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Decided On :01/10/2016

Duration :04years 03months 14days



**In The Court of 2nd Additional Judicial
Magistrate First Class, At.PATAN.**

Cri.Misc.Appli.No.295/2012

Exhibit-34

APPLICANTS :-

No.	Name	Residence	Age/ yrs.	occupation
1	Palkaben Prakashkumar Nayak	At :- Kungher, Ta-Dist:- Patan.	28	House-work

VERSUS

RESPONDENTS :-

No.	Name	Residence	Age/ yrs.	occupation
1	Prakashkumar Mafatlal Nayak (<u>Husband of Applicant</u>)	B/256,Arbu danagar, Mahavirbau g, Odhav, Ahmedabad.	38	Service
2	Babuben Mafatlal Nayak (<u>Mother-in-law of applicant.</u>) <i>Dead Since 07/10/2013.</i>	As Above	68	House-work
3	Vijaykumar Mafatlal Nayak (<u>Elder brother-in-law of</u>	As Above	43	Service

	<u>applicant) (Jeth)</u>			
4	Shushilaben Chandulal Nayak <u>(Sister-in-law of</u> <u>applicant(Nanand)</u>	Nayakvaas, Madropur, Ta:- Kheralu.	50	House-work
5	Hansaben Bhogilal BabalDas Nayak <u>(Sister-in-law of</u> <u>applicant(Nanand)</u>	201, Sheshkrupa flat, part-1, plot no.120, Near Valinath Chowk, Katargam, Surat.	46	House-work
6	Surekhaben Sunilkumar Nayak <u>(Sister-in-law of</u> <u>applicant(Nanand)</u>	A/26, Arunnagar society, Mahesana- radhanpur Road, Mahesana.	45	House-work

**Sub :- Application U/s-12 of Prevention of Women
From Domestic Violence Act-2005.**

Appearances :

Mr.Y.A.Momin,Ld.Advocate for Applicant.

Mr.G.K.Panchal,Ld.Advocate for Respondents.

JUDGMENT

1. The applicant has filed this application U/s 12 of the Protection of Women from Domestic Violence Act (herein after referred as DV Act or PWDV Act for shake of brevity), 2005. She has sought Protection Order under Section 18, Residence Order under Section 19, Monetary reliefs under section 20 and compensation under

Section 22 of the Act.

2. The applicant herein is the wife of the respondent No.1 and thereby she is daughter-in-law of respondent no. 2. Respondent no.3 is elder brother-in-law (Jeth) of applicant. And respondents no.4 to 6 are Sister-in-laws (Nanands) of applicant.

3. Relevant facts for disposal of the application, in brief, are that marriage between applicant and respondent no.1 was solemnized according to Hindu rites and customs on 12/03/2000. And during cohabitation of marriage with respondent no.1, applicant gave birth to one child.

3.1. After marriage applicant went to her in-laws house where she was subjected to mental and physical cruelty on point of bringing less "Kariyavar". It is also stated that she was also torture as she was not able to conceive pregnancy even-after three years of marriage. After conceiving pregnancy she gave birth to baby child which was not as per wish of all respondents and hence, they all cause domestic violence to applicant. Then-after when applicant's baby "Khushi" attained age of 4 years, applicant again got pregnant and at that time respondent no.1 cause termination of pregnancy as there was baby in her womb.

3.2. It is also alleged that as all respondents

were asking for more Kariyavar and she was not able to bring the same she accepted job in school at monthly salary of Rs.500/-. But while she was doing this job her character and chastity was doubted by all respondents. And due to that applicant left her job. It is also averred in application that she was deserted five to six times by respondent no.1 and after giving binding in writing she went with respondent no.1 to live peacefully. But, even then-after she was subjected to mental and physical cruelty and due to that she was compelled to leave house of respondent no.1 in year 2011.

3.3. it is also stated that during pendency of Cri.Misc.Appli.No.185/2011 respondent no.1 was threatening applicant and was forcing her to withdraw application. And respondents are making allegation her character and chastity in society. It is also stated that applicant's all articles which were given by her parents at time of marriage is still with respondents and they are not giving back same.

