

IN THE COURT OF THE ADDL. CHIEF METROPOLITAN
MAGISTRATE, 5TH COURT, DADAR, MUMBAI.
C. C. NO.71/DV/2021

Smt. Manjiri Mayur Mayekar

Age : 43 years, Occ. : Service,
R/o. : 481, Kamat Building, 1st Floor,
Opp. Gammon House,
Prabhadevi, Mumbai.

... Petitioner.

Versus

1. Mayur Sudhir Mayekar

Age : 42 years, Occ. Service,
R/o. : 305, Shivshakti Apartment,
Murale Bllinj Road,
Opp. Uma Devi Temple,
Nalasopara (W), Dist. Thane.

2. Mrs. Meena Sudhir Mayekar

Age : 64 years, Occ. : Service,

3. Mr. Sudhir R. Mayekar

Age : 66 years, Occ. Retired,

Respondent Nos. 2 & 3 R/o.
481, Kamat Building, 1st Floor,
Opp. Gammon House,
Prabhadevi, Mumbai.

... Respondents.

Noman Jafri, Ld. Advocate for the Petitioner.

Sanjivani S. Salekar, Ld. Advocate for the respondents.

**ORDER BELOW APPLICATION (EXHIBIT – 02) FOR INTERIM
RELIEFS UNDER THE PROTECTION OF WOMEN FROM
DOMESTIC VIOLENCE ACT.**

01. This is an application by petitioner for grant of interim maintenance and residence order for herself and for her three children and also restraining orders under section 18 and 19 of the D. V. Act. It is the case of petitioner that she is legally wedded wife of respondent No.1 while respondent Nos. 2 & 3 are her in-laws. Her marriage with respondent No.1 solemnised on dated

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30/9/2022

16/12/2003 at Dadar as per Hindu Vedic rites and rituals. After marriage, she had been to the house of respondents in their joint family situated at Prabhadevi, Mumbai. Out of their wedlock, she has two daughters and one son. Her elder daughter Kum. Maulisha born on dated 17/06/2004 and she is approximately aged 17 years old, while her second daughter Mihika born on dated 17/11/2009 and her approximate age is 12 years old. Her son Mayukh born on dated 21/07/2013 and his approximate age is 08 years old. Her children are pursuing their education in 12th, 6th and 2nd Standard respectively.

02. She claimed that after marriage she had resided with respondents in their joint family where she was harassed by them mentally, emotionally and economically. She has narrated several instances of mental and emotional abuse on the part of her husband and in-laws. Those instances she narrated are dated January 2004, March 2004, June 2004, dated 16/06/2004, 11/06/2004, December 2004, 26/06/2005, 11/09/2005, April 2006, 11/07/2006, February 2009 wherein she had specific allegations against respondent No.1 about sexual, mental and emotional abuse, dated 16/11/2009, January 2010, November 2010, November 2011, December 2011, 12/01/2012, 2015, 2016, 2017, 2018 and instant occurred in July 2019 and August 2019. She further submitted that she was mentally, emotionally and economically harassed by respondents and said harassment was continued till 2020 – 21. She further stated that respondent No.2 lodged false N. C. report on dated 13/10/2020. She began to harass her by hiding kitchen utensils in order to prevent her from using it. The respondent No.2 took gas burner and shifted it to her room due to which she has to purchase gas burner. She further stated that respondent No.2 harassed her verbally by abusing her in filthy language. She further stated that her sister-in-law Sonali Kiran Parab and her husband Kiran Parab also harassed her and threatened her to face dire consequences on

dated 28/02/2021. Respondent No.2 and her daughter coerced her to leave her shared household situated at Prabhadevi, Mumbai, by using coercive means. She narrated one incident dated 30/03/2021 alleging that sister of respondent No.2 Mrs. Vaishali Vilankar, Sonali Parab and respondent No.2 forcefully removed her kitchen appliances and when daughter of petitioner prevented them from doing so, respondent No.2 and Vaishali Vilankar pushed them, due to which they sustained injury. She also narrated the incident dated December 2011 alleging that respondent No.1 sold out flat at Dombivali which was purchased from her earning and he had not given single paisa to her. She further stated that she herself, her brother and her sister-in-law went to police station where they found Kiran Parab sitting there and trying to lodge false complaint against her. As there was threat to her life, limb and liberty of herself and her three children, she had installed C. C. T. V. cameras. Thus, she claimed that respondents are trying to dispossess her from her shared household. Thus, she claimed interim relief under section 18 of the D. V. Act restraining respondents and their relatives from continuing domestic violence upon her and her children, also sought interim relief under section 19 of the D. V. Act restraining respondents from disturbing her and her children's possession over her matrimonial home under section 19(1)(a) of the D. V. Act. She also claimed that the respondents may be restrained from entering into her matrimonial house. She has claimed interim maintenance for herself and her children of Rs.25,000/- per month and also restraining them from dispossessing them from her shared household.

