Received on – 21.06.2014
Registered on – 21.06.2014
Decided on – 11.02.2022
Dura. – 07 Ys. 07 M s. 20 Ds.

C.C. No. 25 DV 2014

EXH.196

IN THE COURT OF METROPOLITAN MAGISTRATE,
12th COURT, BANDRA, MUMBAI
(Presided over by Komalsing Rajput)

Rhea Laila Pillai
Age - 55 yrs., Occupation - Humanitarian Work,
Residing at - The Jacker's, 6th Floor,
113, Carter Road, Bandra (West),
Mumbai – 400 050. **….. APPLICANT**

Vs.

1. Leander Adrian Paes,
Age - 47 years, Occupation - Tennis Player,

2. Vece Paes,
Age - Major, Occupation - Service,
Both Residing at - The Jacker's,
6th Floor, 113, Carter Road,
Bandra (West), Mumbai – 400 050 ….. **RESPONDENTS**

C.C. No. 25 DV 2014

CNR-MHMM18-005931-2014

Rhea Vs Leander and anr.

JUDGMENT

(Delivered on 11th February 2022)

(IN AN APPLICATION UNDER SECTION 12 OF PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT)

Advocates for the Parties –

For Applicant – 1. Shri. Mahesh Jethmalani

2. Shri. V. D. Mungekar

3. Smt. Amna Usman

4. Smt. Pooja Kute

For Respondents – 1. Shri. A. H. Ponda

2. Shri. Nankani

3. Shri. George Cheriyan

4. Shri. Uttam Cheriyan

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I. BACKGROUND FACTS

1. Human race after entering into social set up of civilized norms of living and adopting democratic polity for balancing the rights of individuals and lager interests of society, so many times came across confrontations between law and morality, an age old conflict. Such confrontations further worsened by stiff and rigid letters of statutes, disagree to mould themselves as per changing social norms. Every time such different facets of changing human behavior and consequent changing of norms of living were upheld by law with aid of beneficial and purposive interpretations of statutes. However, such acceptance and adaptation takes time and possible only after meeting different situations and contingencies leading to such interpretations.

2. The sexual relationship beyond the ties of marriage is not widely accepted even today also. It's existence across societies is not in dispute. Several times it posed situations leading to conflict between law and morality. Such relationship put parties into peril. Particularly, a female partner, is always at the receiving end. A patriarchal society caused various injustices to a female partners involved in such relationships beyond marriage. The available legal measures for such female partner are also found to be inadequate resulting in her exploitation and abuse.

3. To prevent this to certain extent the Protection of Women from Domestic Violence Act, was enacted in the year 2005, ***hereinafter referred as D.V. Act***. This Act recognises certain rights of a woman who is in live in relationship, if domestic violence is committed on her by her male partner and his family members during such relationship. Being budding law it poses certain novel situations leading to several contingencies and interpretations. This matter presents one of such situation where a woman during existence of her previous marriage

entered into relationship with unmarried man, lived with him and gave birth to a child. The relationship started in 2003, continued till today and during this long span of time underwent various changes. Applicant entered in the house of Respondent, Respondent separated from her, despite that till date applicant is residing in his house, etc. These changes resulted in accrual of several issues. Such as whether such relationship confer any right under D.V. Act, on the woman who is already married and voluntarily entered into relationship with a third person?, What is the effect of subsequent divorce and continuation of relationship on her rights? Whether in the proceedings initiated under D.V. Act the validity of the relationship can be disputed on the basis of validity of the divorce of female partner?

4. The background facts leading to filing of this application are, in this matter two partners, belonging to different faiths are before this court, wherein Mrs. Rhea Pillai, a Hindu by religion and model-cum-actor by profession, pleading grievances about her derailed relationship with Mr. Leander Paes, a Christian by religion and a tennis player by profession and claimed various reliefs. ***Both are hereinafter referred as, Applicant and Respondent respectively.*** The applicant hails from respectable family, a daughter of Ex-British High Commissioner of India, studied in England upto graduation in Economics. She pursued modeling, acting and a job of instructor of *Art of Living*, a program run by spiritual leader Sri Sri Ravishankar. Respondent is minimally educated, a tennis player, who represented India across world and won several competitions.

5. After failure of two marriages applicant, came in contact with respondent in the month of October or November 2003. The relationship between them developed, both got intimate and decided to have a child without resorting to marital compulsions. This resulted in

cohabitation under common roof in the year 2005-06, at Colaba, Mumbai. Applicant conceived a child from the Respondent and a girl child, later named as Aiyana, born on 3rd April, 2006. They shifted to another at Bandra, Mumbai, initially at Soona Villa and then a house owned by respondent Jacker's, 6th Floor, 113, Carter Road, Bandra (W), Mumbai, i.e. present address ***hereinafter referred as Jackers***. The Respondent No.2, father of respondent Leander, Mr. Vece Paes, also joined them along with his female partner, Ms. Juliana. Differences erupted. The day to day tussle resulted in filing of the custody application by the Respondent in the family Court at Bandra, Mumbai, seeking custody of daughter Aiyana. Then Applicant approached this court under Section 12 of D.V. Act, and claimed various reliefs.

II. PLEADINGS

Applicant's case -

6. As per applicant she hails from respected family, educated and was a model and thereafter, joined as an instructor with an international course of Art of Living. Earlier married to a film actor and separated from him since year 2001. The final divorce was granted in the year 2008. The Respondent is a sportsman-tennis player and also owns companies. He earns handsome returns and leads lavish lifestyle, enjoys on splurging materialistic things. The Respondent No.2, Mr. Vece Paes, is his father, who is in Live-in relationship with a lady by name Ms. Juliana, for the past several years.

7. Applicant and Respondent met in October 2003, they closer and slowly and steadily developed a fondness for each other and enjoyed each others' company. Respondent represented himself to be extremely good being and expressed desire to live with Applicant and give her the status of his partner to show commitment to her and the

relationship. In 2005, they moved into common house to have a committed live-in relationship. In the year 2006, they moved at another place and stayed in live-in relationship, upto 2008. Since year 2005, both of them have been in a live-in relationship, akin to marriage though not legally married. In July 2005, applicant was pregnant, and on 3rd April 2006, gave birth to a girl, later named as Aiyana Vedika Paes. Then in the year 2008, they shifted at Jacker's, 6th Floor, 113, Carter Road, Bandra (W), Mumbai, i.e. present address ***hereinafter referred as Jackers***, in a relationship akin to marriage, but they are not legally married. The said address is also updated in all the official documents of the Applicant and daughter Aiyana, as residential address. In the mean time the attitude of the respondent towards applicant changed. Applicant has taken great pain and incurred heavy expenses in decorating the said house and also attempted to rekindle the emotions of Respondent.

8. Post the birth of daughter Aiyana, the Respondent, avoided any sexual intimacy with the applicant. She noticed that behavior of the Respondent prior to the birth of daughter Aiyana was pretense and quarrels and cracks started developing in their relationship. The Respondent's conduct being arrogant, haughty, rude, condescending, was adversely effecting her mental wellbeing. She attempted to restart her occupation but her movie and other work was not succeeded, she was deeply hurt and antagonized by the Respondent showing complete disregard to her feelings and emotions on account of this failure

9. The Respondent No.2, Mr. Vece Paes, was against the said relationship from very beginning therefore he also resorted to illegal methods to oust the Applicant and the child from Jackers. He is

addicted to pornography, displayed no sensitivity to the young girl in the house.

10. In the year 2007, the Respondent distanced himself and started spending most of his time outside and was not even responding to her phone calls. She noticed that Respondent is having an illicit relation with another woman at Singapore and constantly traveling and stayed there. Applicant was cheated and betrayed by the Respondent at every juncture of their relationship, emotionally, physically and financially. Respondent failed to fulfill his obligations as father and partner. In the year 2007, daughter Aiyana developed a sleep disorder and in 2009-10, underwent surgery. Applicant single handedly made all the arrangements. Respondent shirked away from his obligations and duty as a father. At this time of emergency Applicant constrained to take aid from her girlfriends. Respondent accused her of having illicit relationship with one of her woman friends. He was also accusing her of vagabonding and having illicit relations with other men and her ex-husband.

11. Respondent also used his own child to attract media attention against the wishes of child. He was never sensitive towards the emotions of child. During international tours Respondent was indulging in other woman. On several occasions Respondent treated the Applicant with complete disregard and contempt, doing such things out of his interest in outside relationships.

12. The Applicant is devoted to Art of Living Yoga Course and was holding Satsangs at Jackers. Respondent though aware of it, in the year 2012, he started making vile baseless allegations against students. Therefore, Applicant compelled to stop *Satsangs* and give up teachings the Art of Living courses. On several times even considered

the option of separation but hesitated to do so to protect reputation and emotional wellbeing of child. In the year 2013, during illness of daughter Aiyana also Respondent show little or no concern for her. Applicant came across press reports in newspapers stating that Applicant and Respondent were not married, but they are in live-in relationship and have daughter. They were headed for split. Respondent thereby hurting his own child in public.

13. The Applicant often constrained to bear all the household expenses as Respondent would cringe to part with money for their own daughter and household expenses. Applicant was reduced to pitiable condition wherein she had to wait endlessly for Respondent to send money for household expenses. She also came to know that Respondent was intending to sell Jackers only with intention to dispossess the Applicant and daughter Aiyana. He was creating situation to make the Applicant's life uncomfortable and stressful. Respondent as a father ignored that their daughter is no longer a child, she is girl and had shower with her. On some occasions when daughter slept with him in his bedroom he deliberately locked door from inside.

14. On 15.03.2014, she took daughter Aiyana to Hrishikesh for her mid-term brake. Respondent No.2, Vece Paes, and driver of Respondent Mr. Aziz along with two professional hackers broke into the Applicant's room and rummaged through all her belongings and confiscated all her personal documents and items. They hacked into her computer and transferred all the material from her drive on their own personal disk. Respondents have been blackmailing her of approaching the press with regards to the contents of the disk if she did not leave the house. Respondent filed guardianship petition before Family Court at Bandra, Mumbai, based on falsehood to malign the Applicant. In another attempt to dispossess the Applicant, on

08.05.2014, the Respondent deliberately locked Applicant outside their apartment and deliberately not allowing entry to her. She called up police and secured entry. On next day also she found most of her belongings had been packed up and kept on the side. Non-vegetarian food and shoes was also kept in that room with view to insult the Applicant's religious and spiritual belief. Respondent No.2, Vece Paes, and strange men kept on insisting that she has no place in the house using extremely offensive and abusive words and addressed Applicant in derogatory manner. Their presence also caused nuisance and has spread terror and fear.

15. The Jackers' is located on 6th floor, having area of 2248 sq.ft., consists of four bedrooms which is mirror image of each other on either side of it, then two bedrooms were combined on one side to make master bedroom. She is in occupation of Jackers since 2007, along with Respondent, the daughter Aiyana and domestic staff. On 08.05.2014, Respondent No.2, Vece Paes, along with his live-in partner Ms. Juliana, also moved into Jackers though they own rented place in Mumbai. But with view to get rid of Applicant they started residing permanently in the Jackers. Both of them terrorizing, abusing and asking the Applicant to leave the said house. It is standing only in the name of Respondent, there is every possibility that he might sale, dispossess or create third party rights in the said house. The Respondent had mortgaged Jackers with State Bank of India, obtained loan from Sahara Housing Investment Corporation Ltd. by mortgaging it. He also committed default in paying installments towards the loan of Mercedes car gifted to the Applicant by him, due to which she had to sell off the said car.

16. Thus, the Respondent through his acts and conduct caused verbal, emotional and economic abuse resulted in tremendous

emotional violence, trauma to the Applicant. He has earned and earning huge money as a prize money and from other sources. Applicant is incurring various expenses for day to day requirements, education and other necessities. She is also entitled to the Jackers and they have been in relationship akin to marriage though not legally married for the past ten years and have a daughter from the said relationship. Therefore, Applicant compelled to file the present application prays for various reliefs including protection order, residence order, maintenance, compensation and also asked for division of the Jackers in the two apartments of somewhat equal sizes and direction against respondents to execute a bond not to commit the acts of domestic violence further.

CASE OF THE RESPONDENTS

17. Respondents denied each and every statement, allegations, avernments and submissions made in the petition by the Applicant contrary and/or inconsistent with their stand.

18. The respondents disputed the tenability of the application contending that the relationship between the Applicant and the Respondent is not a relationship in the nature of marriage as defined in Section 2(f) of D.V. Act, as Applicant was married to Mr. Sanjay Dutt till 2008. Applicant made believe the Respondent that she has divorced her husband Mr. Sanjay Dutt in the year 2005, and wanted to have a child but did not want any commitment to a relationship. During subsistence of the said marriage the Applicant and respondent came together and the child Aiyana was born on 03.04.2006 out of said relationship. Ever since the birth of daughter Aiyana, the relationship between the Applicant and Respondent irretrievably broke down and there was no emotional or physical or otherwise relationship

till date. As such, there is no relationship in the nature of marriage between the Applicant and Respondent.

19. The Applicant went about leading her own wayward life on her own terms and conditions, totally unconcerned about the Respondent. The Respondent sought to maintain cordial relationship between the Applicant and himself only for the sake of child Aiyana, even though there was no emotional or physical connect between him and Applicant. When he received news about her pregnancy, he was very happy but applicant insisted that he did not have to take responsibility for the child, he felt shocked about this attitude and attempt to dissociate the Respondent from their child. Despite that he has looked after child's emotional needs and taken care of her financial requirements out of natural love and affection. Applicant knowing Respondent is extremely fond of minor child. Though he was on international tours, Respondent ensured that he was in touch with daughter Aiyana on day to day basis.

