

MHGA030014252023



IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS
GADCHIROLI

(Presided Over by S.A. Bhaisare)

P.W.D.V.A. Apln. No.39/2023

1. Sau. Namobai Bhagrath Tulavi,

Age 35 years, Occ. Housewife,

2. Sahil Bhagrath Tulavi,

Age 16 years, Occ. Education,

3. Nikhil Bhagrath Tulavi,

Age 12 years, Occ. Education,

4. Jintu Bhagrath Tulavi,

Age 06 years, Occ. Education,

All R/o. By at Sagar Banmare's house,

Ramnagar ward no. 19, Gadchiroli

Tah. & Dist. Gadchiroli

... **Applicants**

-VERSUS-

Shri. Bhagrath Rajeshwar Tulavi,

Age 42 years, Occ. Cultivation,

R/o. Devsur,

Tah. Dhanora & Dist. Gadchiroli

... **Non-applicant**

For Complainant :-

:-

Learned Advocate : V. S. Padmagirwar

For Accused :-

:-

Learned Advocate : Ex-parte

ORDER BELOW EXH.5

(Passed on 05th July, 2025)

The present application has been filed by the applicants under section 23 of the Protection of Women from Domestic Violence

Act of 2005 (hereinafter 'the Act' for short), seeking interim reliefs.

02. Perused the application. No arguments advanced by the Ld. Advocate for the applicant. The matter is proceeded ex-parte against the non-applicant vide order below Exh.1 dated 21/05/2025.

03. Perused the record. Following are the points arising for my determination with my findings thereon along with reasons.

Sr. No.	POINTS	FINDINGS
1.	Whether the applicant prima facie is an aggrieved person ?	Yes.
2.	Whether the applicant is entitled to interim maintenance? If yes, how much?	Yes. Rs.3,000/- to the applicant no.1, Rs.1,000 to the applicant no.2, 3 and 4
3.	Whether the applicant is entitled to interim protection orders?	Yes.
4.	Whether the applicant is entitled to order restraining non-applicant from alienating her share in the property?	No
5.	Whether the applicant is entitled to interim residential rent? If yes, how much?	No
6.	What order?	Application is partly allowed in terms of final order.

REASONS

AS TO POINT NO.1 :

04. While considering an application under S.23 of the Act which is certainly a *prima-facie* phase of interlocutory adjudication, the Court is not supposed to go deep into the merits of the case or the evidence which may be brought at the time of trial. Even at this stage, it is not expected of an aggrieved person to bring the proof of pleaded allegations strictly.

05. The applicant has averred that she and non-applicant no.1 married as per customary rites and rituals on 05/05/2004 and she cohabited with the non-applicant after marriage. During the marriage, applicant no.1 and non-applicant gave birth to applicant no.2 to 4. Non-applicant have not denied, by filing written statement, marriage with the applicant no.1 and his cohabitation with her. Thus, the fact that there exists a domestic relationship and a shared household between the applicant no.1 and non-applicant is *prima facie* established.

06. The applicant has filed affidavit to affirm the averments in the application. The non-applicant have not denied the allegations. The veracity of the allegations made by the applicant no.1 will be adjudicated through evidence. But at the present stage, the averments in the application cannot be disregarded due to non-existence of counter allegations. Besides, the contentions on record indicate that some incidents having undertones of domestic violence have occurred between the parties which require ascertainment.

07. Further, the applicant averred that the non-applicant has not maintained her and inflicted domestic violence under the influence of alcohol. There is nothing on record showing that the non-applicant has been providing maintenance to the applicant. The failure to provide maintenance to the applicant prima facie amounts to economic abuse, which is a form of domestic violence.

08. Thus, the averments in the application supported by affidavit indicate that prima facie the applicant might have suffered some domestic violence and financial abuse which requires to be adjudicated through evidence. The documents and the affidavit prima facie indicate that the applicant is an aggrieved person. Therefore, I answer point No. 1 in the affirmative.

AS TO POINT NO.2 :

09. The applicant has asserted in her application and affidavit that non-applicant has income of Rs.4,00,000/- per year from his 10 Acre agricultural land and earns Rs. 20,000/- from manual labour. The applicant has also asserted that she has no source of income and non-applicant has neglected to maintain her despite having sufficient income. The applicant has prayed for Rs.5,000/- per month for herself and Rs.3,000/- each for applicant no.2 to 4 total amount of Rs.15,000/- as interim maintenance.

