

**IN THE COURT OF THE CIVIL JUDGE &
J.M.F.C.,PONNAMPET.**

Present:- Sri. **Mohanagowda M.E.**,
Civil Judge and J.M.F.C.,
Ponnampet.

Dated, the 6th day of September 2018.

Cr.M.C.No.157/2018.

Petitioner:

K.M.Sonia Madiah,
W/o: Late K.M.Madaiah,
Age: 31 years,
R/o: Mathur Village,
Virajpet Taluk,
Kodagu District.

(By **Suresh V.S.**, Advocate)

- V/s -

Respondents: 1.

K.M. Leelavathi,
W/o: Late K.G.Monappa,
Age: 56 years,
R/o: Mathur Village,
Virajpet Taluk,
Kodagu District.

2.

Nisheen K.M.,
W/o: Naveen,
Age: 35 years,
R/o: Mathur Village,
Virajpet Taluk,
Kodagu District.

3.

Kandera Prakash,
S/o: Not known,
Age: 50 years,
R/o: Sulugodu Village,
Balele Post, Virajpet Taluk,
Kodagu District.

EX-PARTE INTERIM ORDER

The petitioner has filed an application under Section.23 (2) of Protection of Women from Domestic Violence Act, seeking ex-parte reliefs U/sec.18 and section 20 of the Act against the respondents, pending disposal of main petition. The application is supported by an affidavit.

2. The case of the Petitioner in brief is as follows:

The petitioner is the legally wedded wife of Late Madiah. The 1st respondent is her mother-in-law and the 2nd respondent is her sister-in-law. That she married Viju Madaiah on 6.1.2008 as per their customs and since then she was living in her matrimonial house along with her father in law and mother in law. The petitioner in her wedlock gave birth to a son and a daughter. That on 8.2.2010 the father in law died and on 12.5.2013 the husband of petitioner died. After the death of her husband the petitioner was ill treated by the respondents, she was blamed for giving birth to a female child and was also harassed by saying that after her entry to the house her husband died. The respondents abused the petitioner in filthy language. The 3rd respondent being brother of 1st respondent instigated the 1st and 2nd respondent to commit domestic violence against the petitioner. When petitioner questioned the conduct of respondents she was thrown out of her matrimonial house with her small daughter and did

not allow her to take her son. The respondents threatened that they would kill her son if she lodges any complaint to police. The respondents said that they would return her son after alienation of all family properties. Several meetings were held to solve the family disputes but the respondents did not agree for settlement. Now the petitioner and her daughter took shelter at her parental house, she is unable to maintain herself. The family of petitioner's husband owns vast agricultural properties and also several sites. That after the death of her father-in-law and her husband the Respondent No.1 mutated all the revenue records to her name and to the name of Respondent No.2 and started alienating the properties to bear their fashionable expenditures. In support of her claim petitioner produced copy of police complaint, NCR, Wedding invitation, wedding photo, study certificate, school certificate, I.D card, Family tree, sale deeds and RTCs. In view of the above petitioner prays to allow I.A.

3. Learned counsel for the petitioner relied on the following judgments:

1. Indra Sarma vs. V.K.V Sarma at SC on 26th November, 2013.
2. Vimalben Ajitbhai Patel vs. Vatslabeen Ashokbhai Patel at SC on 14th March 2008.

In the above judgments it was held that a daughter in law can claim maintenance from her father in law or mother in law who actually hold and enjoy the joint family properties in which the husband of petitioner is entitled to a share. In the present case as per the affidavit averments and RTCs the family of petitioner's husband owns numerous properties and all the properties are in exclusive possession of 1st respondent. Hence in view of the above judgment it is the duty of 1st respondent to pay maintenance to the petitioner since she is deprived of her share in those properties. Further the Apex court held that alienation of properties amounts to economic abuse as defined in the Act and hence the court can pass necessary orders to protect the interest of aggrieved person.

4. In *Vimlaben Ajitbhai Patel v. Vatslaben Ashokbhai Patel*, (2008) 4 SCC 649 Hon'ble Apex Court held as under:

“21. Maintenance of a married wife, during subsistence of marriage, is on the husband. It is a personal obligation. The obligation to maintain a daughter-in-law arises only when the husband has died. Such an obligation can also be met from the properties of which the husband is a co-sharer and not otherwise. For invoking the said provision, the husband must have a share in the property. The property in the name of the mother-in-law can neither be a subject-matter of attachment nor during the lifetime of the husband, his personal liability to maintain his wife can be directed to be enforced against such property.”

5. In *Jabsir Kaur Sehgal v. District Judge Dehradun & Ors* (1997) 7 SCC 7 Hon'ble Supreme Court held

"The court has to consider the status of the parties, their respective needs, the capacity of the husband to pay having regard to his reasonable expenses for his own maintenance and of those he is obliged under the law and statutory but involuntary payments or deductions. The amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband and also that she does not feel handicapped in the prosecution of her case. At the same time, the amount so fixed cannot be excessive or extortionate."

