

MHGA030011042019



IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, GADCHIROLI
(Presided Over by R.R.Khamatkar)

PWDVA No. 30/2019

1. Sou. Sarita Sanjay Bhave,
Age 35 years, Occu. Household,
C/o Rajkumar Ghodeswar (Teacher)
R/o Back to Dongare Petrol Pump,
Gadchiroli, Tah. & Distt. Gadchiroli.

... **PETITIONER**

-VERSUS-

- Sanjay Murlidhar Bhave,
Age 41 years, Occu. service,
R/o Zilha Parishad Uchha
Prathamik School, Dangorli,
Tah. Distt. Gondia.

... **RESPONDENT**

Appearance :- Adv. for the petitioners : Mrs. Kavita Moharkar
Adv. for the respondents : Mrs. Nilima Jumnake,

ORDER APPLICATION BELOW EXH.5
(Passed on 31-01-2022)

It is an application exparte interim relief under section 23 of Protection of Women from Domestic Violence Act. (Referred is short as PWDV Act).

Contention of applicant as follows :

2. The applicant is a legally wedded wife of Non-applicant. Their marriage was solemnized on 25-05-2008 at Pet Ward, Bramhapuri, Dist. Chandrapur by rights and rituals. They have begotten two childrens namely Ojas and Samar out of their wedlock. Both are taking education.

3. It is further contented that, when she had gone for cohabitation at her matrimonial house, he behaves decently. But, thereafter he used to ill-treated her on petty reasons. He used to beat her. He used to take suspicion on her character and insult her. She was resided with him on the hope that his nature will change. Thereafter, several incident have mentioned in the application by the applicant. But one fact came to notice from her pleading that the allegation like beating, harassment on the ground of dowry are existence. Similarly, he was tried to take her life by pouring kerosene on her body. But she get out of it. In meantime she begotten two childs. He alongwith other relatives of non-applicant used to instigate him to beat her.

4. He used to utter filthy language against her. On 16-08-2019, he kept children with him, beaten her and thrown out from his house. At that time, she has no alternative to come back to her parental house and thereafter she lodged report at police station, Gondia on 18-08-2019. Several efforts have be taken to settle the matter between them by women cell of Police Station, Gondia. But, no fruitful result was came out of it. She has not got any response from non-applicant about cohabitation. Thereafter, since 16-08-2019, she is residing at her parental house at Bramhapuri. Thereafter, she came at Gadchiroli and residing at the house of her aunt. She has no source of income. Her mother is widow. The non-applicant is mentally ill and taking treatment from Sindhu Achary Gondia. He had not take any efforts to take back her for cohabitation. He is teacher in Primary School Dangurly Dasgaon. He is receiving handsome salary of Rs. 70000/- per month. He has pakka house at Gondia. He has possessed landed property at Adashi admeasuring 2 acre. He is taking profit of Rs. 3,00,000/- per annum out of it. Similarly, he has possessed a plot of 1500 sq.ft. at Bondegaon.

5. On the other hand, applicant has no source of income. The non-applicant has not taken any care of her. Further, he has not provided any aid for her livelihood. He did not make attempt to meet her. He tried to meet her children, but non applicant has restricted her and therefore, she residing alone without love an affection of her children. Therefore, she incline to file present application and certain reliefs like protection order, monitory relief and custody of children have claim in this application. She further prayed for protection order, monitory relief, maintenance and for further needs, she prayed for allowing specifically claim Rs. 5000/- per moth of rent and Rs.40,000/- for her livelihood.