10. Applicant has filed her assets and liabilities affidavit at Exh. 7. Applicant in her affidavit (Exh.7) has specified her own income to be Nil, and that of non-applicant to be Rs.20,000/- per month and Rs.4,00,000/- per year from 10 Acre agricultural land. No document

has been filed to show the income out of the agricultural land of the non-applicant. The non-applicant has not filed his assets and liabilities affidavit despite sufficient opportunity. Affirmations in the affidavit need to be relied upon considering the material in support thereof.

11. The applicant has pleaded that she has no source of income. The non-applicant has not taken pains to contest the application. In this premise, it has to be presumed that the applicant has no source of income at this stage. Further, it appears that the non-applicant earns Rs.20,000/- per month. Also, non-applicant no. 1 cannot be absolved from the responsibility of maintaining his wife applicant no.1 and sons applicant no.2 to 4. It is nowhere the case of the non-applicant that, any monetary aid is being provided to the applicant. Being husband of the applicant no.1 and father of applicant no.2 to 4, it is his moral and legal obligation to ensure their living. So also, the applicant no.1 has not brought anything on record to show that she is suffering from any disease or disability. Hence, it can be presumed that she is able to carry out manual labour work and earn a living herself and children. Therefore, considering the income of non-applicant on record, capability of the applicant to undertake physical work, the standard of life of the parties, and the necessities of the parties, granting monthly interim maintenance of Rs. 3,000/- per month to the applicant no.1, Rs. 1,000/- per month to the applicant no. 2, 3 and 4 appears justified. Therefore, I answer point no.2 accordingly.

AS TO POINT NO.3 and 4:

12. Protecting a woman from domestic violence is the basic object of the P.W.D.V Act. Sufficient prima facie material in the form of application filed under S.12 of the Act made by applicant, has been placed on record to establish that, domestic violence is prima-facie committed and is likely to be committed at the hands of non-applicants. Therefore, till pendency of this case, it is just and proper to grant interim protection order to the applicant, prohibiting non-applicants from committing, abetting or aiding any act of domestic violence against applicant. Hence, I answer point no.3 in affirmative.

13. The applicant has not brought anything on record to *prima-facie* show that she has any share, right or interest in any movable and immovable property in the ancestral property of non-applicant or self-acquired property. Hence, I answer point no.4 in negative.

AS TO POINT NO.5

14. The applicant no.1 has prayed for interim residential rent of Rs.4,000/- per month. However, on plain reading of the pleadings, there is nothing to show that she was/is residing at a rented premises along with applicants no.2 to 4. She has simply stated in her affidavit (Exh.6) that she is living in an independent rented house. However, she neither stated the rent amount nor produced any rent receipts or agreement in support of her affidavit. In absence of specific pleadings and documents in support thereof, mere statement in her affidavit (Exh.7) would not help her in her quest. In view of this, it does not appear that she has incurred any expenditure on residential rent and

as such, she is not entitled for the same. Hence, I answer point no.4 in negative.

AS TO POINT NO.6

15. In view of the foregoing findings, applicants prima facie appears to be an aggrieved person, and applicant no.1 is entitled to Rs.3,000/- per month, Rs. 1,000/- per month to the applicant no. 2, 3 and 4 towards maintenance from non-applicant. It is pertinent to note that the application was filed on 06/11/2023 and the summons, after taking effective steps by the applicant no.1, were served on the non-applicant on 28/03/2025. Considering the facts and circumstances, it appears just and reasonable to direct the non-applicant with payment of interim maintenance from the date of this order. From the discussion *supra*, applicant is entitled for protection order of interim nature. Therefore, in answer to point 4, I pass the following order.

ORDER

1. The application below Exh.5 is partly allowed.
2. Non-applicant shall pay Rs. 3000/- per month to the applicant no.1, Rs. 1,000/- per month to the applicant no. 2, 3 and 4 as interim maintenance from the date of this order during pendency of the main application or till further orders of the Court.

3. Non-applicant is temporarily prohibited from committing, abetting or aiding any act of domestic violence against the applicants till the decision of the case.
4. Copy of this order be provided to all the concerned persons as per section 24 of the P.W.D.V Act.
5. Both the parties to expedite the trial of this case and ensure its disposal at the earliest.

Place:- Gadchiroli
Date:- 05/07/2025.

sd/-
(S. A. Bhaisare)
Judicial Magistrate First Class,
Gadchiroli.