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**(2022) 09 BOM CK 0173**

**In the Bombay High Court**

**Case No :** Criminal Revision Application No. 59 Of 2018, 2716 Of 2021

Umakant Havgirao Bondre And Others

APPELLANT

Vs

Sakshi And Others

RESPONDENT

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**Date of Decision :** 30-09-2022

**Acts Referred:**

Protection Of Women From Domestic Violence Act, 2005 — Section 12, 17, 17(2), 18, 19, 20, 21, 22, 23, 25(2)

**Citation :** (2022) 09 BOM CK 0173

**Hon'ble Judges :** Sandipkumar C. More, J

**Bench :** Single Bench

**Advocate :** P.V. Barde, Ajinkya Reddy, Ameya Sabnis

**Final Decision :** Allowed

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**Judgement**

Sandipkumar C. More, J

1. The applicants in both these proceedings are the parents of respondent No.2 Suraj Umakant Bondre and in-laws of respondent No.1 Sakshi @ Sonali Suraj Bondre (hereinafter referred to as "Sakshi"). The marriage of respondents was solemnized on 10.06.2015, however, dispute arose between them and from 17.04.2016 respondent No.1 Sakshi started residing at her maternal house. The applicants in Criminal Revision Application No.59 of 2018 have challenged order dated 12.02.2018 passed by the Additional Sessions Judge, Udgir whereby Sakshi was permitted to occupy the shared household bearing No. 3-1-862/1/3-1-930 which is admittedly standing in the name of present applicant No.1 Umakant Bondre. The applicants have also challenged the order passed by learned Judicial Magistrate, First Class (Court No.3), Udgir on 23.10.2021 in Misc. Civil Application No. 91/2017 below exh.39 whereby the learned Magistrate directed the present applicants and her husband i.e. present respondent No.2 to give possession of one room on the ground floor with facility of attached WC, toilet and electricity from the aforesaid shared household.

2. Learned Counsel for the applicants in both these applications submitted that after marriage of present respondents, Sakshi used to harass her husband as well as the applicants by giving threats of committing suicide and ultimately left the aforesaid shared household willingly on 17. 04.2016 and started residing at her matrimonial house by declining the company of her husband and the applicants. He further submits that with a view to harass the applicants and her husband, Sakshi fled Criminal Misc. Application No. 97/2017 against the applicants and her husband in the Court of learned 3rd Judicial Magistrate, First Class, Udgir under the provisions of the Protection of Women from Domestic Violence Act, 2005 ( for short, "D.V. Act"). The learned Magistrate in the said application granted interim alimony of Rs. 2,000/-per month to Sakshi and also granted an amount of Rs. 1500/- per month for her residential accommodation from her husband under the order dated 09.11.2017. The learned Counsel for the applicants then submitted that the aforesaid order dated 09.11.2017 was challenged by Sakshi before the learned Additional Sessions Judge, Udgir by way of Criminal Appeal No. 15/2017 and in the said appeal, the learned Additional Sessions Judge, vide order dated 12.02.2018, modified the earlier order and instead of providing monthly amount of Rs. 1500/- to Sakshi for her residential purpose, he granted permission to Sakshi to occupy the aforesaid shared household with immediate effect. Learned Counsel for the applicants pointed out that in the mean time and after Sakshi started residing in the shared household, there was settlement between Sakshi and her husband i.e. respondent No.2 Suraj and accordingly Sakshi went for cohabitation with her husband to Pune on 11.06.2018. However, thereafter also Sakshi continued her rude behaviour as earlier and left the house of Pune willingly and started residing with her parents at maternal house.

3. Further, according to learned Counsel for the applicants, a divorce petition bearing HMP No. 92/2016 fled by husband of Sakshi against her was also pending in the Court of Civil Judge (Senior Division), Udgir and vide order dated 10.07.2018 passed in the said marriage petition, the marriage between Sakshi and her husband was dissolved. It is further pointed out that despite dissolution of marriage, Sakshi, with intention to harass the applicants, fled application below Exh.39 in the pending proceeding under the Domestic Violence Act i.e. Criminal Misc. Application NO. 91/2017 and prayed for execution of earlier order dated 12.02.2018 passed by the learned Additional Sessions Judge, Udgir in Criminal Appeal No. 15/2017 for providing her accommodation in the shared household. The said application was opposed by the present applicants and also by the husband of Sakshi on the ground that after dissolution of marriage between Sakshi and her husband, she lost right of residence. However, learned Magistrate, Udgir allowed the said application below Exh.39 partly and directed the applicants and husband of Sakshi to provide one room on the ground floor of the shared household with facility of WC bathroom and electric supply. Learned Counsel for the applicants also placed reliance on the following judgments :

