

Shubhada S Kadam

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 1335 OF 2019

1 Farjana Asfaq Shaikh)
Age 30 years, Indian Inhabitant,)
having address at)
Sector No.140/6, Gulmohar Society,)
Walhekarwadi, Chinchwad, Pune – 411 033.) Petitioner

Versus

1 Hasina Liyakat Shaikh)
2 Liyakat Isaq Shaikh)
3 Asfaq Liyakat Shaikh)
All residing at Sector 140/6,)
Gulmohar Society,)
Walhekarwadi, Chinchwad,)
Pune – 411 033.)
4 The State of Maharashtra,)
Through Public Prosecutor,)
High Court, Mumbai.) Respondents

Mr. Abhishek Patil, Advocate for Petitioner.

Ms. Pallavi Dalvi, Advocate for Respondent Nos.1 to 3.

Ms. Gauri S. Rao, APP for Respondent No.4-State.

CORAM : SHIVKUMAR DIGE, J.
DATE OF RESERVING : 6th MAY 2026.
DATE OF PRONOUNCEMENT : 10th JUNE 2026.

Judgment :

1. This petition is preferred against the order of the Additional Collector, Pune, confirming the order passed by the Sub-Divisional Officer

Shubhada S Kadam

(SDO), Pune, dated 25th November 2018, allowing the application filed by respondent Nos.1 to 3 under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short “the Senior Citizens Act”) and directing the petitioner to vacate the suit premises.

2. It is contention of learned counsel for the petitioner that the petitioner is married to respondent No. 3 on 22nd April 2006 and has a daughter out of the said wedlock. Respondents No. 1, 2 and 3 lived together along with the petitioner from the date of marriage. Respondent No. 3 was in the transport business, including running taxi services such as Ola, Uber, etc., including auto rickshaw. During the subsistence of first marriage, respondent No. 3 got married again to one Samina Pathan. In view of the second marriage, respondent Nos. 1 to 3 started neglecting and causing harassment to the petitioner, which resulted in the petitioner filing Miscellaneous Application No. 1157 of 2017 before the learned Judicial Magistrate First Class, Pimpri, (for short “learned JMFC”) under the Protection of Women from Domestic Violence Act, 2005 (for short “the DV Act”). Learned counsel further submitted that respondents No. 2 filed a civil suit for recovery of possession of the premises in use, occupation and possession of the petitioner and her minor daughter. Learned counsel further submitted that to counterblast the application under the DV Act, respondent Nos.1 to 3 filed an application before the learned SDO, Pune,

Shubhada S Kadam

under the Senior Citizens Act. Learned counsel further submitted that the learned SDO, without considering the fact that the civil suit filed by respondent No.2 for possession and the application under the DV Act filed by the petitioner were pending, passed the impugned order directing the petitioner to vacate the premises. The said order is confirmed by the Additional Collector. Learned counsel further submitted that in DV proceedings, considering the submissions of both parties, learned JMFC has passed an order on 11th September 2019, granting maintenance and also granting protection to the petitioner in respect of the suit premises. There are approximately 19 rooms in the suit premises. It is a three-storied building. The petitioner is staying with her minor daughter on the third floor. The said premises were purchased out of the dowry amount given by the petitioner's father to respondent No. 3. The petitioner is protected by the order passed by learned JMFC from being evicted from the suit premises, but this fact was not considered by the SDO and the Additional Collector, and requested to allow the petition.

3. It is contention of learned counsel for respondent Nos.1 to 3 that respondent No. 2 has purchased the said property out of his own income. Due to continuous dispute between the petitioner and respondent No. 3, he directed both of them to vacate the suit premises. Respondents No. 1 and 2 are senior citizens. They need the premises for

Shubhada S Kadam

their accommodation. The provisions of the Senior Citizens Act are enacted for the benefit of senior citizens. The SDO and the Additional Collector have rightly observed and passed a reasoned order. No interference is required in it and requested to dismiss the writ petition.

5. I have heard both learned counsel, perused the impugned order. Admittedly, the suit for recovery of possession against the petitioner is filed by respondent No. 2 after filing of the DV application by the petitioner. Thereafter, the application under the Senior Citizens Act was filed by the respondent Nos.1 to 3 against the petitioner. It shows that to counterblast the DV application, the said proceedings were filed. It is significant to note that in the DV application, the learned JMFC has protected the petitioner from eviction from the suit premises. Moreover, the suit premises is a three-storied building. The petitioner stays with her daughter on the third floor. The respondents have separate rooms to stay. Hence, it cannot be said that inconvenience is being caused to the respondents. As observed by the Hon'ble Apex Court in the case of *S. Vanitha versus Deputy Commissioner, Bengaluru Urban District and ors (2021) 15 SCC 730*, the petitioner cannot be evicted from suit premises as DV application filed by her is pending and she has been protected from eviction from suit premises.

Shubhada S Kadam

6. In view of the above reasons, I pass following order:

ORDER

(i) The petition is allowed.

(ii) The impugned order dated 25th February 2019 in Appeal No.6 of 2018 passed by the Additional Collector, Pune, is quashed and set aside.

(SHIVKUMAR DIGE, J.)