

MHBU070010252024

**ORDER BELOW EXH. 5**(Passed on this 10th Day of April, 2025)

By way of this application, the applicant no.1 is seeking interim maintenance for herself and her children namely Ganesh Gopal Sambare and Prachi Gopal Sambare under the provisions of section 23 of the Protection of Women from Domestic Violence Act, 2005.

2. Admittedly, the applicant no.1 is legally wedded wife of the respondent No. 1. Their marriage was solemnized on dtd. 22.03.2015 at Shegaon, Tah. Shegaon Dist. Buldana as per the rites and customs prevailing in their society. After marriage, she went to her matrimonial home for cohabitation with respondents. The paternity of children is not denied.

3. The applicant no.1 has set out the facts of domestic violence in the present case. According to the applicant no.1, in her marriage, father of the applicant had given silver and gold ornaments and other household articles as mentioned in the application. The respondent no.1 is addicted to liquor. He is skeptical in nature. The applicant no.1 was not allowed to talk to her maternal relatives and neighbours. All the respondents used to harass her mentally and physically by abusing in her filthy language. The respondent nos. 2 to 5 used to instigate respondent no.1 to beat applicant no.1. The respondent no.1 used to beat applicant no.1 by using

belt. But the applicant no.1 was hoping that one day the nature of respondents will change therefore she did not lodge any report against respondents. When applicant no.1 was pregnant none of the respondents took care of her.

4. On the contrary, she was forced to do all the household chores. They were treating her like a household maid. The respondent nos. 1 to 3 used to take doubt on her character and they were demanding divorce from her. On dtd. 02.09.2016 when the applicant no.1 had come to her maternal home for delivery, the respondent no.1 came to Shegaon and falsely told applicant no.1 that he is taking her to sacred visitation for seeking blessings. But the respondent no.1 did not take her to sacred visitation on the contrary he was forcibly taking her to matrimonial home at Belad. On dtd. 07.09.2016 she had given birth to applicant no.2 but none of the respondent came to see applicants. The applicant no.1 & 2 resided at her parents house for one year. The respondent no.1 used to insult her parents. The applicant no.1 has explained in detail in her application that how she has been subjected to domestic violence at the hands of respondents. The respondents did not try to resolve the dispute and never asked her to come back to her matrimonial home. In spite of threat to her life. In this way, the respondents committed domestic violence

against the applicant no.1. Therefore, applicants are residing with parents of applicant no.1 on their mercy.

5. The applicant no.1 submitted that there are 10 buffaloes at the place of respondent no.1 and he does dairy business through which he earns Rs. 3500/- per day. Further, he owns agricultural property having Gut No. 41, 42 and 24 situated at Belad. The respondent no.1 fetches income of Rs. 5 lakhs per year from said agricultural property. Except applicants no one are dependent upon respondent no.1. Therefore, she has claimed maintenance of Rs. 20,000/- per month for herself and Rs. 10,000/- per month to applicant nos. 2 & 3. Hence, she has filed this present application.

6. On the other hand, the respondent nos. 1 to 3 have denied the entire adverse allegations leveled against them by filing their reply vide Exh. 14. The summons to respondent nos. 4 & 5 are yet to serve. But since this is interim application and the respondent no.1 has appeared in this matter. Therefore, it is not necessary to wait till service of summons to respondent nos. 4 & 5. The respondent nos. 1 to 3 have come with specific case that they have treated applicant no.1 with all dignity but applicant no.1 did not want to reside with respondent nos. 1 & 2 at Belad. The applicant no.1 along with applicant nos. 2 & 3 on her own will is residing with her brother at Shegaon. Therefore she is not entitled to claim maintenance from the respondents. The allegations in the

application are false. The marriages of respondent nos. 3 to 5 have already taken place before the marriage of applicant no.1 and respondent no.1. The respondent nos. 4 & 5 are residing with their families at their respective matrimonial home. Also the respondent no.3 is residing with his family. Therefore, after marriage the applicant no.1 was residing with respondent nos. 1 & 2. The applicant no.1 did not like to reside at small village like Belad. Therefore, she was insisting respondent no.1 to either reside at Shegaon or Nandura or Malkapur. But respondent no. 2 was completely depended upon him . Therefore, he told the applicant no.1 that it is not possible for him to leave his age old mother.

7. The applicant no.1 never got up early in the morning. She had habit of sleeping till late hours. When the applicant no.1 used to get up, most of the household work have already done by respondent no.2. the applicant no.1 had habit of going to her parents house at Shegaon. The expenses of both the deliveries have also born by the respondent no. 1 only. After her first delivery she herself stated to respondent nos. 1 & 2 that he wanted to stay at Shegaon for taking further rest. The applicant no. 1 used to talk arrogantly with respondent nos. 1 & 2. She is very whimsical and short tempered. She has lodged all false report against the respondents. On dtd. 15.05.2023 the applicant no.1 called her brother and took all the gold ornaments and cloths and left the

matrimonial home with her brother. While going she also took children with her. The respondents tried to pacify the matter but the applicant no.1 is not ready to reside with respondents. In the month of May, 2024 the respondents have arranged a meeting but applicant no.1 straight away denied to come at her matrimonial home. Brother of applicant no.1 is unmarried therefore, applicant no.1 is residing on her own wish at her matrimonial home in order to cook food for her brother. He further contended that there are no source of income as stated by applicant in her application. The respondent no.1 does labour work and out of the income of labour work he is bearing expenses of himself and his age old mother. He is having only half acre agricultural land and there is not income out of it. On the contrary, the applicant no.1 knows the skill of beauty parlor and stich work and by doing said work she can maintain herself and children. Therefore, raising all these grounds respondents nos. 1 to 3 have sought rejection of the application.

