

MHNG120007082018



**Order Below Exh- 6 In Misc. Cri. Application No. 181/2018**

( Date- 04.02.2021 )

By this application non-applicant no. 1 to 5 prayed to reject the complaint filed by the applicant and stated that it is not maintainable under section 12 of Prevention of Womens from Domestic Violence Act, 2005 [*Hereinafter referred as the D. V. Act*]. The N.A. 2 to 5 are in laws of the applicants. Applicant is legally wedded wife of non-applicant no. 1, after their marriage they resided in joint family in the house situated at Shakti Nagar, Nagpur. The applicant hardly resided with N.A. No. 1, for four month fifteen days. Non-applicant has no nexus with the applicant and she never lived in domestic relationship as described in D.V. Act. In entire complaint the applicant has not leveled any substantial allegation against the present non-applicants and the allegations leveled are general one.

2] The applicant claiming relief of resident order in respect of the house at Bhopla which is owned by the non-applicant no. 2 as self acquired property. Said house cannot be term as shared household. Said property is exclusively property of N.A. No. 2 and applicant has no right to claim any relief against N.A.2. Prima facie case is not made out against the non-applicants.. Non-applicants are not come within perview of definition of respondent defined under section 2 (q) of D.V. Act, accordingly prayed to allow the application and reject the complaint filed by the applicant.

3] The Ld. Counsel of applicant filed his say and thereby strongly opposed the application, therein he stated that applicant has leveled specific instances of the ill-treatment at the hands of non-applicants. Prima facie case is made out against the non-applicants. Present application is filed with intent to harass the applicant and prayed to reject the application with costs.

4] Perused the application and reply as well as the records carefully and thoroughly. Before put reasons while deciding this application here it is necessary to see a definition of respondent share.

**Section 2 (s) of D. V. Act defined share household as under ;**

“Share 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 household 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 a respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the share household”.

**Section 2 (q) of D. V. Act defined share household as under ;**

“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”.

5] The Hon'ble Supreme Court of India in the case of *Rajnish Vs. Neha and Anr. Cri. Appeal 730/2020* struck down the words “adult male” before the word “person” in section 2(q) of the D.V. Act and deleted the proviso to section 2(q) has been contrary to the object of that. Further the Hon'ble Supreme Court of India while dealing with share household held that “..... the household may belong to joint family of which the

respondent is member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the share household. Further the Hon'ble Supreme Court of India held that the word "lives, or at any stage has lived in domestic relationship" under section 2(s) has to be given its normal and purpose full meaning. Living of the women in a household must referred to a living which has some permanency. In view of these legal provisions and law laid down by the Hon'ble Supreme Court of India in the case cited supra let us see the contention of applicant in the present case as well as the contents of present application.

6] On perusal of application at Exh. 1 it clearly shown that the applicant has leveled specific allegations against all the non-applicants. At the initial stage more particularly when evidence is not on record, the Court have to take into consideration the allegations made by the applicants in her application. Since there is allegations against all the non-applicants in the main application, hence notices were issued.

7] So far as concerned with the contention of non-applicant in this application that non-applicants are not come under the purview of definition of respondent. Now in view of the principle laid down by the Hon'ble Supreme Court in the case cited supra, the respondent means any person who is or has been in a domestic relationship with the aggrieved person and against the whom the aggrieved person has sought any relief under the D.V. Act. Here it is pertinent to note that the non-applicants mentioned in para-2 that; "applicant is legally wedded wife of non-applicant no.1..... Though after marriage they are resided in joint family in the house situated at Shakti Nagar..... the applicant hardly resided with N.A.1 for four months fifteen days.....". On perusal of these contents prima facie it shown that the applicant is resided in joint family and in view of

definition of share household it is not necessary that the shared household is to be owned by the aggrieved person or the husband of aggrieved person. Household includes the household whether owned or tenanted either jointly by the aggrieved person or the respondent. Hence at the initial stage without having evidence on record it is not proper and lawful to held that the aggrieved person is not residing in shared household and non-applicants are not come under the purview of definition of respondent more particularly when allegations of ill-treatment at the hands of N.A's mentioned by the applicant in her application.

8] Considering these reasons, application is rejected.

9] In view of the directions of the Hon'ble Supreme Court of India in case cited supra the applicants and non-applicants are directed to file the affidavit of disclosure of assets and liabilities within two week because the applicant prayed interim maintenance in this case.

Dt: 04.02.2021

( **Nitesh B. Rathod** )  
Judicial Magistrate,(F.C.),  
Narkhed

**CERTIFICATE**

I affirm that the contents of this P. D. F file order are same word to word as per original order.

Name of the stenographer : M. R. Raut

|                              |   |            |
|------------------------------|---|------------|
| Case argued on               | : | 04-02-2021 |
| Order dictated on            | : | 04-02-2021 |
| Transcription ready on       | : | 04-02-2021 |
| Order checked and signed off | : | 04-02-2021 |