

SAMIR VIDYASAGAR BHARDWAJ

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v.

NANDITA SAMIR BHARDWAJ

(Civil Appeal No. 6450 of 2017)

MAY 09, 2017

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[KURIAN JOSEPH AND R. BANUMATHI, JJ.]

Protection of Women from Domestic Violence Act, 2005:

s. 19(1)(b) – Application under – By wife – Praying for issuance of mandatory injunction against the husband to move out of the matrimonial house and handing over vacant and peaceful possession of the house – Divorce petition by wife on the ground of cruelty pending – Family Court by interim order directed the husband to move out of the matrimonial house and not to visit the same till the decision of the divorce petition – High Court affirmed the order of family court – On appeal, held: s. 19(1)(b) provides that the Magistrate on being satisfied that domestic violence has taken place, can remove the spouse from shared household – The Family Court arrived at a finding that prima facie material was available to accept the allegation of wife and then exercised his discretion u/s. 19(1)(b) – Exercise of such discretion cannot be said to be perverse.

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Dismissing the appeal, the Court

HELD: 1. Section 19(1)(b) of the Protection of Women from Domestic Violence Act provides that the Court may direct the appellant-husband to remove himself from the shared household. The order passed under Section 19 of the Act seeks to maintain continued and undisturbed residence of the aggrieved party within the shared household and in pursuance of same, it directs the respondent to execute a bond with or without surety or secure an alternate accommodation for the aggrieved party and pay the rent for the same and restrains the respondent from or renouncing property rights or valuable security of the aggrieved party. [Para 11] [92-G-H]

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2. The Family Court arrived at a finding that *prima facie* material was available on record to accept the allegation of the

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- A respondent-wife on domestic violence wherein the concerned Judge had exercised his discretion under Section 19(1)(b) of the Act which provides that the Magistrate on being satisfied that domestic violence has taken place can remove the spouse from the shared household which he has rightly done. Exercise of discretion by Family Court cannot be said to be perverse warranting interference. The High Court while declining to interfere with the order has also considered the factual and legal position. [Para 12] [93-A-B]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6450 of 2017.

C From the Judgment and Order dated 11.01.2017 of the High Court of Judicature at Bombay in W. P. (C) No. 169 of 2017.

M. L. Varma, Sr. Adv, Ms. Vandana Sehgal, Adv. for the Appellant.
D Shyam Divan, Sr. Adv, Udit Gupta (For Ravi Kumar Tomar), Adv. for the Respondent.

The Judgment of the Court was delivered by

R. BANUMATHI, J. 1. Leave granted.

E 2. An order passed by the High Court of Bombay in Writ Petition(C) No. 169 of 2017 dated 11.01.2017 wherein the High Court affirmed the interim order passed by the Family Court in and by which the appellant-husband has been directed to remove himself from his own home and not to visit there until the divorce petition is finally decided is under challenge.

F 3. This case presents a very unpleasant tale of a couple having daughters who are in their early twenties witnessing a bitter matrimonial battle between their parents. The appellant and the respondent herein tied nuptial knot on 05.05.1992. The couple resided in two flats being Flat No. 102 and Flat No. 103 situated in the building known as "Hi Ville" 29th Road, Bandra(West), Mumbai. The said two flats were sold by the couple and they purchased a flat bearing No. 201 situated in "Aashna" Building, 8, St. Martin Road, Bandra (West) Mumbai by way of Agreement for Sale dated 22.11.2010. The said flat was purchased in the joint names of the appellant and the respondent herein where they have been residing with their two daughters till date.

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4. After more than two decades of marital life, on 09.07.2015 respondent-wife filed a petition under Section 27(1)(d) of the Special Marriage Act for divorce against the appellant being Petition No. A-1873 of 2015 in the Family Court at Bandra, Mumbai. The respondent has sought various other reliefs including a direction to be given to the appellant to move out of the matrimonial home and handover vacant and peaceful possession of the same to the respondent and to pay a maintenance of Rs.1,00,000/- and other consequential reliefs apart from seeking dissolution of marriage. An application being I.A. No.162 of 2015 was filed by the respondent-wife under Section 19(1)(b) of the Protection of Women from Domestic Violence Act, 2005 (for short 'the Domestic Violence Act') praying for issuance of mandatory injunction against the appellant-husband to move out of the matrimonial house and handing over the vacant and peaceful possession of the house. In addition to the above, she had also sought for alimony/maintenance and the expenses of marriage of her daughters.

