

Poonam Jaidev Shroff vs State Of Maharashtra on 3 December, 2021

Author: B.R. Gavai

Bench: B.R. Gavai, L. Nageswara Rao

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

I.A. NOS. 59776 AND 60354 OF 2021
IN
CIVIL APPEAL NO. 2634 OF 2017

JAIDEV RAJNIKANT SHROFF

... APPELLANT(S)

VERSUS

POONAM JAIDEV SHROFF

... RESPONDENT(S)

ORDER

B.R. Gavai, J.

1. These two interlocutory applications filed by the respondent's wife are part of series of a long drawn acrimonious litigation between the husband and wife.

2. For the disposal of the present interlocutory applications, we need not refer to the facts in detail. Suffice it to say that the appellant's husband and the respondent's wife were married to each other on 27 th November 2004. However, the relationship between them soured. Various cases including the FIRs were filed by both the husband and wife against each other.

3. The appellant's husband filed a divorce petition being Petition No. A-2742 of 2015 before the Family Court at Bandra, Mumbai (hereinafter referred to as the "Family Court") seeking divorce on the ground of cruelty. The same was filed in the month of October 2015. During the pendency of the said divorce petition, the appellant's husband lodged a complaint against the respondent's wife with the Khar Police Station, making certain serious allegations against the respondent's wife. On the basis of the said complaint, an FIR being FIR No. 169 of 2016 came to be registered by the said police station. It is the contention of the appellant's husband that after the said FIR was lodged, the respondent's wife voluntarily left 82, Pali Hill, Bandra (West), Mumbai – 400 050 (hereinafter referred to as the "said house"), wherein the appellant's husband and the respondent's wife were residing together. According to the appellant's husband, the respondent's wife along with their

daughter Rudritara went to 38, Pali Hill, Bandra, i.e., her mother's residence. The appellant's husband thereafter filed an application seeking an order of injunction restraining the respondent's wife from entering the said house. The Family Court vide order dated 22nd April 2016, allowed the said application, thereby granting an injunction restraining the respondent's wife from entering the said house. Being aggrieved by the order passed by the Family Court dated 22nd April 2016, the respondent's wife filed a writ petition being Writ Petition No. 6029 of 2016 before the Bombay High Court. Vide order dated 24th October 2016, the High Court allowed the said writ petition filed by the respondent's wife. Being aggrieved thereby, the appellant's husband has approached this Court. That is how the main appeal has travelled up to this Court.

4. Initially, when the matter came up before this Court on 15th November 2016, this Court issued notice only to explore the possibility of an amicable resolution of the dispute. However, this Court in its order dated 27th January 2017, recorded that the settlement between the parties, at that stage, was not possible. This Court, therefore, enlarged the scope of the notice issued by this Court vide the said order and expressed that they were inclined to examine the impugned order of the High Court of Bombay on merits. Vide the said order, this Court also passed an order directing the parties to maintain status quo.

5. When this matter was listed before this Court on 14th September 2017, this Court recorded that without prejudice to the rights and contentions of the parties in the present proceedings, the parties are agreeable to explore the possibility of an amicable resolution of their dispute. As such, by consent, Mrs. Sadhna Ramachandran, Advocate was appointed as a Mediator. It further appears that in order to explore the possibility of amicable settlement, this Court vide order dated 22nd January 2018, directed the parties to remain present in person on 30th January 2018 at 02.00 pm. The order of this Court dated 30th January 2018 would reveal that this Court had discussed the matter in Chambers with the parties to find out some amicable resolution and a week's time was granted to the parties to think over to come to an amicable resolution. However, vide order dated 13th February 2018, this Court recorded that there is no possibility of an amicable settlement between the parties.

6. This Court, again on 21st August 2018, recorded that the matter needed to be resolved through mediation. This Court, therefore, appointed Shri Sriram Panchu, Senior Advocate, as a Mediator to mediate the dispute between the parties. Vide the said order, this Court also stayed all the criminal proceedings pending between the parties.

