

M.C.C.No.168/2018
Lalita+1-Vs-Rajesh+4

Order below Exh.5

(Passed on 4th August 2018)

1. This is an application for getting interim maintenance under Sec.23 of the Protection of Women from Domestic Violence Act, 2005 (in short “the act”).
2. Perused the application, say and record of the case.
3. Heard both sides.
4. Applicants submitted that applicant no.1 is legally wedded wife of the non applicant no.1. There marriage was solemnized on 02/06/2013. The applicant no.1 has begotten a son who is applicant no.2 out of the said wedlock. The applicant no.1 went to reside with non applicant no.1 in his joint family which is residing at Khamgaon.
5. Non applicants properly treated the applicant no.1 only for few days after solemnization of the marriage. Non applicant no.1 used to take doubt on the character of the applicant no.1. He used to beat the applicant no.1 for Rs. 50,000/-. The non applicant no.1 gave physical and mental illtreatment to the applicant no.1. The non applicant no.1 driven out the applicant no.1 from his house for numerous times. He denied paternity of applicant no.2 by making false allegations on applicant no.1. The applicant no.1 was bearing all those atrocities in hope of her better future.

6. On 1/04/2018, the non applicant no.1 has driven out the applicant no.1 with her father along with applicant no.2. The non applicant no.1 is avoiding to maintain the applicants. The applicant no.1 has been pregnant from about 8 months. She is not able to pay the medical expenses of her pregnancy and delivery. She is likely to incur expenses of Rs.25,000/- for her delivery. The applicant no.1 is having no source of income. She has been residing at her parental house situated at Nimba. The non applicant no.1 has been working at Mahendra Finance Br. Khamgaon and he is getting monthly salary of Rs.25000/-. He is also owner of a shop. He gets Rs.5000/- p.m. rent from the shop. Father of the non applicant no.1 is a retired police officer having pension of Rs.30,000/- p.m. Brother of the applicant no.1 is also serving in C.R.P.F. Therefore, applicant no.1 is claiming Rs.25000/- from non applicant no.1 as her future medical expenses. She is also praying for interim maintenance of Rs.5000/- p.m. for each applicant from non applicant no.1.

7. Non applicants nos. 1,2,3 and 5 appeared and filed their say cum written statement below Exh.15. Non applicants denied all the contentions of applicant. According to non applicants, the applicant no.1 has not preferred the application under the prescribed form in the act. They denied that they gave any physical and mental ill-treatment to applicant no.1.

8. According to non applicants, the applicant no.1 used to behave with non applicants with hatred. She did not like the non applicant no.1 as her husband. She used to go at her parental house without any reason. The

non applicant no.1 frequently went at her parental house but the applicant no.1 refused to come with him. The applicant no.1 had pressurized the non applicant no.1 for residing separately from his father and mother. Therefore, applicant no.1 had taken a separate residence on rent. The applicant no.1 for no reason left the house of non applicant no.1 without informing him. The non applicant no.1 is unemployed person and he performs labour work. He earns Rs.1200/- to 1500/- p.m. Father and mother of non applicant no.1 are old aged person and they are living on meager amount of pension. The non applicant no.1 has always been ready and willing to cohabit with applicant no.1. Therefore, non applicant no.1 has prayed for rejection of the application.

9. The relationship between applicants and non applicants is not denied. It is also not disputed that applicants are residing separately from non applicant no.1. Both parties have filed various documentary evidence in support of their contentions. The applicant no.1 has filed marriage invitation card, copy of F.I.R, prescription of Doctor. The non applicant no.1 has filed income certificate issued by Tahasildar. The documentary record reveals that the applicant no.1 has filed a report against non applicants at Ural Police Station for offences punishable u/s 498-A, 504, 506 r.w. 34 of the Indian Penal Code. It also appears that the applicant no.1 is taking treatment at Shinde Maternity Hospital. The income certificate of Tahasildar shows that the non applicant no.1 is earning Rs.45000/- p.a.

10. Learned advocate for applicants argued that the certificate is false and it shows that non applicant no.1 and his total family members are earning Rs.45,000/- p.a. He also argued that said certificate is issued on the basis of income certificate issued by Talathi. The certificate is totally contradictory to the reply given by non applicants. However, at this juncture, in my opinion, the said certificate though speaking about total income of all family members but it is not describing any names of family members. Therefore, it's effect is only restricted in respect of non applicant no.1.

11. Non applicant no.1 is earning income. No document is filed on record in order to show that non applicant no.1 has been working in a finance company. It has come on record that he is residing in a big house situated at Khamgaon. Non applicant no.2 is paying Rs.5000/-p.m. as a loan premium. Therefore, at this juncture, it becomes difficult to hold that non applicant no.1 is earning his income merely by doing labour work. It appears that nobody is dependant on the non applicant no.1 except applicants. Nothing has come on record regarding source of income of applicants. Applicants are residing separately from non applicant no.1. Non applicant no.1 is responsible for their maintenance. There is a contention of non applicants that the application is not preferred in a prescribed form. However, at this juncture, without discussing anything about the prescribed form, I would say that from the catena of decisions it is held that the act is a beneficial and protective legislation for the

protection of woman. Therefore, applicants are entitled to claim interim maintenance. This Court is prima facie satisfied that applicants are subjected to domestic violence by non applicant no.1. Therefore, considering totality of circumstances and life style of the non applicant no.1, it appears that he is earning income of Rs.15000/- p.m. Thus, considering the financial and medical needs of applicants, I hereby pass the following order.

Order

[1] The non applicant no.1 is directed to pay Rs.1200/- (Twelve hundred rupees only) p.m. to applicant no.1 and Rs.800/- (Eight hundred rupees only) p.m. to applicant no.2 as interim maintenance from the date of this application till final decision.

[2] The non applicant no.1 is further directed to pay Rs.10000/- (Ten thousand rupees only) to applicant no.1 as medical expenses for her pregnancy.

[3] Copy of this order shall be provided free of cost to applicant no.1 and non applicant no.1.

Place : Balapur

Dt: 04/08/2018

(N. P. Talnikar)
Judicial Magistrate (F.C.),
Balapur.