(i) Satish Chander Ahuja vs Sneha Ahuja 2021 ALL SCR (Cri) 329

(ii) Gautam s/o Sambhaji Narnaware vs Archana w/o Sunil Narnaware and another, 2018 All. M.R. (Cri) 2057

(iii) Ramachandra Warrior vs Jayasree and another 2021 SCC Online Ker 1444

4. On the other hand, learned Counsel for respondent No.1 Sakshi strongly opposed the submissions made on behalf of the applicants and strenuously submitted that the learned Magistrate has in fact passed correct order and thereby rightly implemented the earlier order of Additional Sessions Judge, Udgir whereby Sakshi was permitted to reside in the shared household. He pointed out that considering the scope of Domestic Violence Act, 2005, the aggrieved person i.e. the wife has every right to reside in the shared household despite there being a decree of divorce passed against herself. He pointed out that the applicants and respondent No. 2 harassed Sakshi and ultimately drove her out of the house. He pointed out that Sakshi has also challenged the divorce decree, being obtained by fraud, by way of appeal which is still pending. As such, he prayed for dismissal of both the applications. In support of his submission, he relied upon the judgment in the case of Juveria Abdul Majid Patni vs Atif Iqbal Mansoori and another reported in (2014) 10 SCC 736 and Bharati Naik vs Ravi Ramnath Halarnkar and another reported in 2011 (4) AIR Bom.R 335.

5. With assistance of the rival Counsel for the respective parties, I have gone through the entire documents on record alongwith the impugned orders. I have also considered the citations relied upon by the respective counsel.

6. It is significant to note that it is not in dispute that the marriage of Sakshi was solemnized with respondent No.2 Suraj on 10.06.2015 and that she started residing at her maternal house from 17.04.2016 initially. Further, the concerned Magistrate before whom Sakshi had fled proceeding under D.V. Act, had directed respondent No.2 husband to provide interim maintenance of Rs. 2,000/- per month and also monthly amount of Rs. 1500/- as a rent for Sakshi to make arrangement for her residence independently. However, the said order was modified by the learned Additional Sessions Judge, Udgir and instead of paying the rent to Sakshi, he directed the respondent husband as well as present applicants to give her accommodation in the shared household. It is also not in dispute that the shared household is in the name of present applicant No.1 Umakant who is father-in-law of Sakshi and it is the contention of both the applicants, who are in-laws of Sakshi, that they purchased the aforesaid shared household out of their own savings. However, it is now settled that even if the shared household stands in the name of in-laws, the wife can very well claim residence order in respect of such shared household.

7. The applicants have therefore challenged the impugned order dated 12.02.2018 whereby Sakshi was permitted to occupy the shared household and also the subsequent order of the concerned Magistrate, Udgir dated 23.10.2021 whereby the applicants as well as present respondent No. 2 - husband are directed to provide one room on the ground floor of the shared household

alongwith facility of WC, bathroom and electricity. The main ground for challenging both these orders by the present applicants is that Sakshi cannot enforce these orders since the marriage between Sakshi and her husband has been dissolved long back and more particularly on 10.07.2018 when the learned Civil Judge (Senior Division), Udgir passed an order of dissolution of marriage between Sakshi and her husband. Thus, the applicants are claiming that Sakshi being a divorced wife, cannot claim residence order or she cannot enforce the earlier residence order, which was passed during the subsistence of her marriage with respondent No. 2.

8. Learned Counsel for the applicants, during the course of argument, fairly admitted that after passing the order dated 12.02.2018 by the Additional Sessions Judge, Udgir Sakshi was allowed to occupy the shared household for some period and thereafter the settlement between Sakshi and her husband took place and she went to her husband for cohabitation at Pune on 11.06.2018. This fact also gains support from the impugned order below Exh. 39 passed by the concerned Magistrate which is under challenge in the Criminal Application No. 2716 of 2021. Thus, it is apparent from the record that on 11.06.2018, despite the implementation of order dated 12.02.2018, Sakshi left the shared household during subsistence of her marriage with respondent No.2 Suraj. Further, it is not in dispute that on

10. 07.2018 there was divorce between Sakshi and Suraj as per the order of the learned Civil Judge (Senior Division), Udgir. The learned Counsel for Sakshi vehemently submitted that when Sakshi had gone to Pune on 11.06.2018 with her husband Suraj, he did not treat her properly and ultimately drove her out of the house, and therefore, she was constrained to reside with her parents. He pointed out that though there was a divorce decree, but it was obtained by playing fraud by husband Suraj, and therefore, it was under challenge by way of filing appeal by Sakshi against the same.

