



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 1976 OF 2023

Shubhangi Satish Mahale and Others. ...Petitioners.

Versus

Vidya Vishwasrao Jachak and Others. ...Respondents.

Mr. Sandeep D. Paigude and Ms. Reshma More for the petitioner.
Ms. Seema Sarnaik i/b Mandhata D. Zodge for the respondent.
Mr. Kiran C. Shinde, APP for the respondent-State.

Coram : Sharmila U. Deshmukh, J.

Date : March 18, 2024.

P. C. :

1. By this petition, challenge is to the judgment and order dated 6th June 2023 by which the appellate Court had prohibited the respondents from evicting the applicant from the property. Although in the main application the Protection Officer was not a party, the Protection Officer has been impleaded by name in this petition on an allegation that without the order of the Court being uploaded, the Protection Officer sought to execute the order and that the Domestic Incident Report has been filed without visiting the premises. The Protection Officer is enjoined under the provisions of the Protection of Women from Domestic Violence Act, 2005 [for short "the DV Act"]

to prepare the domestic incident report and submit the same to Magistrate. There is no power of investigation vested in the Protection Officer to verify the truthfulness of complaint . As there was a judicial order in place, it was the duty of Protection Officer and the police officer to implement the order, if so provided. Whether the order had been uploaded or not was not the concern of Protection Officer, when the Protection Officer was approached by respondent no.1 for the purpose of execution. Upon a query by this Court as to whether the petitioners would delete the Protection Officer and Police Officer from the array of respondents as challenge is to the interim restraining order passed by the trial Court, learned counsel appearing for the petitioner would submit that as specific allegations are made against the Protection Officer and the Police Officer, he would not be deleting them.

2. Notice is shown to have been duly served upon the Protection Officer. However, today none appears for the Protection Officer and the Police Officer, i.e., respondent nos. 2 and 3. Matter was partly heard on Friday, however, this fact was not brought to the notice of this Court and today when the matter was taken up further for hearing, it is submitted that respondent nos.2 and 3 have been impleaded in their personal names and have been duly served.

3. Considering that the matter has to be finally disposed of, the notice for final disposal will have to be issued. Issue notice for final hearing to the respondents, returnable on 8th April 2024.

4. Ms. Seema Sarnaik waives notice for respondent no.1 and Mr. Shinde, APP waives notice for respondent no. 4.

5. Ms. Seema Sarnaik would seek vacating the order of status quo as respondent no.1 has no place to reside. There has been an order of status quo operating since 15th June 2023. By this order, operation of the order of appellate Court dated 6th June 2023 has been stayed and status quo has been granted. The specific case of respondent no.1 is that premises is the property of her parents and she is entitled to reside therein. This position is not disputed by learned counsel appearing for the petitioner. The decision of Apex Court in ***Prabha Tyagi v. Kamlesh Devi [(2022) 8 SCC 90]*** holds that if a woman in domestic relationship seeks to enforce her right to reside in a shared household irrespective of whether she had resided therein at all or not, the right can be enforced under section 17(1) of the DV Act.

6. Considering the above, I see no reason to continue the order of status quo, particularly when the residence of respondent no.1 is shown to be of her married daughter's place. It is, thus, clear that

respondent no.1 has no residence of her own. The order of status quo stands vacated.

7. Stand over to 8th April 2024.

[Sharmila U. Deshmukh, J.]