20. Always used daughter Aiyana as a tool and bargaining power to achieve her goals. Applicant's sole objective was to lead her own life, indulge in other relationship and also subsidize her own life lifestyle using financial and other resources of the Respondent provided for minor child by inflating the expenses incurred. Applicant has not done any domestic chores and household was maintained by Respondent expending finances for the domestic help and to meet other household expenses.

21. The Respondent wanted his parents to live with him so that he could look after their requirements and they would also be there to support minor daughter emotionally. Therefore, Respondent No.2, Vece Paes, moved into Jackers, but Applicant made his stay extremely

miserable by treating him shabbily and making false allegations against him. His presence in Jackers make Applicant uncomfortable as her wayward lifestyle would come to fore. She harassed him in various ways which compelled Respondent to provide alternate accommodation to him. The Applicant being instructor of Art of Living, allowed to gather unknown people in the late evening every week in the living room thereby compromising the safety and security under the pretext of conducting *Satsangs.*

22. The Applicant also invited her male friends to the Respondent's residence to camouflage her illicit affairs with the man almost half her age under the guise of attaining inner peace and awakening. The Jackers converted into public facility and sacred tenets of the student teacher relationship were violated under the garb of teaching and preaching spirituality. Her conduct also defiled her parental duty towards child. Daughter Aiyana started developing anxiety symptoms and was constrained to put his foot down and stop Satsangs being conducted at his home.

23. It also resulted in nurturing of her sexual and intimate relationship with one Mr. A, name withheld for securing privacy. Respondent became aware of brazenly open and intimate relationship of the Applicant with him and that she was exposing daughter Aiyana to the said intimate relationship. The conduct of the Applicant towards child Aiyana was negligent Applicant take the minor daughter Aiyana on holidays with her friends including Mr. A, exposing the child to the intimate relationship she had with him. In the month of November 2012, minor daughter Aiyana informed Respondent about it and she did not feel comfortable and did not like his intimate behavior with her mother. When Respondent confronted with it Applicant accepted her involvement with him and confessed that she loved him.

Respondent told to mend her wayward ways for the sake of child but infuriated by it.

24. Respondent was not allowed to take the daughter even outside the apartment complex and Applicant has created fear psychosis in her mind. Therefore, Respondent constrained to file custody petition bearing No. D48 of 2014 under Guardianship and Wards Act, 1890, before Family Court, Bandra, Mumbai, seeking permanent custody of daughter Aiyana, due to concern of her safety, welfare and wellbeing jeopardized on account of intimate relationship of Applicant with said A and her consequent indiscreet and irresponsible behavior, lack of personal maternal supervision, self indulgence, volatile temper, bohemian attitude. To counter blast this petition for permanent custody the Applicant filed present application. On several occasions the Applicant prevented the daughter Aiyana to be with Respondent. She brainwashed daughter Aiyana for her ulterior motives. Respondent is having inseparable bond with his daughter and whenever he got any time, he would spend most of it with her. But the result of conduct of Applicant is that both of them are deprived of simple pleasures of father and daughter relationship.

25. The main intention of the Applicant is to grab the part of residence of Respondent. To entrench herself in *Jackers* she changed the addresses of her companies and other official documents from her two sea facing apartments to Jackers. She also moved certain of her belongings and *mandir* into respondent's bedroom in order to change its character. She made Respondent's life a living hell.

26. Applicant's sole motive is to predate on the meager financial resources of the Respondent and indulge his wasteful expenditure. The child Aiyana's expenses and household expenses also inflated by her

to subsidize her lifestyle. She is extravagant and due to her wasteful expenditure there caused huge drain of Respondents meager financial resources.

27. Applicant is an educated lady and a wealthy person. She owns two sea facing Bandra Apartments, fetching substantial monthly rental income. In addition to this the Applicant received substantial remuneration from her career as Model, as an Instructor in Art of Living and by curating International Exhibitions for fashion and jwellery at locations such as London, Dubai and China. Applicant stands to inherit substantial ancestral wealth. The income Applicant received is more than sufficient to meet all her financial requirements and for Applicant to leave comfortable life.

28. Respondent is on the verge of retirement and he is having limited savings after the expenses incurred on his profession and other financial commitments. He has several commitments including needs of daughter Aiyana, looking after his aged parents, servicing the mortgage on his only place of residence and also he has to provide for his retirement since he will no longer receiving any professional income.

29. He claimed that his father, Respondent No.2, Vece Paes, has a contractual employment with B.C.C.I., at the time of filing of say/reply i.e. in the year 2017, his age was 72 years and ailing from acute diabetes and Parkinson besides other related ailments and have to incur substantial medical expenses. Ms. Juliana, is a strong pillar of support to the Respondent and his sibling and daughter Aiyana.

30. The Jackers is not a shared household. The relationship irretrievably broken down in the year 2006 during subsistence of

marriage of the Applicant with Mr. Sanjay Dutt, which was dissolved only in the year 2008.

31. Therefore, Respondent prayed for rejection of application for want of tenability and want of commission of acts of domestic violence on his part.

SAY/REPLY OF RESPONDENT NO.2, MR. VECE PAES

32. He adopted the above reply filed by Respondent Mr. Leander Paes and denied the application and allegations made against him.

REJOINDER

33. In her rejoinder Applicant denied all the adverse allegations made against her in the reply/say of both the respondents.

34. About the relationship with the respondent i.e. relationship in the nature of marriage it is contended by her that she was married to film actor Mr. Sanjay Dutt and the couple was separated since year 2001. However, divorce came through only in 2008 due to unfortunate circumstances at the said actor's end wherein he was undergoing trial and due to ailment his father passed away and as such divorce decree was delayed. She met with the responded in October 2003 and love relationship flourished between them. Respondent was fully aware of the situation with respect to the pending paper work of divorce and had no point made the paper work of divorce decree and issue. In fact at that point he used to be very understanding and even supportive of the situation of ex-husband of Applicant. Respondent was aware of her status and everything about it and willingly entered into relationship with the Applicant. It is false that she suppressed this fact and misrepresented him. Both of them being intimate with each other and well aware of the past each other decided to take their relationship forward to next level with a serious perspective and future in mind.

Hence, in sometime 2003, they decided to take plunge of having a permanent live-in relationship akin to marriage and also jointly decided to have a love child.

35. They also wanted to have a second child and approached gynecologists, in December 2008, August 2010 and in the month of October 2012, at the instance of Respondent. Both of them attempted to extend their family and approached gynecologists with a desire to conceive a second pregnancy. The Respondent repeatedly represented in public as partner of the applicant and several articles and photographs appeared in the magazines and news papers. The Soona Villa Apartment is not having two apartments, rather it is a single flat admeasuring 1500 sq. ft.

36. The applicant strongly denied that since the birth of child the Applicant distanced herself emotionally and physically and the relations between them broke down irretrievably. He neglected child. Failed to bear expenses, taken no care of child and paid nothing towards her school and other expenses. Applicant has no means of income. Respondent No.2, Mr. Vece Paes, also misbehaved with her and caused various acts. Respondent is leading adulterous life and involved with woman named as Ms. T, name withheld for securing privacy. He filed false petition for custody. He illegally hacked her computer.

IV. INTERIM PROCEEDINGS - Objection to tenability

37. After filing of the application the Respondent appeared on 30.07.2014, and filed application disputing the very tenability of the main application stating that this court does not have jurisdiction to try and entertain it, mainly on the following grounds, that -

i. The *live-in relationship* pleaded by the Applicant is not *relationship in the nature of marriage*. Applicant herself pleaded, in Para. No.77, of the application that she had decided that it is not in her interest to continue the relationship and hence, the same has come to an end, therefore, question of invoking of D.V. Act for any relief thereunder does not arise.

ii. The provisions of D.V. Act can be invoked only by *aggrieved person* and that too if there is an act of *domestic violence* committed during *domestic relationship* i.e. the parties must be related by -

i. consanguinity, or

ii. marriage, or

iii. through a relationship in the nature of marriage, or

iv. adoption, or

v. any family members living together as a joint family.

Neither there exists domestic relationship nor consequent domestic violence as the Applicant and Respondents fall under none of these five categories.

iii. As per Applicant herself, as narrated in Para. Nos. 9 and 75 of the application, she had been in a live-in relationship akin to marriage though not legally married since the year 2005, i.e. relationship in the nature of marriage with the Respondent No.1. Respondents denied the same and submitted that when a married adult woman (during subsistence of marriage) knowingly enters into relationship with unmarried adult man, such relationship would not fall within expression *relationship in the nature of marriage*.

iv. As per Applicant herself she divorced from her husband Mr. Sanjay Dutt, on 06.02.2008. The said divorce was granted by Family Court at Bandra, Mumbai, in Petition No. F28 of 2008, as divorce by mutual consent after waiving the six months statutory period. Respondent contended that Family Court is not competent to waive

the required statutory period of six months under Hindu Marriage Act, 1955 and as such said divorce is illegal and nullity in the eyes of law. The Applicant's marriage with her husband Mr. Sanjay Dutt, is thus still subsisting.

v. While in January 2005, the Applicant falsely represented to the Respondent that she was divorced from Mr. Sanjay Dutt. Applicant admitted in her application that she was married to Mr. Sanjay Dutt at the time the Applicant had a child from the Respondent No.1, Leander, on 03.04.2006. It was only after being represented by Applicant that she was divorced to Mr. Sanjay Dutt, the Respondent to have a child with her and then daughter born at a point of time when the Applicant was still married to Mr. Sanjay Dutt. Applicant herself contended that after the birth of daughter Aiyana relationship between her and Respondent broke down completely and there has been neither intimacy nor any sexual relationship between them. The damage was beyond repair. She also admitted that she does not have any joint assets with Respondent. She owns two flats in the same vicinity. There exists nothing which bears the characteristic of *relationship in the nature of marriage*.

vi. It is also contended by the respondents in the said objection that Applicant filed present application to harass the respondents, to counter blast the guardianship petition, besides other grounds. Therefore, they prayed for framing of preliminary issue about it and prayed for decision on it, before proceeding further with the matter and consequent dismissal of complaint.

Reply of Applicant

38. Applicant vide her reply dated 18.09.2014, Exh.87, denied the contentions disputing the tenability of the application. In this lengthy reply she had taken support of the contents of the main application and

claimed that she was married to film actor Mr. Sanjay Dutt and the couple was separated since year 1999. However, divorce came through only in 2008 due to unfortunate circumstances at the said actor's end wherein he was undergoing trial and due to ailment his father passed away and as such divorce decree was delayed. The statutory waiting period of six months was waived by Family Court, after considering merits of the matter observing that both the petitioners have found separate way of life and also found their respective partners, hence petition did not require time to reconsider their decision for divorce as they were separated from many years and away from one another since last more than eight years of filing the petition. Then marriage was dissolved in terms of settlement arrived. Respondent at belated stage trying to portray that Family Court is not competent authority to waive of the statutory waiting period.

39. She met with the Respondent in October 2003 and love relationship flourished between them. Respondent was fully aware of the situation with respect to the pending paper work of divorce and had no point made the paper work of divorce decree and issue. In fact at that point he used to be very understanding and even supportive of the situation of ex-husband of Applicant. Respondent was aware of her status and everything about it and willingly entered into relationship with the Applicant. It is false that she suppressed this fact and misrepresented him. Both of them being intimate with each other and well aware of the past each other decided to take their relationship forward to next level with a serious perspective and future in mind. Hence, in sometime 2003, they decided to take plunge of having a permanent live-in relationship akin to marriage and also jointly decided to have a love child.

40. They also wanted to have a second child and approached gynecologists, in December 2008, August 2010 and in the month of October 2012, at the instance of Respondent. Both of them attempted to extend their family and approached gynecologists with a desire to conceive a second pregnancy. The Respondent repeatedly represented in public as partner of the applicant and several articles and photographs appeared in the magazines and news papers. Applicant was also managing all the affairs of Respondent No.1, in Mumbai. Even sometime in the year 2009-10, she also lent sum of Rs.14 lacs to him. Respondent desired to keep the Applicant in a state of dependency and deprived her of status and dignity, therefore, she did not make any attempt to purchase any assets jointly or include her name in business ventures initiated by her. But in various official and personal documents her address is that of Jackers, which is shared household, therefore, relationship between Applicant and Respondent is akin to marriage as provided in D.V. Act.

Initial adjudication on interim proceedings

41. The said preliminary objection was rejected by this court. The Respondent challenged said decision in the City Civil and Sessions Court, Greater Mumbai, by filing Criminal Appeal**,** bearing No.356 of 2015. The said petition was allowed as per order of Sessions Court, dated 27.11.2015 and the trial court is directed to frame the following preliminary issue as reproduced in Point No.1, in the table of points for determination.

42. However, the said decision of the City Civil and Sessions Court, Greater Mumbai, was challenged by Applicant in High Court, by filing Revision Petition bearing No.112 of 2016. In the said matter as no interim relief was granted Applicant approached Supreme Court, by filing Criminal Writ Petition bearing No.10208 of 2016. In this

matter Supreme Court, after considering the case in entirety, directed instead of deciding any particular issue as preliminary, to decide whole matter and expedited it. The Revision Petition No.112 of 2016, filed before High Court, was also withdrawn. Accordingly, both the parties lead their respective evidence, on this issue as well as on the point of domestic violence, as -

EVIDENCE RELIED BY PARTIES

Oral Evidence

A.W. 1 – Rhea L. Pillai, Applicant herself, Exh.3

A.W. 2 – Dr. Avan Dadina, Exh.54

D.W. 1 – Leander Adrian Paes, Main Respondent, Exh.60

D.W. 2 – Mr. Vijayshankar Nagraja Rao, Cyber Expert, Exh.69

Documentary Evidence

The documentary evidence relied by both the parties is bulky. It is considered in the later part of judgment, with its respective relevance.

