

Order below Exh.5 in P.W.D.V.A. No. 12/2023

Sau. Rinku Navthosh Mandal

...Applicant.

Vs-

Shri. Navtosh Gopal Mandal & Ors.

...Non-applicants.

.....

Learned advocate for applicants - Shri. D. H. Gayali,

Learned advocate For Non-applicants - Shri. A.B. Randive

.....

1] This is an application filed by the applicant u/s 23 of Protection Woman Domestic Violence Act 2005 for grant of interim maintenance and other ancillary relief u/s 19 and 20 of Domestic Violence Act.

2] **In brief the case of the applicant is as under :**

A] It is the contention of the applicant that her marriage with the non-applicant no.1 was solemnized on 09/06/2022 at Gouripur, Tah. Chamorshi, Dist. Gadchiroli as per the Bengali rituals. At the time of marriage father of the applicant has given household article mentioned in the annexure A. Father of applicant has incurred the expenditure of 8 to 10 lakh in the marriage. Non applicant no.1 is the husband of the applicant and non-applicant no.2 to 4 are mother in law, father in law and sister in law of the applicant respectively.

B] After the marriage applicant went to the house of the non-applicant no.1 at Bhadrawati for cohabitation. Reception was held on 11/06/2022. Applicant started living and co-habiting with non-applicant no.1 in joint family of the applicant no.1. Applicant live at Bhadrawati for one month after which she along with the non-applicant no.1 went to the Nagpur where non-applicant no.1 was doing the business of selling spare parts of four wheeler. Applicant live with the non-applicant no.1 in rented room at Nagpur. Other non-applicants came to Nagpur two three times in

months. Non-applicant no.3 and 4 started giving trouble to the applicant for not giving the dowery at the time of marriage. Non-applicant no.1 also harassed the applicant under the influence of the liquor for petty household things such as a non cooking the meal properly. Non-applicant no.1 also beat the applicant with fist and blow. Non-applicant no.1 taunted and abused the applicant in a filthy language. Applicant described the various incident of harassment of ill-treatment at the hand of the non-applicant no.1 in her application. In spite of the harassment and trouble at the hands of the non-applicant no.1 applicant continue to live with non-applicant no.1 with the hope that conduct and the behavior of the non-applicant no.1 will be changed. But non-applicant no.1 continue to trouble and harass the applicant. Non-applicant no.1 informed to non-applicant no.2 and 3 about the trouble and harassment given by the non-applicant no.1. But non-applicant no.2 and 3 abuse the applicant instead of giving understanding to non-applicant no.1. Fed up with constant harassment and ill-treatment at the hands of the non-applicant no.1 to 4 applicant had gone to her maternal home on 05/05/2023. Non-applicant no.1 never come to the maternal home of the applicant to take her back and sent the notice with false contention through his advocate. On 05/06/2023 applicant lodged the complaint with the woman and child cell in police station Chamorshi. But no compromise took place in woman and child cell at Chamorshi police station.

3] Non-applicant no.1 is earning more than one lakh rupees per month from his business of spare parts. He has immovable assets in Bhadrawati and Wani. Non-applicant no.2 is pensioner and he is getting the pension. Non-applicant no.1 have no responsibility of maintenance of any family member except the applicant. Applicant is required to incur the expenditure for her cloth and medicine and it is the responsibility of non applicant no.1 to maintain the applicant. Non-applicant no.1 is competent to give rupees 30,000/- per month for maintenance. Hence,

applicants prayed for grant of interim maintenance of Rs.30,000/- and other relief.

4] Non-applicant resisted the application by filing the written reply at Index no.65. Non-applicant filed the pursis stating that reply to the main application shall be considered as a reply to this application. Non-applicant admitted the relationship with applicant. But all others adverse allegation and contention leveled by applicant against them is denied. In their special pleading non-applicant contended that applicant always pick up the quarrel with him to fulfill her demand that she does not want to live with the joint family at Bhadrawati and she wanted to live separately with non-applicant no.1 at Nagpur. She always insisted for new cloth and other non essential things. Non-applicant no.1 always gave understanding to applicant that he is poor person and he cannot afford to make such a big expenditure. Non applicant no.1 made her understand that we need to save for future. Applicant got angry over it and abuse and beat the non-applicant no.1. Miscarriage of the applicant took place due to her negligence. Non applicant no.1 took care of the applicant when she was admitted in the hospital for her miscarriage. After discharging from hospital applicant picked up the quarrel with the non-applicant no.1 and gave mental and physical trouble to him. Applicant used to went her maternal home without informing the non-applicant no.1. Non-applicant no.1 gifted the gold ring to applicant on her birthday when applicant resided at her maternal home. Applicant was not happy with the gold ring and she told him that she does not want to co-habit with him. Even mother of the applicant had driven him out from the house. On 05/05/2023 relative of the applicant came to the house of the non-applicant at Bhadrawati and took away all the cloth and household item by picking up the quarrel with the non-applicants and warned him that non-applicant no.1 shall not contact with applicant and applicant wants divorce from him. Applicant live in her maternal from 24/04/2023 on her own wish. Non-applicant have a threats from the

applicant which is reflected from the conduct of the applicant. In spite of that non-applicant no.1 is ready to live with applicant. This application is filed only for giving trouble to non-applicants and obtaining the divorce from non-applicant no.1. All the incident of domestic violence mentioned in the applications are false and applicant live separately from non-applicant since 24/04/2023. Non-applicant being the husband of the applicant has fulfilled all his duty as husband. Therefore, the applicant does not deserve to get any relief sought by her as she is not the victim of any domestic violence. Hence, non-applicant prayed that this application is liable to be rejected with cost.

