



Judgment

476 revn240.22

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL REVISION APPLICATION NO.240 OF 2022

..... **Applicant.**

:: VERSUS ::

1.

2.

..... **Non-applicants.**

Shri Deepanshu Verma, Counsel for the Applicant.
Shri Sadanand M.Nafde, Counsel for the Non-applicants.

CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 21/08/2025
PRONOUNCED ON : 16/09/2025

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JUDGMENT

1. By this revision, the applicant has challenged judgment and order dated 17.8.2022 passed by learned Additional Sessions Judge-12, Nagpur in Criminal Appeal No.162/2017 whereby allowed the non-applicants to reside in shared-household (ground floor of suit property) as described in the application with costs of Rs.20,000/- to be paid to the applicant.

2. Brief facts necessary for disposal of the revision, are as under:

The non-applicant No.1 is legally wedded wife of Mukesh Chauhan, who is brother of the applicant and applicant No.2 is son of non-applicant No.1 and Mukesh. On 23.5.2008, Mukesh died and since then the non-applicants are trying to pursue request for permitting them to reside in the house at plot No.465. However, as

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per the allegations, the applicant has not allowed them to stay in the house. The mother-in-law of non-applicant No.1 and the mother of the applicant executed Will on 29.9.2004 and bequeathed the ground floor to the applicant and first floor to deceased Mukesh. The mother of the applicant also died on 5.2.2007. As per the contention of the non-applicant No.1, after married, she resumed co-habitation in the said house and resided with her husband and other family members, till March 2004. Due to the family dispute, the non-applicant No.1 and her husband left shared household in March 2004 and went to stay at Pune. They again returned to Nagpur and started residing in a rented premises. In the year 2007, the deceased Mukesh started constructing first floor of the shared household as per the Will with the consent of his mother Sadhana. However, Mukesh died in January 2008. At the relevant time, the said construction was

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incomplete. The applicant, thereafter, did not allow the non-applicants to enter in the shared household and she was constrained to stay in a rented premises along with her son on payment of Rs.6000/- per month. The applicant has also not responded to the notices issued by the non-applicants. Therefore, non-applicant No.1 was constrained to approach to the JMFC seeking relief under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (the said Act).

3. The applicant resisted the application on the ground that the non-applicant No.1 never shared and resided along with her husband in the said house. The divorce decree was executed on 5.7.2007 and non-applicant No.1 and deceased Mukesh were not having any conjugal relationship, upto death of Mukesh. The non-applicants were residing separately. It is the applicant

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who has constructed structure on the first floor. The non-applicants never resided with the applicant in the house property in the year 2004. It is further contended that as the said Act was enacted on 14.9.2005, it would not apply in the present case.

4. Heard learned counsel Shri Deepanshu Verma for the applicant and learned counsel Shri Sadanand M.Nafde for the non-applicants.

5. After hearing both the sides and perusing the documents on record, learned JMFC, Nagpur rejected the said application by order dated 7.10.2014. Being aggrieved with the same, the non-applicants preferred an appeal bearing Criminal Appeal No.162/2017 before learned Additional Sessions Judge, Nagpur. After considering pleading and the submissions, the Appellate Court held that definition of “aggrieved persons” is

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provided under Section 2(a) of the said Act. The definition of “shared household” is also given and in view of the provisions of shared household, the non-applicants are entitled to stay in the shared household and allowed the appeal.

6. Being aggrieved and dissatisfied with the same, the present revision is filed on the ground that the non-applicants are not at all the aggrieved persons and the non-applicant No.1 never resided with her husband in the shared household. The provisions of the said Act are not applicable as the said Act is enacted in 2005.

7. Learned counsel for the applicant reiterated the said contentions and submitted that the order passed by the Appellate Court is erroneous and liable to be set aside. He placed reliance on the decision in the case of **S.R.Batra**

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and vs. Taruna Batra (Smt), reported in (2007)3 SCC 169.

8. *Per contra*, learned counsel for the non-applicants supported the judgment and order of the Appellate Court. He placed reliance on the decision in the case of **Prabha Tyagi vs. Kamlesh Devi**, reported in (2023)8 SCC 90.

9. It is submitted that the non-applicant No.1 is married with Mukesh, who is elder brother of the applicant and they resided in the house property, upto March 2004. It is also undisputed that after March 2004, the non-applicant No.1 and her deceased husband went to Pune and after returning from Pune, they resided in a rented premises. At the time of death of deceased Mukesh, the non-applicants were residing in the rented premises. It is further alleged that after the death of Mukesh, the

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non-applicants requested the applicants to allow them to stay in the shared household property, but the said request was not considered and they were deprived from staying in the shared household property. It is further contended that the mother-in-law of the Non-applicant No.1 and the mother of the applicant executed Will and bequeathed the right in favour of her two sons namely the applicant and deceased Mukesh, which is undisputed fact. As per contentions of the non-applicant No.1, she filed an application under Section 12 of the said Act seeking various relief alleging that she is subjected for domestic violence by the applicant and deprived her from her right to stay in the shared household property.

