

ORDER ON APPLICATION FILED UNDER ORDER 21
RULE 48 OF CPC

The petitioner filed the instant application under Order 21 Rule 48 of CPC for attachment of the salary of respondent in order to satisfy the maintenance awarded by this court.

2. It is stated in the affidavit that, the maintenance petition filed by the petitioner is allowed by this court. As per the said order, the respondent failed to pay the maintenance amount and as such she filed recovery petition in terms of Sec.128 of Cr.P.C. In order to accomplish the need of maintenance amount, she has produced the salary certificate of respondent and the attachment of salary needs to be passed. Therefore, the petitioner prays to attach the salary till the maintenance amount is satisfied.

3. Respondent appeared but not filed any objection.

4. As is borne out from the order, the petitioner had applied for various reliefs as provided under the provisions of Protection of Women from Domestic Violence Act, 2005 and her petition was under Sec.12. The petition was numbered as Crl.Misc.No.283/2019. Which was allowed in part and thereby awarded the maintenance amount to petitioner at Rs.5,000/- per month, that too from the date of petition. The petitioner opted to file the instant petition for recovery of the maintenance amount as awarded by this court and it is in terms of Sec.128 of

Cr.P.C. As per the Protection of Women from Domestic Violence Act, 2005, Section 28, the procedure for proceedings Under Section 12, 18, 19, 20, 21, 22 and 23, Sec.31 shall be governed by the provisions of the Code of Criminal Procedure, 1973. The said provisions speaks further, that court may lay down its own procedure for the disposal of an application under Sec.12 or under (2) of Sec.23 of the Act. Thus, the present petition for recovery of maintenance amount as awarded by this court, filed under Section 128 is absolutely proper and can be entertained.

5. The petitioner filed the instant application for attachment of salary of respondent in terms of Order 21 Rule 48 of CPC. However, the specific provision is available under Protection of Women from Domestic Violence Act, 2005, which is Sec.20(6). The same reads as under;

“Sec.20. Monitory Reliefs. (1) (a) to (d) ****

(2) to (5) ****

(6).- *Upon the failure on the part of the respondent to make payment in terms of the order under Sub-Section (1), the magistrate may direct the employer or a detour of the respondent, to directly pay to the aggrieved person or to deposit with the court a portion of the wages or salaries or debt due to or accrued to the credit of the respondent, which amount may be adjusted towards the monitory relief payable by the respondent.*”

6. Having referred the aforesaid provision, it is manifestly clear that, the magistrate has power to direct the employer or debtor of the respondent to directly pay or deposit the amount due under or accrued to credit of respondent. Thus, in my opinion, nevertheless the petitioner filed the application in

terms of Order 21 Rule 48, it would not be hurdle for granting the relief as sought thereunder. Since the PWDV Act is social legislature and it should be seen that, no woman should be deprived of her livelihood with all dignity of life in the society on account of desertion by husband. In this object of the Act, I feel it appropriate to consider the application on hand to grant the relief as prayed thereunder. Even though the application filed under Order 21 Rule 48 of CPC, there is no impediment to act upon Section 20(6) of the Protection of Women from Domestic Violence Act, 2005 and in my opinion which would achieve the ends of justice. It would achieve the very object for which the enactment comes into effect, as well.

7. The petitioner has produced the certified copy of order passed by this court. As per the same, the respondent No.1 has been directed to pay a sum of Rs.5,000/- per month to the petitioner from the date of petition. The order was passed on 23.09.2022. The present petition has filed on 05.01.2023. The petition is within time from the date of order. The respondent though appeared through an advocate has not made any attempt to pay the balance amount, even after opportunity and issuance of FLW, also.

8. The Petitioner has filed necessary application to call the salary certificate from the employer of respondent. Accordingly, this court issued a necessary direction to the DDO of the respondent namely, BEO, Ranebennur for furnishing the salary certificate, vide order dated 09.02.2024. Consequently, the BEO furnished the salary certificate on 20.02.2024. As per the said salary certificate the respondent is getting gross salary of Rs.62,261/- per month and net salary is Rs.50,225/-, net salary is the amount receivable after the deductions towards

necessary taxes, savings and other essentials. The records reveal non payment of the amount. Therefore, the employer of respondent needs to be directed to directly pay the sums to the account of petitioner. Which will be till the satisfaction of the amount covered under this petition. Due is in the tune of Rs.1,90,000/-, as on the date of filing of this petition.

9. The petitioner has provided her bank account details and the copy of pass book. Thus, in my considered opinion, in order cater the need of petitioners, to accomplish the order passed by this court, the necessary direction needs to be given to the employer of respondent to directly pay the amount to petitioner, out of salary of respondent, that too till satisfaction of the amount due as on this petition. Accordingly, the following order;

-:: ORDER ::-

By acting under Sec.20(6) of the Protection of Women from Domestic Violence Act, 2005, the application filed by the petitioner is allowed in the following terms.

The BEO of Ranebennur Taluk, District Haveri is hereby directed to deduct the 1/3rd portion out of the net salary of respondent. It further directed the BEO of Ranebennur to deposit the deducted amount directly to the Savings Bank Account of petitioner laying at Union Bank of India, Tyavanagi Branch, under Account No.520101263495110, till satisfaction of the amount of Rs.1,90,000/- covered under this petition.

It is further directed the employer of respondent to stop the deduction of salary amount after completion of payment of Rs.1,90,000/-.

Issue notice to BEO, Ranebennur, along with account details of petitioner for compliance of this order.

Sd/-
**Prl. Civil Judge & J.M.F.C.,
Channagiri.**