9. It is extremely important to note that whatever may be the contentions by Sakshi and Suraj against each other, but existence of divorce decree, though under challenge, cannot be disputed. Further, it is important to note that though the order dated 12.02.2018 was implemented earlier and Sakshi was allowed to reside in the shared household, but in the year 2018 itself and just one month prior to the decree of divorce, she had already left the shared household. Learned Counsel for the applicants pointed out that the husband Suraj, after passing of divorce decree, waited for about two years and thereafter got married for second time. As such, it is claimed on behalf of the applicants that after dissolution of marriage between Sakshi and her husband Suraj, she is not entitled to execute the order dated 12.02.2018 again, especially when she is no more in the domestic relationship with her husband Suraj.

10. Learned Counsel for the applicants relied upon the judgments as mentioned herein-above. This Court, in the case of Gautam Sambhaji Narnaware vs Archana Sunil Narnaware (supra) has observed that a woman cannot claim right of

residence under provisions of D.V. Act when the house is owned by her father-in-law. However, this aspect is now gone and it is now settled that a woman can claim right of residence in the shared household irrespective of its ownership. However, the Hon'ble Supreme Court, in the case of Satish Chander Ahuja vs Sneha Ahuja (supra), has cautioned the Courts by making the following observation :

"right to residence under Section 19 is not an indefeasible right of residence in shared household especially when the daughter-in-law is pitted against aged father-in-law and mother-in-law. The senior citizens in the evening of their life are also entitled to live peacefully not haunted by marital discord between their son and daughter-in-law. While granting relief both in application under Section 12 of Act, 2005 or in any civil proceedings, the Court has to balance the rights of both the parties".

11. Both the above-mentioned judgments are in respect of the right of woman whose marriage was still in subsistence. In the instant case, the applicants are old aged in-laws of Sakshi who are seeking balancing order from the Courts. They claim that instead of accommodating her in the shared household, certain rent amount could have been granted to Sakshi from her husband Suraj. However, now they are claiming that since there is divorce between Sakshi and Suraj, she cannot claim the residence order as of right.

12. On the contrary, learned Counsel for Sakshi also heavily relied on the judgment of this Court in the case of Bharati Naik vs Ravi Ramnath Halarnkar (supra), wherein it has been observed that even a divorced wife can invoke provisions of the Act by treating her as an aggrieved person as defined in the Act, so as to cover the past relationship between herself and her husband. Further, learned Counsel also relied on the judgment of Hon'ble Apex Court in the case of Juveria Abdul Majid Patni vs Atif Iqbal Mansoori (supra), wherein an application for seeking the relief under the provisions of Sections 18 to 23 has been held maintainable when the wife lived together in the shared household with her husband through relationship in nature of marriage and if domestic violence had taken place. In short, it has been held that subsequent decree of divorce would not absolve the husband from his liability for the offence. However, though such observation is there, in that case the alleged divorce not really found to have taken place.

13. Learned Counsel for the applicants submits that the citations relied upon on behalf of respondent Sakshi are not helpful in the instant case since the Division Bench of Kerala High Court has decided the reference directly on the issue involved in this matter. He relied on the judgment in the case of Ramchandra Warrior vs Jayasree and another (supra), wherein the learned Division Bench of Kerala High Court was deciding reference made by a Single Judge, finding conflict in the decisions rendered by two other Single Judges in Sulaiman Kunju vs Nabeesa Beevi [2015 (3) KHC 5] and Bipin vs Meera [2016 (5) KHC 367]. The main question involved in the reference was, as to whether a divorced woman is

entitled to invoke the provisions of D.V. Act as against her husband. Learned Division Bench of Kerala High Court, while answering the aforesaid reference, had also taken into consideration various decisions passed by the various High Courts and Hon'ble Supreme Court, which includes the case of Juveria Abdul Majid Patni vs Atif Iqbal Mansoori and Satish Chandar Ahuja vs Sneha Ahuja (supra), relied by the rival parties.

14. The right to reside in a shared household is specifically conferred under Section 17 of the D.V. Act, which reads 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."