VI. ARGUMENTS OF PARTIES –

43. Both the parties filed on record their written notes of arguments along with documents. Relying on contents of those arguments both the parties also made oral arguments at length. They also relied on various documents and citations. All these submissions are summarized, as follows -

Argument of Applicant

44. The Ld. Advocates on behalf of Applicant started with background and further proceeded by drawing attention towards the provisions of D.V. Act. It is submitted that it recognizes three important rights of women and minor children. For the sake of these rights various orders for protection, residence, maintenance and other

expenses can be passed. The court can also grant compensation and cost of expenses.

45. To prove domestic relation and shared household in case of live-in relationship to assert it to be in the nature of marriage, the Applicant relied on the judgment of Supreme Court, in case of ***D. Velu Sami Vs. D. Patchaimmal ((2010)(10) SCC 469)***, wherein conditions to be satisfied are laid down to assert it to be in the nature of marriage. She also relied on various documents particularly photographs, paper cuttings, passport, etc. She drawn attention towards contents of her evidence as well as evidence of the Respondent where he himself represent publicly with Applicant as husband and wife or having relation in the nature of marriage. The admissions in the cross examination, pleadings of Respondent and other facts and circumstances also relied by Applicant to prove the existence of relationship, as relationship in the nature of marriage. To prove the allegations of emotional and economic violence also Ld. Advocates for the Applicant relied on various documents. Applicant also attempted to show the weakness of defence. Regarding income of the Applicant and income of Respondent, so also her dependency the Ld. Advocates drew attention towards various facts transpired from oral and documentary evidence and prayed for various reliefs including compensation and cost of litigation.

Argument of Respondents -

46. Respondents also contended the above arguments with same vehemence. Respondents also filed on record various written submissions and copies of various citations relied by them. The Ld. Advocate minutely traversed through every pros and cons of the dispute and relied on facts, relevant provisions and citations submitted

that application is not sustainable. The summary of the argument of Ld. advocate on behalf of respondents is that -

A. There exists no relationship in the nature of marriage to invoke the provisions of D.V. Act. The allegations neither constitute domestic relationship nor there is any shared household.

B. The respondents also heavily relied on the fact of behavior of the Applicant, adultery on her part and other aspects, and contended that Respondent himself suffered domestic violence and losses.

C. There is no domestic violence, either emotional or economical. Relying on various facts and documents, respondents attempted to shift burden on the Applicant and prayed for dismissal of application.

VII. THE CASE LAWS RELIED BY PARTIES -

47. Both the parties relied upon citations mentioned below with their law points. Out of them important citations are discussed in later part of this judgment with their respective relevance to the point discussed.

NAME OF PARTIES	CITATION	LAW POINT
Krishna Bhattacharjee Vs. Sarathi Choudhury,	(2016)2 SCC705	Approach towards D.V. Act in Constitutional perspectives.
Indra Sarma Vs. V.K.V. Sarma	(20130(15)SCC755)	Nature of live-in-relationship to constitute relationship in the nature of marriage.
D. Velusamy Vs. D. Patchaimal	(2010)(10)SCC469)	Requirements to constitute relationship in the nature of marriage.
Deoki Panjhiyara Vs. Shashi Bhushan Narayan Azad and anr.	(2013)2SCC 137	Effect of previous marriage on live-in-relationship
S. Khushboo Vs. Kanniammal and Another	(2010)(5)SCC600	Live-in-relationship permissible subject to certain conditions.

Navtej Singh Johar and Ors. Vs. Union of India	(2018(10) SCC1)	Social morality should not prevail over constitutional morality.
Saraswathi Vs. Bau	(2014 (3) SCC 712)	Conduct of the parties prior to the commencement of the DV Act, comes within its ambit.
Mr. Ishpal Singh Kahai Vs. Mrs.Ramanjeet Kahai	(2011(3) Mh.L.J.849)	Right of residence in shared household.
Gullipilli Sowria Raj Vs. Bandaru Pavani	(2009(1)SCC714)	Validity of marriage entered into by a Hindu with a Christian.
Smt. Sureshta Devi Vs. Om Prakash	(1992 AIR 1904)	For the purpose of Sec.13B oh Hindu Marriage Act, meaning of term 'living separately.
Amardeep Singh Vs. Harveen Kaur	(2017(8)SCC746)	Waiver of cooling period to pass decree under Section 13B(2) of the Hindu Marriage Act, 1955.
Smt. Sadhana w/o Hemant Walwatkar Vs. Hemant s/o Shalikramji Walwatkar	(2019 AllMR (Cri.) 2299)	Necessity of existence of domestic relation on the date of filing of application.
Ramchandra Warrior Vs. Jayshree and others	MANU/KE/077/2021	Applicability of D.V. Act to women only in domestic relationship in a shared household.
Inderjit Singh Grewal Vs. State of Punjab and others	(2011(12)SCC588)	Effect of misrepresentation on reliefs to be granted.
Sangeeta Saha Vs. Abhijit Saha and others	MANU/SC/534/2019	Remedy available only in case where domestic violence is established.
Juveria Abdul Majid Patni Vs. Atif Iqbal Mansoori	(2014(10)SCC736)	Domestic relationship to grant relief and status of divorced partner.
Shafi Mohd. And others Vs. State of H.P. and others	(2018(5)SCC311)	Use of electronic evidence.
Arjun Panditrao Khotkar Vs. Kailas Kushanrao Gorantyal and others	(2020(7)SCC1)	Use of electronic evidence.

Manmohan Attavar Vs. Neelam Manmohan Attavar	(2017(8)SCC550)	Domestic relationship refers to shared household as defined in Section 2(S) of D.V. Act.
Rakesh Mohindra Vs. Anita Berry	(2016(16)SCC483)	Admissibility of secondary evidence.
J. Yashoda Vs. K. Shobha Rani	(2007(5)SCC730)	Admissibility of secondary evidence.
Quamarul Islam Vs. S. K. Kanta and others	MANU/SC/0417/1994	Admissibility of newspaper reports.
Bhartiben Bipinbhai Tamboli Vs. State of Gujrat and others	MANU/GJ/0025/2018	Domestic violence – meaning.
Jagdesan Vs. State of Tamilnadu and others	(2015(1)MWN (Criminal)451)	D.V. Act – beneficial legislation, needs to be interpreted in tune with its object.
Shalu Ojha Vs. Prashant Ojha	(2015(2)SCC99)	Reliefs to be granted under D.V. Act.

VIII. POINTS FOR DETERMINATION -

48. Considering submissions, pleadings and other facts and circumstances on record, I recorded my findings on following points for the reasons discussed below -

Point No.1	***Does the present application filed under D.V. Act, is maintainable?***
Finding	***Yes, in the affirmative.***
Point No.2	***Does it prove that the respondents committed domestic violence against applicants?***
Finding	***Yes, in the affirmative.***
Point No.3	***Does the applicant and her daughter entitled to the reliefs as prayed for?***
Finding	***….Partly proved only against Respondent No.1.***
What order?	***…..Application is partly allowed.***

REASONING

AS TO POINT NO.1 – Tenability of application

49. This is crucial point. As discussed previously, respondents filed separate application, Exh.85, in this regard at very beginning and raised following objections to the tenability of the main petition, -

A. That the *live-in relationship* pleaded by the Applicant is not *relationship in the nature of marriage*. The provisions of D.V. Act can be invoked only by *aggrieved person* and that too if there is an act of *domestic violence* committed during *domestic relationship* i.e. the parties must be related by -

i. consanguinity, or

ii. marriage, or

iii. through a relationship in the nature of marriage, or

iv. adoption, or

v. any family members living together as a joint family.

Neither there has been act of domestic violence nor do the Applicant and Respondents fall under any of these five categories.

B. As per Applicant herself, as narrated in Para. Nos. 9 and 75 of the application, she had been in a live-in relationship akin to marriage though not legally married since the year 2005, i.e. relationship in the nature of marriage with the Respondent No.1. Respondents denied this nature of relationship and submitted that when a married adult woman knowingly enters into relationship with unmarried adult man, such relationship would not fall within expression *relationship in the nature of marriage*.

C. While in January 2005, the Applicant falsely represented to the Respondent that she was divorced from Mr. Sanjay Dutt. Applicant admitted in her application that she was married to Mr. Sanjay Dutt at the time the Applicant had a child from the Respondent No.1, Leander, on 03.04.2006. It was only after being represented by Applicant that she was divorced to Mr. Sanjay Dutt, the Respondent to have a child

with her and then daughter born at a point of time when the Applicant was still married to Mr. Sanjay Dutt. Applicant herself contended that after the birth of daughter Aiyana relationship between her and Respondent broke down completely and there has been neither intimacy nor any sexual relationship between them. The damage was beyond repair. She also admitted that she does not have any joint assets with Respondent. She owns two flats in the same vicinity. There exists nothing which bears the characteristic of *relationship in the nature of marriage*.

D. As per Applicant herself she divorced from her husband Mr. Sanjay Dutt, on 06.02.2008. The said divorce was granted by Family Court at Bandra, Mumbai, in Petition No. F28 of 2008, as divorce by mutual consent after waiving the six months statutory period. Respondent contended that Family Court is not competent to waive the required statutory period of six months under Hindu Marriage Act, 1955 and as such said divorce is illegal and nullity in the eyes of law. The Applicant's marriage with her husband Mr. Sanjay Dutt, is thus subsisting.

50. The above objection, if considered it can be said that the objection is two fold.

First – It is not a relationship in the nature of marriage as contemplated under D.V. Act

As per respondent, the relationship between him and applicant, is not a relationship in the nature of marriage as contemplated under D.V. Act, as marriage was in subsistence when they were in relationship and child was born. It came to end before formal divorce. This fact was admitted by applicant herself as she pleaded that the said relationship between him and applicant came to end before 2008, when divorce was granted.

Second - Divorce is not valid

In the alternative, even if it is presumed that the said relationship not came to end before formal divorce was granted, it is not a relationship in the nature of marriage as contemplated under D.V. Act because divorce is not valid, as it was granted without undergoing by the parties, the compulsory waiting period of six months. The order of waiver of this period vitiates the decree of divorce.

Validity of divorce

51. Before discussing on the first objection to tenability on the ground of nature of relationship, the ground of validity of divorce without waiver waiting period needs to be considered, as the first aspect have somewhat long discussion. The record shows that Respondent was aware of the said divorce decree from very beginning and has not denied this fact. It is also admitted that despite having such knowledge from very beginning he had not challenged it anywhere, either before or after filing of this petition. Even after filing of his objection in this matter, till date he has not challenged said divorce decree. Thus, the decree is still in existence and as such it can be said that its validity is intact and not in dispute. It is having a binding effect on all parties concerned, including Applicant. On its basis it can be said that the marriage of the Respondent is not in subsistence from the date of decree and she is divorced from her husband Mr. Sanjay Dutt.

52. Moreover, there is clear judgment of Supreme Court on this point. In the case of ***Amardeep Singh Vs. Harveen Kaur (2017(8)SCC746)***, as follows -

> ***"1. The question which arises for consideration in this appeal is whether the minimum period of six months stipulated under Section 13B(2) of the Hindu Marriage Act, 1955 (the Act) for a motion for passing decree of divorce on the basis of mutual consent is mandatory or can be relaxed in any exceptional situations.***

21. Since we are of the view that the period mentioned in Section 13B(2) is not mandatory but directory, it will be open to the Court to exercise its discretion in the facts and circumstances of each case where there is no possibility of parties resuming cohabitation and there are chances of alternative rehabilitation."

53. This court has no jurisdiction to scrutinize the legality of the said decree. The Applicant produced on record the copy of said decree, Exh.79, and also deposed certain facts about its contents wherein it is specifically observed the reasons for passing of said decree. Thus, there found nothing beyond law on the basis of which it can be said that the order of passing of decree is lacking in merits. If this aspect considered in the light of law laid down by Supreme Court in above case, it can be said that decree of divorce passed between Applicant and her ex-husband is valid and binding on this court. It is also binding on Respondent and he can not dispute its validity in this proceeding.

Relationship is not relationship in the nature of marriage as contemplated under D.V. Act

54. In this regard if we considered the evidence of the applicant, as A.W.1 3. Rhea Laila Pillai, Exh.3, she deposed that she was earlier married to a film actor and separated since year 2001, but the final divorce was granted in the year 2008. Both for the first time met on a flight sometime in October 2003. After initial interaction they felt strong physical and emotional attraction towards each other and enjoyed each others' company. After being in love for more than a year they took a decision to take their relationship forward with a serious perspective and future in mind. Respondent expressed desire to live with Applicant and give her the status of his partner to show commitment to her and the relationship. Hence, sometime in 2005, both moved in the same house at Taj Wellington Mews Serviced

Apartments, to have a committed live-in relationship. From there in the year 2006, they moved to another place, Soona Villa and stayed in live-in relationship, between years 2006 to 2008. Since year 2005, both of them have been in a live-in relationship, akin to marriage though not legally married. In July 2005, she was pregnant, her happiness knew no bounds and was ecstatic. On 3rd April 2006, Applicant gave birth to a girl, later named as Aiyana Vedika Paes. Later in 2009, daughter Aiyana, was admitted to school. Then they shifted to the Jackers sometime in the year 2008, in a relationship akin to marriage, they are not legally married.

55. In July 2005, the Respondent on being informed about pregnancy of applicant displayed happiness and enthusiasm however, within no time drastic changes occurred in his behavior and attitude towards the applicant and her pregnancy. Post the birth of daughter Aiyana, the Respondent, avoided any sexual intimacy with the applicant and justified it stating that he was present in delivery room at the time of birth of daughter and could no longer view the Applicant as a desirable woman. She felt aghast and shell shocked, but suffered the same in silence and was hopeful. From the year 2007 onwards tension between them rose, Applicant felt more and more estranged from Respondent. Physical intimacy as much as vanished from their relationship and emotional violence was in forefront. She lovingly approached him with zest and fashion with a view to rekindle their dying relationship and spend some precious and intimate moments, but Respondent remained cold and indifferent.

