

MHJN050003852023

P.W.D.V.A. No. 13/2023
Divya Vs. Dilip & etc.

ORDER BELOW EXH. 13

(Passed on this 22nd Day of November, 2024)

By this application the applicant sought an interim relief under section 23 of The Protection of Women from Domestic Violence Act and thereby claimed interim maintenance of Rs. 12,000/-p.m. to enable to carry out her livelihood.

02. Read the application. The respondents have failed to file their say. However, They have filed their say for main application (Exh. 11). Heard the Ld. Advocate for the applicant. The respondents and their Ld. Advocate are absent. Perused the record of the case.

03. Upon considering the contentions of both the parties, following points arise for my determination and I have recorded my findings thereon as follows-

POINTS

Sr. No.	Points	Findings
01	Whether applicant established that she is suffered from domestic violence at the hands of the respondents?	In the affirmative
02	Whether the applicant is entitled the interim maintenance as claimed?	In the affirmative
03	What order?	As per final order

REASONS

As to points nos. 1 to 3

04. Reasons pertaining to all these points are taken together

for discussion. While considering interim relief under *section 23 of D.V.Act*, which is certainly a prima facie of interlocutory adjudication, the Court is not supposed to penetrate deep into the merits of the case or the evidence which may be brought on record at trial. Even at this stage, it is not expected of an aggrieved person to bring the proof of pleaded allegations. The same thing is applicable to the respondents, who are also not supposed to prove or disprove any allegation by them or against them. Both parties have filed affidavits to make their pleadings look believable. Therefore, here is a situation of *Oath Standing Against Oath*. Under such a situation, it will not be appropriate to accept the oath of one party at the cost of discarding the oath of its counter-party. The only aspect of consideration remains is that, whether the application prima facie discloses that respondents are committing, or have committed or there is any likelihood that they may commit an act of domestic violence against the petitioner.

05. The marriage and they are having one child are admitted facts.

06. In short, applicant submits, she filed an application u/s 18, 19, 20, 22 of the Protection of Women from Domestic Violence Act, 2005 against the respondents, and the same is pending before the court. The respondents have appeared in the matter. The matter would take reasonable time to decide it on merit. Therefore, it is necessary to grant interim maintenance to the applicant. The applicant is unable to maintain herself. Further, she has no source of income. The respondents have caused physical and mental harassment to applicant. The respondents have committed domestic violence against applicant. Respondent no. 1 has an income source. He is doing the business of milk, and he has agricultural land. From

the milk business, respondent no. 1 earns Rs. 50,000/- per month, and from agricultural land, he earns Rs. 2,00,000/- per year. The respondent no. 1 is economically sound. He has no responsibility except for the applicant. Respondent no. 1 has always shown his ignorance towards the present applicant. Hence, she prayed for interim maintenance.

07. The respondents have failed to file their say on this application. But, the respondents have filed their say to the main application [Exh. 11]. At this stage, this say [Exh. 11], can be taken into consideration for deciding this application on merit. The respondents contended that they never subjected applicant to any domestic violence. The application is filed to harass and extort the respondents. The applicant has suppressed the material facts. The applicant herself has been living separately from them for a long time. The application is false, frivolous, and not maintainable. The respondent no. 1 has filed an application under Section 9 of the Hindu Marriage Act for restitution of conjugal rights. Further, he also sent notice to the applicant for co-habitation. However, the applicant is not willing and ready for co-habitation with respondent no. 1. The applicant, by leaving her child with the respondents, left their house without any sufficient cause. So, the applicant is not entitled to maintenance. Hence, they prayed to reject the application.

08. The respondents have admitted their domestic relationship with the applicant. It is also admitted that applicant is staying away from the respondents. So, naturally, applicant has to look after herself. The contents of the application are supported by an affidavit. The petition/domestic violence incident report discloses an entire date-wise and specific incident-wise account of the instances of domestic violence subjected by respondents to the applicant. On

minutely observing contents in petition/domestic violence incident report, there are specifications in regard to **verbal and emotional abuse and** also of physical abuse. These instances narrated by applicant, certainly fulfill the ingredients of the terms “***Domestic Violence***” as defined in ***Section 03 of the D.V.Act.*** Therefore, the circumstances as well as allegations in the petition certainly display the prima-facie existence of domestic violence. Prima-facie, applicant appears to be the victim of domestic violence. Prima-facie, the allegations of domestic violence cannot be ignored. The respondent no. 1 did not make any arrangements for the applicant’s maintenance since, the applicant was residing separately from respondent no. 1. So, prima-facie, it appears that applicant appears to be the victim of domestic violence.

