

IN THE COURT OF THE JUDICIAL MAGISTRTE (FIRST CLASS)
49TH COURT, VIKHROLI, MUMBAI.
C.C.NO. 63/DV/2023

Heena Abdul Rehman Shaikh

----- Applicant

V/s.

Mohammad Suleman Shaikh & 4 others

----- Respondents

ORDER BELOW INTERIM APPLICATION EXH. 3

(Passed on 02-01-2025)

1] This application is filed u/sec. 23 of Protection of Women from Domestic Violence Act, 2006. (hereinafter for brevity it will referred as D.V. Act) for grant of interim protection order, residence order and other interim reliefs for applicant.

2] The case of the applicant is that, respondent no. 1 is the father-in-law, Respondent no. 2 is the mother-in-law, Respondent no. 3 is the brother-in-law and Respondent no. 4 and 5 are sister-in-laws of the applicant. Applicant is married to Abdul Rehman Shaikh as per the Sharia Law amongst the families, guests and relatives. Soon after the marriage she started residing at matrimonial house Room no.5/7, Kalyanji Devji chawl, Chirag nagar, Ghatkopar (West), Mumbai alongwith her husband and all the respondents which is shared household. The said marriage is consummated and out of the said wedlock applicant and her husband have one child of 8 years. At the time of marriage applicant was given various gifts and stridhan more than 6 Tolas from her family, relatives and in laws. The gold chain of 1 Tola is in custody of respondent no. 1 and 2. Respondents misappropriated her stridhan and valuable for their own use. Respondent no. 4 taunted her about her culinary skills and criticize the

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food made by her. Respondent no. 4 and 5 stays at parental house alongwith their husband and they all threatened and harass the applicant and abused and use filthy language. "Yeh madarchod ki waje se sab jhagda ho raha hai" to the applicant and her husband. Respondent no. 1 and 2 made strict reservations to her to get awake early in the morning and insisted her to make Chapati-Bhakri. Since the applicant is North Indian, she was not accustomed to Maharashtrian food. Respondent no. 2 would to taunt the applicant infront of everyone that "iski maa ne kuch khana sikhaya nahi banana" an would abuse her. Respondents shifted entire household burden on the applicant and treated her like maid. Respondents used to quarrel with her on trivial issues and made her life miserable. Respondents have threatened and tortured her to such extent that she was constrained to live at rented apartment at Ghatkopar West.

3] Thereafter her husband went to matrimonial house and requested respondent no. 1 to take back them at matrimonial home to stay there, but the respondent no. 1 got furious and stated that he will sell the said room and he would not give any share of sale proceeds to the applicant and her husband. Applicant and respondent were able to occupy the matrimonial house at the mezzanine floor. However, respondent no. 1 to 5 started troubling and harassing applicant and her husband by restraining them to enter into the room premises. Applicant further submitted that she could not come together with the respondent no. 1 to 5 in their marital wedlock due to their moody, whimsical, stubborn, diabolical behaviour. Applicant further submitted that she is in need of protection and residence order under the Domestic Violence Act. Applicant prayed to pass residential order and direction to respondent

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no. 1 to 5 to allow applicant to reside in the matrimonial house or share house hold to the applicant. Hence, she prayed for interim reliefs as prayed for.

4] On the other hand, respondents filed their reply at Exh.11B. Respondent stated that applicant is not aggrieved person and she is not residing in the address mentioned in the title. The said house is not a shared house. Contents of application are false and it is concocted story. Respondents further stated that applicant's sister is practicing advocate in connivance with the concerned police station put pressure on the respondents. There is no domestic violence done on part of the respondents. Respondents submitted that application of applicant is totally false and with intention to only give mental torture to the above respondents the applicant has only dragged their names in the present application. The applicant and her husband who is son of the Respondent no. 1 and applicant's son had left the said house 9 years before in the year 2014. There is no domestic relationship between applicant and respondents. The applicant after her marriage was not at all interested in staying in her matrimonial house. Respondents further submitted that when the applicant left the home alongwith her husband, she took away all her belongings with herself and nothing was left behind. Applicant took away all her Stridhan alongwith her while leaving from matrimonial home. Respondent no. 4 was married at the time of marriage of applicant and she was residing at her matrimonial house at Bhandup, Mumbai. Respondent no. 5 was unmarried, so she was residing with her parents i.e. respondent no. 1 and 3. Respondent no. 4 used to come on festivals at her parental home. So question of harassing or threatening does not arise. Respondent no. 5 got married

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when applicant was not residing in her matrimonial house so question of her husband coming and staying in the home does not arise. The applicant left the house soon after her marriage because she was unable to adjust with the family atmosphere and culture of the respondents family.

