, 2005 — Section 12, 18, 19, 20, 22, 23

Citation : (2018) 04 BOM CK 0110

Hon'ble Judges : BHARATI H. DANGRE, J

Bench : Single Bench

Advocate : Taubon F. Irani , Mrunalini Deshmukh, Sanjog Parab, Akshay Patil, Vikrant D. Shetty

Final Decision : Dismissed

Judgement

Building,Location,Floor,Bedrooms,Area,Property Details

Lodha

Primero",Mahalaxmi,30th,Â 2BHK,1300 bu,"Semi furnished, harbour facing, 2 car parks

Lodha

Primero",Mahalaxmi,45th,2 BHK,1300 bu,"Semi furnished, harbour facing, 2 car parks

Lodha

Primero",Mahalaxmi,35th,3 BHK,1800 bu,"Semi furnished, 2 car parks

eÂmails exchanged, it is stated that the current rate of accommodation is Rs.2.88 lakhs approximately per month, and if an alternate accommodation",,,,,,

is not being arranged for, then the said amount should be paid to the wife. Mrs.Mrunalini Deshmukh would also invite my attention to the order passed",,,,,,

by the Family Court in execution proceedings instituted by the wife vide Petition No.RD 429 of 2015 which is a Darkhast Petition filed for recovery of,,,,,

Rs.9,90,000/Â (Rupees Nine lakhs Ninety thousand) from the judgment debtor in pursuanceÂ of order dated 4th September 2015.Â She would",,,,,,

submit that the said Darkhast came to be rejected by an observation that the order was to provide alternate accommodation by the respondent for,,,,,

their residence of similar standard, but no where the amount of rent is awarded to the petitioner as alternate prayer and the executing court would not",,,,,,

go beyond the judgment and decree.Â She would submit that all the attempts to provide alternate residential accommodation were refused by the,,,,,

petitioner wife by declining to accept the said accommodation on the ground that they are not similar to the standard of the flat in which they were,,,,,

residing.,,,,,,

5 On perusal of the record placed before the Court, including the compilations filed by the parties and on hearing the learned counsel for the respective",,,,,,

parties, the question to be decided is whether an amount of maintenance awarded by the Family Court is just and proper in the peculiar facts and",,,,,,

circumstances of the case.,,,,,,

6 The application seeking maintenance filed by the petitioner wife gives the details of the standard of living of the parties.Â It is alleged by her that,,,,,

the respondent is running a family business in the name of Modern India Limited and he is the owner of immovable property at Modern MillÂ,,,,,

Compound, Modern Centre, Mahalaxmi, Mumbai, and residential flatsÂ at 38, 39th and 40th floors of Belvedere Court Mahalaxmi.Â It is the specific",,,,,,

contention of the petitioner wife that she was subjected to cruelty and was abused physically and verbally along with her children. In an application,,,,,

filed under Section 12 of the Domestic Violence Act, she prayed for multiple reliefs, including the relief of maintenance of Rs.8,00,000/Â (Rupees",,,,,,

Eight lakhs)Â for herself and her children, and also prayed that the husband be made liable to pay the school fees of the children and bear all their",,,,,,

educational expenses.,,,,,,

Â It is no doubt true that the parties have levelled reckless allegation against one another and the issue of access of the children have been mutually,,,,,

settled between the parties in the three writ petitions filed before this Court and this Court, by an order dated 28th March 2018 was pleased to",,,,,,

dispose of the said three writ petitions.,,,,,,

7 The claim of maintenance by the petitioner wife is based on the allegation that she was subjected to cruelty and the respondent had intimidated her,,,,,

and had left her without any home, which left her with no option than to relocate herself to a rental accommodation. According to her, she and her",,,,,,

children are literally left to the mercy of her relatives and it is the moral responsibility of the husband to take care of the wife. However, on perusal",,,,,,

of the exchange of e-mails between the parties, it can be seen that pursuant to the order passed by the Family Court on 4th September 2015, ",,,,,,

directing the husband to provide an alternate accommodation, the husband had communicated to the wife about the alternate residential",,,,,,

accommodation in the same area. Perusal of the said alternate accommodation would reveal that the flats which were offered to the petitioner wife,,,,,

are in the "Lodha Primero" and the location is Mahalaxmi. The two options offered are of 2 BHK, whereas one option is 3 BHK flat which is",,,,,,

semi furnished with two car parkings. The brochure of the building "Lodha Primero" reflect that the said building premises have the,,,,,

amenities like Gymnasium, full size swimming pool, play area for children and club facilities as well as recreation sports and skill building activities.",,,,,,