8. Heard Smt. V.V. Kumkule learned Advocate for the applicants and Shri. G.V. Pise learned advocate for the respondents .

9. The learned advocate for the applicants argued that, the respondent No. 1 being husband of applicant No. 1 cannot flee away from his responsibility to maintain her and their children. He is under moral and legal obligation to maintain them. He further submitted that the applicant

has made out prima facie case that she was subjected to domestic violence by the respondents. She was being harassed mentally and physically by the respondents. All these acts cause domestic violence and therefore applicants are entitled for protection order and interim maintenance.

10. She further submitted that, there are 10 buffaloes at the place of respondent no.1 and he does dairy business through which he earns Rs. 3500/- per day. Further, he owns agricultural property having Gut No. 41, 42 and 24 situated at Belad. The respondent no.1 fetches income of Rs. 5 lakhs per year from said agricultural property. Therefore, she is entitled for interim maintenance as prayed. On the contrary, the Ld. Advocate for the respondent submitted that the respondent No. 1 is labour and out of the income of labour work he is bearing expenses of himself and his age old mother.

11. Having considered contentions of both the parties. I went through the case papers and affidavits of assets and liabilities filed by both the parties. I have also gone through the documents filed by applicants. Indisputably the parties are in domestic relationship. The applicant has set out the circumstances about the domestic violence in her application which came to be specifically denied by the respondent. The questions, whether the respondents have subjected the applicant

No. 1 to domestic violence or she is residing separately on her own wish, are to be decided after giving opportunity to lead evidence to both the sides. Generally a husband is always under liability to maintain his wife. The applicant as already stated, has also set out the circumstances in application on affidavit about domestic violence. As such, considering all the circumstances, the applicant has made out prima facie case that the respondent subjected her to domestic violence.

12. So far the entitlement of interim relief is concerned. Respondent No.1, being under legal and moral obligation, is under liability to pay interim maintenance to the applicants. I have gone through the affidavits filed by both the parties. As per the affidavit of applicant respondent no. 1 owns 10 buffaloes and he does dairy business through which he earns Rs. 3500/- per day. Further, he owns agricultural property having Gut No. 41, 42 and 24 situated at Belad. The applicant has filed 7x12 extracts of Gat No. 41, 42 and 24. However, the respondent no.1 admitted Gut no.41 but he specifically stated that the said agricultural land is barren and no income is generated through it. On the contrary, the respondent no.1 in his affidavit did not mentioned any income. However, it is his contention that applicant is running a parlor and does stitching work. However he failed to file any documents in support of his contentions

13. While determining the quantum of interim maintenance or maintenance, the Hon'ble Supreme Court in **Rajesh -Vs- Neha Cri.A.No. 730/2020** has led down certain guidelines. As per the said guidelines while determining the quantum the status of the parties, reasonable needs of wife and child education qualification of applicant's wife source of income of applicant. Further financial capacity of husband his actual income, his reasonable expenses and expenses towards dependents should be taken into consideration.

14. The Hon'ble Supreme Court also held that onus is on the husband to establish with necessary material that there are sufficient ground to show that he is unable to maintain and discharge his legal obligation for reasons beyond his control. The husband does not disclose the exact amount of his income an adverse inference may be drawn by the Court. The amount of maintenance should not be neither extravagant nor meager.

15. In the instant matter, the applicant has not filed any documents to show that the respondent no.1 is earning Rs. 3500/- per day out of his dairy business. But she has filed the 7x12 extracts as mentioned above. Considering the 7x12 extracts filed by the applicant no.1, it is noticed that Gat no. 42, admeasuring 52R of Belad stands in the name of Sarasvatibai Gulabrao Sambare. However, respondent no.1 being son of Sarasvati, is having right in the said property or not depends upon the

nature of the property. Further, Gat. No. 42, ad-measuring 1.03HR is the joint family property wherein name of Gopal Nivrutti Sambare is appearing and it does not reflect the name of respondent no.1. The applicant no.1 has not filed any document to show that the respondent no.1 fetches income of Rs. 5 lakhs per year from said agricultural property. Further respondent no.2 is the joint responsibility of respondent nos. 1 and 3. The respondent no.1 is able bodied person therefore he simply can not run away from his responsibilities by saying that he is unable to maintain them.

16. Considering the above discussions and in view of admitted fact that applicant nos. 2 and 3 are residing with applicant no.1 and they are of school going age in my opinion, the applicants are entitled to interim maintenance of Rs. 3000/- (Three thousand) each towards interim maintenance. Hence I proceed to pass the following order.

OPERATIVE ORDER

1. The application is partly allowed.
2. The respondent No. 1 is directed to pay an amount of Rs.3000/- (Three thousand Only) per month to each applicant (total Rs. 9000/-, Nine Thousand only) towards interim maintenance from the date of the application till final decision of the case vide section 23

read with section 20 of the Protection of Women from Domestic Violence Act, 2005.

3. A copy of this order be given free of cost to the applicant and the respondent vide section 24 of the Protection of Women from Domestic Violence Act, 2005.

Place: Shegaon.
Date: 10/04/2025

(Ku. Madhuri K.Gote)
Judicial Magistrate, F.C
(Court No. 2), Shegaon.

Certificate

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

Name of Steno: K. S. Deshmukh, Grade-III

Name of Court: J.M.F.C., 2nd Court, Shegaon.

Date: 10.04.2025.