15. The learned Division Bench of Kerala High Court, by discussing various cases has made the following observations :

"7. Juveriya Abdul Majeed held that a subsequent decree of divorce will not absolve the liability of the husband under the DV Act for an act of domestic violence committed earlier. The wife sought protection under S.18, monetary relief under S.20, custody order under S.21, and compensation under S.22. Therein the husband asserted a divorce in accordance with the Muslim Personal Law, for which no evidence was placed before Court. It was authoritatively declared that even if it is presumed that there was a divorce, the claim of the wife with respect to the obligations arising under the past relationship will not stand effaced; to enforce which the provisions of the DV Act be invoked. In fact the learned Judges distinguished the decision in Inderjit Singh Grewal where an identical issue on different facts was considered. Therein the spouses had applied under S.13B of the HMA and after the statutory period their statements were recorded based on which the marriage stood dissolved. Later, contention was raised by the wife that the decree obtained was a sham, insofar as the spouses lived together even after the decree of divorce. The complaint filed before the Police was referred, finding no case made out against the divorced husband. The divorced wife invoked the provisions of the DV Act and also filed a civil suit for declaration of the decree of divorce as null and void; having been obtained by fraud. The Hon'ble Supreme Court found that the respondent wife had been consistently before the Family Court, admitted to the marriage having broken down and there was enough evidence that they were living separately after the divorce, with the custody of the only child conceded to the husband. It was held that the Magistrates Court, under the DV Act cannot sit in appeal from the decree of divorce. Allowing the appeal the proceedings before the Magistrate were found

to be incompetent, but leaving open the divorced wife's remedy before the civil court.

8. Having gone through the precedents of the Hon'ble Supreme Court, we pertinently notice that in none of these decisions the question arose, as to whether a divorced wife would be entitled to seek a residence order so as to continue living in the shared household, which was shared at the time of the subsisting marital relationship ie, when the relationship was cordial or rather it had not broken down completely. We specifically observe so since rare would be cases where the spouses approach the Family Court to file and contest a divorce petition, when they are living together in the same house. But we are conscious that there could be such instances also since human conduct can never be put in a strait jacket. If after divorce the wife is allowed to invoke the right conferred under S.17 then it could lead to absurd results. But we have to keep in mind that the Hon'ble Supreme Court had time and again held that a divorced wife could invoke the provisions of the the DV Act for the purpose of enforcing obligations arising from the past relationship like custody, maintenance and other monetary reliefs, compensation and even orders ensuring personal safety of the wife and children. In that context the definition of 'aggrieved person' cannot be given a restrictive meaning only in cases where a residence order is sought under S.19. The definition clause of 'aggrieved person', as per the dictum of the Hon'ble Supreme Court includes a divorced woman and Sulaiman Kunju to that extent is not good law.

9. In this context we refer to Satish Chander Ahooja v. Sneha Ahooja 2021(1) SCC 414 wherein a three Judge Bench of the Hon'ble Supreme Court examined the Statement of Objects and Reasons of the DV Act and opined that the enactment was a mile stone for protection of women in the country. The learned Judges noticed that domestic violence in this country is rampant and often woman resigns to her fate, suffering violence and discrimination, while discharging the different roles she plays in a family. Often the women are cowed down, for reason of the patriarchal society still demanding her to be subservient to the man coupled with the social stigma attached to any measure of retaliation. The Statement of Objects and Reasons, it was observed, refer to three International Conventions recommending participating States to take measures including legislation to protect women against violence; even that occurring within the family”.

16. Thereafter the learned Kerla High Court has also made following observations in para 12 :

“12. Having found, on the strength of binding precedents that even a divorced woman could avail the remedy under the DV Act, we are still faced with the question of whether a divorced woman can seek an order of residence under S.19, as per the right conferred under S.17. The reliefs available under the DV Act are protection orders under S.18, residence orders under S.19, monetary reliefs under S.20, custody orders under S.21, compensation orders under S.22

as also interim and ex parte orders under S.23. As has been held by the Hon'ble Supreme Court in Kunapareddy the remedies provided under the DV Act enable realization of a number of civil rights available to a distressed woman. Pertinently with respect to the right of residence there is specific conferment of that right under the DV Act itself by S.17. As we noticed, the precedents we discussed above did not specifically deal with the question of a divorced woman enforcing the right of residence under S.17. We have not discussed the numerous decisions of the various High Courts produced before us, because most of them, again, are on the aspect of whether a divorced woman would fall under the definition of 'aggrieved person'. We have come across two decisions of Single Judges of the High Courts of Bombay and Chhattisgarh High Courts, (Bharati Naik v. Ravi Ramnath Halamkar and another[2011 CriLJ 3572] and Ajay Kumar Reddy and others v. State of Chhattisgarh and another [2018 CriLJ 1155]), where the specific question of a residence order claimed by a divorced wife came to be considered. In both the said cases the divorced wife was living in the shared household, when the Magistrates Court was approached, under the DV Act”.

17. Thereafter the learned Division Bench of Kerala High Court answered the reference as below :

“On the above reasoning, we answer the reference as follows:

(i) A divorced wife would not be entitled to the right of residence conferred under S.17 under the Protection of Women from Domestic Violence Act, 2005, for reason of that right being available only to a woman in a domestic relationship.