56. Against it respondent, as **D.W.1 Mr. Leander Vece Paes, Exh.60**, deposed that the relationship between the Applicant and the Respondent is not a relationship in the nature of marriage as defined in Section 2(f) of D.V. Act. Applicant was married to Mr. Sanjay Dutt till

2008. During subsistence of the said marriage of the Applicant the child Aiyana was born on 03.04.2006, when Applicant was residing with Respondent. Ever since the said birth of daughter Aiyana, the relationship between the Applicant and Respondent irretrievably broke down. Thereafter, there was no emotional or physical or otherwise relationship till date. It also can not be construed as relationship in the like of marriage, as it was only till 2006, when the Applicant was married to Mr. Sanjay Dutt. Therefore, there is no relationship in the nature of marriage between the Applicant and Respondent.

57. Applicant made believe the Respondent that she has divorced her husband Mr. Sanjay Dutt in the year 2005, and wanted to have a child but did not want any commitment to a relationship. Applicant did not believe institution of marriage citing the reasons of her two failed marriages. While dissuading the Respondent from marriage the Applicant stated that she did not want to be questioned or answerable to anybody and she wanted to live life on her own terms without being bound by strings attached to marriage. Only after the same, their minor child was conceived. The Applicant and Respondent are not married.

58. Ever since the birth of their minor child on 03.04.2006, the Applicant distanced herself from the Respondent both emotionally and physically and relationship between them broke down irretrievably. The Applicant went about pleading her own wayward life on her own terms and conditions, totally unconcerned about the Respondent. The Respondent sought to maintain cordial relationship between the Applicant and himself only for the sake of child Aiyana, even though there was no emotional or physical connect between him and Applicant.

59. In the backdrop of this evidence, for ascertaining the exact nature of relationship it is necessary to bear upon relevant provisions and various citations relied by both the parties. The two important terms in this regard are defined in Sections 2(a) and 2(f) of D.V. Act, which provides for definitions of *aggrieved person, domestic relationship, Respondent* and *shared household*, respectively, as follows -

> **Sections 2(a)** ***"aggrieved person"*** *means any woman who is, or has been,* ***in a domestic relationship with the respondent*** *and who alleges to have been subjected to any act of domestic violence by the respondent;*
>
> **Sections 2(f)** ***"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.*

60. In addition to it two important citations relied by both the parties, are judgments of Supreme Court in the case of ***D. Velusamy Vs. D. Patchaimal (2010) (10) SCC 469)***, and ***Indra Sarma Vs. V.K.V.Sarma (20130(15)SCC755).*** In both these matters Supreme Court, while interpreting the terms *domestic relationship* and *relationship in the nature of marriage*, issued certain guidelines. In case of ***D. Velusamy*** Supreme Court, in Para No.33 observed, as follows -

> *Para. No.33. In our opinion a 'relationship in the nature of marriage' is akin to a common law marriage. Common law marriages require that although not being formally married :-*
>
> *(a) The couple must hold themselves out to society as being akin to spouses.*
>
> *(b) They must be of legal age to marry.*
>
> ***(c) They must be otherwise qualified to enter into a legal marriage, including being unmarried.***

(d) They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.

In our opinion a 'relationship in the nature of marriage' under the 2005 Act must also fulfill the above requirements, and in addition the parties must have lived together in a 'shared household' as defined in Section 2(s) of the Act. Merely spending weekends together or a one night stand would not make it a 'domestic relationship.

61. However, in case of ***Indra Sarma,*** while interpreting the term relationship in the nature of marriage, explained certain situations/contingencies under which a particular relationship can be said to be a relationship in the nature of marriage, as follows -

Para. 36. Distinction between the relationship in the nature of marriage and marital relationship has to be noted first. Relationship of marriage continues, notwithstanding the fact that there are differences of opinions, marital unrest etc., even if they are not sharing a shared household, being based on law. ***But live-in-relationship is purely an arrangement between the parties unlike, a legal marriage. Once a party to a live-in- relationship determines that he/she does not wish to live in such a relationship, that relationship comes to an end. Further, in a relationship in the nature of marriage, the party asserting the existence of the relationship, at any stage or at any point of time, must positively prove the existence of the identifying characteristics of that relationship,*** *since the legislature has used the expression in the nature of.*

Para. 37. Reference to ***certain situations, in which the relationship between an aggrieved person referred to in Section 2(a) and the respondent referred to in Section 2(q) of the DV Act, would or would not amount to a relationship in the nature of marriage****, would be apposite. Following are some of the categories of cases which are only illustrative:*

a) Domestic relationship between an unmarried adult woman and an unmarried adult male:

Relationship between an unmarried adult woman and an unmarried adult male who lived or, at any point of time lived together in a shared household, will fall under the definition of Section 2(f) of the DV Act and in case, there is any domestic violence, the same will fall under Section 3 of the DV Act and the aggrieved person can always seek reliefs provided under Chapter IV of the DV Act.

b) Domestic relationship between an unmarried woman and a married adult male: *Situations may arise when an unmarried adult women knowingly enters into a relationship with a married adult male. The question is whether such a relationship is a relationship in the nature of marriage so as to fall within the definition of Section 2(f) of the DV Act.*

c) <u>Domestic relationship between a married adult woman and an unmarried adult male:</u> *<u>Situations may also arise where an adult married woman, knowingly enters into a relationship with an unmarried adult male, the question is whether such a relationship would fall within the expression relationship in the nature of marriage.</u>*

d) Domestic relationship between an unmarried woman unknowingly enters into a relationship with a married adult male: *An unmarried woman unknowingly enters into a relationship with a married adult male, may, in a given situation, fall within the definition of Section 2(f) of the DV Act and such a relationship may be a relationship in the nature of marriage, so far as the aggrieved person is concerned.*

e) Domestic relationship between same sex partners (Gay and Lesbians): *DV Act does not recognize such a relationship and that relationship cannot be termed as a relationship in the nature of marriage under the Act. Legislatures in some countries, like the Interpretation Act, 1984 (Western Australia), the Interpretation Act, 1999 (New Zealand), the Domestic Violence Act, 1998 (South Africa), the Domestic Violence, Crime and Victims Act, 2004 (U.K.), have recognized the relationship between the same sex couples and have*

brought these relationships into the definition of Domestic relationship.

62. Respondents relied on these judgments and it is vehemently submitted that the present matter is covered by these judgments. It is submitted that in the judgment of ***Indra Sarma***, the Supreme Court examined the status of a relationship of a married adult woman when she knowingly enters into a relationship with an unmarried adult male and it is observed that such a relationship is not relationship in the nature of marriage as contemplated under D.V. Act. Respondent while relying on another contingency provided in the judgment of ***D. Velusamy***, where conditions for relationship in the nature of marriage to be akin to common law marriages where laid down and one of such conditions is that the parties must otherwise qualified to enter into a legal marriage, including being unmarried. In the present matter Applicant while entering into relationship with respondent was already married. This relationship came to end during subsistence of marriage, before passing of decree. Relationship can not be said to be relationship in the nature of marriage as contemplated in D.V. Act.

63. Respondents heavily relied on admitted fact of entering into relationship with the Respondent prior to date of divorce and pleadings particularly Para. No.77 of the main application wherein it is clearly averred that after the birth of daughter Aiyana in the year 2006, the physical relations seized to have existed, relationship has broken down and damage is beyond repair, besides other similar avernments, it is submitted that if these aspects considered in the light of the observations made by Supreme Court, in both the above cases as relationship is of a period during which marriage was in subsistence it can not be said to be a domestic relationship and consequently

neither Applicant is *aggrieved person* nor the house where they resided and still residing, is a shared household.

64. To counter these submissions the Applicant mainly relied on the fact of knowingly entering into relationship by the Respondent with the Applicant during subsistence of initial marriage, continuance of the relationship even after 2008 i.e. after decree of divorce mentioning that both the periods needs to be considered in the context of each other with reference to knowledge of both the parties. Applicant also relied on one of the judgment i.e. judgment of ***D. Velusamy*** and conditions laid therein, relied by Respondent, mentioned above. The Applicant also relied on judgment of ***Krishna Battacharjee Vs. Sarathi Choudhary ((2016)(2)SCC705)***.

65. So far as evidence relied by parties is concerned it is admitted that divorce was granted in the year 2008, on 06.02.2008. Before that both the parties came in contact with each other, established emotional and physical relationship and gave birth to a child in the year 2006. In this regard Respondent contended that the Applicant concealed this fact from him. She misrepresented to him that she is already divorced from her husband, Mr. Sanjay Dutt.

66. If we perused record in reply/say to the main application and the application for maintainability, Respondent pleaded this fact. He also maintained this contention in his evidence, Exh.56. The Applicant denied this fact in her rejoinder and reply to the objection. She also denied this fact in her evidence affidavit, Exh.3.

67. The Applicant to show the fact of continuation of relationship relied on pleadings and certain facts added by her by way of rejoinder to the say/reply *t*o the main application filed by Respondent. Those facts are mainly attempts by both the parties to conceive second child,

the change of address, repeatedly public representations of relationship by the Respondent as relationship in the nature of marriage.

68. In her evidence she maintained that Respondent was well aware of the fact that she is separated from her husband forever and just formalities of divorce remained to be completed for the untoward circumstances occurred on the part of her husband. The cross examination on this point is almost nil. Even suggestions are not put to her in this regard to the Applicant. The Applicant deposed certain additional facts about it and deposed that Respondent even came in contact with her husband Mr. Sanjay Dutt. He roamed his cars, resided with her in the house Soona Villa, standing in the name of Mr. Sanjay Dutt, with their daughter Aiyana for substantial time, etc. If we perused cross examination of the Applicant from the side of Respondent he has not denied the contention of the Applicant in this regard. Therefore, it can not be accepted that the Respondent was unaware of the status of the initial marriage of the applicant.

69. Against it if we perused admitted facts and evidence of the Respondent he simply contended that the Applicant suppressed this fact from him. But as stated above, he already admitted the majority of material facts. So also it is not the case of the Respondent that the husband of Applicant is resident of some other place or unknown to him or fully unaware of the facts and circumstances pertaining to initial status. The status of the both the parties i.e. including Respondent is of such a nature that its very difficult to believe his version about want of knowledge of the status of Applicant. He is a person internationally roamed and acclaimed belonged to elite class who understand each and every intricacy and legal implications of

status accrued on account of marriage. Therefore, his version can not be accepted.

70. The Applicant in this regard mainly relied on certain documents, showing her status shown as wife of the Respondent i.e. her passport, Exh.35, P.I.O. Card, Exh.152, the affidavit of the Respondent and various official and other documents showing that she is residing in the shared household and also running her business activities from there.

71. These facts of common household documents are not seriously disputed by the Respondent. The objections raised needs no more consideration as the fact of residence at Jackers and subsequent continuation of relationship though shattered while residing there is admitted. Therefore, it can be said that the relationship was continued.

72. In this regard the Applicant averred in her rejoinder that even after 2008, they attempted to have a second child and relationship was continued to be in the nature of marriage. Besides her oral evidence she examined A.W.2, Dr. Avan Dadina, vide Exh.54. Said witness deposed that she is having qualification of M.D. in Obstetric and Gynecology. Initially in the year 2005, Applicant and Respondent approached her, when Applicant was pregnant. Thereafter, in 2012 also Applicant approached her to have a second child. In the month of October 2012, both of them approached her for their second child. She advised Applicant to conceive naturally. Again in the year 2014, Applicant approached her for other complaints. On her request she issued certificate, Exh.55, contents of which are proved by her. In cross examination said witness narrated the various dates of the visit. In a specific question to that effect she replied that they both came together and consulted to her. She also informed that she maintains

medical file of every patient of every visit. In the certificate, Exh.55, also the description of visit is mentioned. In this cross examination there is nothing on record from which she can be disbelieved.

73. But there is cloud of doubt over the admissibility of this evidence as it is not pleaded by the Applicant in her initial application and this fact can be said to be out of pleading. In cross examination of the Applicant this fact is brought to notice, but she failed to explain anything substantive. Moreover, her pleadings about mental separation from the Respondent particularly avoidance of sexual relationship by the Respondent also creates doubt about this evidence. Therefore, this piece of evidence is not much helpful. But this non reliance makes no difference on the degree of proof of fact of nature of relationship in the nature of marriage, considering other evidence and facts transpired from admissions on the part of Respondent.

Non-severance of *prior* and post divorce period

74. As discussed above and as admitted even after the granting divorce on 06.02.2008. The Applicant with respondents and her daughter remained at Jackers. The record also shows that they followed day to day pursuits without being disturbed by daily skirmishes going on. Those pursuits continued undisturbed upto 2014 when Respondent approached Family Court and prayed for custody of daughter Aiyana. During this period various incidences as narrated in the application continued. For the reasons discussed above about the validity of divorce, divorce amongst Applicant and her ex-husband Mr. Sanjay Dutt, is valid and it can be said as those incidences post divorce occurred below same roof the relationship can be said to be domestic relationship as provided in D.V. Act.

75. This act of continuation of relationship can not be severed from the acts occurred during a period before obtaining of divorce. The wrong, going on is continuous wrong. Respondent failed to prove that he was unaware of the divorce proceedings. It is almost admitted that when divorce decree passed he was aware of it. The various documents, wherein the name of the Applicant is entered as his wife are also not denied by the Respondent till the occurrence of this proceeding. It also reflect that Respondent was aware of everything about the divorce decree. Had he been cheated by Applicant by concealing fact of subsistence of marriage he ought to have challenge his relationship with the Applicant at that time itself. The whole record reflects that he did nothing, which fact is against the Respondent and falsifies his version that the fact of subsistence of marriage was concealed by misrepresentation. It can be said that he acquiesced his claim and accepted the petitioner with this legal defect, which may be formal in nature in the backdrop of peculiar circumstances occurred in this matter. Therefore, the pre and post divorce cohabitation can not be separated.