10. Before entering into the merits of the case, it is necessary to refer some relevant provisions.

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11. Section 2(a) of the said Act defines “aggrieved person” means any woman who is, or has been, in a domestic relationship with the respondent and who alleged to have been subjected to any act of domestic violence by the respondent.....

12. Section 2(f) defines “domestic relationship” means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family.....

13. Section 2(s) defines “shared 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

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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 the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household

14. Section 3(iv) defines “economic abuse” which includes ---

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a Court or otherwise or which the aggrieved person

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requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her

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stridhan or any other property jointly or separately held by the aggrieved person; and

(c)prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Explanation II. For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes domestic violence under this section, the overall facts and circumstances of the case shall be taken into consideration.

15. Thus, this clause defines expression “domestic violence. Any act, omission or commission or conduct of the respondent shall amount to domestic violence in

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certain circumstances. It includes causing physical abuse, sexual abuse, verbal and emotional abuse or economic abuse, which are also explained in the said clause.

16. In determining, whether any act, omission, commission or conduct of the respondent constitutes “domestic violence”, the overall facts and circumstances of the case shall be a guiding factor.

17. Section 12 of the said Act, talks about procedure for obtaining orders of reliefs, which is reproduced as under:

“12. Application to Magistrate. (1) An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act:

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Provided that before passing any order on such application, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider.

(2) The relief sought for under sub-section (1) may include a relief for issuance of an order for payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent:

Provided that where a decree for any amount as compensation or damages has been passed by any Court in favour of the aggrieved person, the amount, if any, paid or payable in

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pursuance of the order made by the Magistrate under this Act shall be set off against the amount payable under such decree and the decree shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, be executable for the balance amount, if any, left after such set off.

(3) Every application under sub-section (1) shall be in such form and contain such particulars as may be prescribed or as nearly as possible thereto.

(4) The Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the Court.

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(5) The Magistrate shall endeavour to dispose of every application made under sub-section (1) within a period of sixty days from the date of its first hearing.

18. Section 17 of the said deals with “right to reside in a shared household, which states that (1) notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same and (2) the aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law.

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19. It is submitted by learned counsel for the applicant that in view of the definition of the “domestic relationship, the non-applicant No.1 never resided with her husband after 2004 and, therefore, the said domestic relationship was not in existence between them. It is further submitted that in view of definition of the “shared household,” where the person aggrieved lives or at any stages lives in domestic relationship either singly or along with the respondent, includes such household whether owned or tended either jointly by the accused persons and the respondent or owned or tended by either of them in respect of which either the aggrieved persons or the respondent or both jointly or singly have any right, title, interest, or enquiry and includes such household which may belong to joint family of which respondent is a members, irrespective or whether the respondent or the

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aggrieved person has right, title or interest in a shared household.

20. The non-applicant No.1 has left the house along with her husband in the year 2004 itself. There was no domestic relationship in existence within meaning of the above referred definitions. Therefore, her application is not maintainable. The said submission itself is not tenable, because the wording of “aggrieved person” as laid down in Section 2(a) of the said Act clearly provided that any woman, who is, or has been in a domestic relationship with the respondent.

21. The definition of “domestic relationship” also means relationship between two persons who live or have at any point of time live together in a shared household. The definition of shared household also means where the person aggrieved lives or at any stage has lived in a

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domestic relationship. Therefore, none of definitions contemplate that on the date of filing of such application for the reliefs under the said Act, the parties should be actually residing or living together. The wording itself “has lived together at any point of time”, covers even the past cohabitation or past togetherness between the aggrieved person and the respondent. The intention of the inclusion of the said words, has its own meaning. Otherwise, these words would not have appeared in the definitions. Giving any other interpretation to these words, is not the object of the said provisions. Therefore, till the relationship exists and the party at any point of time had lived together, the application or proceeding under the said Act can survive and is very much maintainable so as to grant necessary relief.

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22. This aspect is also considered by the Hon'ble Apex Court in the case of **Prabha Tyagi vs. Kamlesh Devi** and it has been held that 'domestic relationship' means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family. The expression 'domestic relationship' is a comprehensive one. Hence, every woman in a domestic relationship in whatever manner the said relationship may be founded as stated above has a right to reside in a shared household, whether or not she has any right, title or beneficial interest in the same. Thus, a daughter, sister, wife, mother, grand-mother or great grand-mother, daughter-in-law, mother-in-law or any woman having a relationship in the nature of marriage, an adopted daughter or any member

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of joint family has the right to reside in a shared household.

It has been further observed that the expression 'shared household' is defined in the context of a household where the person aggrieved lives or has lived in a domestic relationship either singly or along with Respondent, in the context of Sub-section (1) of Section 17, the said expression cannot be restricted only to a household where a person aggrieved resides or at any stage, resided in a domestic relationship. In other words, a woman in a domestic relationship who is not aggrieved, in the sense that who has not been subjected to an act of domestic violence by the Respondent, has a right to reside in a shared household. Thus, a mother, daughter, sister, wife, mother-in-law and daughter-in-law or such other categories of women in a domestic relationship have the

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right to reside in a shared household de hors a right, title or beneficial interest in the same.