6. The Non-applicant appeared at contented that, all the allegations are baseless. He by his special pleading submitted that, she herself used to do quarrel on petty reasons. She herself poured kerosene on her body and cut her hand by knife. By doing such act she tries to commit suicide. That conduct causes physical and mental agony to him as well as his family members. She was not willing to reside with his family members. Therefore, he used to reside on rent. The applicant wanted to do job, therefore, she had taken her admission in tuition class for competitive examination in the year 2017. He deposited tuition fee of that class and did purchas Honda Activa vehicle for attending the class. He made several defences in his specific pleading and stated that, in the year 2019 he came to know that, from couple of year she was doing obscene whatsapp chats with other persons. Thereafter, he called meeting on 21-04-2019. At that time, several persons were present over there. The minutes of meeting were written down on stamp paper and mentioned that she is doing obscene whatsapp chat. It is the fault of applicant. If it happens again when his she tries to commit a suicide then she herself will responsible for such act. Similarly, she had written down that, if she does so, then he will give divorce to her, that substance/undertaking was signed by relatives of applicant. The applicant is a B.A.D.Ed., MS-CIT. She

taking tuition class and gets income of Rs. 15,000/- per month. The application for interim maintenance is filed before Civil Judge Sr.Dn., Gondia. Thus, it is pending before the court.

7. Considering the contention of this parties following points are arise for my determination alongwith reasons as follows

Sr.No.	Points for determination		Findings
1	Whether she subjected to domestic violence at the hands of non-applicant ?	Yes.
2	Whether applicant is a entitled for interim maintains ? If Yes, then what extent ?	Yes. Rs.5000/- per month
3	What order ?	Application is partly allowed.

REASONS AS TO FINDINGS

As to Point No.1 :-

8. The application for interim maintenance is filed by making several allegations particularly beating, suspicion on character, tries to take her life, abusing her by filthy language and on the ground of dowry made by the applicant. It is denied by the non-applicant. He replied that all the faults of applicant. He has no fault in the set of circumstances put by applicant in his application. No domestic violence is cause at the hands of non-applicant towards applicant. Similarly, he further contented that, without any sufficient reason she went away from his house to her parental house. Therefore, he is not entitled for giving maintenance to her.

9. I have perused the record and proceeding she has two children namely Ojash and Samar are residing with non-applicant. The document violence like domestic violence report mention entire chain of

circumstances in the said report but now question for determination is that whether applicant is subjected to domestic violence at the hands of applicant and therefore, she is entitled for interim maintenance or not.

10. I heard, the ld. Adv. for applicant and ld. Adv. for non-applicant/respondent. The Ld. Adv. for applicant vehemently submitted that, no married lady can broke her marriage relationship without any sufficient cause. She is subjected to domestic violence at the hands of non-applicant/respondent, she has filed report at police station, Gondia against respondent and returned back to Gadchiroli. Since 16-08-2019, she is residing at her aunt's house. The non-applicant has not taken any care since her residence. Several attempt were made for conciliation between them. But, no fruitful result was come out. In the conciliation proceeding was taken place in women cell of police station, Gondia. The non-applicant has refused to cohabit with her. Even though applicant is willing to residing with him.

11. She further submitted that, she was gone to meet her children and stayed at neighbours house. Thereafter, she was willing to meet them. But, non-applicant restrained her to meet them. She also finds that, one lady is living in the house of non-applicant/respondent. Further, she also submitted that, the non-applicant has filed it divorce proceeding before Gondia Court after filing this application against him. It shows that, he is not willing to cohabit with her. He is a assistant teacher and earning handsome salary. Therefore, he can pay a handsome amount to the applicant. She is subjected to domestic violence from the hands of non-applicant. Therefore, application kindly be allowed as threshold.

12. On the other hand, I heard the Ld. Adv. for non-applicant at length. She submitted that, the sons of applicant are residing with non-applicant/respondent. Their education and livelihood is taking care by the

non-applicant. The receipt of their education fees are also filed on record. He has taken housing loan and paying an installment of that loan. Similarly, his parents are dependent upon him. He is taking care of them. For that purpose he required some amount. In such a circumstances less salary is received by him after incurring all expenditure.

13. She further submitted that, the contention made by applicant in her application is baseless. The copy of stamp papers are filed on record which shows that, she has done the act which was reducing writing and signed by the applicant and witnesses, who are relatives of applicant and non-applicant. The non-applicant is not willing to cohabit with her though she is ready for the same. The divorce proceeding is going on at Gondia Court. Thus, no domestic violence whatsoever is caused at the hands of non-applicant mention by the application in her application against non-applicant. Thus, and application liable to be rejected.