03. The respondent Nos. 1 to 3 submitted their reply to this application vide Exh.12. They have not disputed their relations with petitioner but denied the entire allegations levelled against them and their relatives. They submitted that the petitioner and respondent No.1 had purchased flat at Dombivali out of their joint income and thereafter

J. H. D. R.
30/9/2022

also purchased flat at Nalasopara in their joint name. They have not disputed that petitioner and her children are residing with respondent No.2 and 3 at house situated at Prabhadevi, Mumbai. They submitted that petitioner has quarrelsome nature due to which respondent No.1 requested her to shift back to Nalasopara, Dist. Thane, for betterment of their family, but she refused to do so. On the contrary, she started giving ultimatum to everybody that now she will make her in-laws go out of the house. She tortured respondent No.2 on various occasions which forced respondent No.2 to lodge N. C. report dated 02/09/2020, 13/10/2020, 22/12/2020, 23/12/2020. On dated 18/11/2020 respondent No.1 shifted to the flat situated at Nalasopara, Dist. Thane, with the hope that petitioner will shift soon at Nalasopara, but, she preferred to reside at house situated at Prabhadevi, Mumbai, which is ot her matrimonial house. The said house situated at Prabhadevi was taken by respondent Nos. 2 & 3 on Pagdi system and pertaining to the said house suit is pending before the Hon'ble Bombay High Court in respect of tenancy rights. They have denied that Kiran Parab, Sonali Parab and Vaishali Vilankar ever threatened or harassed petitioner. Respondent No.2 further claimed that petitioner harassed them mentally by cursing them on their caste and community and also threatened them to broke their limbs. Respondent No.2 claimed that she is victim of domestic violence, thus, claimed that application is not tenable and may be rejected.

04. On rival contentions of both parties, the points arise for determination and I recorded findings and reasons as under : -

POINTS

FINDINGS

- i) Whether the petitioner prima facie proved that she is victim of domestic violence?

... In the affirmative.

- ii) Whether the petitioner proved that she and her children are entitled to get maintenance of Rs.25,000/- per month towards interim maintenance? ... Partly affirmative.
- iii) Whether the petitioner proved that she is entitled to get restraining order against respondents from entering into her matrimonial or shared household situated at Prabhadevi, Mumbai? ... In the negative.
- iv) Whether the petitioner proved that she is entitled to get residential order in her shared household against respondents? ... In the negative.
- v) Whether the petitioner proved that she is entitled to get restraining order against respondents preventing them from disturbing her possession over shared household or matrimonial house and entitled to get order of residence from respondent No.1 under section 19(1)(a) of the D. V. Act? ... Partly affirmative.
- vi) Whether the petitioner proved that she is entitled to get order under section 18 of the D. V. Act restraining respondents from continuing domestic violence against her and her children? ... In the negative.
- vii) What order? ... As per final order.