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5. When the application was taken up by the Family Court, the respondent-wife did not press for other reliefs and she pressed only for the relief of mandatory injunction to direct the appellant-husband to move out of the matrimonial house. The application was resisted by the appellant herein denying all the allegations stating therein that identical relief with regard to injunction having been sought in the Divorce Petition, the same cannot be granted at an interim stage. The appellant had also contended before the Family Court that he being the owner of the flat, cannot be deprived from using his house. It is also the case of the appellant-husband that the allegations made by the respondent-wife are not supported by way of anything on record and that the wife owns a flat jointly with her mother at Tardeo and another one on *pagadi* basis.

6. The Divorce Petition has been filed on the ground of cruelty and the respondent-wife had alleged in the application seeking interim relief that she had been subjected to mental and physical cruelty due to which living under one roof with the appellant-husband has become impossible. Even the daughters who have filed their respective affidavits have supported the stand taken by their mother namely the respondent. The counsel further stated that the husband was owing a flat jointly with his mother and is just five minutes walking distance from the matrimonial home and that no inconvenience would be caused to him.

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A 7. The Family Court passed the interim order on 13.12.2016 directing the appellant-husband to remove himself out of the matrimonial house and not to visit the same till the decision of the divorce petition. Aggrieved by the interim order passed by the Family Court, the appellant-husband approached the High Court by way of a writ petition stating therein that final relief sought in the main petition could not have been granted at interim stage; he being a co-owner of the premises, he cannot be evicted from that premises which amounted to his virtual dispossession of the premises of which he was a co-owner. It was urged that there is no independent/corroborative evidence to support the claim of domestic violence and impugned order is harsher than temporary injunction.

C 8. Heard learned counsel for the parties.

9. The only issue to be addressed in this case is whether the order directing appellant-husband to remove himself from the matrimonial home of which he is a co-owner warrants interference.

D 10. It is an undisputed fact that the property is a shared household of the parties. The appellant-husband is working with the Taj Group of Hotels and the respondent-wife is working as an airhostess with the British Airways. As is seen from the organisations in which they are working, both the appellant and the respondent are independent and having their own source of income. We have gone through the allegations of domestic violence made not only by the respondent-wife but also in the affidavits filed by their grown up daughters wherein they have expressed their feelings in view of the dispute between their parents and also their feelings as to the conduct of their father at home. We do not propose to go into those averments in the affidavit sworn in by the daughters, lest it would prejudice either parties while contesting the main matter.

F 11. Section 19(1)(b) of the Protection of Women Domestic Violence Act provides that the Court may direct the appellant-husband to remove himself from the shared household. The order passed under Section 19 of the Act seeks to maintain continued and undisturbed residence of the aggrieved party within the shared household and in pursuance of same it directs the respondent to execute a bond with or without surety or secure an alternate accommodation for the aggrieved party and pay the rent for the same and restrains the respondent from or renouncing property rights or valuable security of the aggrieved party.

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12. The Family Court arrived at a finding that *prima facie* material was available on record to accept the allegation of the respondent-wife on domestic violence wherein the concerned Judge had exercised his discretion under Section 19(1)(b) of the Domestic Violence Act which provides that the Magistrate on being satisfied that domestic violence has taken place can remove the spouse from the shared household which in our opinion he has rightly done. Exercise of discretion by Family Court cannot be said to be perverse warranting interference. The High Court while declining to interfere with the order has also considered the factual and legal position.

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13. Having gone through the orders of the High Court and the Family Court and considering the fact that the daughters are grown up, we are not inclined to exercise our discretion under Article 136 of the Constitution of India at the interlocutory stage. The appeal is dismissed. We direct the Family Court, Bandra, Mumbai to expedite the hearing in the Divorce Petition and dispose the same expeditiously. We make it clear that we have not expressed any opinion on the merits of the matter. The Family Court shall try and dispose of the case uninfluenced by any observations or findings either in the impugned order or this order. No costs.

Kalpana K. Tripathy
Appeal dismissed.