76. In the alternative even if it is accepted that the pre-divorce relationship was not relationship in the nature of marriage as contemplated under provisions of D.V. Act, the post-divorce relationship and co-habitation of both the parties with each other and their family members under same roof, it is necessary to bear upon it as these facts of co-habitation and leading life under same roof are not denied by the Respondent. The allegations of the Applicant prima facie constitutes domestic violence and as such it can be said that the relationship is relationship in the nature of marriage.

Explanation offered by Applicant in cross examination

77. The cross examination of Applicant from the side of Respondent in this regard is very important and also somewhat interesting. On this point the Applicant was exhaustively cross examined by the Respondent. Respondent put up all the relevant questions. The summary of this cross examination is that Applicant admitted that she has averred and admitted that formal divorce was granted in the month of February 2008, from her husband, Mr. Sanjay Dutt. She came in relationship with Respondent in the year 2001 and said relationship continued upto year 2008, as live-in relationship akin to the marriage. In the year 2008, onwards her relationship with the Respondent never seemed to be happy or satisfactory one and physical relationship almost vanished. Further clarification was sought by the Respondent from her by putting some additional questions. On that she informed that she celebrated Gandharva marriage with the Respondent in the year 2005 and again underwent an informal marriage ceremony in the year 2012. But she has no documentary evidence of it. She informed about all these facts to her advocate from whom she obtained advise for filing of present application. But said advocate advised her that as she has no documentary evidence about those marriages and it will not stand in the court. Therefore, on the advise of her advocate she put forward the theory of live-in relationship akin to marriage in the present application.

78. The Respondent not preferred to stop his cross examination here, but he sought further clarification from her about the nature of relationship. Applicant fairly answered that she is unable to explain the legal intricacies of this term and left the interpretation of it to the legal experts and refrained from answering further. She effectively faced cross examination on this point and answered to the best of her knowledge.

79. Thus, the Applicant shouldered the responsibility of interpreting the relevant term i.e. ***relationship in the nature of marriage,*** on the court. Therefore, this responsibility of interpreting the said term needs to be considered in the light of guidelines issued by Supreme Court, in the case of ***Indra Sarma,*** particularly about domestic relationship between a married adult woman and an unmarried adult male knowingly entered into and another guideline issued in the case of ***D. Velusamy***, that parties entering into such relationship must be otherwise qualified to enter into a legal marriage. The question here arises, whether these guidelines in any way bars the Applicant from relief?

80. This case presents a situation which bring to fore the age old conflict of law and social change, either law is suppose to change the society i.e. norms of behavior of society or the law should be changed as per changed norms of changing social scenario. The findings on this judgment will have different repercussions. It can be said that allowing the Applicant to have child from another man during subsistence of relationship is nothing but legalizing or promoting adultery which is neither good nor acceptable for maintaining order of relationship in the society. Further, it can also be said that permitting such relationship will damage the very sanctity of marriage. At the same time the fact of existence of relationship beyond marriage is undeniable. Its adverse impact on the women is also not in dispute, for which the very enactment of D.V. Act, came in force. Therefore, it is necessary to bear upon these socio-legal aspects while considering the relevant legal position enshrined by Supreme Court, in above judgments.

81. Therefore, it is necessary to bear upon the various pros and cons of the question posed before this court by Applicant. For this purpose

it is necessary to begin with the objects and reasons of the D.V. Act, as follows –

> Domestic violence is undoubtedly a human rights issue and serious deterrent to development. The Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action (1995) have acknowledged this. The United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women on Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) in its General Recommendation No.XII (1989), has recommended that State parties should act to protect women against violence of any kind especially that occurring within the family.
>
> 2. The phenomenon of domestic violence is widely prevalent but has remained largely invisible in the public domain. Presently, where a woman is subjected to cruelty by her Husband or its relatives, it is an offence under Section 498-A of the Indian Penal Code. The Civil law does not however address this phenomenon in its entirety.
>
> 3. It is, therefore, proposed to enact a law keeping in view the rights guaranteed under articles 14, 15 and 21 of the Constitution to provide for a remedy under the civil law which is intended to protect the woman from bring victims of domestic violence and to prevent the occurrence of domestic violence in the society.

82. Then it is also necessary to consider some of the important judgments out of numerous judgments of Supreme Court and certain High Courts, wherein the guidelines are issued to interpret the provisions of D.V. Act, as follows -

Supreme Court in the case of ***Krishna Bhattacharjee Vs. Sarathi Choudhury, (2016) 2 SCC 705***, as follows - and stressed upon following observations as, -

> 4. Regard being had to the nature of the legislation, a more sensitive approach is expected from the courts where under the 2005 Act no relief can be granted, it should never be conceived of ***but, before throwing a petition at the threshold on the ground of maintainability, there has to be an apposite discussion and thorough***

deliberation on the issues raised. It should be borne in mind that helpless and hapless aggrieved person under the 2005 Act approaches the court under the compelling circumstances. It is the duty of the court to scrutinise the facts from all angles whether a plea advanced by the respondent to nullify the grievance of the aggrieved person is really legally sound and correct. The principle justice to the cause is equivalent to the salt of ocean should be kept in mind. The court of law is bound to uphold the truth which sparkles when justice is done. Before throwing a petition at the threshold, it is obligatory to see that the person aggrieved under such a legislation is not faced with a situation of non-adjudication, for the 2005 Act as we have stated is a beneficial as well as assertively affirmative enactment for the realisation of the constitutional rights of women and to ensure that they do not become victims of any kind of domestic violence.

83. In the same case of ***Indra Sarma***, relied by Respondents, in the second/opening paragraph of this judgment Supreme Court, observed that -

"Para. No.*14. *The D.V. Act has been enacted to provide a remedy in Civil Law for protection of women from being victims of domestic violence and to prevent occurrence of domestic violence in the society. The DV Act has been enacted also to provide an effective protection of the rights of women guaranteed under the Constitution, who are victims of violence of any kind occurring within the family.

15. Domestic Violence is undoubtedly a human rights issue, which was not properly taken care of in this country even though the Vienna Accord 1994 and the Beijing Declaration and Platform for Action (1995) had acknowledged that domestic violence was undoubtedly a human rights issue. UN Committee on Convention on Elimination of All Forms of Discrimination Against Women in its general recommendations had also exhorted the member countries to take steps to protect women against violence of any kind, especially that occurring within the family, a phenomenon widely prevalent in India. Presently, when a woman is subjected to

cruelty by husband or his relatives, it is an offence punishable under Section 498A IPC. The Civil Law, it was noticed, did not address this phenomenon in its entirety. Consequently, the Parliament, to provide more effective protection of rights of women guaranteed under the Constitution under Articles 14, 15 and 21, who are victims of violence of any kind occurring in the family, enacted the DV Act.

84. One of the most important judgment is judgment of Madras High Court in case of ***Jagdesan Vs. State,*** relied by Applicant, wherein purpose of D.V. Act and duty of courts to interpret its provisions are widely discussed, as follows -

"Para.No.99. Keeping in view the rights guaranteed under Articles 14, 15 and 21 of the Constitution of India, and to provide a remedy, under the Civil Law, the Protection of Women from Domestic Violence Act,2005, has been enacted with a clear intention to provide the women from being victims of domestic violence and to prevent the occurrence of domestic violence in the society. Intention is manifestly clear that there should be not only protection and also prevention. Right to Equality guaranteed, under Article 14 and Right to Live under Article 21 of the Constitution of India, are the goals sought to be achieved. Taking note of the fact that Civil Law does not address the aspect of domestic violence, against a woman, the Protection of Women from Domestic Violence Act, 2005, has been enacted with an aim to protect and to amolierate further domestic violence and to ensure the constitutional rights, under Articles 14, 15 and 21 of the Constitution of India. It is a beneficial and social welfare legislation. Let me consider some of the decisions, where the Supreme Court has explained, as to how, a beneficial legislation has to be interpreted.

100. The Protection of Women from Domestic Violence Act, 2005, is to rectify the causus omission in the ordinary civil law. The expression, Causus Omissus , as explained in various decisions, means (1) Omitted case, (2) What a statute or an instrument of writing undertakes to foresee and to provide for certain contingencies, and through mistake, or some other cause, a case remains to be provided for, it is said to be a Causus Omissus.

102. The primary duty of the Court, while construing the provisions of the Act is to adopt a constructive approach subject to that it should not do violence to the language of the provisions and is not contrary to attempted objective of the enactment.

105. Reading of the Act in entirety makes it clear that the legislature has enumerated certain contingencies and circumstances, in relation to domestic violence and empowered the Court to pass just and proper orders, to redress the grievance of the aggrieved person. From the reading of the Act, it is manifestly clear that the Domestic Violence Act, is independent of other laws.

106. It is a complete code in itself, dealing with the entire gamut of family relationship between Husband, Wife and children and the remedies available to an aggrieved person, on account of domestic violence.

85. Thus, the D.V. Act is a beneficial legislation, its provisions needs to be interpreted liberally in larger interest to benefit the women in distress to address the issue of domestic violence. It is not a penal statute which can be interpreted strictly.

86. It is also necessary to mention that in this matter social morality deploring adultery is in conflict with the constitutional morality recognizing it to certain extent as relationship in the nature of marriage, are in conflict with each other. In such a situation when ***constitutional morality*** conflicts with ***social morality*** the constitutional morality always prevails. In the case of ***Indra Sarma (cited above)***, in the second/opening paragraph of this judgment Supreme Court, recognizing constitutional morality about it put the factor of adultery on lighter note, it is observed that -

"Para. No.2. Live-in or marriage like relationship is neither a crime nor a sin though socially unacceptable in this country. The decision

to marry or not to marry or to have a heterosexual relationship is intensely personal."

87. Reiterating same while considering the issue of social morality verses constitutional morality Supreme Court in the case of ***S. Khushboo Vs. Kanniammal and Another (2010)(5)SCC600***, as follows -

> ***"Para. No.21. While it is true that the mainstream view in our society is that sexual contact should take place only between marital partners, there is no statutory offence that takes place when adults willingly engage in sexual relations outside the marital setting, with the exception of `adultery' as defined under Section 497 IPC.*** *At this juncture, we may refer to the decision given by this Court in Lata Singh Vs. State of U.P. & Anr., AIR 2006 SC 2522, wherein it was observed that a live-in relationship between two consenting adults of heterogenic sex does not amount to any offence (with the obvious exception of `adultery'), even though it may be perceived as immoral. A major girl is free to marry anyone she likes or "live with anyone she likes". In that case, the petitioner was a woman who had married a man belonging to another caste and had begun cohabitation with him. The petitioner's brother had filed a criminal complaint accusing her husband of offences under Sections 366 and 368 IPC, thereby leading to the commencement of trial proceedings. This Court had entertained a writ petition and granted relief by quashing the criminal trial. Furthermore, the Court had noted that `no offence was committed by any of the accused and the whole criminal case in question is an abuse of the process of the Court."***

88. Supreme Court in the case of ***Navtej Singh Johar & Ors. Vs. Union of India (2018(10) SCC1)***, the Supreme Court, came across the issue of human rights of transgenders and constitutional validity of Section 377 of Indian Penal Code. In somewhat different but also about somewhat similar aspect of sexual orientation of human beings the discussion occurred and following observations made -

"Para. No.9……. When we talk about identity from the constitutional spectrum, it cannot be pigeon-holed singularly to one's orientation that may be associated with his/her birth and the feelings he/she develops when he/she grows up. Such a narrow perception may initially sound to subserve the purpose of justice but on a studied scrutiny, it is soon realized that the limited recognition keeps the individual choice at bay. The question that is required to be posed here is whether sexual orientation alone is to be protected or both orientation and choice are to be accepted as long as the exercise of these rights by an individual do not affect another's choice or, to put it succinctly, has the consent of the other where dignity of both is maintained and privacy, as a seminal facet of Article 21, is not dented. At the core of the concept of identity lies self-determination, realization of one's own abilities visualizing the opportunities and rejection of external views with a clear conscience that is in accord with constitutional norms and values or principles that are, to put in a capsule, —constitutionally permissible‖. As long as it is lawful, one is entitled to determine and follow his/her pattern of life. And that is where the distinction between constitutional morality and social morality or ethicality assumes a distinguished podium, a different objective. Non-recognition in the fullest sense and denial of expression of choice by a statutory penal provision and giving of stamp of approval by a two-Judge Bench of this Court to the said penal provision, that is, Section 377 of the Indian Penal Code, in Suresh Kumar Koushal and another v. Naz Foundation and others2 overturning the judgment of the Delhi High Court in Naz Foundation v. Government of NCT of Delhi and others3, is the central issue involved in the present controversy.

121. In this regard, we have to telescopically analyse social morality vis-à-vis constitutional morality. It needs no special emphasis to state that whenever the constitutional courts come across a situation of transgression or dereliction in the sphere of fundamental rights, which are also the basic human rights of a section, howsoever small part of the society, then it is for the constitutional courts to ensure,

with the aid of judicial engagement and creativity, that constitutional morality prevails over social morality."

89. In these prospectives also this matter can be considered. We are now living in a era of globalisation having exposure to the whole world. The societal norms of behavior not remained today as those were in past where access to world at large is limited and the interpretation of societal norms where also limited by certain ethos having limited implications. The law in itself is rigid and not flexible. Against it the society or social norms are flexible, moldable as per requirements of changing patterns of society. Law must maintain its pace with requirements of changing patterns and changing norms of society. Such a change must be in tune with constitutional norms i.e. constitutional morality. It should not be governed by rigid societal standards incompatible with human rights and justice.