09. No wife will be able to reside with a husband and his relative who subject her to this much intense domestic violence. **No doubt, the applicant will have to prove these instances of domestic violence at trial, but at this prima-facie stage of interlocutory adjudication, it must be accepted that, no woman will make false allegations to such an intense extent of domestic violence.** Therefore, the instances of domestic violence demonstrated by applicant appears to be the reasonable and sufficient cause for applicant to reside separately from respondents.

10. Respondent no. 1 has not denied his income in his say [Exh. 11]. He only contended that the petition and domestic violence incident report are false and incorrect. Further, he denied the same. The applicant, on her desire, resides separately from the respondents. The applicant is not ready and willing to co-habit with the respondents and to take responsibility of her child. Therefore, she is not entitled to any relief. Respondent no. 1 should have

justified the above-mentioned stand or facts that he is taking, because these are the stand or facts within his special knowledge. He cannot simply shirk his responsibility by saying that the applicant is not entitled to any relief. Further, the said stands are taken by respondent no 1 at this stage, when the responsibility for the applicant's maintenance came on his shoulders. So, this fact shows the ignorance of respondent no. 1 towards the applicant. The respondent no. 1 has a moral and legal duty to maintain the applicant. He cannot absolve himself from his responsibility to maintain the applicant by saying that the applicant herself resided separately from the respondents without reasonable cause. It is also seen that respondent no. 1 has no other responsibility except the applicants.

11. The documents are not filed regarding the income source of the respondents. Hence, in that circumstance, it is just and proper to take into consideration how much money an able bodied person could earn. Today, an able-bodied person can earn between Rs. 300 to Rs. 400/- per day. Further, respondent no. 1 appears to be young. No document is filed on record to show the income source of the applicant. The applicant is residing separately and she is depending on respondent no. 1. It prima-facie appears that the applicant has no source of income, therefore, she solely appears to depend on respondent no. 1.

12. At this preliminary stage, I deem it proper to grant interim maintenance to the applicant to enable her to carry out her livelihood. Now the only thing left is to determine what shall be a reasonable sum for interim maintenance. The applicant has sought Rs. 12,000/- per month for interim maintenance. She has not justified how she needs this amount. However, the court can take cognizance

of the fact that nowadays there is a steep rise in the prices of essential commodities. So, in the facts and circumstances of the case, it will be just to grant Rs. 2500/- per month interim maintenance to applicant to enable applicant to pull on the responsibilities with ease. The applicant has not filed any document to show that she is homeless and residing in a rented house. Further, she has not filed any document regarding her illness. Whether the applicant is entitled for house rent and medical expenses, these questions would be decided by giving adequate opportunity to both sides. At this primary stage, it would not be just and proper to grant the other reliefs without adducing cogent evidence in that regard. Therefore, at this primary stage, the applicant is not entitled for other interim reliefs. Hence, I answer points no. 1 and 2 in the affirmative, and in answer to point no. 3, I proceed to pass the following order:

ORDER

01. The application is partly allowed.
02. Respondent no. 1 shall pay Rs. 2,500/- (In words Rupees Two Thousand Five Hundred Only) per month to applicant, as interim maintenance from the date of the application until the final disposal of the main application.
03. The copy will be given to the applicant free of costs.

Date:- 22.11.2024

(Rahul B. Suryawanshi)
Judicial Magistrate First Class,
(Court No. 2), Partur

- : C E R T I F I C A T E : -

I affirm that the contents of this Pdf file order are same word as per original order.

Name of Jr.Clerk :- Yogesh R. Kumawat
Name of Judge :- Judicial Magistrate First Class (Court No. 02), Partur
Date of decision :- 22.11.2024
Order signed by P.O. on :- 22.11.2024
Order uploaded on :- 22.11.2024

Sd/xxx
(Yogesh R. Kumawat)
Jr. Clerk