

CRI.M.A. NO. 237/2021.**ORDER PASSED BELOW EXH. 05**

Gitanjali Mahendra Patil and another.

V/s.

Mahendra Pandit Patil, etc.6.

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1] This is an application under Section 23 of The Protection of Women from Domestic Violence Act 2005 (hereinafter called as 'the D.V. Act') for grant of interim maintenance.

2] It is contended that applicant No.1 is legally wedded wife of respondent No.1. Out of the said wedlock, applicant No.1 and respondent No.1 are having a son namely Jayostu (applicant No.2). It is the contention of applicant No.1 that respondents abused and torture her for money and under the influence of liquor, respondent No.1 used to abuse and beat her. Due to it, on various occasions, she filed complaint with Virar police station and N.C reports came to be filed against respondent No.1. The respondents have physically and mentally illtreated her. Respondent No.1 used to demand divorce from applicant No.1. Respondent No.1 deserted the applicants. The applicants have no source of income. Respondent No.1 is doing business of Broker and earning Rs. 40,000/- to 60,000/- per month. The respondents are having their ancestral property at Kanalde, Tal. Dist. Nandurbar bearing Block No. 24/B and 36. From the said agricultural land, the respondents are getting net annual income of Rs. 3,00,000/-. The respondents are having two flats at Virar and they have given the same on rent and earning monthly rent of

Rs. 50,000/- per month. Except the applicants, nobody is dependent on respondent No.1. Hence, she prayed that interim maintenance of Rs. 30,000/- each be granted to them.

3] Respondent Nos. 1 to 4 filed their say at Exh.19 to this application and main application. Respondent No.1 admitted that he got married with applicant No.1 and applicant No.2 is his son. Respondent No.1 denied the contentions of applicant about illtreatment committed by them to applicant No.1. It is contended that applicant No.1 used to harass him. The brother of applicant No.1 namely Gopal Patil was residing with them and he was not doing any work. On that count also, dispute used to take place between applicant No.1 and respondent No.1. Due to it, on various occasions, he filed complaint with Virar police station and N.C reports came to be filed against applicant No.1. He suffered from paralysis attack and applicant No.1 did not take care of him. Applicant No.1 herself refused to cohabit with him. Lastly, he prayed for rejection of the application.

4] Heard the learned Advocate for the applicants. The learned Advocate for respondents filed his written notes of argument at Exh.33.

5] It is contended by applicant No.1 that she is legally wedded wife of respondent No.1 and applicant No.2 is born out of said wedlock. After marriage, she went to cohabit with respondents. Initially, the respondents treated her properly but thereafter they started harassing her mentally and physically. It is alleged that respondents abused and beaten her for money. Under the influence

of liquor, respondent No.1 used to beat, abuse and threaten her. Respondent No.1 used to demand divorce from her. It is alleged that the respondents physically and mentally harassed and deserted her.

6] On the other hand, respondent No.1 contended that applicant No.1 used to harass him. The brother of applicant No.1 namely Gopal Patil was residing with them and he was not doing any work. On that count also, dispute used to take place between applicant No.1 and respondent No.1. Due to it, on various occasions, he filed complaint with Virar police station and N.C reports came to be filed against applicant No.1. He suffered from paralysis attack and applicant No.1 did not take care of him. Applicant No.1 herself refused to cohabit with him.

7] The learned Advocate for respondent No.1 argued that applicant No.1 herself deserted respondent No.1, therefore, she is not entitled for the interim maintenance. In support of his contentions, he placed his reliance on the Judgment of Hon'ble Chattisgarh High Court in the case of *Shiv Kumar Yadav v/s. Smt. Santoshji Yadav, decided on 15/02/2004*. On perusal of the facts of the said case law, it appears that in the said case, the application filed by the applicant under section 125 was rejected after adducing evidence by both the parties on the ground that applicant was residing separately without any sufficient reason. In this case, the present application is filed for interim maintenance. To decide the said application, it is necessary to see whether prima facie case of domestic violence is made out or not. Whether applicant is residing separately without any sufficient reason or not will be decided after adducing evidence by both the

parties. Therefore, the facts mentioned in the above case law and facts in the present case are different.

8] In the present case, applicant No.1 specifically mentioned about the physical and mental illtreatment caused to her by the respondents by giving the dates and details of the same. Applicant No.1 also stated that respondent No.1 used to demand divorce from her. Both applicant No.1 and respondent No.1 have filed N.C cases against each other at Virar police station. Respondent No.1 filed petition No 98/2019 against applicant No. 1 for divorce and applicant No. 1 filed zerox copy of Exh.1 of petition No. 98/2019 on record. This goes to show that the relations between them were not good. Respondent No.1 not provided maintenance to them. Considering the allegations in the application, prima facie it appears that respondents have committed acts of domestic violence. Being a wife and son, it is duty of respondent No.1 to maintain them.

9] In the present case, it is contended by the applicants that respondent No.1 is doing business of Broker and earning Rs. 40,000/- to 60,000/- per month. The respondents are having their ancestral property at Kanalde, Tal. Dist. Nandurbar bearing Block No. 24/B and 36 and the respondents are getting net annual income of Rs. 3,00,000/- from it. The respondents are having two flats at Virar and they have given the same on rent and earning monthly rent of Rs. 50,000/- per month. On the other hand, respondent No.1 contended that applicant No.1 is educated upto B.A and she can maintain herself. She can do the sewing work and she used to do sewing work when she was residing with him.