05. Heard Learned Counsels for both the sides. Perused the documents placed on record.

Jyoti
30/9/2022

POINT NO. (i) :-

06. It is admitted fact that petitioner is wife of respondent No.1 and daughter-in-law of respondent Nos. 2 & 3. It is admitted fact that marriage of petitioner with respondent No.1 was solemnised in the year 2003 and out of their wedlock they have three children. It is also admitted fact that petitioner is residing with respondent Nos. 2 & 3. From the petition (Exh.1) it appears that the address of respondent No.1 is of Nalasopara, Dist. Thane, while address of respondent Nos. 2 & 3 and the petitioner is of Prabhadevi, Mumbai. It is also admitted fact that petitioner along with her children and respondent No.1 have been residing in the house situated at Prabhadevi, Mumbai. It is also admitted fact that on dated 18/11/2020 respondent no.1 started residing at house situated at Nalasopara, Dist. Thane. It is the grievance of petitioner that all the respondents harassed her mentally and emotionally. They used to abuse her in filthy language. She also claimed that respondent No.1 abused her economically as he has sold out flat situated at Dombivali which was purchased out of income of both petitioner and respondent No.1, but, he had not given her single paisa from the said sale transaction. She also levelled allegations of harassment against sister-in-law Sonali Parab and her husband Kiran Parab and also against sister of respondent No.2 Vaishali Vilankar. To prove prima facie that she is victim of domestic violence, she had narrated so many instances which alleged to have occurred since 2004 to 2021. Those instances are not reproduced here. She has also relied on complaint lodged by her with police against Vaishali Vilankar. Respondent No.2 also claimed that she is also victim of domestic violence. In support of her claim she has filed copies of five N. C. reports on record. But, the fact remains that it is the petitioner who has to prove her prima facie case to show that she is victim of domestic violence. The petitioner filed copies of complaints filed against respondents dated 01/03/2021 and 13/01/2021. She has also filed copy

of complaint filed against her sister-in-law dated 31/03/2021 with Dadar Police Station. Thus, it is concluded that there is enough material on record to establish that petitioner is victim of domestic violence and she has prima facie succeeded in proving that she is victim of domestic violence. Consequently, I answer Point No.(i) in the affirmative.

POINT NO. (ii) :-

07. The petitioner claimed Rs.25,000/- (Rs.Twenty Five Thousand) per month towards interim maintenance for herself and her three children. It is admitted fact that petitioner and her three children are residing at Prabhadevi, Mumbai, while respondent No.1 is residing at Nalasopara, Dist. Thane. It is the case of petitioner that respondent No.1 has not made any provision for their maintenance and left her company. As discussed above, petitioner is succeeded in proving that prima facie she is victim of domestic violence. She claimed that she is serving as Senior Executive and getting salary of Rs.25,000/- per month, while it is her case that respondent No.1 is also serving and he is getting Rs.30,000/- per month. She further stated that she has to maintain herself and her three children out of their own income which is not sufficiently enough for their education and maintenance. On the contrary, respondent No.1 disclosed his salary as Rs.26,946/- per moth. He claimed that he has to maintain his parents. It is admitted fact that respondent No.2 is serving as a Nurse. It is admitted position that children of petitioner are pursuing their studies. For them maintenance is required. It is also admitted fact that as petitioner is getting salary of Rs.25,000/- per month she is able to maintain herself. So far as her children are concerned, their expenses are required to be incurred by both the parents as both the parents are serving and they have handsome amounts of salary in their hands to maintain their children. They both are liable to pay and incur equal expenses towards their children.

Jhoral
30/9/2022

Therefore, petitioner is entitled to get interim maintenance for her children of Rs.12,000/- (Rs.Twelve Thousand) per month from respondent No.1. So far as petitioner is concerned, she is not entitled to get interim maintenance as prayed by her as she is capable to maintain herself out of her own source of income. Consequently, I answer Point No.(ii) in partly affirmative.

POINT NOS. (iii) TO (v) :-

08. The petitioner is seeking relief of residence order under section 19 of the D. V. Act. She claimed that respondents and their relatives may be restrained from entering into her shared household and restrain them from dispossessing her from the shared household. She also claimed that the house situated at Prabhadevi, Mumbai, in which she along with her children and her in-laws have been residing is her shared household and therefore her possession over said house may be protected by passing residence order under section 19 of the D. V. Act. It is the case of petitioner that after marriage she herself along with respondents resided in the said house. Today also she is residing along with her children with respondent Nos. 2 & 3 in the said house. This itself is sufficient to hold that the said house situated at Prabhadevi, Mumbai, is the shared household of the petitioner. It is the case of both petitioner and respondent No.2 who is mother-in-law of petitioner that they are victim of domestic violence. As discussed above, petitioner is succeeded in proving prima facie that she is victim of domestic violence, but respondent No.2 who is mother-in-law of petitioner also filed another domestic violence case in this court bearing No.104/DV/2021 against this petitioner under section 12 of the D. V. Act claiming reliefs under the D. V. Act. The respondent No.2 claimed that petitioner and her children are harassing her mentally and physically. She and her husband being old aged are very much afraid of petitioner and her children.