14. To counter the fact of same the Ld. Adv. for applicant submitted that, the substance written on stamp paper is illegal. No lady can admit her character in such extend that she was presumed to be unchastest. In such circumstances the agreement is written after thought by inserting new facts non-applicant, the signature of the witnesses, which appears on stamp paper are suspicious and cannot be relied upon it at this stage. Therefore, such fact needs to be ignored at this stage. Thus, an application is liable to be allowed.

15. I patiently heard both sides over this application. The object of Protection of Women from Domestic Violence Act protects any kind of violence is cause at the hands of husband and his relatives. That violence may be physical, mental, financial and on the ground such as taking suspicion on her chastity. After considering the application, I am of the view that, the marriage was solemnized between them on 25-05-2008.

She has left her matrimonial house on 16-08-2019. In meantime 11 years they were resided together. In that period she can filed an application for domestic violence. But, she had not done so. But after a gap of 11 years, she is incline to file this application against non-applicant. Then something may be happened between them otherwise for such a long gap why she was in need to file this application.

16. Considering the fact and circumstances at this stage in the prudent of ordinary man, no married lady is ready to breakdown her matrimonial life without any reason. This what protection of women from domestic violence of says so. They adamant behavior of the non-applicant is came on record in the proceeding filed before women cell of concerned police station that he is not willing to reside with her at any cost. There may another reason but in such facts and circumstances at this stage considering the documents filed on record prima facie, I come to conclusion that, somewhere she may subjected to domestic violence act the hands of non-applicant. The application allegation against her chastity of women will not permit by any married lady without its proof. On that ground many couple have lost their matrimonial life. Similar facts is also appear on record which will not ignored. No husband has any right to take suspicion on chastity of her wife without valid ground. Therefore, on only that ground I am of the opinion that, she subjected to domestic violence at this stage. Thus, I answer point No.1 in affirmative.

As to Point No.2:

17. I have answered point no.1 in affirmative. Therefore, she is entitled for interim relief against non-applicant. That interim relief may be protection order or monetary relief or any kind of protection prescribed under the PWDV Act. In this context, if she is subject to domestic violence then she is entitled for interim relief. The assets and liabilities filed on record at below Exh.25 by the non-applicant along with salary slip shows

that he has getting handsome salary about Rs.64,648/- per month. After perusal of it finds that, he has drawn Rs.36,472/- net pay salary in the month of November-2021. Considering the other aspect he is taking care of education of her children. Similarly, he has responsibility to look after his parents and other liabilities are concerned he cannot pay much amount to the applicant. Considering his income and liabilities as well as the livelihood of applicant is concerned, she did not file assets and liabilities on record to show her earning but apparently she is not doing any business and not having any source of her livelihood. She is residing at her aunt's house on the parity of her. It is a duty of non-applicant towards applicant take care of every livelihood as a husband. But, he fails to do so. Not going in to merit at this stage, she is entitled for interim relief of interim maintenance of Rs.5000/- per month from filing of this present application to till its disposal. Thus, I answered point No.2 in affirmative as above.

As to Point No.3:-

18. After perusal of pleadings and considering the other aspects, she is also entitled for other reliefs like protection order and residence order. If this court compel her to live in her matrimonial house then her life will be apprehended. Therefore, she is entitled for the rent as well. Thus, I proceeded to pass following order.

ORDER

- 1] Application is party allowed.
- 2] The non-applicant will not contact her, not to harass or not to make any attempt to harass her by any means till disposal of this application.
- 3] The applicant is entitled Rs.5000/- per month as a interim relief till disposal of this application from the date of filing this application.

- 4] The non-applicant is directed to pay Rs. 1500/- as a rent to the applicant till disposal of this application from the date of filing this application.
- 5] The non-applicant do pay Rs.2000/- as a cost of this application.
- 6] The copy of this order be given free of cost to the applicant.
- 7] The copy of this order be forwarded to police station, Gadchiroli and protection order for necessary information.

Gadchiroli.
Dated : 31/01/2022.

(R.R.Khamatkar)
Judicial Magistrate First Class,
Gadchiroli.