5] Heard learned counsel for applicant and non-applicant. Perused the documents.

6] Following points arose for my determination and I record my findings against them for the reasons stated below.

No	Points	Findings
.		
1.	Whether applicants prima-facie prove that the non-applicants have subjected her to domestic violence ?	Yes
2.	Whether applicants are entitled to get interim maintains allowances and If yes at what rate ?	Yes Rs.5000/- per month
3.	What order ?	Application is partly allowed.

REASONS

As to point No.1 :-

7] While deciding application for interim maintains prima facie it will have to be seen whether non-applicants have subjected applicant to domestic violence. The applicant has averred in her application that she

was subjected to the domestic violence and narrated the various incident constituting the domestic violence. It is admitted fact that applicant no.1 is the wife of the non-applicant no.1. Applicant has leveled the allegation against the non-applicant no.1 on oath which was duly supported by the Domestic Violence report at Exh.11. Prima facie it appears that non-applicant no.1 have committed the domestic violence towards the applicant no.1. The contention of the non-applicant no.1 about the mental and physical harassment at the hands of the applicant no.1 would be decided during the time of the evidence. It appears from pleadings and the Domestic Violence report that applicant was subjected to domestic violence at the hands of the non-applicant no.1. Hence, I answer the point no.1 in affirmative.

As to point No.2:-

8] It is the contention of applicant that non-applicant no.1 is earning more than Rs.1,00,000/- from his business of selling spare parts of four wheeler and he has immovable assets at Bhadrawati and Wani. Applicant no.1 did not file any documentary evidence in support of her contention about the earning of the non-applicant no.1. Applicant and non-applicant no.1 filed the affidavit of asset and liability at Exh.14 and 13 respectively. Non-applicant no.1 stated in his affidavit that his parents is depended on him and he has to shell out Rs.25,000/- for the maintenance of his parents. He is suffering from some mental problem and he is working as a driver in Zunka Servicing Center, Nagpur. According to his affidavit his liability towards loan and other thing is Rs.5,00,000/-. As per the affidavit of the applicant at Exh.14, she has no source of income and she need Rs.30000/- for her monthly expenses. If affidavit of asset and liability filed by non-applicant no.1 is taken into consideration the non-applicant no.1 cannot give maintenance of Rs.30,000/- to the applicant. But it is admitted fact that non-applicant no.1 is living in Nagpur and doing some business or job in Nagpur. Now a days it is the common practice that non-applicant

does not give correct information about the source of income in the affidavit which is required to be filed as per the judgment of Apex Court in Rajnish and Neha case. It is very difficult for applicant to prove that non-applicant mention the wrong information in the affidavit as it is time consuming process. However, the quantum of maintenance can be decided on the earning capacity of the non-applicant as in Indian culture it is duty of the husband to maintain the wife. The relationship of the applicant and non-applicant as a husband and wife is still exist. Even non-applicant did not claim that applicant has a any source of income. Looking at the physical capability of the non-applicant no.1 it can be said that non-applicant no.1 can give Rs.5000/- to applicant as interim maintenance from the date of the application. It appears that non-applicant no.1 is living at Nagpur for the purpose of livelihood. Any person can earn up to 15,000/- to 20,000/- per month by doing the job in Nagpur. Therefore, it can be said that non-applicant no.1 at least earn 15,000/- to 20,000/- per month. Non-applicant no.1 can give Rs. 5000/- per month to the applicant for her maintenance. Other relief such as maintenance for house rent and sharing in immovable property and preventing the non-applicant from getting the second marriage will be decided at the time of decision of the main application. Accordingly I answer the point no.2 in partly affirmative. In answering the point no.3 I proceed to pass following order.

ORDER

- 1] Application is partly allowed.
- 2] The non-applicant No.1 shall pay Rs.5,000/- per month to the applicant as the interim maintenance from 26/06/2023 i.e. the date of filling of this application.
- 3] The copy of this order be supplied to the parties free of cost.

Date :15/03/2024

Sd/-
(N.D.Meshram)
Judicial Magistrate First Class,
Chamorshi.

CERTIFICATE

I affirm that the contents of this P.D.F. file are word to word same, as per original Judgment.

Name of Stenographer : Mr. S.N.Khandekar, Stenographer
(Grade-3)

Name of Court :Civil Judge (Jr.Dn.) &
JMFC, Chamorshi.

Date of Judgment/Order : 15/03/2024.

Judgment checked and
signed by Presiding Officer on : 15/03/2024.

Judgment uploaded on : 16/03/2024.