

MHTH060006522023



Presented on : 28/02/2023
Registered on : 28/02/2023
Decided on : 31/10/2023
Duration : Y00 M 08 D 03.

IN THE COURT OF ADDITIONAL SESSIONS JUDGE, KALYAN,
AT : KALYAN
(Presided over by P. R. Ashturkar)

PWDVA APPEAL NO. 12/2023.
Exh.No.:- 22.

1. Smt. Neha Naresh Mane

Age : 43 years, Occ. : Nil.
R/at : Amberstar, C 102, Khambalpada,
near R.B.T. school, Dombivali(E),
Tal. Kalyan, Dist.Thane.

... Appellant.

Versus

1. Shri. Naresh Vasudev Mane

Age : 50 years. Occ. : Service.
Office at : Cipla R & D center,
L.B.S. Marg, Vikroli (W),
Mumbai No. 89.

2. Shri. Suresh Vasudev Mane

Age : 59 years, Occ. Service.
R/at : Fenil Apartment, ground floor,
R. No. 3, near Mukta Vidhyamandir,
Hanuman temple, Ajadegaon,
Dombivali (E), Tal. Kalyan
Dist. Thane.

... Respondents.

Ld. Adv. Shri. C.J. Waghmare for appellant.

Ld. Adv. Smt. Jyoti Shekade-Parab & H.D. Magar for respondents .

-: JUDGMENT :-

(Delivered on this 31st day of October, 2023)

1] This appeal is directed against the order dated 08.02.2023 passed by Ld. Judicial Magistrate, F.C., 3rd Court, Kalyan in PWDVA No.121/2019 by which the applicant is directed to strike out or delete name of respondent no. 3 from main application and further directed to carry out necessary and ancillary amendments.

2] Before deciding the merits, it is necessary to put on record that after filing of the appeal interim stay was granted and the entire matter was sent to the copying department for issuing certified copies. Unfortunately, thereafter the original brief went missing and could not be traced out despite repetitive attempts. However, as the stay was already granted, both the parties fairly stated across the bar that they are ready to furnish all the copies of original papers and requested to reconstruct the matter. They have also furnished an application/pursis to that effect. Considering the urgency and request of both the parties an order was passed and after reconstructing the matter it is finally heard.

3] Facts giving rise to this appeal in brief are as under :

(Parties in this appeal hereinafter will be addressed as per their original status in the PWDVA Application No.121/2019 pending before the Ld. JMFC, 3rd Court Kalyan and accordingly, the

appellant will be addressed as applicant and the respondents will be addressed as opponents.)

4] The applicant filed an application under section 18,19,20,21,22,23 of the Protection of Women from Domestic Violence Act (hereinafter referred as Domestic Violence Act). In the said application she arrayed in all four opponents. Opponent No.3, Suresh Vasudev Mane is the brother of opponent No. 1, who is husband of applicant. Said opponent No. 3 filed an application before trial court to delete him from the proceeding. The trial court passed an order below Exh. 21 as thereby allowed deletion of respondent No. 3 from the proceeding. Being aggrieved by the said order, present appeal is filed.

5] The respondent appeared and filed his say. He denied all the contents and allegations in toto. According to him, he is no way related with the applicant and his brothers domestic quarrel. The applicant purposefully added him as a party so as to harass him. He never resided with the applicant and his brother. In other words according to him, he never lived in domestic relationship with the applicant. As he is no way related regarding the domestic issues between applicant and his brother he has sought deletion of his name and it is accordingly allowed. According to him, there is no illegality or irregularity in the order of the trial court and, therefore, he prayed that, appeal be dismissed.

6] Being aggrieved by said order, the applicant has preferred this appeal inter alia contending that the Ld. Magistrate failed to consider facts and circumstances. He also failed to appreciate law properly. The applicant, therefore, prayed for allowing her appeal by setting aside the order passed by the Ld. Magistrate dated 08.02.2023.

7] Heard Ld. Adv. Shri. Waghmare for applicant/appellant and advocate Shri. Magar for the Respondents/opponents. Their submissions are as per contents of their appeal and reply.

8] After considering the submissions put-forth by the Ld. advocates for both the parties, following points arise for my determination to which I give my findings along with the reasons discussed hereinafter :

POINTS	FINDINGS
1] Order passed by Ld. Judicial Magistrate F.C., 3 rd Court Kalyan in PWDVA Application No. 121/2019 dated 08.02.2023 warrants interference ?	No.
2] What order ?	Appeal is dismissed.

-: REASONS :-

As to point No.1 :

9] This appeal is on very limited point as to whether the respondent No.3 had ever stayed in domestic relationship in a shared household with the applicant.

10] While deciding this limited point of controversy, reference of section 2(f), 2(s), and 2 (q) in the definition clause of the Protection of Woman from Domestic Violence Act is very important. Those are reproduced herein after for the sake of clarity.

(f) "domestic relationship" means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family;

(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:

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 house hold 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;

11] As the issue is directly related regarding the status of respondent, it is necessary to discuss section 2(q) specifically.

As per section 2(q) a respondent means any adult male person who is, or has been, in a domestic relationship with the aggrieved person. So also, as per section 2(f) domestic relationship means a relationship between two persons who live or have, **at any point of time, lived together in a shared household**, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are **family members living together as a joint family**; and lastly "shared household" means a household where the person aggrieved (applicant) lives **or at any stage has lived** in a domestic relationship either singly or along with the respondent.

12] Thus, it is crystal clear that applicant will have to prima facie show that the respondent had shared household with her or she had ever lived in domestic relationship with him. This takes me to the contents of pleading. In the entire application the applicant nowhere stated as to when and during which period the respondent shared household with her. The entire petition do not whisper any such date or period. On the contrary, what reveals from the contents of petition is that since the marriage the applicant resided with her husband i.e. respondent No.1. Thus, only because the respondent No.3 is the brother of respondent No. 1 do not automatically becomes a necessary party to the petition filed by applicant that too under Domestic Violence Act.

13] Though it is argued that respondent No. 3 had instigated the respondent No.1 or abused to the applicant, on the basis of said pleading it cannot be said that respondent No. 3 falls in the category of respondent as mentioned in 2(q) of the aforesaid Act. If at all their allegations are presumed to be true there are altogether different remedies under law but definitely not under Domestic Violence Act. The trial court had elaborately discussed all these points. There appears no any illegality or irregularity in the order of trial Court. As the applicant failed to prima facie show that respondent no. 3 had ever shared household with her or had ever lived in domestic relationship, the appeal fails on every count. Hence, the order.

-: ORDER :-

1. The PWDVA Appeal No.12/2023 stands dismissed.
 2. Order of Trial court is confirmed.
 3. Inform Ld. Trial Court accordingly.
- (Pronounced in open court.)

Kalyan.
31.10.2023.

Sd/
(P R. AShturkar)
Additional Sessions Judge,
Kalyan.