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1 3 2

IN THE COURT OF SESSIONS JUDGE,
SURENDRANAGAR

CRIMINAL APPEAL No. 269/2024

Exh. 10

Sejalben Jigneshbhai Shah,
Res. At : “Kshemjyot” , behind T.B.Hospital,
Near Nirmalnagar,Surendranagar.

...Appellant.
(Original Applicant)

V E R S U S

1. The State,
2. Manjulaben Himmatlal Shah,
3. Bhavnaben Himmatlal Shah,
Nos.2,3 Res.At ;Hariprakashnagar,
Saraswatinagar-2 ,near Jalaram Hall,
Surendranagar.
4. Sangitaben Himmatlal Shah
w/o. Rajeshbhai Sanghvi,
Res.At ; Limbdi no utaro, Vadipara,
Surendranagar.
5. Pritiben Himmatlal Shah,
w/o. Kaushikkumar Maheta,
Res.At ; Switi Beauty Parlour,
behind Shiv Hotel, 60 feet road,
Surendranagar.

....Respondents
(Nos.2 to 5. Original Opponent Nos.2 to 5)

Sub.: **Appeal filed under Section 29 of the**
Protection of Women from Domestic
Violence Act,2005 against the judgment
and order dated 24/09/2024 passed by the
learned Addl. JMFC, Surendranagar in
Criminal Misc. Application No. 132/2019.

Appearance :

Mr.K.K.Ramanuj, Learned Advocate for the Appellant.

Mr.R.B.Raol, Learned A.P.P. for the Respondent No.1-State.

Mr.N.B.Lakhtariya, L.A. for the Respondent Nos.2 to 5.

:: J U D G M E N T ::

1. The appellant/original applicant has preferred the present appeal under Section 29 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the “D.V. Act”) challenging the further order and judgment dated 24/09/2024 passed below Exh.32 by the learned Additional JMFC, Surendranagar in Criminal Misc. Application No. 132/2019, whereby the learned Trial Court confirmed the negative finding recorded in respect of Issue No. 3 vide judgment and order dated 17/02/2024.

1.1 It is pertinent to note that the matter was earlier remanded vide judgment and order dated 12/07/2024 passed in Criminal Appeal No. 65/2024 by the then learned Sessions Judge, Surendranagar. Thereafter, upon recording further evidence and after hearing both sides, the learned Trial Court vide the impugned judgment and order date 24/09/2024 observed and concluded that no grounds were made out to warrant any interference with or modification of the earlier decision. Consequently, it was held that the applicant is not entitled to suitable accommodation or alternative monthly rent from respondent Nos. 2 to 5/original opponent Nos.2 to 5 under Section 19 of the D.V.Act.

2. The respondents have been duly served with the notices and the respondent No.1 State has appeared through learned A.P.P. Mr.R.B.Raol and on behalf of the respondent Nos.2 to 5/ original opponent Nos.2 to 5 learned advocate Mr.N.B.Lakhtariya has appeared.

3. The short facts giving rise to the present appeal are that the present appellant/ original applicant (hereinafter referred to as “the applicant”) filed an application u/s. 12 of D.V.Act against the respondent Nos.2 to 5/ original opponent Nos.2 to 5 (hereinafter referred to as “the opponents”) before the learned trial court and as per the case of the applicant, the marriage of the applicant was performed with the original opponent No.1 husband as per Hindu rituals on 02/12/2004 and from that date they became the husband and wife and the opponent No.2 is the mother in law and opponent Nos.3 to 5 are the sisters in law of the applicant. After the marriage took place, the applicant went to her matrimonial home to reside with the opponents and initially marriage life was going smoothly and out of this wedlock two daughters namely Hitakshi aged 14 years and Jinal aged 8 years were born and subsequently the opponent Nos.1 to 3 started taunting the applicant and giving mental torture to her and abusing the parents of the applicant and she was subjected to physical assault also and subsequently prior to seven months of the filing of the application, the applicant with her minor daughters were driven out from her matrimonial home and the opponent No.1 neglected to maintain the applicant and minor daughters and hence, the applicant filed the application against

the opponents praying several reliefs u/s.18,19,20,21 and 22 of the D.V.Act.

3.1 After recording the evidence led by both the sides and hearing the respective parties, vide the judgment and order dated 17/02/2024 at Exh.32, the learned trial court was pleased to partly allow the application of the applicant and directed the opponent Nos.2,3 to handover the documents of the applicant and her minor daughters which are in their possession and directed the opponent Nos.2,3 to jointly and severally to pay Rs.25000/- to the applicant as compensation for the domestic violence suffered by the applicant and also directed the opponent Nos.2,3 to pay Rs.50,000/- to each minor daughter i.e. total Rs.1,00,000/- to both the minor daughters of the applicant and also awarded cost of the application of Rs.1,500/- to the applicant.

