

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS,
COURT NO.3, NASHIK.



P.W.D.V.A. No. 547/2021

Applicant :- Swati Swapnil Galinde

- Versus -

Non-applicant :- Swapnil Galinde etc. 3

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Advocate for applicant :- Shri C. G. Navle

Advocate for non-applicants :- Shri S. D. Badode

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ORDER BELOW APPLICATION EXH. 5

1. The applicant filed present application under Section 23 of the Protection of Women from Domestic Violence Act (hereinafter called as the D.V. Act for short) for grant of monitory relief of Rs.20,000/- per month. She also prayed for separate residence or rent of Rs. 10,000/- per month.

2. Non-applicants filed their say at Exh.14 and contested this interim application. Non-applicants denied the allegations as to domestic violence in toto. They submitted that applicant deserted non-applicant No. 1 on her own. Applicant and her family members harassed and insulted the non-applicants. They lastly requested to reject the application.

3. Heard Ld. advocate Shri C. G. Navle for the applicant and Ld. advocate Shri S. D. Badode for non-applicants, at length.

4. Considering pleadings and submissions advanced, following points arise for the determination. They are mentioned below along with findings and reasons thereon:-

NO.	POINT	FINDING
1	Whether the applicant prima facie proved domestic violence at the hands of non-applicants ?	Yes.
2	Whether the applicant is entitled for grant of interim reliefs as prayed ?	Partly affirmative.
3	What Order ?	Application is partly allowed.

REASONS

5. At this juncture, it will be expedient to go through admitted facts to narrow down the controversial issues. Admitted facts are as follows:-

- a) Relation in between applicant and non-applicants.
- b) They resided in 'Shared household'.
- c) Presently applicant is not residing with non-applicants.

AS TO POINT NO.1 :-

6. Admittedly, the applicant is wife of non-applicant No.1. Furthermore, non-applicant No. 2 is mother-in-law, non-applicant No. 3 is sister-in-law of the applicant. It shows 'domestic relationship' between parties. Furthermore, it is also admitted that earlier applicant resided with the non-applicant Nos.1 and 2. Hence, it shows that they had 'shared household'. At this juncture, it is not possible to decide all issues involved in this case. Therefore, the question remains about the fact of subjection of the applicant to domestic violence by non-applicants. Applicant has to establish prima facie domestic violence at the hands of non-applicants.

7. Applicant came with specific case of domestic violence at the instance of non-applicants. Applicant alleged physical, verbal and emotional abuse by non-applicants. She further alleged incidents of beating, abusing and insulting by non-applicant No.1 and his family members. Applicant filed copy of Police Complaint, injury certificate dated 28/04/2019 issued by Civil Hospital, Nashik, Complaint to Mahila Cell, Nashik, dated

29/09/2021 etc. documents. On perusal of said complaints, it prima facie appears that the applicant alleged about ill treatment by non-applicants. Further, in Injury Certificate the Medical Officer mentioned history of incident as 'assault'. Therefore, prima facie applicant's assertions are supported with documentary proof. Furthermore, applicant's assertions are supported with affidavit. Acts alleged by the applicant are covered under the definition of domestic violence under Section 3 of the D. V. Act. Accordingly, the applicant prima facie proved that she was subjected to domestic violence by non-applicants. Hence, the applicant come under the definition of 'aggrieved person' as per Section 2 (a) of the D. V. Act. Accordingly, Point No. 1 is answered in the affirmative.

AS TO POINT NO.2 AND 3 :-

8. By filing present application, the applicant requested for interim maintenance of Rs.20,000/- per month for herself. She further requested for direction to make provision for her residence or in alternative pay amount of Rs.10,000/- per month toward rent.

9. In this regard it appears that the applicant is residing separately from non-applicant No.1. The applicant averred that from the date of separation, the non-applicant No.1 has not made any provision for her maintenance. On the other hand, non-applicant No.1 submitted that the applicant deserted him by her own will and wish. Further, the applicant is well educated and earning Rs.50,000/- per month from her service. Non-applicant No.1 has not specifically stated about his actual monthly income in his say. By filing Assets and Liabilities affidavit, at Exh. 21, non-applicant No.1 submitted his monthly income as Rs. 65,000/-.

10. The fact that the applicant is residing separately, has not been denied by the non-applicant No.1. Non-applicant No.1 has not stated anywhere in his reply that now he is looking after the expenses of the applicant as well as maintaining her. At this juncture, non-applicants have not filed on record any document to prove actual income of the applicant.

11. In this regard ratio laid down in ***Binita Dass V/s Uttam Kumar reported in 2019 LawSuit (Del) 2446***, needs to be considered. In said case, Hon'ble Delhi High Court held that, "*Magistrate cannot deny interim maintenance to the wife only because she has earning capacity or is a qualified person*".

12. It prima facie came on record that non-applicant No.1 has not made any provision for the applicant since 02/09/2021. Non providing economical support to the wife amounts to an economic abuse, on her. Non-applicant No.1 is morally as well as legally bound to maintain his wife. Hence, it is necessary to make an interim arrangement for the survival of the applicant. The non-applicant No.1 is an able bodied person. Therefore, it is just and proper to direct him to maintain his wife.

13. Through this application, the applicant requested for interim monetary relief of Rs. 20,000/- per month. At this juncture, it is to be born in mind that the amount of interim maintenance must be of such a kind that it will help for humanly survival of the applicant and should not cause exorbitant impact on the non-applicant and his family.

14. The applicant averred that non-applicant No.1 is working in private company and fetching monthly income of Rs. 95,000/-. Furthermore, non-applicant No.2 is pensioner. At this juncture, the applicant has not filed any document on record to show actual income of non-applicant No.1. It further appears that non-applicant No.1 admitted his monthly income as Rs. 65,000/- per month.

15. It further appears that applicant is well educated. It is further averred that earlier applicant was employed in private company and earning livelihood. It further appears that no one is dependent on the applicant. Hence, considering peculiar facts and circumstance of the case and above discussed facts, at this juncture, interim maintenance of Rs. 5,000/- per month to the applicant will suffice the purpose.

16. Applicant also sought direction for separate residence or in alternative direction to pay Rs. 10,000/- per month for monthly rent. On perusal of application as well as affidavit at Exh. 18, it appears that, the applicant is residing in the house of her father. There is nothing on record to show that the applicant is residing at rental premises and paying certain sum as monthly rent. Hence, at this juncture, direction for separate residence or to pay Rs. 10,000/- per month to the applicant toward monthly rent or direction regarding alternative accommodation, appears to be unjust and unwarranted. Considering peculiar circumstances and above discussed facts, I answer Point No. 2 as partly affirmative and in order to answer point No. 3 pass following order :-

ORDER

1.	The application is partly allowed.
2.	Non-applicant No.1 is hereby directed to pay interim maintenance of Rs.5,000/- (Rs.Five thousand only) per month to the applicant, from the date of filing of this application till final disposal of this proceeding.
3.	Cost in cause.
4.	Copy of this order be provided free of cost to the parties of this application and to the concern Police Station as well as to the Protection Officer.

Date : 27/04/2022

(Mahesh D. Joshi)
Judicial Magistrate First Class,
Nashik, Court No.3.

CERTIFICATE

I affirm that the contents of this PDF file order is same word to word as per the original order.

(a) Name of the Court : -Civil Judge Jr. Div. & JMFC Court,
Court No. 3, Nashik
(b) Name of the Stenographer : -Smt. G. M. Joshi
(b) Checked and signed on : -27/04/2022
(c) PDF uploaded on : -28/04/2022