During the pendency of this petition as well as petition No.104/DV/2021, the Deputy Collector, Mumbai, passed eviction order against this petitioner under the provisions of Maintenance and Welfare of Parents and Senior Citizen Act, 2007 in favour of the respondent No.2 Meena Sudhir Mayekar dated 15/02/2022. The petitioner challenged said order before the Hon'ble Bombay High Court in Civil Writ Petition No.5338/2022 wherein the Hon'ble Bombay High Court had passed ad-interim protection order till 30/09/2022 whereby protected her possession and also hold that the said order shall cease to operate after 30/09/2022 or till disposal of application of the petitioner for issuance of protection for making residential arrangement for herself and her children whichever comes first. In other words, under the Maintenance and Welfare of Parents and Senior Citizen Act, 2007 the Deputy Collector had evicted the petitioner from her shared household situated at Prabhadevi, Mumbai and her possession is protected till today by the Hon'ble Bombay High Court. Admittedly, the petitioner has right to reside in her shared household but the Deputy Collector has passed eviction order against her. Having regard to the provisions of both Maintenance and Welfare of Parents and Senior Citizen Act, 2007 and Protection of Women from Domestic Violence Act, Hon'ble Supreme Court in Vanita V/s Deputy Commissioner, Bangaluru Urban District and Others has held that the provision of these two Acts needs to be harmoniously construed or interpreted. Moreover, it is equally important to look into the matter that respondent No.2 has also filed D. V. case alleging harassment to her on the part of petitioner. Under such circumstances petitioner is not entitled to reside in the shared household situated at Prabhadevi, Mumbai, along with her children.

09. Though the petitioner is succeeded in proving that the house situated at Prabhadevi, Mumbai, is her shared house, she is not entitled to get restraining order against respondents from entering into said

Admitted
30/9/2022

house or dispossessing her and her children from the said house. Therefore, her relief to that effect cannot be allowed and hence rejected. But, the fact remains that if under the provisions of Maintenance and Welfare of Parents and Senior Citizen Act 2007, if the respondent No.2 executes the said order passed on dated 15/02/2022 against the petitioner she and her children would face harassment. It is the duty of respondent No.1 being husband of petitioner and father of her children to make a provision for his wife and children for residence. It is his liability to provide alternative accommodation and to secure same level of alternate accommodation to that of her shared household. Therefore, respondent No.1, at the moment the respondent Nos. 2 & 3 execute order dated 15/02/2022, to provide petitioner and her children accommodation at Prabhadevi, Mumbai. Consequently, I answer Point Nos. (iii) and (iv) in the negative and (v) in the partly affirmative.

POINT NO. (vi) :-

10. It is the case of petitioner that she is victim of domestic violence as she has been residing with respondents but as discussed above the Deputy Collector under the provisions of Maintenance and Welfare of Parents and Senior Citizen Act 2007 evicted petitioner and her children from the house situated at Prabhadevi, Mumbai, the question of further continuation of domestic violence would not arise. Consequently, I answer point No. (vi) in the negative and to answer Point No.(vii), proceed to pass the following order.

ORDER

i The application for interim maintenance is hereby partly allowed.

- ii. The petitioner is entitled to get Rs.12,000/- (Rs. Twelve Thousand) per month from respondent No.1 from the date of main petition for maintenance of her children.
- iii. The respondent No.1 is directed to deposit Rs.12,000/- (Rs. Twelve Thousand) per month towards interim maintenance of children of petitioner from the date of main petition.
- iv. The respondent No.1 is directed to provide or to arrange or secure residential house or accommodation for petitioner and for her children within Prabhadevi, Mumbai, area at the moment, the respondent Nos. 2 & 3 execute order passed by the Deputy Collector, Mumbai, dated 15/02/2022.

(J. P. Shirale)

Addl. Chief Metropolitan Magistrate,
5th Court, Dadar, Mumbai.

Date : 30/09/2022.
ssk

Received copy Free of cost

सौ. जीना सुधीर मयेकर

6/10/2022