3.2 Being aggrieved and dissatisfied with the judgment and order dated 17/02/2024 passed at Exh.32 by the learned Trial Court, the present appellant/original applicant preferred Criminal Appeal No. 65/2024 before this Court on 15/03/2024. The primary ground of challenge was that while deciding Issue No. 3, the learned Trial Court, without affording proper opportunity to the applicant, observed and recorded a finding that the interim order passed below application Exh.18 had become infructuous and therefore required to be set aside and that the applicant-wife was not entitled to an order of residence under Section 19 of the D.V. Act. However, in the operative part of the judgment, no specific order was passed setting aside the interim relief granted below Exh.18, and only such observations were made in the body

of the judgment. In view of the same, learned advocate Mr. K.K. Ramanuj appearing for the applicant prayed for setting aside the impugned judgment and order dated 17/02/2024. Upon considering the facts, circumstances, and the provisions of law, the then learned Sessions Judge was pleased to set aside the judgment and order dated 17/02/2024 passed by the learned Additional JMFC, Surendranagar in Criminal Misc. Application No.132/2019 and remanded the matter to the learned Trial Court for fresh adjudication of Issue No.3, particularly in respect of the interim order passed under Section 23 of the D.V. Act below application Exh.18, after giving opportunity to both parties to adduce evidence. It was further kept open for the respondents/original opponents to move an application under Section 25(2) of the D.V. Act before the learned Trial Court.

3.3 In view of the above, since finding and conclusion recorded by the learned trial court vide the judgment and order dated 17/02/2024 at Exh.32 recorded by the learned trial court vide issue Nos.1,2,4,5 and 6 were remained confirmed in the judgment and order dated 12/07/2024 passed by the then Session Judge, Surendranagar in Criminal Appeal No.65/2024 and the said decision of the then Session Judge, Surendranagar was also not challenged by the appellant/ original applicant, after remanding the matter, the matter learned trial court has recorded the evidence led by both the sides and thereafter the learned trial court has conclusively decided the issued No.3 and vide further order dated 24/09/2024 passed below the judgment at Exh.32, the learned trial court was pleased to hold that the applicant is not entitled to suitable accommodation or alternative monthly rent

from respondent Nos. 2 to 5/original opponent Nos.2 to 5 under Section 19 of the D.V.Act.

3.4 Being aggrieved and dissatisfied by the said further order dated 24/09/2024 passed by the learned Additional JMFC, Surendranagar in Criminal Misc. Application No. 132/2019 below the judgment at Exh.32, the appellant/ original applicant has preferred the present appeal.

4. Learned advocate Mr.K.K.Ramanuj for the present appellant/ original applicant has submitted that the judgment and order passed by the learned trial court is expressly illegal and against the settled principles of law and is required to be set aside. That though the learned trial court has answered Issue No.1 in the affirmative and held that domestic violence is proved, it has committed serious errors in law and facts while denying the consequential relief of residence under Section 19 of the Protection of Women from Domestic Violence Act. Once domestic violence is established, the applicant, being an aggrieved person within the meaning of Section 2(a) of the Act, is legally entitled to protection and residence order, including suitable accommodation or alternative rent, and the denial of such relief is contradictory and unsustainable. That the applicant has produced affidavit evidence at Exh.39 and written submissions at Exh.52, clearly establishing her requirement of accommodation and the fact that she has no independent residential arrangement. The learned Court below has failed to properly consider the admissions given by witness Pritiben Kaushikkumar Mehta in cross-examination, wherein she

admitted that the house was originally in the name of her brother and mother, that the upper floor was constructed subsequently, that the document was transferred in the name of three sisters and that no written proof of payment or consideration has been produced. These admissions cast serious doubt on the genuineness of the transfer and indicate that the transaction was made to defeat the rights of the applicant and her minor daughters, yet the Court below has ignored these material aspects while deciding Issue No.3. It is also submitted that the marriage between the applicant and the son of respondent No.2 is undisputed and that two daughters were born from the wedlock. The applicant resided in the shared household after marriage and since 2019 has been living separately with her daughters without any financial assistance from the respondents. Neither maintenance nor compensation has been paid. In such circumstances, the applicant has made out a prima facie case for residence and protection under the Act. The transfer of property in favour of the daughters in joint tenancy and the pendency of Civil Suit No.205/23 challenging the said transaction have not been properly considered. If possession of the first floor is taken from the applicant during pendency of the proceedings, she and her daughters would be rendered destitute. It is lastly submitted that the order deleting party Nos.4 and 5 is contrary to law as they are necessary and proper parties for effective adjudication. Therefore, the impugned order deserves to be quashed and set aside and the applicant is entitled to appropriate residence order or alternative accommodation in accordance with law.

