

ORDER BELOW EXH.5
(Passed on 07.12.2022)

1. This is an application filed by the applicants at Exh.5 under Section 23 of the Protection of Women from Domestic Violence Act, 2005 for granting interim maintenance.

2. It is contended by the applicant that she is legally wedded wife of the respondent No.1. Their marriage was solemnized on 24.11.2015 at village Kurha as per Hindu religion and caste customs. Applicant No.2 is the daughter of applicant No.1 and respondent No.1. Respondents No. 2 to 4 are mother-in-law, sister-in-law, brother in law of applicant No.1 respectively. After marriage, applicant No.1 with her golden ornaments, valuable vessels and gifts went to the house of respondents to cohabit with respondent No.1. Respondents gave normal treatment to the applicant for the first 15 days of the marriage. However, respondents started giving physical and mental harassment to applicant No.1 for the reason of not giving dowry to them. When applicant No.1 shown her inability to satisfy their demands, respondents started beating and asked her to leave the house and to give divorce.

3. It is further contended by applicant No.1 that after giving birth to the female child i.e., applicant No.2, the respondents became upset and asked her to go to her parents' house. On 11.01.2020, applicant No.1 along with applicant No.2 went to the house of respondents No. 1 and 2 with her father but, they gave ill-treatment to her. She along with her daughter has been residing at her parents' house since 17.11.2020. Since then, respondents did neither make any

inquiry of the applicants nor provided anything for their living. Therefore, she lodged report against respondents No.1 to 4 in the Police Station, Kurha. The notice was given to respondent No.1 to remain present before women cell, but he did not turn up.

4. It is further contended by the applicant that she is jobless and does not earn any amount. She does not own any movable or immovable property. Applicant No.2 is a minor. The applicants are totally depending on the parents of applicant No.1. They are unable to maintain themselves. Respondent No.1 is a lounge manager, and he earns Rs. 40,000/- per month from his job. Respondent No.2 earns Rs. 15,000/- to Rs. 20,000/- from the rent of the flat. The applicant No.1 prayed to pass the order directing the respondents to pay Rs. 10,000/- per month to each of the applicants towards their maintenance and prayed to allow the application.

5. The says of the respondents were called. They filed their reply at Exh.11 and opposed the present application. They admitted the relationship and marriage with the applicant. However, they have denied all the allegations of domestic violence levelled against them by applicant No.1. It is contended by the respondents that after the marriage, applicant No.1 started insulting the respondents and started giving trouble to them. Applicant No.1 deserted respondent No.1 without any reason and residing with her parents without having any reasonable excuse. Respondent No.1 always intended to cohabit with applicant No.1, but she wanted to live in her parents' house. The respondents issued notice to applicant No.1, however, in spite of due service of notice, applicant No.1 did not resume the cohabitation.

Respondent No.1 also filed application under Section 9 of the Hindu Marriage Act, 1955 for the cohabitation, but applicant No.1 does not want to cohabit. Respondent No.1 is and has been ready for cohabitation with applicant No.1. On the other hand, applicant No.1 filed false cases against the respondent No.1. It is further contended by respondent No.1 that he has no income source. He works as labour and earns for himself and his mother. He is unable to give maintenance to both the applicants. The present applicant is false. Therefore, he prayed to reject the application.

6. Heard both the sides. Heard learned Adv. Shri. H. P. Karmore for the applicants and learned Adv. Ku. B. B. Kavre for the respondents. Perused the application and the reply. Perused the record of the case.

7. Taking into consideration the application, the say and submissions of advocates for both the sides, the following points arise for my determination to which I have recorded my findings along with the reasons thereunder -

Sr. No.	Points for determination	Findings
1.	Whether applicant No.1 has proved that she is an aggrieved person as per Section 2 (a) of the Domestic Violence Act, 2005 ?	Yes.
2.	Whether the applicants have proved that they are entitled for the interim maintenance under Section 20 of the Domestic Violence Act, 2005? If yes, what would be the quantum?	Yes. Rs. 1500/- per month to applicant No.1 and Rs. 1500/- per month to applicant No.2.

3.	What order?	Application is allowed as per final order.
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REASONS

(Submissions of the learned advocates).

8. The learned Adv. Shri. H. P. Karmore for the applicants submitted that the marriage solemnized on 24.11.2015. After the marriage, the applicant was subjected to mental and physical torture at the hands of respondents. The respondents demanded dowry from the father of applicant. The financial condition of the father of applicant is very poor. When the applicant told the respondents that her father has no economic capacity to fulfil their demand of dowry, the respondents started beating and giving ill-treatment to her. The respondents were upset when the applicant delivered female child. They asked the applicant to leave the house and went to her parents' house. The respondents used to abuse the applicant in the filthy language. They also asked the applicant to give divorce to respondent No.1. The applicant is residing with her baby daughter in the house of her father. She has no income source. She is Hence, he prayed to allow the application of interim maintenance.