3.4. Hence, applicant filed present application and claimed reliefs pertaining to protection against further domestic violence under section-18, residence order under section-19 of DV Act, maintenance order under section-20 of DV Act and compensation order under

section-22 of DV Act.

4. After DIR was filed and service of notice to respondents they failed to file written statements even-after ample opportunities and hence, matter proceeded without filing of written statement.
5. In support of her claim applicant lead below stated evidence.

Sr.No.	Description	Exhibit
1	Deposition of applicant Palakaben Prakashkumar Nayak	13

6. A closing pursis is filed by applicant at Ex.24.
7. All respondents were given opportunities to cross-examine applicant but even-after repeated opportunities granted to them they failed to avail the same and hence, their right to cross-examine applicant was closed. It is also pertinent to note that when this application was kept for arguments advocate for respondents gave application at exhibit-32 to open right of cross-examination. Same was kept for hearing and advocate for respondents as well as respondents failed to remain present on dates when matter was adjourned. Thence, that application was also rejected.
8. Advocate for applicant has initially argued that necessary order may be passed looking to evidence on record and he may be considered as heard. But, when advocate for respondent took a

stand that application is not maintainable due to limitation he argued that in cases filed under domestic violence act issue of limitation not applicable. He has further argued that applicant's evidence is not challenged anywhere by respondents and hence, it can be said that applicant has proved her case. It is also argued that there is not evidence which rebutes evidence produced by applicant. Thus, he has prayed to allow application and prayed to grant reliefs claimed by applicant.

8.1. On other hand advocate for respondents Mr.G.K.Panchal has only take contention of limitation. He has prayed that as application is filed after one year of DV same is not maintainable. Thus, he has argued to reject application of applicant with cost.

9. After having gone through above-mentioned evidence and arguments on record at outset following issues arise before me for judicial decision of this application.

a) Whether applicant proves that she was subjected to domestic violence at hands of respondents?

b) Whether applicant proves that she has reason to live separately from respondent no.1?

c) Whether applicant proves that she is entitled to get protection against further

domestic violence under section-18 of DV Act.?

d) Whether applicant proves that she is entitled to get relief of residence order under section-19 of DV Act.?

e) Whether applicant proves that she is entitled to get articles given in "Kariyavar" from respondent as per schedule-"A" annexed with application?

f) Whether applicant proves that she is entitled to get compensation order under section-22 of DV Act?

g) What order?

10. My answers for above-mention issues are as under.

a) In affirmative.

b) In affirmative.

c) In affirmative.

d) In affirmative.

e) In affirmative.

f) In affirmative.

g) As per final order.

Issue no. (a) to (f)(reasons)

11. Since issue no.(a) to issue no.(f) occupies reason based on same set of evidence, I propose to decide them analogously.

12. Before adverting to deciding this application it would be just and proper to have a look at object for enacting the DV Act. Same

can be read like this "An Act to provide for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto".

13. Now it is essential that prior to giving any relief under PWDV Act, applicant/petitioner is under mandate to prove herself as aggrieved person. Hence the first question that arises for determination is as to whether the applicant is an aggrieved person? Aggrieved person is defined in Section 2(a) of D V Act which reads as under:
(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"

A perusal of this section shows that two ingredients needs to be satisfied before a person can be said to be an aggrieved person: (1) Aggrieved person must be in domestic relationship with the respondent; and (2) Aggrieved person must have been subjected to domestic violence while she was in domestic relationship with the respondent.

Section 2 (f) defines domestic relationship as under: (f) "Domestic relationship" means a relationship between two persons who live or

have, at any point of time, lived together in a shared household, where 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."

It is clear from the perusal of section 2 (f) that the aggrieved person must establish that she was in relationship with the respondent by way of blood, adoption or marriage and **was residing with him in a shared household.**

Domestic violence has been defined in section 3 which reads as under:

1."Definition of domestic violence - For the purpose of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it" (a) harms or injures or endangers the health, safety, life, limb or well being, whether mental or physical, of the aggrieved person or tends to do so and included causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse: or (b) Harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her meet any unlawful demand for dowry or other property or valuable security; or (c) has the effect of threatening the aggrieved person or any person related to her by any conduct

mentioned in clause (a) or clause (b); or (d) otherwise injuries or causes harm, whether physical or mental, to the aggrieved person."