5. Learned advocate Mr.N.B.Lakhtariya for the respondent No.2 to 5/ original opponent Nos.2 to 5 has supported the impugned order and submitted that the learned Trial Court has properly appreciated the oral and documentary evidence and passed a reasoned order which does not warrant interference in this appeal. It is contended that even if domestic violence is held to be proved, the grant of relief under Section 19 of the Protection of Women from Domestic Violence Act is not automatic, and the applicant must independently establish her legal entitlement to a residence order or alternative accommodation in accordance with the statutory requirements and facts of the case. That the applicant has failed to establish that the property in question is a shared household or that she has no alternative accommodation. The title of the property stands in the names of other lawful owners and any challenge to the transfer is already pending before the competent civil court. That the learned Trial Court has rightly exercised its discretion and committed no illegality or perversity. Therefore, learned advocate Mr.N.B.Lakhtariya has submitted that the appeal deserves to be dismissed. Learned A.P.P. Mr.R.B.Raol for the respondent No.1 State has requested to pass necessary order.

6. On perusal of the record and proceedings of Criminal Misc. Application No.132/2019, impugned judgment and order passed by the learned trial court, appeal memo and submissions of the parties, the following points are required to be considered for determination of the appeal:-

∴ POINTS ∴

1. Whether the appellant/original applicant proves that the further judgment and order dated 24/09/2024 passed below Exh.32 by the learned Additional JMFC, Surendranagar in Criminal Misc. Application No.132/2019, whereby the learned Magistrate has confirmed the negative finding recorded on Issue No.3 vide judgment and order dated 17/02/2024 and held that the appellant is not entitled to suitable accommodation or alternative monthly rent from respondent Nos.2 to 5 under Section 19 of the Protection of Women from Domestic Violence Act, is ex-facie illegal, contrary to settled principles of law, and liable to be set aside?
2. What order ?
7. My findings on the above points are as under.
 1. In the negative.
 2. As per final order.

-:: REASONS ::-

POINT No. 1 :-

8. So far the facts of the present case are concerned, the same have already been narrated hereinabove.
9. It is pertinent to note that after the matter was remanded vide judgment and order dated 12/07/2024 passed in Criminal Appeal No.65 of 2024 by the learned Sessions Judge, Surendranagar, for fresh consideration of Issue No.3, particularly with regard to the interim order passed under Section 23 below Exh.18 and the entitlement of the original applicant to suitable accommodation or alternative monthly rent under Section 19 of

the Protection of Women from Domestic Violence Act, the learned Trial Court afforded full opportunity to both sides to lead additional evidence.

10. It appears from the record that pursuant to the remand, the original applicant filed her additional chief affidavit at Exh.39 reiterating her claim for residence and alternative rent. On the other hand, original opponent No.5 filed her chief affidavit at Exh.45 opposing the said claim and supporting the earlier finding of the learned trial court. The opponents has examined Harishchandrasinh Lakhdhirsinh Zala, Deputy Engineer, PGVCL, Surendranagar City Sub Division-1, at Exh.46. The said witness has produced documentary evidence including the copy of the application submitted by the applicant for electricity connection at Exh.47 with the copy of the registered sale deed of the premise of the original applicant and the electricity consumption readings along with the corresponding bills at Exh.48 and the aforesaid parties have been cross examined by the learned advocate for the other side.

11. I have carefully gone through the impugned judgment dated 17/02/2024 passed below Exh.32 in Criminal Misc. Application No.132/2019 by the learned Additional JMFC, Surendranagar, the further order dated 24/09/2024 passed below Exh.32 after remand, the oral and documentary evidence led by both the sides, and the grounds urged in the present appeal.

12. It clearly emerges from the evidence on more particularly from the cross-examination of the applicant that

material admissions have come on record. The applicant has admitted that certain facts stated in the affidavit at Exh.39 were not pleaded in the original application, that the possession of the disputed premises is presently with the in-laws after execution of the registered sale deed, that no documentary proof has been produced to establish continuous residence on the upper floor, that no documents have been produced to show that the applicant is residing in rented premises. The applicant has filed initially her examination in chief at Exh.9 and in her cross examination, she has admitted that she has owned a house at Mahalaxmi Park, Dalmill road area since 16/01/2021 by virtue of the sale deed. Further, it is admitted that she is residing in this house for the last one and haft year. Moreover, as per the further chief examination and cross-examination of the applicant at Exh.39, though it is stated that the house owned by her is mortgaged with Indian Bank, no supporting documents are produced and the bank has not taken possession of her house. These admissions materially affect the credibility of the claim for residence order.