90. If such interpretation is adopted in the light of fact that the Respondent acquiesced his right to dispute the legality of relationship on the basis of the fact that he had knowledge of the subsistence or existence of marriage of the Applicant with her ex-husband and entered into physical relationship with her and allowed her to conceive child from him. He is estopped from claiming any relief on the basis of principle of acquiescence as equity comes into play, the principles that one who seeks equity must do equity and one can not be benefited of its own wrong can be applied to the present case. A married woman came in association with a unmarried man initially during subsistence of her marriage and later on continued with this association even after dissolution of marriage. The unmarried man accepted her with her previous and later status of marriage, continued this relationship knowing it well which means he indirectly accepted it. This aspect

needs to be considered in the larger prospective of constitutional morality.

91. It can be easily inferred that the Respondent estopped from claiming the benefit of his own wrong by disputing the legality of the relationship. Now the societal norms are relaxed. The consensual sexual relationship between married individual out of their relationship of marriage is not prohibited, except few exceptions. Acceptance of the Respondent's stand means accepting a claim of morality from a person who had followed immoral way to gain benefits. Merely because socially such a practice is unacceptable the Applicant can not be deprived of her rights. The stand of the Respondent is not sustainable on the test of constitutional morality.

POINT NO. 2 – DOMESTIC VIOLENCE

92. In support of this point the Applicant examined herself as A.W.1, Rhea L. Pillai, vide Exh.3, detailed evidence affidavit. She narrated all the details from beginning of her relationship with the respondent till the filing of present application.

93. It can be divided under following parts -

A. Background facts leading to dispute

B. Facts constituting emotional violence

C. Facts constituting economic violence

D. Reliefs

A. Background facts leading to dispute

94. Applicant hails from respected family, educated and have degree in Economics. She had a flourishing modeling career. She is also instructor with an international court of Art of Living and pursuing the same since last so many years. Both her parents are retired and dependent on ancestral finances. She was earlier married to

a film actor and separated since year 2001, but the final divorce was granted in the year 2008.

95. Respondent after his minimal education became a sportsman/tennis player, represented India at various prestigious championships and won several of them. He also owns companies, *Brand Leander* and *Leander Sport*, from which he receives handsome returns. Being international tennis player he pursues lavish lifestyle and enjoys on splurging materialistic things. His parents separated in the year 1985. Respondent No.2, Mr. Vece Paes, his father works for Bombay Cricket Club of India (B.C.C.I.) as Officer of WADA Drug Control, is in Live-in relationship with a lady by the name Ms. Juliana, for the past several years.

96. Applicant and Respondent for the first time met on a flight sometime in October 2003. At that time she was working on large scale humanitarian project. This fact brought the Respondent and Applicant closer and slowly and steadily developed a fondness for each other. After initial interaction they felt strong physical and emotional attraction towards each other and enjoyed each others' company. Being in first throes of romance both started spending considerable time together, on the request of Respondent, Applicant even joined him to several tournaments across world. Respondent represented himself to be extremely spiritual, pious with no voices, straightforward and down to earth individual. He informed her that he had been in a serious relationship with another girl prior to their relationship, but that was over and he is devoted to relationship with her. After being in love for more than a year they took a decision to take their relationship forward with a serious perspective and future in mind.

97. Respondent expressed desire to live with Applicant and give her the status of his partner to show commitment to her and the relationship. Hence, sometime in 2005, both moved in the same house at Taj Wellington Mews Serviced Apartments, to have a committed live-in relationship. From there in the year 2006, they moved to another place, Soona Villa and stayed in live-in relationship, between years 2006 to 2008. Since year 2005, both of them have been in a live-in relationship, akin to marriage though not legally married. Applicant was happy and always prioritized the happiness of Respondent. In July 2005, she was pregnant, her happiness knew no bounds and was ecstatic. On 3rd April 2006, Applicant gave birth to a girl, later named as Aiyana Vedika Paes. Later in 2009, daughter Aiyana, was admitted to school.

98. Then they shifted to the Jackers sometime in the year 2008, in a relationship akin to marriage, they are not legally married. Applicant has taken great pain and incurred heavy expenses in decorating said house and moved their with a positive attitude and hope expecting that it would rekindle the emotions of Respondent. The said address is also updated in all the official documents of the Applicant and daughter Aiyana, as residential address.

B. Facts constituting emotional violence

Avoidance and disrespect

99. In July 2005, the Respondent on being informed about pregnancy of applicant displayed happiness and enthusiasm however, within no time drastic changes occurred in his behavior and attitude towards the applicant and her pregnancy. Post the birth of daughter Aiyana, the Respondent, avoided any sexual intimacy with the applicant and justified it stating that he was present in delivery room at the time of birth of daughter and could no longer view the Applicant

as a desirable woman. She felt aghast and shell shocked, but suffered the same in silence and was hopeful. From the year 2007 onwards tension between them rose, Applicant felt more and more estranged from Respondent. Physical intimacy as much as vanished from their relationship and emotional violence was in forefront. She lovingly approached him with zest and fashion with a view to rekindle their dying relationship and spend some precious and intimate moments, but Respondent remained cold and indifferent. Her dreams and desires came crashing down. She noticed that behavior of the Respondent prior to the birth of daughter Aiyana was pretense, the mask over his face is now lifted. Slowly but surely quarrels and cracks started developing in their relationship. The Respondent's conduct being arrogant, haughty, rude, condescending, was adversely effecting her mental wellbeing, but she put the interest in relationship about her personal pains and agony, strive hard to work said relationship, as she was carrying child.

100. The Respondent withdrawn from his commitments given to the applicant prior to their decision to start their lives together. She also signed movie, but project was not materialized. Another movie acted by her fared miserably at box office. She was deeply hurt and antagonized by the Respondent showing complete disregard to her feelings and emotions. He informed her that he choose his career as actor over the applicant and his daughter.

101. In the year 2007, the Respondent started spending most of his nights away from home even when he was not on any professional tour, keeping the Applicant in the dark about his whereabout like details of hotels and the persons accompanied him. Even in case of emergency or otherwise she would not know where to reach him. He was not responding to her phone calls and answering rudely as per his

whims and fancies causing severe pain and agony to Applicant and her minor daughter.

102. Out of a year, Respondent spends around ten months on tour and failed to fulfill his obligations as father and partner. He would not make as much as phone calls and shamelessly abundant Applicant and daughter Aiyana.

103. At the end of 2007, daughter Aiyana developed a sleep disorder called *sleep apnea,* causing causes in breathing or instances of shallow or infrequent breathing during sleep, but at this time of emergency Respondent remained absent and Applicant constrained to take aid from her friends. Applicant taken all care, her girlfriends where her soul support system during this time of need and they spend nights at her home and also helped to take care of daughter Aiyana. In 2009-10, daughter when Aiyana underwent surgery for said disorder and at that time also Applicant single handedly made all the arrangements and taken care of the child. Respondent shirked away from his obligations and duty as a father.

104. On several occasions Respondent treated the Applicant with complete disregard and contempt. Sometime in 2012, while she was accompanying Respondent on the tour to New York with daughter Aiyana, Respondent hesitated to introduce Applicant and introduced her as mother of his daughter, with intention to hurt her pride.

105. The Applicant is devoted to Art of Living Yoga Course for several years and a qualified teacher. She would hold Satsangs at Jackers on every Tuesday at 07.00 p.m. Respondent was aware of it from very beginning and supportive of the same, but sometime in the year 2012, he accused Applicant and started making vile baseless allegations of having Pakistani strippers and men in the house. In fact

those were only students, both men and women gathered only for prayers and spiritual discussions, from reputed families and backgrounds. She requested him not to indulge in such indecent behavior, but continued to speak in properly. Therefore, Applicant compelled to stop Satsangs and give up teachings the Art of Living courses. He sullied this sanctity of teachings by such accusations and allegations and Applicant was pained by same.

106. She noticed from the demeanor of Respondent that he is doing all these things out of his interest in outside relationships and was deliberately causing disrespect and humiliation to the Applicant. She considered the option of separation several times, but hesitated to do so due to concern about social implications and effect of such separation on the psyche of child Aiyana. In order to protect the reputation and emotional wellbeing of child she left that idea.

107. Respondent followed demonic ways and misconstrued her efforts as being submissiveness and become more vicious taking toll of her psychological wellbeing.

108. Applicant came to know from media reports that Respondent filed guardianship petition before Family Court at Bandra, Mumbai, which is based on falsehood to malign the Applicant and portray her in poor light with intention to harass her and compel her to leave share household.

Attempt to dislodge the Applicant out of house

109. She is in occupation of Jackers since 2007, along with Respondent, the daughter Aiyana and domestic staff. It is came to know that Respondent was intending to sell Jackers only with intention to dispossess the Applicant and daughter Aiyana. She constrained to write a letter to society and Bandra Police Station,

Mumbai, and requested not to permit Respondent to bring buyers to the apartment and sell it without intimating her.

110. In another attempt to dispossess the Applicant, on 08.05.2014, the Respondent deliberately locked Applicant outside their apartment when she had taken daughter Aiyana for birthday party. She noticed that Respondent No.2, Vece Paes and other strange men were present inside and deliberately not allowing entry to her. She called up police and secured entry in the Jackers.

111. On next day when she entered in her room for meditation and where her *mandir* is kept she found most of her belongings had been packed up and kept on the side. Non-vegetarian food and shoes was also kept in that room with view to insult the Applicant's religious and spiritual belief.

112. Respondent No.2, Vece Paes, and strange men kept on insisting that she has no place in the house using extremely offensive and abusive words and addressed Applicant in derogatory manner. It was her friends who rushed for help and then she filed the complaint to police station at Bandra, Mumbai. The other children questioned the daughter Aiyana while attending school about these issues/disputes between them and taking a toll on child's mental wellbeing.

113. The Respondent No.2, Vece Paes, have been entertaining strange men in the age of thirties in the Jackers, who were loitering in and around the house in threatening manner. Both the respondents did so, to spread a reign of terror and fear. They were indecently dressed, talking in loud and uncouth language. Applicant informed about it to Respondent on several occasions. On 08.05.2014, some of these men resorted to abusing and accusing the Applicant. The Applicant also felt

terrorized and fearful of her safety and wellbeing, she also felt concern about safety and wellbeing of daughter Aiyana.

114. On 08.05.2014, Respondent No.2, Vece Paes, along with his live-in partner Ms. Juliana, also moved into Jackers and both of them terrorizing, abusing and asking the Applicant to leave the said house. It is standing only in the name of Respondent, there is every possibility that he might sale, dispossess or create third party rights in the said house. Respondent No.2, Vece Paes, owns rented place in Mumbai, where he has been residing with his partner for several years, but with view to get rid of Applicant they started residing permanently in the Jackers from 08.05.2014.

Hacking of computer and illegally obtaining data

115. On 15.03.2014, she took daughter Aiyana to Hrishikesh for her mid term brake. Respondent No.2, Vece Paes, and driver of Respondent Mr. Aziz along with two professions hackers broke into the Applicant's room and rummaged through all her belongings and confiscated all her personal documents and items. They hacked into her computer and transferred all the material from her drive on their own personal disk. Both the respondents have been blackmailing her to approach the press with regards to the contents of the disk if she did not leave the house. Therefore, she constrained to seek aid of police and filed complaint with Bandra Police Station, Mumbai, on 17.03.2014, against Respondent No.2, Vece Paes, driver Mr. Aziz and two other persons involved in the unlawful act. Respondent evaded her privacy also committed offence under Information Technology Act.

Flirtatious behavior of Respondent

116. Respondent developed a wavering eye for every young and attractive woman and would make flirtatious gestures in presence of

applicant, making her uncomfortable and humiliated and embarrassing. Such a conduct on his part causing the applicant immense pain and agony during her pregnancy.

117. Applicant on several occasions found womens clothing in the bag of Respondent, when he returned from tours, upon confrontation he come up with excuses. During international tours when Respondent indulging in other woman though Applicant rededicated to him. Sometime in 2010, Applicant came across article in newspaper where Respondent was spotted with a lady in Rome, quoted as his love interest. But, he refused the same on confrontation.

118. Respondent has been traveling with cheer leader of Washington Kastles Team and the same has been seen by various people on the tennis circuit.

Adultery of Respondent

119. In 2007, she noticed that Respondent constantly traveling to Singapore and stayed there for days together despite having no tour scheduled. Applicant learnt that he did so as he is having an illicit relation with another woman. Applicant felt like complete fool at the hands of Respondent and relationship seemed only a deception, she was cheated and betrayed by the Respondent at every juncture of their relationship, emotionally, physically and financially. It was informed to her by students and acquaintances that Respondent was having affair with a girl in Singapore.

Conduct of Respondent No.2, Mr. Vece Paes

120. The Respondent No.2, Mr. Vece Paes, was against the said relationship from very beginning as he felt insecure. Taking advantage of the fact that Respondent started loosing interest in Applicant he resorted to illegal methods to oust the Applicant and the child from

Jackers, causing grief to the Applicant. He is addicted to pornography and time and again watching it on a computer kept at Jackers. He used to left same running even after watching it. On two occasions when Applicant sat on computer found that porn videos popped up. The said computer often used by their minor daughter and it is not healthy for her tender and impressionable age to came across such videos. But Respondent refused to pay any heed to such reckless actions of his father and turn a blind eye to the Applicant's concern. He and Respondent displayed no sensitivity to the fact that there was a young girl in the house.

Behavior of Respondent with Daughter Aiyana

121. The Respondent in his flourishing tennis career used his own child to attract media attention and took pictures with his daughter to give it for publication in news papers against the wishes of child. He was never sensitive towards the emotions of child who wanted to be like a normal child. His hunger for fem gone to extend of making remarks about the Applicant and their daughter to portray himself to be a family man, though it is not true.