7. Shri Sriram Panchu, the learned Mediator submitted his report on 19th February 2019, stating therein that the differences between the parties were too wide and it was not possible to resolve the matter at that stage. Hence, he filed the closure report. Further report of the Mediator dated 12th April 2019, would reveal that by e-mail dated 25th March 2019, counsel for the respondent's wife has informed him that while adjourning the matter by four weeks, this Court had issued an oral direction to the parties to appear once more before the Mediator. The report further revealed that, however, both the parties by self/through counsel have expressed the view that there is no point in continuing with the mediation. In the circumstances, vide the said report dated 12th April 2019, the learned Mediator has observed that the mediation cannot be carried on and was therefore closed.

8. On 30th January 2020, this Court passed the following order: □“Heard.

Mr. P. Chidambaram and Mr. Shyam Divan, learned Senior Counsel appearing for the respondent □ Poonam Jaidev Shroff, state that the respondent □ Poonam Jaidev Shroff will locate rented premises of her choice which shall be equivalent to the residence at 82, Pali Hill, Bandra (West), Mumbai – 400 050, for her residence.

Dr. A.M. Singhvi, learned Senior Counsel appearing for the appellant–Jaidev Rajnikant Shroff, states that the appellant □ 3 Jaidev Rajnikant Shroff will pay the rent for the said premises.

It is understood that this arrangement will at the moment continue till the disposal of the pending divorce petition.

Mr. P. Chidambaram and Mr. Shyam Divan, learned Senior Counsel appearing for the respondent, prays for time to make a statement regarding the disposal of the divorce petition pending in the Family Court at Bandra, Mumbai.

List these matters on 26.02.2020 (a non □ miscellaneous day).”

9. Again, when the matter was listed before this Court on 6th March 2020, this Court passed the following order: □“We have heard the question of respondent □ wife’s accommodation at length.

We are of the view that in the circumstances of the case, the interests of justice would be best served if the Registrar of the Family Court at Bandra, Mumbai, is directed to engage an architect from the panel of architects maintained by the Bombay High Court for finding out appropriate accommodation for the residence of the respondent – wife.

It is made clear that the residence shall be approximately similar to the size of 82, Pali Hill, Bandra (West), Mumbai – 400 050 and located as far as possible in Bandra and Juhu area.

After such accommodation is located, the Registrar shall submit a report forthwith to this Court pointing out the location of such accommodation along with rent so as to enable this Court to pass further orders. We further direct that if the accommodation is approved, the petitioner – husband shall regularly pay such rent to the landlord of the tenanted premises. List these matters after two months.”

10. Pursuant to the aforesaid orders passed by this Court, Smt. Kishori Joshi, Architect, Valuers and Engineers was engaged by the Registrar of the Family Court. On 3rd February 2021, Smt. Joshi submitted a list of the properties, which in the architect’s opinion were similar to the said house. The communication dated 3 rd February 2021 would reveal that in the architect’s opinion, the properties listed were outcome of their best efforts to provide a suitable accommodation to the respondent □ wife as per her liking and will. As many as 17 properties have been listed in the list sent along with the communication dated 3rd February 2021. However, vide communication dated 10 th February 2021, it was informed on behalf of the respondent □ wife that none of the properties shown

in the list were similar to the said house.

11. In this background, the respondent's wife has approached this Court with the two interlocutory applications. The prayers in I.A. No. 60354 of 2021, read thus:

(a) "allow the present application and vacate the interim order dated 27th January 2017 passed by this Hon'ble Court in the aforesaid appeal and permit the Respondent and the minor child to reside in the matrimonial home;

(b) allow the present Application and dismiss the SLP(Civil) No. 32264 of 2016 converted into Civil Appeal No. 2634 of 2017;"

12. The prayers in I.A. No. 59776 of 2021, read thus:

a) "clarify the order dated 06.03.2020 & allow the Respondent and the minor daughter to forthwith move into 82 Pali Hill (matrimonial Home) and the Respondent be paid an amount of Rs. 75.26 Lakhs per annum for the staff of the matrimonial home and maintenance as per actuals along with arrears for living outside the matrimonial home @ Rs. 35.37 Lakhs per month from 07.04.2016 till the date of passing of the Order;

b) In the alternative, clarify the order dated 06.03.2020 & an amount of Rs 35.37 Lakhs per month be paid to the Respondent which is the monthly rent amount of the matrimonial home along with cost of running & maintaining the premises as per actuals and the arrears from 07.04.2016 till the date of passing of the Order."