12.1 It appears that during the pendency of the trial, the husband of the appellant/ original applicant, who is the original opponent No.1 expired on 24/10/2021 and the death certificate is also submitted in the record and proceedings at Exh.16. Moreover, during the pendency of this appeal, learned advocate for the applicant has submitted a copy of the pay slip of the applicant at Mark-9/1 and on perusal of the same, it appears that the applicant is getting Rs.89,172/- per month as salary. Furthermore, it is also stated by the learned advocate for the applicant that the applicant is paying EMI Rs.25,000/- per

month towards house loan meaning thereby, the applicant is having sufficient accommodation and she has her own house in her name and therefore, it cannot be said that the applicant is residing in a destitute situation, in rented premise and is dependent on others and therefore, it is clear that the applicant does not require a shared household in her matrimonial home or rent for alternative accommodation.

13. The evidence of original opponent No.5 Pritiben Kaushikkumar Mehta, read as a whole, shows that the house was transferred through a registered document prior to the death of the husband and that the question of title is already the subject matter of Regular Civil Suit No.205/2023 pending before the competent Civil Court. Hence, as per settled law proceedings under the Domestic Violence Act cannot be converted into proceedings for adjudication of title or cancellation of registered documents. Until such document is set aside by a competent court, the transferees cannot be divested of their ownership rights in summary proceedings.

14. Further, the documentary evidence from P.G.V.C.L. at Exh.47 and Exh.48 shows that electricity connection was obtained and bills were generated in respect of another premises owned by the original applicant, thereby supporting the case of the original opponents that the applicant has alternative residential arrangement. The original applicant has failed to produce cogent evidence to establish that she is without any accommodation or that she is paying any rent for her accommodation or that original opponent Nos.2 to 5 are under a

legal obligation to provide alternative rent in the facts of the present case.

15. The then learned Sessions Judge, Surendranagar had remanded the matter for fresh consideration, pursuant to which both the parties were afforded sufficient opportunity to lead additional evidence and advance their arguments. From the evidence available on record, it has also emerged that the original applicant had purchased a parcel of land in her own name, obtained a loan for that purpose, and had applied to P.G.V.C.L. for an electricity connection in respect of the house constructed on the said land. The documentary evidence produced through the concerned officer of P.G.V.C.L. supports this position and was duly considered while deciding the entitlement of the applicant under Section 19 of the Protection of Women from Domestic Violence Act. Hence, considering the entire facts, circumstances and evidence on record, the learned trial court has rightly held vide the impugned order dated 24/09/2024 that present appellant/ original applicant is not entitled to suitable accommodation or alternative monthly rent from respondent Nos.2 to 5 under Section 19 of the Protection of Women from Domestic Violence Act. The learned trial court has reconsidered the matter and passed a reasoned order. Hence, no perversity, illegality or jurisdictional error is demonstrated in the appreciation of evidence or application of law.

15. In appellate jurisdiction, interference is justified only when the findings are arbitrary, perverse or contrary to law. In the present case, the conclusions drawn by the learned Trial

Court are based on proper appreciation of evidence and settled principles governing Section 19 of the Protection of Women from Domestic Violence Act, 2005. The appellant has failed to establish that the impugned order is ex facie illegal or against settled principles of law.

17. Accordingly, this Court finds no justifiable reason to interfere with the finding recorded vide further judgment and order dated 24/09/2024 passed below Exh.32 in Criminal Misc. Application No.132/2019 by the learned Additional JMFC, Surendranagar. The impugned judgment and order does not suffer from any illegality, perversity or jurisdictional error warranting interference in appellate jurisdiction. Hence, the appeal being devoid of merits deserves to be dismissed.

18. In view of the above discussion, Point No.1 is answered in the negative. In view of the findings recorded hereinabove, and with regard to Point No.2, the following final order is hereby passed.

: ORDER :

The present Criminal Appeal is hereby dismissed.

The further judgment and order dated 24/09/2024 passed below Exh.32 by the learned Additional JMFC, Surendranagar in Criminal Misc. Application No. 132/2019 is hereby confirmed.

The R & P along with a copy of this Judgment be sent back to the learned Trial Court .

Pronounced in the open court to-day on this **06^h day of March, 2026.**

Date : 06/03/2026

Place: Surendranagar.

(KAILASNATH R. UPADHYAY)

Sessions Judge,

Surendranagar.

(GJ00333)