14. If the aggrieved person is able to show domestic violence in any form as per section 3 of D.V. Act, she is entitled to orders u/s 18, 19, 20 and 22 of D.V. Act.

15. Before I decide any question regarding whether applicant was subjected to DV at hands of respondents I would like to decide this application's maintainability. Because by relying upon judgment delivered in case of Inderjit Singh Garewal Vs State of Punjab reported in ACR 2011(II) 167(SC) learned advocate for respondents has argued that application is barred by limitation and hence not maintainable. After having gone through this judgment's facts and circumstances I am of the opinion that this judgment is not applicable to present case's facts and circumstances. Because in Inderjit Singh's (Supra) judgment fact was that, divorce was obtained by mutually by both parties and then after wife withdraw her consent and furthermore she filed criminal complaint for fraud. And then-after she filed complaint under DV Act. And after having regard to facts and circumstances of the case Hon'ble Apex Court held that as decree of divorce was already obtained by mutual consent and after one year of that decree

application under DV Act is not maintainable. While I am deciding this controversy regarding limitation in application under DV Act one judgment Hon'ble Supreme Court is bankable to refer herein. This judgment is delivered in case of Saraswathy Vs Babu reported in 2014 0 AIR(SC) 857. In this judgment Hon'ble Apex Court allowed appeal even-though marriage was solemnized in year 2000 and application was filed in year 2008. Hence, it can be said that limitation is not applicable to present case because applicant was victim of economic abuse. Consequently, I decide this application as maintainable.

16. It is admitted that respondent no.2 is dead since 07/10/2013. Hence, I restrict myself from passing any order against respondent no.2. Be it noted that as per applicant's application it is abundantly clear from addresses shown in title that respondent nos. 4 to 6 are residing at other placed then where respondent no.1 is residing. Hence, without touching their role I am of the opinion that no order can be passed against them. Because now a days it has become usual practice from the applicant in cases of DV Act to join all relatives of husband whether they are living together or not. Hence, I deemed it fit to pass all necessary orders against respondent no.1 only.

17. Now from the facts, regarding violence she

has categorically stated in her application as well as examination-in-chief at exhibit-13 that she was subjected to violence after her marriage with respondent no.1. In this regard it is pertinent to note that applicant has categorically stated in her examination-in-chief that she was subjected to domestic violence at hands of respondents. It is also appropriate to note herein that she is not cross-examine by respondents and thus her evidence is left unchallenged. And this is benevolent piece of legislation no strict proof is required. And more-over when respondents has become reluctant to carry out cross-examination of applicant. Hence, I am of the opinion that applicant has proved her case.

18. Further while I am deciding this types of application it would be profitable to refer herein judgment of Hon'ble Gujarat High Court in case of Induben Vrajlal Rabari Vs. Vrajlal Ramajibhai Rabari reported in 1993 (1) G.L.R. 396. In this judgment Hon'ble Gujarat High Court has held that "There may not be any independent evidence on the point of cruelty and mental torture. If the wife has stated before the Court on oath that she was physically and mentally tortured by her husband and her evidence in cross is not shaken, then there is no reason for the Court not to believe her evidence." I also

know that this judgment was delivered in case filed under section-125 of Criminal Procedure Code but I am of the opinion that ratio laid down in this judgment can be applied in present case as both statues are benevolent statues and judgment of Induben(Supra) can be applied in present case. Hence, on discussion of above-mention evidence on record and facts and circumstances of the application this Court is of opinion that applicant no.1 was subjected to domestic violence at hands of respondents and she has reason to stay separate from respondents. Hence, issue no. (a) and (b) are hereby answered in affirmative.

19. When this Court is of the prima-faice of the opinion that applicant was subjected to domestic violence it is to be decided that whether petitioner/ applicant of this application is entitled to all reliefs as claimed u.s 18,19,20,22 from respondents.

20. Under section-18 order can be passed for protection in favour of aggrieved person restraining respondents from causing further domestic violence to the aggrieved person. And if I refer section-18 of DV Act it clearly indicates that, if Court is satisfied that domestic violence is likely to take place, may pass a protection order in favour of the aggrieved person. Therefore, issue no.(c) is

hereby answered in affirmative.