9. On the other hand, the learned advocate Ku. B. B. Kavre for the respondents submitted that there is no dispute between the marriage. The story of the applicant is false and baseless. The applicant herself left her matrimonial house and residing with her father. The respondents tried many times to bring back the applicant to her matrimonial house, but she refused to resume cohabitation with

respondent No.1. Respondent No.1 is a labour and he earns very meagre amount. Therefore, he is not able to pay the interim maintenance. The application is filed only to harass the respondents. The applicant is highly educated. Therefore, she is not in the need of maintenance. She prayed to reject the application.

AS TO POINT NO. 1 :

(Whether the applicant is an aggrieved person?)

10. In order to grant the interim maintenance under the Protection of Women from Domestic Violence Act, 2005, the applicant has to prima facie prove that she is an aggrieved person. The definition of an aggrieved person is given under Section 2 (a) of the Protection of Women from Domestic Violence Act, 2005. In the present application, the date of marriage is admitted by both the parties. Their relationship is also admitted. It is also admitted fact by both the parties that the applicant is living with her daughter in her parents' house.

11. The applicant has filed the affidavit and stated that due to the demand of dowry, mental-physical torture, continuous beating and ill-treatment by the respondents, she left her matrimonial house. She also stated in her affidavit that she lodged report against respondents No.1 to 4 in the Police Station, Kurha. On perusal of the record, it is clear that applicant No.1 has proved that she comes within the purview of scope of the aggrieved person mentioned in Section 2 (a) of the Protection of Women from the Domestic Violence Act, 2005. **Hence, point No.1 is answered in affirmative.**

AS TO POINTS NO.2 AND 3 :**(Quantum of maintenance)**

12. Both these points are interlinked with each other. Therefore, in order to avoid the repetition of the facts and evidence, these points are taken together for discussion. The relationship and the date of marriage is admitted by both the parties.

13. Section 23 of the Protection of Women from the Domestic Violence Act, 2005 provides for power to grant interim maintenance and ex-parte orders which reads as follows-

(a) In any proceeding before him under this Act, the Magistrate may pass such interim order as he deems just and proper.

(b) If the Magistrate is satisfied that an application prima facie discloses that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he may grant an ex parte order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under section 18, section 19, section 20, section 21 or, as the case may be, section 22 against the respondent.

14. The applicant has claimed Rs. 10,000/- per month to each of the applicants as a amount for the interim maintenance. Maintenance means not only food but also includes the other expenses which are necessary to live a dignified life. The other expenses include expenses

towards clothes, medicine, education, communication, etc. It is contended by applicant No.1 that respondent No.1 is a lounge manager and earns Rs. 40,000/- from the job. However, to substantiate her contention, no oral or documentary evidence has been filed. Moreover, applicant No.1 has not adduced her evidence in the witness box and has not gone through the vigour of the cross-examination.

15. Applicant No. 1 filed her affidavit of assets and liabilities at Exh.14 in which she has stated her qualified as M.A. It reveals that she is highly educated person and can do the job. On the other hand, respondent No.1 has stated in his affidavit of assets and liabilities at Exh.15 that he is educated till 12th standard and do the labour work for his livelihood. He earns Rs.7000/- from the labour work. He has also stated that 2 members of his family are dependent on him. It is further contended by the applicant that respondent No.2 earns Rs. 15,000/- to Rs. 20,000/- from the rent of the flat. However, no evidence has been filed on record by the applicant to support the contention.

16. It is the settled position of law that the husband carries legal and moral responsibility to maintain his wife and children if they have no income source and unable to maintain themselves. It is admitted fact by the respondents that the applicants are living in the house of parents of applicant No.1. While granting the interim maintenance, it is necessary to consider the inflation rate, educational and financial position of both the parties, etc. Applicant No.2 is 14 months old baby. The court can take the judicial note that the sufficient amount of money is required for the purpose of vaccination and other medical expenses of the baby child. Therefore, considering the facts,

circumstances and the material evidence placed on record, it would be just and reasonable to grant Rs.1,500/- (Fifteen Hundred Only) per month as an interim maintenance to both the applicants from the date of the application till the final disposal of the main application. Hence, point No.2 is answered in the affirmative. In answer to point No.3, the following order is passed.

ORDER

1. The application at Exh.5 is allowed as under.
2. Respondent No.1 shall pay interim maintenance amount of Rs.1,500/- (Fifteen Hundred Only) per month to applicant No.1 and applicant No.2 from the date of application till the date of final disposal of the main application.
3. The copy of this order be given free of cost to both the parties.

Date- 07.12.2022

Sd/-
(V. H. Shende)
Judicial Magistrate First Class,
(Court No.02), Teosa.