13. We have heard Shri Shyam Divan, learned Senior Counsel appearing on behalf of the applicant's respondent wife and Dr. Abhishek Manu Singhvi, learned Senior Counsel appearing on behalf of the non-applicant/appellant husband.

14. Shri Divan submitted that though the respondent's wife has succeeded before the High Court, on account of the status quo order passed by this Court, the respondent's wife is deprived of staying in the said house, which is the shared household as contemplated under Section 2(s) of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the "DV Act"). He submitted that the appellant's husband is earning hundreds of crores per year, whereas the respondent's wife and the daughter Rudritara have to survive on a meagre amount of Rs. 12 lakhs per month.

15. Shri Divan further submitted that this Court had directed an architect to be appointed by the Family Court to find out a house similar to the one, wherein she was residing with her husband. He submitted that the properties suggested by the architect, by no stretch of imagination, could be said to be houses, which are similar to the said house. He submitted that on one hand, the respondent's wife is compelled to stay with her aged mother, whereas on the other hand, the appellant's husband is residing in the shared household with a lady with whom he is engaged in an adulterous relationship. He submitted that the appellant's husband has been emboldened on account of the

status quo order passed by this Court and has entered into an adulterous relationship with a lady and also fathered a child in the said relationship. It is submitted that the appellant's husband is making all efforts to move into the matrimonial house with his mistress and as such, has abused the process of the court and manipulated legal process in filing fabricated petition.

16. Shri Divan therefore submitted that taking into consideration the conduct of the appellant's husband, the order of status quo granted by this Court needed to be vacated. He submitted that in the alternative, since the respondent's wife was compelled to reside with her husband, the order dated 6th March 2020 needed to be clarified that the respondent's wife and the minor daughter be permitted to move to the said house and the appellant's husband be directed to pay an amount of Rs.75.26 lakhs per annum for the staff at the matrimonial home and maintenance as per actuals along with arrears. He submitted that in the alternative, it is necessary to clarify the order dated 6th March 2020 and direct an amount of Rs.35.37 lakhs to be paid to the respondent's wife by the appellant's husband, which was a monthly rent of the matrimonial home along with the cost of running and maintaining the premises as per actuals and the arrears from 7th April 2016.

17. Dr. Singhvi, learned Senior Counsel appearing on behalf of the appellant's husband, on the contrary, submitted that the present applications are an attempt to seek a review of the order passed by this Court, which has been passed after hearing the parties. He submitted that the appellant's husband is willing to pay the rent for the premises, if the suitable premises is chosen by the respondent's wife and she shifted her residence to the said premises. However, the present applications are an attempt to get much more amount than to which the respondent wife has been found to be entitled by an elaborate order passed by the Family Court dated 30th July 2018. He submitted that the respondent's wife herself is a rich lady having huge properties, having income more than sufficient to sustain herself. He submitted that, however, the respondent's wife is trying to take an undue advantage of the fact that the appellant's husband is a rich person. He submitted that the entire conduct of the respondent's wife would show that she has been unreasonable and adamant. He submitted that the order dated 30th January 2020 passed by this Court, would itself clarify that the respondent's wife had made a statement that she will locate a rented premises of her choice, which shall be equivalent to the said house. The appellant's husband had also expressed his willingness to pay the rent for the said premises. By another order dated 21st August 2018, this Court had directed an architect to be appointed from the panel of Architects, maintained by the Bombay High Court. Accordingly, an architect was appointed by the Registrar of the Family Court, who has identified as many as 17 properties. He submitted that it is impossible to find out a property, which can be found to be identical with the said house. He, however, submitted that the properties, which have been identified by the architect, are similar in terms of the facilities and luxuries, as are available in the said house.

18. Dr. Singhvi further submitted that though the appellant's husband has offered an amount of Rs.100 crore as a one-time settlement, the respondent's wife has refused the said offer and has demanded an amount of Rs.600 crore.

