

MHNG080027462023



PWDVA Appln. No.47/2023
Prerana +1 Vs. Sachin & Others

ORDER (BELOW EXH.20)
(Passed on 03/09/2024)

Non applicants No.1 and 2 have filed this application for recalling order dated 10/07/2024 passed below Exh.18 and recalling issue process order passed against non applicants No.3 and 4.

02] It is contended that the applicants have arrayed non applicants No.3 and 4 in main application falsely showing their addresses in shared household along with non applicants No.1 and 2. This Court passed issue process order against them. The notice issued to non applicants No.3 and 4 have been returned unserved as they are not residing on the said address. The applicant filed application (Exh.18) seeking direction to non applicants No.1 and 2 to provide address of non applicants No.3 and 4. Non applicant No.4 married in May-2009 and she is residing at her matrimonial house at Indora, Nagpur. There is no domestic relationship between applicant and non-applicant No.4. Hence, she is not required to be joined as non-applicant. Similarly, non applicant No.3 married in February-2020 and since then she has been residing at her matrimonial house. First Report of domestic violence lodged by the applicant on 08/01/2023 and present proceeding filed on 28/12/2023. Therefore, it is apparent that no

domestic relationship existed between the applicant and non applicant No.3, when the cause of action for the present proceeding arose. Hence, non applicant No.3 is not required to be joined as non applicant. Hence, prayed to allow the application.

03] The applicant filed her say on the application itself and strongly opposed the application. It is contended that non applicants No.3 and 4 were married, but both are interfering in her life and also harassed her emotionally, mentally and economically. Non applicants No.3 and 4 residing at their matrimonial house but they used to come there for torturing applicant. The applicant has no knowledge about their address but non-applicant No.1 is very well know their address. This case be decided on merit. Hence, prayed to reject the application with heavy costs.

04] Heard both sides. Learned advocate for non applicants submitted that there is no domestic relationship between applicant and non applicants No.3 and 4 as provided in Section 2(f) of Protection of Woman From Domestic Violence Act, 2005. Non applicants No.3 and 4 never resided in share household along with applicant. Therefore, they are not necessary parties for this proceeding. On the contrary, the learned advocate for applicant submitted that non applicants No.3 and 4 used to torture her mentally, emotionally and economically and therefore they are necessary parties for the proceeding. She further submitted that application should be decided on merit.

05] The learned advocate for non applicants, in support of

her submission, relied on case of **Kinjal Jayesh Mehta Vs. Disha Jimit Sanghvi – AIR ONLINE 2024 BOM 238** and on the case of **Amit Agarwal Vs. Sanjay Aggarwal - 2017 CRI.L.J. 3570**.

06] I have perused citations relied by learned advocate for the non applicants. The case of **Amit Agarwal Vs. Sanjay Aggarwal** (cited supra) is differ on facts and therefore not applicable for deciding present application. In the case of **Kinjal Vs. Disha** (cited supra) the Hon'ble Bombay High Court held that “there was no subsisting domestic relationship between petitioner and respondent No.1. The petitioner could not have been arrayed as respondent in the domestic violence application. The mere visits of the petitioner to the share household being devoid of any permanency is not sufficient and adequate to constitute residence in shared household.”

07] Perused the main application. The applicant clearly admitted in para No.1 that prior her marriage, marriage of non-applicant No.4 was solemnized. In para No.7 of the application, the applicant specifically admitted that marriage of non-applicant No.3 was solemnized in 2020 and she is residing at her matrimonial house. Perusal of main application shows that the applicant did not mention single date when non applicants No.3 and 4 caused domestic violence on her. Perusal of main application shows that there are vague allegations against non applicants No.3 and 4. There is no specific period mentioned by the applicant, when non applicants No.3 and 4 tortured her mentally,

emotionally and economically. It is admitted fact that non applicants No.3 and 4 are married and residing at their matrimonial house. Their mere visits at their parent's house being devoid of any permanency is not sufficient and adequate to constitute their residence in shared household.

08] Perusal of main application shows that there is no domestic relationship in existence between the applicant and non applicants No.3 and 4. It is condition precedent to array non applicants in domestic violence application that there should be domestic relationship between parties. But, perusal of main application shows that the applicant and non applicants No.3 and 4 never resided at matrimonial house of applicant after their marriage as there is no specific dates given by the applicant about domestic violence caused by non applicants No.3 and 4 on her. Therefore, it is difficult to believe that non applicants No.3 and 4 caused domestic violence on the applicant after their marriage. The applicant filed copy of police report dated 08/01/2023 on record, but said report does not show that the applicant filed said report against non applicants No.3 and 4. The applicant did not file any report filed by her in police station against non applicants No.3 and 4 in respect of domestic violence caused by them on her after their marriage. As there is no prima facie evidence against non applicants No.3 and 4, it will not be just and proper to continue said proceeding against them.

09] Perusal of main application shows that the learned

advocate for the non applicants rightly relied on case of **Kinjal Vs. Disha** (cited supra) which is squarely applicable to the facts of the present case. The returned envelop of RPAD clearly shows that non applicants No.3 and 4 are not residing on the address of non applicants No.1 and 2. Therefore, it can be gathered from the same that applicant deliberately arrayed non applicants No.3 and 4 in main application though they are not residing at her matrimonial house. Thus, there is substance in the submission of learned advocate of non applicants that there is no domestic relationship between applicant and non applicants No.3 and 4. Hence, application deserves to be allowed and issue process order and order passed below Exh.18 need to be recalled. Hence, I pass following order.

ORDER

- 1] Application (Exh.20) is allowed.
- 2] Order dated 10/07/2024 passed below Exh.18 and issue process order passed against non applicants No.3 and 4 are hereby recalled.
- 3] The main application will proceed only against non applicants No.1 and 2.

Kamptee.
Date :- 03/09/2024

(R.R. Sherekar)
Judicial Magistrate First Class,
(Court No.3), Kamptee, Dist. Nagpur.