23. Thus, the right of residence of the aforesaid categories of women and such other categories of women in a domestic relationship is guaranteed Under Sub-section (1) of Section 17 and she cannot be evicted, excluded or thrown out from such a household even in the absence of there being any form of domestic violence.

24. Thus, the expression 'right to reside in a shared household' has to be given an expansive interpretation, in respect of the aforesaid categories of women including a mother-in-law of a daughter-in-law and other categories of women referred to above who have the right to reside in a shared household.

25. If a woman in a domestic relationship seeks to enforce her right to reside in a shared household,

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irrespective of whether she has resided therein at all or not, then the said right can be enforced Under Sub-section (1) of Section 17 of the D.V. Act. If her right to reside in a shared household is resisted or restrained by the Respondent(s) then she becomes an aggrieved person and she cannot be evicted, if she has already been living in the shared household or excluded from the same or any part of it if she is not actually residing therein. In short, , the expression 'right to reside in the shared household' is not restricted to only actual residence, as, irrespective of actual residence, a woman in a domestic relationship can enforce her right to reside in the shared household.

26. Admittedly, the enactment of the said Act is piece of social legislation wherein right of a woman to reside in the shared household is identified. It is applicable to every woman irrespective of her religious

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affiliation or social background. The enactment is for more effective protection of her rights guaranteed under the Constitution of India and in order to protect woman victim of domestic violence occurring in domestic relationship.

27. Coming to the facts of the present case, the non-applicant No.1 has claimed her right to stay in the shared household as she resided in the said shared household along with her husband upto March 2004.

28. This Court in the case of **Smt.Bharati Naik vs. Shri Ravi Ramnath Halarnkar and anr**, reported in **2010(3) Bom Criminal Cases 871** wherein the words “has been or have been interpreted.” It is categorically held that the words “has been and have been” are used for the purpose of showing the past relationship or experience between the concerned parties. The said words therefore

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have been used purposefully as the said Act has been enacted to protect a woman from domestic violence and, therefore, there cannot be any fetter which can come in the way by interpreting the provisions in a manner to mean that unless the domestic relationship continues on the date of the application, the provisions of the said Act cannot be invoked. It was further held that To interpret the said provisions so as to mean that only subsisting domestic relationship are covered would result in turning the provisions of the said Act Otiose.

As such, the submissions made by learned counsel for the applicant on this aspect are not tenable and hence the same are required to be rejected.

29. The applicant has further come with another defence that there was dissolution of marriage between the non-applicant No.1 and her husband on 25.7.2007 by

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way of divorce deed. This contention is not substantiated by any document. The non-applicant No.1 has already denied the said fact. In view of 13 of the Hindu Marriage Act, the dissolution of marriage will be effected only by decision of the competent civil court and not by executing any such divorce deed. Therefore, the said contention is also not tenable.

30. Admittedly, the evidence on record shows that the applicant and the non-applicants shared the household as well as they lived in domestic relationship. After the death of husband of non-applicant No.1, the non-applicant No.1 attempted to stay in the said household. The present applicant has also not allowed her to reside in a shared household. The mother-in-law of non-applicant No.1 and the mother of the applicant executed Will on 29.9.2004 and bequeathed the ground

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floor to the applicant and first floor to deceased Mukesh. Therefore, the non-applicants have claimed that the applicant's refusal to allow the non-applicant No.1 in the shared household amounts to domestic violence. The definition of domestic violence given under Section 3 of the said Act, especially clause (a), specifically states that for the purpose of the said Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it harms or injures or endangers health, safety, life, limb well-being, whether mental or physical, of the aggrieved person tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse.

Thus, the clause defines the expression "domestic violence". Any act or omission or commission or conduct of the respondent shall amount to domestic

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violence in certain circumstances. It includes all abuses including economic abuse.

31. Section 3(v) of the said Act defines “economic abuse” which includes deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a Court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance.

32. Thus, it provides that economic abuse would be domestic violence if the respondent prohibits or restricts the applicant to continue access or resources or facilities which aggrieved person is entitled to use or

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enjoy by virtue of the domestic relationship including the access to the shared household. Therefore, in view of the rights given under the said Act, the provisions of the shared household and domestic relationship between the applicant and the non-applicants may not be there. However, considering the non-applicant No.1 was deprived from using the shared household property and, therefore, the applicant has committed the domestic violence who was in the year 2004 in a domestic relationship with her. Therefore, the judgment and order passed by learned Additional Sessions Judge calls no interference. Only modification required is that instead of ground floor, the non-applicant No.1 is entitled to reside in the shared household on the first floor in view of recital of the Will executed by her mother-in-law.

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33. In this view of the matter, I proceed to pass following order:

ORDER

(1) The Criminal Revision Application is **partly allowed**.

(2) The judgment and order dated 17.8.2022 passed by learned Additional Sessions Judge-12, Nagpur in Criminal Appeal No.162/2017 is modified to the extent that the non-applicant No.1 along with her son is entitled to reside in the shared household on the first floor instead of on the ground floor as described in the application.

(3) Rest of the order is maintained.

Revision stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

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