The petitioner wife, however, refused to accept the said apartment as an alternative accommodation on the ground that it do not meet the same",,,,,,

standard where she was residing. During the course of hearing of the matter, the learned counsel for the respondent husband has tendered on",,,,,,

record a list of similar flats available, and had asked the petitioner to exercise her choice about the said flats. The respondent husband categorically",,,,,,

made a statement that he intends to honour the order passed by the Court and he has no intention to leave the wife and the children in a destitute,,,,,

condition, and he would submit that the wife is at liberty to chose the flats which have been offered with the assistance of the broker in the similar",,,,,,

locality. However, the respondent has specifically denied the contention of the petitioner wife that the earlier residence in which they were residing",,,,,,

is a flat of 20,000 sq.ft.",,,,,,

8 In any contingency, the wife is entitled for a flat to be chosen as a residential

accommodation which is of the same standard.Â Â Same standard do",,,,,

not mean the standard by metes and bounds, but it means the flatÂ in a good residential locality and preferably Mahalaxmi area since the matrimonial",,,,,

house was in the said locality with all the amenities and facilities which theÂ modern flat scheme in Mumbai provide for, and it should be sufficient",,,,,

enough to accommodate the mother and her two children and permit them to continue them to lead the same life style which they were earlier,,,,,

living.Â The offers made by the respondent husband therefore, needs to be looked into by the petitioner wife and it is open to the petitioner to chose",,,,,

one of the said flats, and the husband is directed to make available the flat in Mahalaxmi area with minimum 3 BHK with all the amenities.Â The",,,,,

respondent is directed to provide such an accommodation to the petitioner forthwith in compliance of the directions issued by the Family Court on 4th,,,,,

September 2015, and the petitioner is directed to accede to such an accommodation, and failure to do so, would not make the husband liable for breach",,,,,

of the order passed by the Family Court directing him to provide an alternate Â accommodation.,,,,,

9 As far as the amount of maintenance is concerned, though the petitioner had claimed an exorbitant amount, no evidence has been placed on record",,,,,

as to the earning capacity of the husband or the needs of the wife, except making a bald statement that the Family was living a luxurious life.Â In any",,,,,

contingency, the amount of maintenance to be awarded is a matter of evidence and the Family Court by taking into consideration the status of the",,,,,

parties, have directed the respondent to pay an amount of Rs.75,000/Â towards the wife and the two children by taking into consideration their",,,,,

economical status and standard of living.Â The Court has rightly observed that the issue of maintenance as well asÂ other reliefs sought under the,,,,,

Protection of Women from Domestic Violence Act, is to be decided on merit after leading evidence by both the parties and the parties would avail",,,,,

opportunities to file their respective documents about economical status.Â However, the provision for interim maintenance prompted the Court to fix",,,,,

the amount of Rs.75,000/Â? per month and it cannot be said that the said order is, in any way, perverse or illegal.Â The Court has rightly observed that",,,,,

the said amount would be just and sufficient for maintenance of the children and the said amount is directed to be paid as an interim maintenance.Â,,,,,

10 By the impugned order, the Court has also directed the respondent to comply with the order as regards the alternative accommodation and also",,,,,,

directed the respondent to pay school fees for the Academic Year and to continue to pay school fees directly, till the disposal of the petition.Â Â",,,,,,

Since no perversity is found in the impugned order passed by the Family Court, the same is upheld.",,,,,,

11 For the reasons recorded above, the present writ petition is dismissed.Â",,,,,,

Â No order as to costs.,,,,,,