

MHAU050039152025



Cri. M.A. No. 228/2025

Pallavi Rohit Bhalekar

vs.

Rohit Bhalekar and ors

ORDER BELOW EXH 5

This is an application under section 23 of The Protection of Women from Domestic Violence Act, 2005 (herein after referred to as the D. V. Act) for grant of interim maintenance to the tune of Rs. 50,000/- per month.

2. The application bears contents of the factum of marriage of applicant and respondent No.1 on 05/02/2021 at Golewadi. Applicant was treated well for some time and was later physically and mentally harassed by the respondents due to various reasons on several occasions as mentioned in the application. The application is supported by affidavit.

3. Respondent has strongly opposed the allegations of domestic violence by e-filing his reply at Exh.06. Respondent contended that applicant has not mentioned under which provision of law she had filed application; therefore, application is not tenable in the eyes of Law. The fact of marriage between applicant and respondent is admitted. Despite his efforts to reconcile and establish a harmonious matrimonial life, the applicant persistently engaged in quarrels and subjected respondent to mental and physical cruelty with the apparent intention of harassing him. Respondent also contended that, applicant herself went to her parental house with her uncle. Further, respondent contended that, applicant has not filed application as per law. Hence it is prayed that the application be dismissed with heavy cost.

4. Heard Learned Advocate for applicant and respondent. Perused written notes of arguments filed by the Respondents. Perused affidavit of assets and liabilities of both parties. In view of the arguments advanced by the parties and application and reply filed on the record following points arise for my determination:

Sr. No	Points	Findings
1. W	Whether the applicant has prima facie proved that she is a victim of domestic violence at the hands of the respondent?	Affirmative
2. W	Whether the applicant is entitled to claim maintenance from the Respondent?	Partly affirmative
3. W	What order?	Partly allowed

REASONS

AS TO POINT NO 1 TO 3:

5. Since all the points are inter-linked, they are taken up together for discussion to avoid repetition and recurrences.

6. Ld. Advocate for the applicant has argued that, the applicant is legally wedded wife of Respondent No.1. She has domestic relationships with respondents. Applicant is subjected to domestic violence at the hands of the Respondents on various occasions. Hence, she is residing separately from the respondent, and she is entitled for interim maintenance. On the other hand, Ld. Advocate for the respondents submitted that, present application is not maintainable as applicant has not given evidence which shows her domestic relations with the respondents. Further he argued that, there is no specific

allegation or incidents as to domestic violence at the hands of Respondents. Applicants have averred vague incidents. Applicant herself admitted that she is residing separately from the respondent for one year hence, there is no cause of action to file present application. Further he has submitted that, applicant not given any evidence or supportive affidavits which shows domestic violence at the hands of respondents. He also argued that this Court is not having jurisdiction to try present application. Hence, respondents prayed to reject the present application.

7. To support contentions, Ld. Advocate for the respondent relied upon following judgments:

1) *Narendra Vs. K. Meena, 2016 (9) SCC 455*

2) *Mamta Jaiswal Vs. Rajesh Jaiswal, Decided on 24 March 2000.*

In the written notes of arguments, the Respondents have referred to the judgments in ***Sameer Ghosh v. Jaya Ghosh and K. Srinivas Rao v. D.A. Deepa***. The Respondents have not provided proper citations thereof. However, I have carefully perused the above-cited judgment. It shows that in all above cited judgments provisions of Hindu Marriage Act are discussed. With due respect to the Hon'ble Courts, I humbly submit that the facts of the cases cited are different from the facts of the present case. Therefore, the judgments relied upon by the Respondents are not applicable to the present case and do not support their contentions.

8. While considering an application under section 23 of D.V. Act, which is certainly an interlocutory adjudication, the court is not expected to look into the deep merits of the case. Even at this stage, it is not expected that an aggrieved person to bring the proof of all pleaded allegations. Same thing is

applicable to the respondents who are also not supposed to prove or disprove any allegations by them or against them. At present the application is pending for cross examination of the applicant by the respondents. Therefore, unless the evidence of applicant is testified by cross examination, it can't be accepted while deciding the instant interim application. Thus, at this stage, only aspect of consideration remains is that, whether the application prima facie discloses that respondents are committing, or have committed or there is any likelihood that they may commit an act of domestic violence against Applicant.