5] Respondents further stated that applicant never took responsibilities of the household work and was never interested in doing any work. The applicant never get up early in the morning and when she was asked to do any work, she taunted the respondents that “main padhi likhi ladki hu main ghar ka kaam nahin karungi” and would never do any work. Respondent no 2 and 5 would cook food and the applicant and her husband would eat.

6] Respondents further stated that applicant had made the life miserable of the respondents by showing daily her new colours. Respondent had become victim of the applicants act. The applicant soon as entered the house, she disturbed the peace and harmony of the house by her deeds and giving hardships o the respondents and giving them mental stress. Applicant always used to pick up quarrels in the house and just immediately after few days of marriage applicant alongwith her husband left away from home. Respondent no. 1 and 2 submit that it was great shock for them because applicant’s husband is their son and even he left without thinking once that he was the elder son of the house and he had some responsibilities on his head. They further submitted that when they needed the help of the son at that time he left them and listened to the applicant and left them un-supportive at old age. They never returned back and never came to see the old aged

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parents. They never used to come and all of a sudden after 9 years they returned back just to file false complaint against the respondents. Respondent further submitted that applicant and her husband even during the lock down period never visited the respondents place nor they called up even them for asking about their well being. Respondents further stated that when applicant came to know that respondent is selling the room, they planned to enter the home. All these acts shows that applicant is only in greed of the house money and she is not interested in living her matrimonial home. It is respondents who are now being harassed by the applicant and his husband for the property. Respondent submitted that mezzanine floor of the house was always given on lease basis. The Respondents were in some debt and hence they planned to sell the house and as soon as the applicant and his husband came to know about this, they both started demanding their rights in the property. The property solely belongs to the Respondent no.1. Hence, it would be his decision that he wants to give the property to whom. The applicant was in search only to enter the house forcefully.

7] Respondents further submitted that they were victims at the hands of the applicant and her husband. On 08-05-2023 the applicant forcefully entered in the house creating scenes. She was not at all hit by anyone and never sustained injuries. On that the cross N.C. was lodged against the applicant. Respondents further stated that just to make the jurisdiction and to file false domestic case the applicant came and resided in the home and later on 18-05-2023 she left the house on her own taking back all her belongings with her. Applicant's husband assaulted the respondent no. 1 for which N.C. was registered with concerned police station. Application of the applicant is false, frivolous.

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There is no domestic violence done by them to the applicant. Hence, they prayed to reject the interim application of the applicant.

8] Perused application, documents, reply and asset and liability statement filed by both parties. Heard both counsels at length.

9] Ld. Counsel for applicant submitted that the marriage of applicant and her husband solemnized in the year 2014. The applicant filed Domestic Violence case against her father-in-law, mother-in-law and sisters-in-law and brother in law. The respondents compelled applicant to leave her shared household. Applicant has right to reside in shared household. He also prayed for Protection order for protection of the applicant from respondents.

10] On the other hand Ld. Counsel for respondents argued that respondent no. 1 is father-in-law of the applicant and other respondents are relatives. The applicant is residing with her husband separately since 9 years back. The house of respondent is given on lease and license basis on rent, which is the only source of income of respondent no. 1 i.e. father in law of the applicant. There is no domestic violence on the part of the respondents. The application of applicant may be rejected.

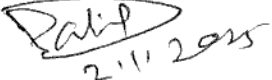
11] On perusal of the averment made by the both parties, it seems that applicant is residing separately with her husband and son. Hence, she has alternative shelter. Prima facie, it appears that property is exclusively owned by the Respondent no.1, who is father-in-law of the applicant. When applicant is residing with her husband, the application

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lacks urgency or necessity of residence. In the absence of evidence prima facie, there is no proof of cohabitation in alleged shared household. Hence, I proceed to pass the following order:-

ORDER

- 1) The Interim application of the applicant is partly allowed.
- 2) All the respondents are directed not to commit domestic violence against applicant by way of interim protection order.
- 3) Copy of this order be sent to the Protection officer and concerned police station as well as copy be provided to the both parties free of cost as per section 24 of the Domestic Violence Act.


(D.T.Patil)

Vikhroli, Mumbai.
Date : 02-01-2025

Judicial Magistrate (First Class)
49th Court, Vikhroli, Mumbai.