122. In the year 2013, the Applicant's daughter Aiyana was badly affected. She was constantly in medical room for headaches, stomachaches and fever. But Respondent show little or no concern for her.

123. Applicant came across press report in newspaper dated 14.05.2013, where it is published that Applicant and Respondent were not married, but they are in live-in relationship and have daughter. In news papers dated 14.05.2014, it was published that the Applicant and Respondent were headed for split. Rather than making phone calls to his daughter Respondent choose to call the publicist and insisted on

going to media to give such a statement, thereby hurting his own child in public. It constrained Applicant to go to school of daughter Aiyana and speak to the people in charge and took out of school for one week until the attention on the said subject calm down.

124. Respondent as a father failed to bear his responsibility. On 13.11.2013, she came to know that he was having shower with daughter Aiyana at 02.30 p.m., and that took without having her meal. She repeatedly knocked the door, but Respondent refused to answer for half an hour and when door was opened she found both of them were standing in only their towels. Respondent should be mindful of the fact that their daughter no longer a child should not be witnessed her father in nude as it is extremely unhealthy for mental wellbeing and welfare. On some occasions when daughter slept with Respondent in his bedroom he would deliberately lock his door from inside causing discomfort. On 28.02.2014, Applicant addressed a letter to the Respondent expressing love, but Respondent shown complete disregard.

Facts constituting economic violence

125. The Applicant often constrained to bear all the household expenses as Respondent would cringe to part with money for their own daughter and household expenses. He earned millions, but would never sign the cheques. On certain occasions even his cheques were dishonoured and bank authorities turned up at doorsteps to recover money causing financial loss and embarrassment to the Applicant. Applicant was reduced to pitiable condition wherein she had to wait endlessly for Respondent to send money for household expenses. Her savings depleted.

126. Respondent completely stopped making payments towards the staff salary. He was increasingly creating situation to makes the Applicant's life uncomfortable and stressful.

127. The Respondent had mortgaged Jackers with State Bank of India and was committing default in making payment of installments. He also obtained loan from Sahara Housing Investment Corporation Ltd. in the month of September 2009, by mortgaging it. He also committed default in paying installments towards the loan of Mercedes car gifted to the Applicant by him, due to which she had to sell off the said car.

Reliefs sought by the applicant

128. Applicant initiated this ultimate state of filing application as she has exhausted all other options. She continued to reside in Jackers and seized to have physical relationship since the year 2006, as their relationship broken down and the damage is beyond repair due to inhuman, insensitive and reprehensible behavior of the Respondent who is guilty of not discharging his duties and obligations as a partner and father.

129. He has earned and earning huge money as a price money and from other sources. Applicant is incurring various expenses for day to day requirements, education and other necessities, as narrated in the table. She is also entitled to the Jackers and they have been in relationship akin to marriage though not legally married for the past ten years and have a daughter from the said relationship.

130. Therefore, Applicant prays for various reliefs as -

i. Protection order under Section 18 of D. V. Act to restrain the Respondent or anybody on his behalf from committing acts of domestic violence, communicating with her, alienate or seeking to

alienate the Jackers, committing acts adversely affecting the various supplies to Jackers.

ii. Pass residence order under Section 19 of D. V. Act, restraining the respondents or anybody on his behalf from preventing the Applicant or anybody on her behalf to reside in a shard household, alienating or create any interest, title, etc. in it or renouncing the right in it except with the leave of this court.

iii. Pass maintenance order along with compensation and expenses under various other provisions.

iv. The Applicant also asked for division of the Jackers in the two apartments of somewhat equal sizes and allowed to construct two separate entrances, so also direction against respondents to execute a bond not to commit the acts of domestic violence in future.

A.W.2 Dr. Avan Dadina, Exh.54.

131. Said witness deposed that she is having qualification of M.D. in Obstetric and Gynecology. Initially in the year 2005, Applicant and Respondent approached her, when Applicant was pregnant. Thereafter, in 2012 also Applicant approached her to have a second child. In the month of October, 2012 both of them approached her for their second child. She advised Applicant to conceive naturally. Again in the year 2014, Applicant approached her for other complaints. On her request she issued certificate, Exh.55, contents of which are proved by her. In cross examination said witness narrated the various dates of the visit. In a specific question to that effect she replied that they both came together and consulted to her. She also informed that she maintains medical file of every patient of every visit. In the certificate, Exh.55, also the description of visit is mentioned. In this cross examination there is nothing on record from which she can be disbelieved.

132. Respondent's Evidence

D.W.1 Mr. Leander Vece Paes, Exh.60

The Respondent also in his detailed Evidence Affidavit, Exh.60. His defence evidence can be divided under following parts -

A. Denial of Applicant's case

B. Tenability of application

C. Explanation of circumstances alleged by applicant

D. Denial of economic abuse

A. Denial of Applicant's case

133. Respondents denies each and every statement, allegations, avernments and submissions made in the petition by the Applicant contrary and/or inconsistent with their stand.

B. Tenability of application

134. The respondents disputed the tenability of the application contending that the relationship between the Applicant and the Respondent is not a relationship in the nature of marriage as defined in Section 2(f) of D.V. Act. Applicant was married to Mr. Sanjay Dutt till 2008. During subsistence of the said marriage of the Applicant the child Aiyana was born on 03.04.2006, when Applicant was residing with Respondent. Ever since the said birth of daughter Aiyana, the relationship between the Applicant and Respondent irretrievably broke down. Thereafter, there was no emotional or physical or otherwise relationship till date. It also can not be construed as relationship in the like of marriage, as it was only till 2006, when the Applicant was married to Mr. Sanjay Dutt. Therefore, there is no relationship in the nature of marriage between the Applicant and Respondent.

135. Applicant made believe the Respondent that she has divorced her husband Mr. Sanjay Dutt in the year 2005, and wanted to have a

child but did not want any commitment to a relationship. Applicant did not believe institution of marriage citing the reasons of her two failed marriages. While dissuading the Respondent from marriage the Applicant stated that she did not want to be questioned or answerable to anybody and she wanted to live life on her own terms without being bound by strings attached to marriage. Only after the same, their minor child was conceived. The Applicant and Respondent are not married.

136. Ever since the birth of their minor child on 03.04.2006, the Applicant distanced herself from the Respondent both emotionally and physically and relationship between them broke down irretrievably. The Applicant went about pleading her own wayward life on her own terms and conditions, totally unconcerned about the Respondent. The Respondent sought to maintain cordial relationship between the Applicant and himself only for the sake of child Aiyana, even though there was no emotional or physical connect between him and Applicant.

C. Respondent's explanation of facts alleged by applicant

137. When he received news of their daughter conception at the end of August 2005, when he was competing in U.S. Open Tournament from the Applicant, she informed him about her pregnancy, but insisted that he did not have to take responsibility for the child. He was shocked about this attitude and attempt to dissociate the Respondent from their child. Despite that he has looked after child's emotional needs and taken care of her financial requirements out of natural love and affection. Though he was on international tours, Respondent ensured that he was in touch with daughter Aiyana on day to day basis.

138. Applicant knowing this that Respondent is extremely fond of minor child. Always used daughter Aiyana as a tool and bargaining power to achieve her goals. Applicant's sole objective was to lead her own life, indulge in other relationship and also subsidize her own life lifestyle using financial and other resources of the Respondent provided for minor child by inflating the expenses incurred.

139. Applicant has not done any domestic chores and household was maintained by Respondent expending finances for the domestic help and to meet other household expenses. From the birth of daughter Aiyana till date Respondent has to employ over 30 domestic helps due to behavior of the Applicant, causing instability to the environment of the daughter Aiyana.

140. The Respondent wanted his parents to live with him so that he could look after their requirements and they would also be there to support minor daughter emotionally. Therefore, Respondent No.2, Vece Paes, moved into Jackers, but Applicant made his stay extremely miserable by treating him shabbily and making false allegations against him. His presence in Jackers make the Applicant uncomfortable as her wayward lifestyle would come to forefront. She tried to got him outside the Jackers under various pretexts. She placed mandir in his room and threatened respondent to move out unless she would file a complaint for violating her religious sentiments. She converted the attached bathroom into laundry room by moving the washing machine and dryer into shower cubicle. As Respondent was out of station for considerable period his father left to manipulation of the Applicant and also fearing of his health and safety, which compelled Respondent to provide him temporary alternate accommodation. Living room of the respondent's residence thereby compromising the safety and security of daughter Aiyana under the

pretext of conducting Satsangs Applicant would also invite her male friends to the Respondent's residence to camouflage her illicit affairs with the man almost half her age under the guise of attaining inner peace and awakening. It resulted in nurturing of her sexual and intimate relationship with one Mr. A.

141. The Jackers converted into public facility and sacred tenets of the student teacher relationship were violated under the garb of teaching and preaching spirituality. Her conduct also defiled her parental duty towards child. He received frantic calls from child sobbing that she was scared as Applicant had left her in the apartment with the maids and a huge group of unknown people. Daughter Aiyana started developing anxiety symptoms and was constrained to put his foot down and stop Satsangs being conducted at his home.

142. Respondent became aware of brazenly open and intimate relationship of the Applicant with one Mr. A and that she was exposing daughter Aiyana to the said intimate relationship. In the month of November 2012, minor daughter Aiyana informed Respondent that Mr. A is close friend of Applicant and she did not feel comfortable and did not like his intimate behavior with her mother, the Applicant. Mr. A was regular visitor to Jackers and spent a lot of time in the bedroom in Respondent's absent. When Respondent confronted with it Applicant accepted her involvement with him and confessed that she loved him. Respondent told to mend her wayward ways for the sake of child. Infuriated by her Applicant wrote a letter on 27.07.2013, to Secretary Jackers Building, making false allegations and also sent it's copy to Bandra Police Station. She started spreading false information.

143. The conduct of the Applicant towards child Aiyana was negligent, Applicant take the minor daughter Aiyana on holidays with her friends including Mr. A, exposing the child to the intimate relationship she had with him. Respondent had not been informed about these holidays and unaware of the whereabouts of the child and unable to contact his daughter. He was not allowed to take the daughter even outside the apartment complex and Applicant has created fear psychosis in her mind. The Applicant exchanged lewd and obscene messages, email and compromising photographs with said A. Therefore, Respondent constrained to file custody petition bearing No. D48 of 2014 under Guardianship and Wards Act, 1890, before Family Court, Bandra, Mumbai, seeking permanent custody of daughter Aiyana, due to concern of her safety, welfare and wellbeing jeopardised on account of intimate relationship of Applicant with said A and her consequent indiscreet and irresponsible behavior, lack of personal maternal supervision, self indulgence, volatile temper, bohemian attitude. To counter blast this petition for permanent custody the Applicant filed present application.

144. The Applicant is robbing joyous fatherhood of Respondent by preventing the daughter Aiyana from attending the ceremony where Hon'ble President of India presented the prestigious *Padmabhushan* award to the Respondent. At the time of *Ganpati* festivals school holidays from 17.09.2015 to 20.09.2015, also she prevented the minor daughter from being in company of Respondent to watch him play the Davis Cup Match in Delhi. He sought permission of Family Court, which order was challenged by Applicant upto Supreme Court. Though she had not succeeded Applicant prevented the minor daughter from attending this match by means of intimidation and manipulation. She brainwashed daughter Aiyana for her ulterior

motives. She was denying the Respondent to school access card and preventing him from dropping of and picking up daughter Aiyana from school. Respondent is having inseparable bond with his daughter and whenever he got any time, he would spend most of it with her. But the result of conduct of Applicant is that both of them are deprived of simple pleasures of father and daughter relationship.

D. Denial of economic abuse

145. In the year 2008, after the Applicant receiving huge settlement, included two sea facing apartments in building named Soona Villa in Perry Cross Road, Bandra, Mumbai, worth over 20 cores from Mr. Sanjay Dutt, the Applicant and Mr. Sanjay Dutt got divorced.

146. It can be seen that main intention of the Applicant is to grab the part of residence of Respondent. To entrench herself in Jackers she changed the addresses of her companies and other official documents from her two sea facing apartments to Jackers. She also moved certain of her belongings and *mandir* into respondent's bedroom in order to change its character. She made Respondent's life a living hell. Despite paying for everything he was ignored in the house. The respondents belonging also not maintained and remained unkempt and neglected.

147. Applicant's sole motive is to predate on the meager financial resources of the Respondent and indulge his wasteful expenditure. She uses lights and air conditioners without caring adverse financial impact due to payment of hefty electricity bills. The child Aiyana's expenses and household expenses also inflated by her to subsidize her lifestyle. She is extra vegan and due to her wasteful expenditure there caused huge drain of Respondents meager financial resources. Her conduct constrained Respondent to make payments directly for all

such expenses. Respondent is payment minor child's entire school fees and also incurring her other expenses.

148. Applicant is an educated lady and a wealthy person. She owns two sea facing Bandra Apartments, fetching substantial monthly rental income. In addition to this the Applicant received substantial remuneration from her career as Model, as an Instructor in Art of Living and by curating International Exhibitions for fashion and jewelery at locations such as London, Dubai and China. Applicant stands to inherit substantial ancestral wealth. The income Applicant received is more than sufficient to meet all her financial requirements and for Applicant to leave comfortable life.

149. Respondent is on the verge of retirement and he is having limited savings after the expenses incurred on his profession and other financial commitments. He has several commitments including needs of daughter Aiyana, looking after his aged parents, servicing the mortgage on his only place of residence and also he has to provide for his retirement since he will no longer receiving any professional income.

150. He claimed that his father, Respondent No.2, Vece Paes, has a contractual employment with B.C.C.I., at the time of filing of say/reply i.e. in the year 2017, his age was 72 years and ailing from acute diabetes and Parkinson besides other related ailments and have to incur substantial medical expenses. Ms. Juliana, is a strong pillar of support to the Respondent and his sibling and daughter Aiyana.