19. Though the appellant and respondent have made serious allegations against each other, we do not find it necessary to go into those allegations. A perusal of the record would reveal that the

relations between the parties are strained to such an extent that even the efforts made by this Court to arrive at a settlement by personally discussing the matter in Chambers with them, have failed. On two occasions, this Court has appointed Mediators, who were Advocates. However, the mediation proceedings could not succeed. In such a situation, to compel the parties to live together in one house, would not be in the interest of either of the parties. With the history of such acrimony and filing of criminal cases against each other, such an order, rather than benefiting the parties, would be detrimental to their interests.

20. The order passed by this Court dated 30th January 2020, would reveal that this Court has attempted to balance the equities. On the first occasion, the respondent's wife had herself made a statement that she would identify a similar property and the appellant's husband had made a statement that he was willing to pay the rent of such a property identified by the respondent's wife. On the second occasion, this Court vide order dated 21st August 2018, directed an architect to be appointed from the panel of Architects. In accordance with the directions passed by this Court, an architect was appointed and she has made an elaborate exercise of identifying various properties. It will be relevant to refer to the contents of the letter dated 3rd February 2021, addressed by the Architect to the Registrar of the Family Court: "We are producing herewith Property Listings similar to 82, Pali Hill, Bandra (West), Mumbai in our best effort to provide suitable accommodation to Mrs. Poonam Shroff as per her liking and will. The shortlisted properties in Upscale locales assuredly possess the potential to exhibit the desired degree of luxe & comfort as expected by Mrs. Poonam Shroff evident from the mail dated 07.10.2020 from Madhu Chaudhary (madhuchaudhary@nnico.com) from Naik Naik & Company representing Mrs. Poonam Shroff."

21. It could thus be seen that in the Architect's opinion, the properties in the list are similar to the said house and that they have made their best efforts to provide a suitable accommodation to the respondent's wife as per her liking and will. It has further been stated in the said communication that the shortlisted properties in the upscale locales assuredly possess the potential to exhibit the desired degree of luxe and comfort as expected by the respondent's wife. The list annexed to the communication of the Architect contains as many as 17 properties in the upscale area of Bandra, Juhu, Santacruz and Khar. Even if we leave aside properties No. 4 and 12, which according to the respondent's wife are not suitable for residential accommodation, there are still 15 properties available for rent. We do not like to go into the details of all the properties. However, we will reproduce the details of few properties with the remarks given by the respondent's wife, to examine the correctness of the stand taken by the respondent's wife: Sr. Name of Location Area Accommodation Rent Remarks Remarks on behalf of Premise Type per Poonam Shroff Month in Rupees

1. Independent Carter 12,000 Independent 25 Sea Smaller as compared to Building Road, Sqft Building lakhs View 82, Pali Hill and hence Bandra Ground + cannot be an alternate (West) 6 (terrace) equivalent accommodation in terms of the order dated 6th March, 2020 of the Hon'ble Apex Court in Civil Appeal No. 2634 of

2. Bungalow Juhu Tara 6000 Sqft Bungalow 30 Sea Further details required Road, Near + 7000 Lakhs Facing Soho House Sqft (Garden) + 4000 Sqft (Terrace)

3. Vasant Kunj Santacruz 7500 Sqft Duplex□3th & 25 Fully Smaller as compared to 14th Floor Lakhs done up 82, Pali Hill and hence with Sea cannot be alternate View equivalent accommodation

9. Silver Sands Carter Road 4500 Sqft Penthouse□12 Includes Smaller as compared to + 1000 4BHK Lakhs terrace, 82, Pali Hill and hence Sqft Sea cannot be an alternate (terrace) Facing equivalent accommodation in terms of the order dated 6th March, 2020 of the Hon'ble Apex Court in Civil Appeal No. 2634 of

11. Raj Mahal Juhu 10000 Bungalow□4 25 Sea Smaller as compared to Sqft BHK Lakhs Facing, 82, Pali Hill and hence has cannot be an alternate Garden equivalent accommodation & in terms of the order dated Terrace 6th March, 2020 of the Hon'ble Apex Court in Civil Appeal No. 2634 of