09. Considering the contents from the interim application, it discloses the instances of domestic violence subjected by respondents to the applicant. On careful scrutiny of the contents in the application, there are specific allegations in regard to illegal demand, verbal and emotional abuse and also of physical abuse. The respondent No. 1 has not disputed that, since the separate residence of applicant, he has not provided any means of livelihood to the applicant. This certainly amounts to refusal as well as neglect on the part of respondents to ensure the living and to maintain the applicant. Thus, the instances narrated by applicant are supported by her affidavit are sufficient to constitute the ingredients of the "Domestic Violence" as defined under Section 3 of the D.V. Act. Therefore, allegations in the application certainly disclosed the prima facie existence of domestic violence.

10. Now coming to the interim relief claimed by the Applicant, the learned Advocate for the Respondents argued that, since the Applicant is residing separately on her own, she is not entitled to maintenance. He further argued that the Applicant is running beauty parlour and tailoring businesses and is capable of maintaining herself from the income earned therefrom. He further submitted that the Applicant has filed a false affidavit of assets and liabilities.

Hence, Respondent submitted that, the applicant is not entitled to interim maintenance as prayed for.

11. The respondent has not denied that the applicant is residing separately from him. During the separate stay of the applicant, respondent No.01 has not provided any means of livelihood to the applicant. Ultimately, the husband is under liability to maintain his wife. Respondent has not brought any material on record to show that the applicant has any independent source of income, and she is able to maintain herself. Thus, respondent, being husband of the applicant is under legal as well as moral obligation to maintain the applicant.

12. The instant matter would take its own time for its final disposal on merits. Till then, the applicant would require an amount for her livelihood and proper maintenance. In view of all these circumstances the applicant is entitled for interim maintenance from the date of the application till disposal of the matter.

13. As regards the quantum of maintenance, the applicant claims that respondent No.1 is working as Engineer and he took construction contracts and from the said Respondent No.1 is earning of Rs. 1,50,0000/- to 2,00,000/- per month. Respondent in his say contended that, he is doing labor work. However, the Respondent has not demonstrated that he is unable to earn, nor has he established financial incapacity. An able-bodied husband cannot escape his liability to maintain his wife by evading disclosure of his income or by adopting a non-cooperative stance.

14. It is well settled legal position that the wife is to be paid maintenance by the husband. It is also well settled that if the husband is able bodied person, he has legal obligation to maintain his wife. Husband cannot escape the liability of maintenance merely by stating that wife has income and

he has other financial obligations. The onus is on husband to prove that he is unable to maintain his family due to reasons beyond his control. Respondent has stated that his age-old mother is dependent on him. However, personal liabilities or expenses towards other dependents cannot be a ground to deny the legal right of maintenance to the wife.

15. In the present case, I am of the *prima facie* opinion that the respondent No 1 is able bodied person who can maintain his wife. There is no evidence to show that applicant has any source of income. Applicant reside with her parents. Having considered the needs of the applicant, the standard of living to which she was accustomed during the marriage, and the presumed earning capacity of the respondent, I am inclined to grant maintenance to applicant of Rs. 2500/-(Two Thousand Five Hundred only). Accordingly, I answer to point No.01 in affirmative and point No.02 in partly affirmative. In view of the above discussion, I answer Point no.3 I pass the following order:

ORDER

- 1) Application is partly allowed.
- 2) Respondent No 1 is directed to pay to the applicant a sum of Rs 2,500/- (Rs Two thousand five hundred) per month from date of filing of the present application till disposal of the case.
- 3) Copy of this order be given free of costs to the Applicant.

(Self-typed and pronounced in open Court.)

Date: 13/05/2026
Place: Vaijpaur

(M.A.Bendre)
Judicial Magistrate First class,
(Court No.3), Vaijapur.