

ORDERS

The petitioner has filed an application on behalf of petitioner seeking affidavit of income details of the respondent as indicated the terms in the said application.

2. Further it is stated that the respondent has luxuries lifestyle of living. He owns immovable properties in Karwar and various means of comforts. The petitioner since last 3 years is living at the mercy of her parents where all her daily expenses, needs like food, clothing including medicines are looked after by them. The petitioner being the legally wedded wife, she is entitled to be maintained by the respondent as per his life style.

Under these circumstances, he prayed to direct the respondent to furnish the details of income in affidavit for determining income of respondent.

3. On the other hand, the respondent has filed detailed objections, wherein, it is stated that the petitioner has filed the instant application without quoting any provision of law. On that point alone, it is deserves to be dismissed. Now, this case is set down for cross-examination of P.W.1. During this period, instead of appearing for cross-examination of P.W.1, the petitioner has come up with the above said application seeking for the relief mentioned therein. Under these circumstances, there is no scope for the petitioner to file such kind of application. During the cross-examination of P.W.1 as well as the cross-examination of respondent, it is adequate opportunity to prove their case, by posing suitable questions on them. Without doing so, he has filed present application without any grievance, merely in order to prolonging this case proceedings, the petitioner has filed the instant application. That apart, the details of the income particular has been already exhibited in this case. Except that, there are no other income to the respondent and whatever the reasons stated in the above said application are entirely false and therefore, the respondent prays to reject the above said application filed by the petitioner.

4. Heard both side arguments.

5. In view of above facts and circumstances, the following points would arise for my consideration:

1. Whether the application filed by the petitioner is deserves to be allowed?
2. What order ?

6. My answers to the above points is as below:

Point No.1 : In the **negative**.

Point No.2 : As per final order, for the following:

:REASONS:

7. **Point No.1:-** The petitioner has filed this petition against the respondent U/sec.12(1) of Protection for Women from Domestic Violence Act, 2005. Such being so, now this case is set it for cross-examination of P.W.1. In the meantime, the petitioner has filed the instant application seeking a direction to respondent to produce his income particulars in affidavit. Further he contended that the respondent has lead luxuries life and he had various financial sources, even if, the petitioner has depending upon her parents to day to day necessities. Under which, the petitioner is entitled for maintenance amount in which, it is necessary to prove his income to determining the maintenance amount. During the course of arguments, the learned advocate for petitioner relied decision reported in CM(M) 79/2011 passed by Delhi High Court.

8. In support of his case, the learned advocate for petitioner it is argued that as per the directions given by the Hon'ble Delhi High Court, the respondent should furnish income particulars so as to determine the maintenance amount of petitioner, otherwise, it is not possible to correctly decide the maintenance amount of petitioner in the absence of said affidavit. Further he countered arguments that it is not necessary for invoking any provision to the instant application which filed by the petitioner. As per directions given in the above said decision, there is no need to invoke any provision to decide the contradictions arised between the parties and it is very much necessary to give directions to the respondent before cross-examination of P.W.1 and such other reasons, he prayed to allow the above said application.

9. On the other hand, the learned advocate for the respondent, vehemently it is argued that the petitioner has not filed this application in proper manner. Whereby, the above said application is not at all maintainable according to the Protection of Women from Domestic Violence Act, the respondent did not escape his liability, he has already produced his salary certificate, that document already exhibited on behalf of petitioner. Apart from that, the remedy is very much

available to prove the petitioner's case, when he was entered into the witness box. Without producing any documents, the petitioner has merely alleging that he has living luxuries life. The respondent is working as a captain (supervisor) in a Hotel by name Hotel Arora Towers, M.G. Road, Pune. Except that salary, the respondent did not received any financial sources in any manner. Now he is also being suffered so many ailments. He is ready to take care of petitioner too, as he lead normal lifestyle. Apart from that, he did not able to look after the petitioner. Whatever the guidelines given in above said decision that has to be applicable within the limits of Hon'ble Delhi High Court. Due to which, those facts and circumstances are not applicable to this case. On these grounds also, this application deserves to be dismissed.

10. In view of above said facts and circumstances, now it is remained for consideration is whether the petitioner has made out a prima-facie grounds for allowing the above said application. In this context, this court has going through the entire materials available on record, the petitioner has filed this case against the respondent for the relief of maintenance and circumstantial relief U/sec.12 of Protection of Women from Domestic Violence Act, 2005. Such being so, now this case is set it for cross-examination of P.W.1. Moreover, the salary certificate of respondent is already exhibited. Except that, the petitioner's inclined to get the income details of the respondent, she must say on what type of various financial sources being taken by the respondent, but no where she stated that the respondent is getting various financial sources merely because relying upon the decision stated supra. Of-course, this court is also full agreement with the decision reported in CM(M) 79/2011 passed by Hon'ble High Court of Delhi judicator. But, in the instant case, she is not claiming interim maintenance. Further, the petitioner herself who being the legally wedded wife of respondent is not known properly the income sources of respondent. Simply, she has alleging that he had various financial sources, but she failed to established the same. However, this court cannot come to the

conclusion that the respondent is having that much of financial background.

11. It is relevant to mention here that the petitioner has already got examined and some of the documents got exhibited. Among them, salary certificate of respondent is also one of the document. As such, the respondent is being a private employer, suppose the respondent is having other financial sources that is very much possible to justify the petitioner's case while he entering into the witness box. Otherwise, it is remained assumption and presumption towards the income of respondent. Circumstantially, the petitioner herself stand on her own legs to prove her case. So, the respondent having financial sources other than the salary. As of now, the respondent is also not deny the income particulars. Due to which, remaining apprehensions raised by the petitioner will be taken into consideration, after completion of both side evidences, at this stage, it is immaterial to taken into consideration. No doubt, the respondent should liable to furnish his income particulars. Based on that, the respondent has furnished the details in his objections, if he has other income sources, the petitioner must liable to prove the same. Upon considering these aspects, this court of the considered opinion that the petitioner has failed to made out prima-facie grounds, allowing the above said application. Hence, ***I answer point No.1 in the negative.***

12. **Point No.2:-** Therefore, I proceed to pass the following:

ORDER

Application filed by the petitioner,
is hereby rejected.

Hence, Call for cross-examination
of P.W.1, finally by 5/11/2019.

Addl. Civil Judge and JMFC.,
Karwar.