21. For relief under section-19 order can be passed to maintain same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same. For this I would like to refer judgment of Hon'ble Supreme Court in the case of **S.R. Batra and another v. Taruna Batra (Smt.), (2007)3 SCC 169.** In this landmark Judgment after having regard to the DV Act and related circumstances of the case Hon'ble Apex Court cleared aspect of Shared Household. In this judgment Hon'ble Supreme Court held that in house where applicant & respondent lived together can be termed as shared household. And also held that where house belongs to in-laws of applicant same cannot be considered while passing order under section-19 as shared household. But if same is name of applicant's husband then same can be covered under section-19 and necessary order can be passed taking into consideration. Thence, issue no.(d) is hereby answered in affirmative.

22. Regarding issue no.(e) it is necessary to mention that articles which are given to lady at the time of her marriage are always considered as "Stridhan". It is immaterial that whether it was given by in-laws or her parents. And while I am deciding this issue recent judgment of

Hon'ble Apex Court has come to my aid. Same has been delivered in case of Krishna Bathacharjee Vs. Sarathi Choudhary & ors reported in 2016 (1) G.L.H.(S.C) 1. At the cost of repetition I would like to reproduce relevant head-note of this judgment. "c) Matrimonial law - Stridhana - Constitutes properties gifted to the wife before the marriage, at the time of marriage or at the time of giving farewell - It is exclusive property of the wife on proof of entrustment of the property or dominion over the stridhana property to her husband or any other member of the family - On such proof no further agreement is required to be established. (Para 27).

(d) Protection of Women from Domestic Violence Act, 2005 - Section 12 - Claim for retrieval of stridhan - Maintainable as long as relationship of husband and wife continues and she remains the aggrieved person - Deprivation of wife from her stridhan is continuing offence - The wife can always make her claim u/s 12. (Para 31)".

Thence, after having regard to the ratio laid down by Hon'ble Apex Court in Krishna Bhatarjee's (Supra) case I am of the opinion that applicant deserves to have her "Stridhan" back. Hence, issue no.(e) is answered in affirmative.

23. Under section-22 of DV Act When it is proved that applicant was subjected to

domestic violence at hands of respondents it would be appropriate to award compensation for for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by that respondents. Looking to the evidence on record it would be just and proper to award Rs.5,000/- as compensation under section-22 of DV Act. And this application came to be filed due to violence of respondents, I deemed it fit to grant this application from date of application. It is also pertinent to note that from desertion of applicant till today no arrangement has been made by respondent for her residence. Hence, this application deserves to be granted from date of application in view of object of enacting this Act.

24. After having above facts and circumstances in the mind and judgments mentioned herein above following order is passed.

ORDER

- 1.** *All respondents are also hereby restrained from threatening the applicant or any of her relatives and restrained from making any allegation against chastity & character of applicant which are without any cogent proof ,henceforth.*
- 2.** *Respondent no.1 is hereby ordered to secure same level of alternate accommodation for the*

aggrieved person as enjoyed by her in the shared household or to pay rent for the same of Rs.2,000/-(Rupees Two Thousand Only) from date of order.

3. Respondent no.1 is directed to pay Rs.5,000/- (Rupees Twenty Five Thousand) as one time compensation to petitioner within 30 days from the date of this order.

4. Respondent no.1 is hereby directed to hand over articles as per schedule annexed with application and on failure of same respondent no.1 to pay Rs.75,000/- (Rupees Seventy Five Thousand Only) to applicant within 3 months from date of this order.

5. Respondent No.1 is further directed to pay Rs.1000/-(Rupees one Thousand) as cost to applicant.

6. Parties to the proceedings to be provided a copy of this order free of cost and copy of this order is to be sent to concerned police station in whose jurisdiction respondent no.1 resides for information as per s.20(4) of this act and also to the protection officer who has submitted domestic incidence report.

With the above directions the application U/s. 12 of Protection of Women from Domestic Violence Act 2005 filed by the applicant stands disposed of.

Signed and pronounced in Open Court on this the 1st

Day of October,2016 at Patan.

Place:-Patan

Date:-01/10/2016

(Vikram Karshabhai Solanki)

2nd Addl.Civil Judge & J.M.F.C.

Patan.

Judge Code No.:-GJ-01099