22. The aforesaid chart would reveal that though the property at Serial No. 1 is an independent bungalow at Carter Road, Bandra, with a sea view, the remarks given by the respondent□wife is that the same is smaller as compared to the said house, and therefore, cannot be an alternate equivalent accommodation in terms of the order of this Court dated 6th March 2020. Insofar as the property at Serial No. 2 is concerned, the same is also a sea facing bungalow at Juhu Tara Road. However, the remarks given by the respondent□wife is that further details are required. The rent for these two houses is Rs.25 lakhs and Rs.30 lakhs respectively. The property at Serial No. 3 is a duplex on 13 th and 14th floor. It is fully done up with a sea view. However, the remarks given by the respondent□wife is that it is smaller as compared to the said house and therefore, cannot be an alternate equivalent accommodation. The property at Serial No. 9 is a Pentahouse□4BHK with 1000 sq. ft. of terrace and also sea facing. However, the remarks given by the respondent□wife is that it is not similar to the one offered at Serial No. 1. The property at Serial No. 11 is a 10,000 sq. ft. bungalow. It is sea facing and has a garden and a terrace. The rent is Rs.25 lakhs. However, a similar remark is given by the respondent□wife even in respect of this property also.

23. In our view, to stretch the word 'similar' as used in the order dated 6th March 2020, to be totally identical to the said house, would be unrealistic. It will be difficult to find out a house identical to the said house having the same area, the same facilities and the same luxuries. The word 'similar' has to be construed as providing the same degree of luxury and comfort as is available in the said house. We have no hesitation in observing that the conduct of the respondent□wife in firstly not choosing any house as per her choice and secondly, in rejecting all the properties, which have been identified by the Architect, only on the ground that they are not similar and therefore, not in accordance with the order dated 6th March 2020, to say the least is unreasonable.

24. As already discussed hereinabove, if we allow the prayer and allow the respondent□wife to move into the said house, it will rather than subserving the interest of the parties, would be detrimental to their interests. The record and the pendency of the criminal proceedings would show that the relations between the parties are so strained that if they are permitted to live in the said house, it would lead to nothing else but further criminal proceedings.

25. Insofar as the alternate prayer with regard to payment of Rs.35.37 lakhs per month is concerned, it will be necessary to refer to the order of the Family Court dated 30 th July 2018. The Family

Court, by an elaborate order, after recording the details about the income of the parties, had directed an interim maintenance to be paid to the respondent's wife at the rate of Rs. 7 lakhs per month and to the minor at the rate of Rs. 5 lakhs per month. If the prayer for payment of an amount is allowed, it will be giving an additional amount to the respondent's wife. It will amount to awarding an amount which is much more than the one to which the respondent's wife was found entitled by the Family Court. It may not be out of place to mention that the said order has been passed on 30th July 2018 i.e. during the pendency of the present appeal. We, therefore, find that the alternate relief as prayed also cannot be granted.

26. Insofar as the vacation of status quo is concerned, the order was passed after hearing the parties. Apart from the fact that it may amount to review of the order, we do not find that in the facts of the present case, the said order needs to be vacated.

27. A perusal of the order passed by this Court dated 30th January 2020, would reveal that this Court intended to pass the order directing the appellant's husband to pay the rent till the disposal of the pending divorce petition. The divorce petition has been pending before the Family Court for a period of last 6 years. Taking into consideration the facts and circumstances of the case, we are of the view that it will be in the interest of both the parties that the divorce petition pending before the Family Court is decided expeditiously so that there can be at least some quietus to the acrimonious litigation pending between the parties.

28. In the result, we do not find merit in both the interlocutory applications and the same are rejected. However, we clarify that in the event, the respondent's wife decides to shift to any of the properties mentioned in the list annexed with the report of the Architect dated 3rd February 2021 or she locates any of the rented premises as per her choice, the appellant's husband shall pay the rent of the said premises from the date on which such premises are taken on rent. However, taking into consideration that the highest rent of the properties identified by the Architect is Rs. 30 lakhs per month, the appellant's husband would be liable to pay rent to the maximum of Rs. 30 lakhs per month.

29. In the facts and circumstances, the Family Court is directed to expedite the proceedings of the Petition No. A-2742 of 2015 and decide it as expeditiously as possible. No order as to costs.

.....J. [L. NAGESWARA RAO]J. [B.R. GAVAI] NEW DELHI;

DECEMBER 03, 2021.