10] The learned Advocate for the respondent No.1 argued that applicant No.1 is having one Wagon-R vehicle and it is given to Ola/Uber company for business. From the said vehicle, applicant No.1 is getting monthly income of Rs. 30,000/- to 40,000/- per month. Therefore, applicant No.1 is not entitled for the interim maintenance.

11] In this regard, I would like to mention that there are no pleadings about the same in the say filed by the respondents. Even, no documentary evidence is brought on record by respondent No.1 that applicant No.1 is having Wagon-R vehicle. He could have filed the R.C book of the vehicle to show that applicant No.1 is owner of the Wagon-R vehicle. In absence of any documentary evidence, it cannot be said that applicant No.1 is having Wagon-R vehicle and from the said vehicle, she is getting income of Rs. 30,000/- to 40,000/- per month.

12] According to respondent No.1, applicant No.1 can do the sewing work. She used to do sewing work when she was residing with him. However, respondent No.1 did not file any documentary evidence on record to show that applicant No.1 is and was doing sewing work. Therefore, it cannot be said that applicant No.1 is having any income source.

13] The learned Advocate for respondent No.1 argued that applicant No.1 is educated upto B.A. She was doing sewing work when she was residing with respondent No.1 and can maintain herself by doing sewing work. Therefore, she is not entitled for the interim maintenance. In support of his contentions, he placed his

reliance on the Judgment of Hon'ble High Court of Calcutta in case of *Somdatta Chatterjee Raychaudhuri v/s. Anindya Chatterjee, decided on 11/06/2019* and Judgment of the Hon'ble High Court of Delhi in case of *Rupali Gupta v/s. Rajat Gupta, decided on 05/09/2016*. After going through the facts of both the aforesaid case laws, it appears that in both the cases the wife was having sufficient means to maintain herself. In the present case, respondent No.1 did not bring on record that applicant No.1 is having any income source. Therefore, with due respects, the facts of the aforesaid case laws are not identical with the facts of the present case. Therefore, they are not applicable to the present set of facts.

14] Applicant No.1 did not file on record any documents showing that respondent No.1 is doing business of the Broker and earning Rs. 40,000/- to 60,000/- per month. Even she did not file any documents on record that the respondents have given their flats on rent and earning income of Rs. 50,000/- per month. Applicant No.1 filed on record 7/12 extract of the Block No. 37, 24/B, 36 situated at Kanalde and mutation entry No. 516. It appears that Block No.37 is owned by respondent No.2 i.e mother of respondent No.1, Block No. 24/B is owned by the father of respondent No.1 along with other co-owners. The 7/12 extract of Block No.36 and mutation entry No. 516 would show that said property was owned by the mother of respondent No.1 i.e respondent No.2 and it is sold by her to Jyotsana Vinayak Patil and Vinayak Patil. The mutation entry reveals that said property was sold for the consideration of Rs. 3,40,000/- on 11/04/2022. Therefore, it is clear that mother and father of respondent No.1 are having agricultural land and being son,

respondent No.1 is having his share in the said property. Therefore, it can be said that respondent No.1 has income source from the said agricultural lands.

15] Respondent No.1 contended that he is suffering from paralysis and unable to do any work. He is dependent on others. He has no source of income. In support of his contentions, respondent No.1 filed documents of the medical treatment taken by him. The learned Advocate for respondent No.1 argued that respondent No.1 is not able to do any work. He has to incur Rs. 5,000/- per month for his medical expenses. Hence, applicant No.1 be directed to pay Rs. 5,000/- per month to respondent No.1 for medical expenses. In the present case, respondent No.1 did not file application for getting interim maintenance from applicant No.1. Even, as discussed above, respondent No.1 failed to prove that applicant No.1 is having any source of income. Applicant No.1 proved that respondent No.1 is having source of income to provide them interim maintenance. Moreover, under the provisions of Domestic Violence Act, only aggrieved person can seek relief. Respondent No.1 is not an aggrieved person. Therefore, the said submission by the learned Advocate for respondent No.1 cannot be taken into consideration. In the present case, respondent No.1 did not file any documents to show that he cannot work or suffering from disability. No disability certificate issued by the Civil Surgeon is placed on record by respondent No.1.

16] Respondent No.1 being the husband and father, it is his moral and legal duty to maintain the applicants. However, it appears

that respondent No.1 has not paid any fair and reasonable amount to the applicants. Therefore, the applicants are entitled for the interim maintenance. Considering this fact and prima facie evidence, it appears that the amount of Rs. 1,500/- per month to applicant No.1 and Rs. 1,000/- per month to applicant No.2 is proper to award them as interim maintenance from respondent No.1.

17] Considering the above said discussion, the application deserves to be partly allowed. In the result, I pass the following order:-

ORDER

- 1] The application (Exh.4) is partly allowed.
- 2] Respondent No.1 is directed to pay interim maintenance of Rs. 1,500/- to applicant No.1 and Rs. 1,000/- to applicant No.2, from the date of this application till final disposal of the case.
- 3] Copy of the order be provided to the both parties free of cost.
- 4] Copy of this order be sent to concerned police station.

Sd/-xxx

(M. R. Kayastha)
Judicial Magistrate (F.C.),
Shindkheda Dist. Dhule.

Date: 01/04/2024.

CERTIFICATE

I certify that the contents of this PDF file are word to word as per Original Order.

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Name of the Court : Civil Court J. D., Shindkheda,

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Sd/-xxx

Stenographer -III