D.W.2 Mr. Vijayshankar Nagaraja Rao, Exh.69.

151. The summary of his evidence is that Leander Paes handed over to him computer hard disk bearing Sr. No.5Q84002NZ13BA, Model Hitachi HDP 725032GLA380 and on his request he viewed, extracted,

printed, copied the electronic documents contained in the said hard disk and certified the same under Section 65-B of Evidence Act. Those certificates are at Exhs.39 and 41. The extract of the electronic record/data of the hard disk in the printed format are also produced, in bound volumes. The respondent attempted to prove contents of those six bound volumes, singly exhibited as Exh.38.

152. Nature of domestic violence –

Both the parties made various allegations against each other. If we considered the kinds of domestic violence and the present case, it can be said that the nature of allegations mainly in the form of situational couple violence. As mentioned above, the Applicant's allegations of domestic violence can be mainly divided into two parts.

First – Emotional violence and

Second – Economic violence.

First – Emotional violence – The acts of emotional violence, in brief, are as -

i. In this regard Applicant claimed that the Respondent misrepresented himself to be a good person and relying on his representation she shared herself with him, emotionally and physically. She became pregnant from him and gave a birth to daughter Aiyana. After her birth he started avoiding her. He seized on his contacts with her. He also stopped sexual contacts with her and started blaming her to be undesirable woman.

ii. He started living outside the house and avoiding contacts with Applicant and their daughter and paid no attention towards them. Taken no emotional or other care of them.

iii. In an attempt to drove the Applicant and her daughter out of Jackers. He made various attempts. He stopped Satsangs. He called outsiders and Respondent No.2, in the house, on one occasion even he

kept the Applicant and her daughter out of house and after intervention of police access was permitted. Her household and other articles are also packed by Respondent with a view to send her out of house.

iv. Respondent made wild allegations against her. He alleged that she is maintaining same sex relations as well as having sexual relations with her ex-husband and other persons.

v. During her absence her room was illegally entered into and her personal computer was also hacked by respondents with the aid of private persons. The data contained in it was illegally obtained by them without her permission. They attempted to blackmail her by using data contained in it.

vi. Due to behavior of the Respondent and various issues tremendous mental and physical pain caused to her. But Respondent felt no sympathy for her. He neither taken care of either Applicant or her daughter in any way.

Second – Economic violence - The acts of emotional violence, in brief, are as -

vii. Respondent has not paid anything for earning day to day life of Applicant and her daughter, such as maintenance of house, medical expenses, recreation, school fees, etc.

viii. He has exhausted her finances and also not paid back the amount obtained from her for his personal requirements.

Evidence of Respondent

153. Respondent in his evidence, evidence affidavits of himself, as D.W.1, Leander Adrian Paes, Exh.60, and another witness, D.W.2, Mr. Vijayshankar Nagraja Rao, Cyber Expert, Exh.69, denied all the adverse allegations. The summary of defence evidence is that

allegations are false and there caused no domestic violence on his part. Applicant herself committed fraud on him, caused him financial losses. Applicant is not faithful to him and leading irresponsible, wayward and adulterous life. She has resources, residence and no relief can be granted.

Scrutiny of Evidence

Admitted Facts

154. If we considered the reply/say/written statement of the Respondent, cross examination from his side and his evidence, it is observed that following facts are admitted by him or by both the parties. Those are reproduced at the cost of repetition, as it is necessary to do so for further discussion.

i. Applicant separated from her husband Mr. Sanjay Dutt, in the year 1999-2000.

ii. At that time marriage was in subsistence and both of them not divorced.

iii. Both the parties came in contact with each other in the year 2003 and started sharing quality time with each other.

iv. Then they started living together at Colaba, Mumbai.

v. Applicant become pregnant in the month of August 2005.

vi. Both the Applicant and Respondent shifted to Bandra, Mumbai at Soona Villa, in 2006.

vii. Applicant gave birth to daughter Aiyana in the month of April 2006.

viii. Both the parties resided at Soona Villa upto 2008.

ix. In 2008, they shifted to Jackers, in the house owned by Respondent.

x. Applicant formally divorced from Mr. Sanjay Dutt, on 06.02.2008.

xi. In the year 2008, differences irrupted.

xii. Respondent No.2, Mr. Vece Paes, started residing at Jackers with his partner Ms. Juliana.

xiii. Differences aggravated, but parties continued to live at Jackers, Bandra, Mumbai.

xiv. In the month of February, 2014, Respondent filed custody petition bearing No. D48 of 2014 under Guardianship and Wards Act, 1890, at

Family Court, Bandra, Mumbai, and then Applicant approached this court in the month of May 2014.

xv. In written statement/reply/say the respondents not denied the allegations of adultery on her part is not denied by the respondents rather they tried to prove these facts.

xvi. Same is the case with other allegations, in their written statement/reply/say the respondents not seriously denied the allegations of arrival and presence of Respondent No.2, occurrence of differences, initial non-payment of expenses, breaking of room of applicant, hacking of computer, packing of her household, and other material facts not seriously disputed. They tried to justify these facts by putting forward their own version.

xvii. In cross-examination the respondents maintained this stance and disputed these facts. Almost all the allegations are not specifically or even generally denied by the respondents.

xviii. About economic violence also it is admitted and came on record Respondent made financial no arrangement for survival of the Applicant and her daughter. He paid the amounts only after orders by the court. In cross examination also majority of these aspects not specifically or even generally denied by the respondents.

Effect of these admitted facts on burden of proof

155. Thus, majority of the material facts pertaining to emotional economic violence are admitted. It is important to note that majority of them are not even denied in the cross examination. The Ld. Advocate for the Applicant in written notes of the argument and also during oral submissions heavily relied on this aspect.

156. It is noticed that the Respondent rather than denying it preferred to justify these facts by putting forward his own version about every aspect, including desertion, adultery, non-payment of expenses, hacking of computer, presence of other persons in the house, etc. The proceedings are of summary nature. The test to be applied is preponderance of probabilities or below than that. No strict proof of

each and every aspect is required beyond reasonable doubt. Considering the facts admitted by the Respondent, as stated above, it can be said that the Applicant succeeded in proving all allegations constituting emotional and economic violence and then burden shifts on the shoulders of Respondent to prove counter i.e. his stance/defence.

Respondent failed to discharge burden

157. But if we perused either cross examination of the Applicant from his side or his evidence affidavit there is nothing in it, on the basis of which it can be said that Respondent succeeded in proving his defence.

158. One another important aspect needs to be discussed in this regard. The Respondent taken a defence of adultery and claimed that Applicant is having illicit relations with one Mr. A. For this purpose in support of his oral evidence he tried to rely upon the contents of the data obtained from the computer placed in house, imported in it from phone of the Applicant having application, *Blackberry Messenger*, ***hereinafter referred as BBM.*** To prove its contents he also examined D.W.2, Mr. Vijayshankar Rao, vide Exh.69, He also attempted to prove the contents of those messages allegedly exchanged between Mr. A and Applicant, by producing its transcripts, Exh.39.

159. During arguments, much has been argued by Respondent in this regard as well. The summary of those submissions is that adultery is proved and it disentitles the Applicant from claiming any reliefs. The respondents also relied on certain judgments, ***Arjun Panditrao Khotkar Vs. Kailas Kushanrao Gorantyal, Shafi Mohd.,*** etc. In reply the Applicant claimed that the said evidence was collected in her absence that too by

a private person by illegally hacking computer used by her. The material is neither relating to her nor the contents in it are proved.

160. If we perused evidence affidavit of concerned witness i.e. Mr. Vijayshankar Nagraja Rao, he deposed that Respondent handed over him computer hard disk bearing Sr. No.5Q84002NZ13BA, Hitachi HDP725032GLA380 and on his request he viewed, extracted, printed, copied the electronic record contained in the said hard disk and certified the same under Section 65-B of Evidence Act. Thus, the hard disk containing data was handed over to the witness by the Respondent. Respondent himself contended that when the data was recovered from the computer he was out of India and everything was done by his father with the help of experts to obtain the details of his missing passport. Thus, there is a considerable time gap between removal of hard disk from the computer and extracting data from it. Hard disk is not produced in the court. Further, there is no evidence that the said hard disk is the same hard disk removed from the computer used by Applicant and kept intact without any tampering during the intervening period, therefore, the said evidence is not admissible. There found no connection between the Applicant and the said data or its transcripts.

161. Applicant cross examined at length for considerable period of time about the contents of the data. She admitted friendship with Mr. A, but there found nothing which will connect the Applicant either with data or its extracts.

162. There is alternative angle to this aspect as well. There is no provision in the D.V. Act which will provide the disability relating to adultery to claim any of the reliefs under its provisions, as provided in Section 125 of Code of Criminal Procedure, i.e. provision relating to

maintenance of wives and other persons and that too in case of live-in relationship in the nature of marriage. In this regard the legal aspects discussed in preceding paragraphs, can also be considered about interpretation of the provision.

163. There may be difference of opinion about it whether person living in adultery can claim reliefs from the opponent partner or not? Such a difference of opinion may raise various questions relating to morality and other social aspects. But as discussed in preceding paragraphs issues relating to interpretation of D.V. Act, constitutional and social morality and other aspects it can be inferred that the persons having live-in relationship are standing on some weak footing and they are not having such strong rights as that of married person. Before entering into such relationship they should prepare themselves for facing consequences and get ready for the situation where they may not have defences or privileges available to the married couple. Therefore, even if it is presumed that Applicant was leading adulterous life it can not absolve the Respondent of his liability to maintain Applicant.

164. It is proved that Respondent caused various acts of domestic violence.

Reliefs

165. The Applicant claimed various reliefs, protection order and order of injunction from committing acts of domestic violence, communicating with her, alienation of property, residence order, maintenance and compensation order and division of Jackers in two apartments of equal size. It can also be considered whether any compensation and cost can be awarded or not?

166. It is admitted that the Applicant comes from sound background. She is residing at Jackers, which is owned by Respondent and though she is having another house in her own name Soona Villa. Respondents resides in a rented house. She also owns two companies. It is also admitted by both the parties that Respondent is bearing all the expenses of livelihood and education of the daughter Aiyana. While granting reliefs these aspects can not be ignored while granting reliefs of residence and maintenance.

167. The Section 17(1) of Domestic Violence Act, provides that *notwithstanding anything contained in any other law for the time being in force, every women in a domestic relationship shall have the right to reside in a shared household, whether or not she has any right, title or beneficial interest in the same.* Thus, even if Applicant is having another house she is entitled to live in a shared household. But Respondents possesses no house. They are residing outside in a rented house. His career as tennis player is almost over. He also bearing all the expenses of daughter Aiyana. If such a situation is allowed to continue it will definitely cause serious prejudice to the respondents. It can not be ordered that Respondent shall remain outside by depriving himself of every resources and only pay the maintenance to the Applicant. Some alternative arrangement is necessary.

168. These aspects compel this court to balance the equities and thus, balance the rights of both the parties. Therefore, rather than awarding payment of maintenance with permitting the Applicant to reside at Jackers itself, the maintenance needs to be conditioned by leaving of house of the Respondent i.e. Jackers. Besides the direction to pay cost and payment of education and other expenses of daughter Aiyana, also needs to be ordered. While awarding the amount of maintenance the expenses, which Respondent is incurring and the fact that Applicants

owns companies and comes from sound background also needs to be weighed. So far as cost of litigation and compensation is concerned. As Applicant is residing in the house of Respondent himself and there is no evidence about any special damages compensation can not be awarded. The reasonable cost of litigation can be granted. Considering all these facts and circumstances I am of the opinion that following order, will serve the cause of justice. Accordingly, order -

ORDER

A. Application is partly allowed.

B. Respondent No.1, Mr. Leander Adrian Paes, is directed to pay the amount of Rs.1,00,000/- (Rupees One Lac Only) per month towards maintenance and amount of Rs.50,000/- (Rupees Fifty Thousand Only) per month towards house rent, i.e. total amount of Rs.1,50,000/- (Rupees One Lac Fifty Thousand only) per month to Applicant Rhea L. Pillai, from the month of March, 2022, subject to condition that Applicant Rhea L. Pillai, shall left the house i.e. Jacker's, 6th Floor, 113, Carter Road, Bandra (W), Mumbai, within two months from today.

C. Respondent No.1, Mr. Leander Adrian Paes, is also directed to pay the additional amount of Rs.1,00,000/- (Rupees One Lac Only) to Applicant Rhea L. Pillai, towards the cost and expenses of the application.

D. The Respondent No.1, Mr. Leander Adrian Paes, shall continue with the expenses of maintenance, education and other necessities of the daughter Aiyana Vedika Paes, until she attains majority.

E. If above order in Clause 'B', is materialized, Respondent No.1, Mr. Leander Adrian Paes, shall also directed to pay the amount

ordered above with additional increase of 5% every year, from the month of March 2023, so that Applicant shall not be compelled to knock the doors of court again and again for enhancement of amount of maintenance and house rent to meet the inflation, till the date upto which the said order remains in force.

F. Reliefs in respect of past maintenance, partition of house and other prayers relating to said house are also rejected, in view of order Clause 'B'.

G. Copy of this judgment shall be given free of cost to both the parties.

MUMBAI **(KOMALSING RAJPUT)**

DATE – 11.02.2022 **M.M., 12TH COURT, BANDRA, MUMBAI**

I affirm that the contents of this PDF file judgment are same word for ward as per original judgment.

Court Name	: Komalsing Rajput
Name of Steno	: S. R. Parab
Date	: 11.02.2022
signed by P.O. on	: 22.02.2022
uploaded on	: 22.02.2022