(ii) A divorced wife would be included under the definition 'aggrieved person'. A divorced wife occupying a shared household can be evicted only in accordance with law. A divorced wife can approach the Magistrate's Court for an order under S.19 if she is residing in the shared household. The residence orders passed in such cases, would be subject to any proceeding for eviction in accordance with law, initiated by the husband, as contemplated under S.17(2).

(iii) There can be no order to put a divorced woman in possession of a shared household, from where she had separated long back, and the relief can only be of restraining dispossession”.

18. Thus, it can be seen that after considering the various cases, the learned Division Bench of Kerala High Court has held that a divorced wife would not be entitled to the right of residence conferred under Section 17 of the D.V. Act since the said right is not available to her as she was not in domestic relationship. However, divorced wife was included in the definition of aggrieved person under the Act only if she was found occupying the shared household and cannot be evicted therefrom without any due process of law. Further, an opportunity has also been given to the divorced wife for approaching the Magistrate's Court for an order under Section 19 of the D.V. Act only if she is residing in the shared household and the residence order passed in such cases would be subject to any proceeding for eviction in accordance with law initiated by the husband, as

contemplated under Section 17 (2) of the Act. Thus, in short, it has been decided that divorced wife can claim residence order only if she is occupying the shared household. The third clause of the answer of reference is most important in respect of the controversy in the instant matter, which specifically and categorically bars the Court from passing order to put a divorced woman in possession of a shared household from where she had separated long back and the relief can only be of restraining dispossession. This third clause clearly puts an end to the disputed in this matter. As such, Sakshi cannot take resort to the earlier residence order when her marriage with respondent No. 2 Suraj has been dissolved by a divorce decree passed by the Court having proper jurisdiction and especially when she had already left her shared household four years back. Under the circumstances, Sakshi is not even entitled for the relief of restraining dispossession since she is not in possession of the shared household.

19. Learned Counsel for Sakshi pointed out that even the learned Division Bench of Kerala High Court, in the aforesaid judgment, though answered reference as mentioned above, ultimately upheld the impugned orders therein, which allowed the wife to reside in the shared household and it was directed that the husband was to seek for modification or revocation of the same under sub-section (2) of Section 25 of the D.V. Act, which reads as under :

"25. Duration and alteration of orders.—

(1) x x x

(2) If the Magistrate, on receipt of an application from the aggrieved person or the respondent, is satisfied that there is a change in the circumstances requiring alteration, modification or revocation of any order made under this Act, he may, for reasons to be recorded in writing pass such order, as he may deem appropriate".

20. However, in the instant matter, the applicants, who are entitled to challenge both the impugned orders, had in fact raised the ground of changed circumstances before the concerned Magistrate at Udgir, by mentioning that there was divorce between Sakshi and Suraj due to which she lost right to reside in the shared household. However, in view of the observation made by the learned Division Bench of Kerala High Court in the aforesaid case, the learned Magistrate should have considered such claim of the applicants for modification or revocation of the residence order. Under such circumstances and considering the peculiar facts of this case, I come to the conclusion that Sakshi being a divorced wife, is not entitled to claim residence order or implementation of earlier residence order in the light of changed circumstances i.e. after her subsequent divorce for occupying the shared household after leaving the same long back and prior to her divorce.

21. Learned Counsel for respondent Sakshi also tried to argue that divorce decree is under challenge by way of appeal filed by Sakshi with allegation that it was obtained by fraud. The appeal will be decided in due course and this Court

cannot sit as an appellate authority for the same and at this juncture the decree of divorce dated 10.07.2018 is not at all set aside. Therefore, mere pendency of an appeal will not come into way of the present applicants for challenging the impugned orders herein.

22. Considering all the above aspects and especially the observation of the learned Division Bench of Kerala High Court while answering the reference about the right of divorced wife for seeking residence order or other orders under the D.V. Act, I am of the opinion that the learned Magistrate has definitely erred in directing the applicants to provide one room to Sakshi in the shared household alongwith the facility of WC, bathroom and electricity. As such, the following order is passed.

#### ORDER

(i) Criminal Revision Application No. 59 of 2018 and Criminal Application No. 2716 of 2021 are hereby allowed.

(ii) The impugned orders dated 12.02.2018 and 23.10.2021 are hereby set aside.

(iii) However, it is made clear that respondent No.1 Sakshi is at liberty to seek alternative remedy of claiming rent for her accommodation instead of occupying the shared household, from respondent No.2 i.e. her husband.