6. In *Shamima Farooqui Vs Shahid Khan AIR 2015 SC 2025* Hon'ble Supreme Court held

"..Be it clarified that sustenance does not mean and can never allow to mean a mere survival. A woman, who is constrained to leave the marital home, should not be allowed to feel that she has fallen from grace and move hither and thither arranging for sustenance. As per law, she is entitled to lead a life in the similar manner as she would have lived in the house of her husband. And that is where the status and strata of the husband comes into play and that is where the legal obligation of the husband becomes a prominent one. As long as the wife is held entitled to grant of maintenance within the parameters of Section 125 CrPC, it has to be adequate so that she can live with dignity as she would have lived in her matrimonial home. She cannot be compelled to become a destitute or a beggar."

7. I have perused the above judgments and in the present case it is the duty of mother in law to provide maintenance to the petitioner according to the status of the parties and not just for mere survival.

8. The allegation of neglect and refusal can be decided only after full fledged trial and it is too premature to decide this issue at this stage. It is the duty of the 1st respondent to maintain the petitioner unless the case falls under exceptions. I have perused the Affidavit, documents and above judgments. As per the affidavit statement the total income from family properties is more than Rs.70,00,000/- per annum and only the 1st respondent is enjoying all the income. Petitioner has made out a prima facie case at this stage, balance of convenience still lies in her favour.

9. Regarding the powers of magistrate to pass ex parte interim orders the Hon'ble High Court of Bombay in **Nandkishor vs Kavita 2009 SCC OnLine Bom 1156 held as under:**

“5. The point as regards calling of the report from the Protection Officer or Service Provider is concerned one will have to interpret provisions of Section 12 of the Act and the said interpretation has to be in favour of the person, who is in need of maintenance and in particular interim maintenance. Report from the Protection Officer or Service Provider has to be gathered and it would assist the Court for the purposes of doing complete justice in the matter. At the same time, it is expected that the trial Court has to pass an interim order as early as possible. If the trial Court, who is required to pass an interim order, keeps on waiting to get the report of the Protection Officer or Service Provider, it would entail the delay and the idea of considering the case of a needy person at the interim stage will be actually defeated. Therefore, I am inclined to observe that it is not necessary in each and every case to obtain a report from the Protection

Officer or Service Provider to decide application for interim relief. If on the basis of record before the Court, the Court is in a position to arrive at a just and proper conclusion, it will be open for the Court to do so and decide the matter accordingly. In the present case, the applicant had filed reply to the application filed by non applicants and, therefore, necessary material was before the learned trial Judge to decide the question whether interim relief should be granted. The record has been considered and order has been passed.”

10. In *B.M.Nagaraj vs. Mamta* 2017 SCC OnLine Kar 2918 Hon'ble High Court of Karnataka upheld magistrate's order of passing of *exparte* interim order without domestic incident report. In *Manoj Harikisanji Changani v. Prema Shrinivas Changani*, 2012 SCC OnLine Bom 38 the Hon'ble High Court of Bombay has taken similar vies.

11. Section.21 of P.W.D.V. Act empowers the magistrate to grant temporary custody of any child or children to the aggrieved person at any stage of the application and as per Section.23 *exparte* order can be passed against the respondent for custody of child. In the present case the son of petitioner is aged about 10 years and obviously it is proper to grant custody of child to its mother i.e petitioner. During the pendency of case, if sought by the respondents, they may be given visitation rights.

12. Section.18 (e) of P.W.D.V. Act empowers the magistrate to restrain the respondent from alienating any assets held

either jointly by the parties or separately by them without the leave of the Magistrate. As per Section.23 exparte order can be passed against the respondents under section 18 of the Act. In the present case the petitioner and her two children have right over the joint family properties, hence the respondents can't alienate those properties according their whims and fancies. It is necessary to protect the interest of petitioner and her children as far as their economic rights are concerned.

13. In view of the above reasons this court proceeds to pass the following:

ORDER

Interim application filed by the petitioner is hereby partly allowed.

The respondent No.1 is directed to pay Rs.25,000/- [Twenty Five thousand] per month to the petitioner towards maintenance of petitioner and her children from the date of this petition till the date of final disposal of main petition.

Acting under Sec.21 of P.W.D.V.A 2005 the petitioner is given custody of her child named Dillan Devaiah and the respondents shall not disturb the same without due process of law.

Acting U/Sec.18 (e) of PWDVA the respondents are hereby prohibited from

alienating or mortgaging or creating any kind of charge on application schedule properties.

Office to send copy of this order to the relevant Sub-registrar's office for effective application of the order.

However, this order is subject to modification and alteration as the case may be, considering the facts and circumstances.

Office to send copies of this order to the Protection Officer and the SHO of the concerned Police Station, for proper execution of this order.

(Typed by me on my computer, after clerical additions by the stenographer, corrected and pronounced by me in the Open Court on this the 6th August 2018)

(Mohanagowda M.E.,)
Civil Judge and J.M.F.C.
Ponnampet.