

Order Below Exh. 12 in P.W.D.V.A Application No. 03/2022
(CNR No. MHJN070000632022)

Through this application applicant is praying for monthly interim maintenance vide Sec. 23 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred as 'DV Act' in short).

2] That, the case of applicant can be capitulated at narrow compass that, the applicant is the legally wedded wife of the respondent No.1. Their marriage has been solemnized on 11/07/2016 as per Muslim rights and rituals. They have two children out of said wedlock. The parents of applicant gifted Gold ring of 5 gram and Rs. 20000/- to respondent no. 1 and also gifted Gold ornaments to applicant at the time of marriage. The parents of applicant gave all necessary household articles and wearing apparels to them at the time of marriage and also spent amount of Rs. Three Lakh in their marriage. After marriage applicant went to co-habit with respondents. For first two years of marriage they treated her cordially, but after birth of her daughter Alfiya respondents started abusing her by taking suspicion on her character. They used to keep her starving and used to remove her from of the house. Respondent no. 2 and 3 used to force applicant to have sexual relations with respondent no. 1 without her will and when she used to refuse, they used to abuse her in filthy language by taking suspicion on her character and also used to instigate respondent no. 1 to beat her. Because of which respondent no. 1 did not used to come home for fifteen days and used to stay out.

((2))

The respondent no. 2 to 3 used to blame applicant for such behavior of respondent no. 1.

3] It is further submitted by the applicant that, when applicant become pregnant in the year 2020, the respondent denied paternity of the child and beat her on the pretext of that. The parents of applicant tried to exhort respondents however they were not in state of mind to listen anything. The respondent no. 3 snatched seven piece Gold neck-less wore by applicant and purchased auto rickshaw for respondent no. 4. When applicant complained about the same, respondents took away all her Gold ornaments and kicked her out of the house. Thereafter applicant came to her parental house along with her daughter. When parents of applicant made phone call to respondents they said that after doing DNA test of baby they will take back applicant for co-habitation.

4] It is further submitted by applicant that, on 26/10/2020 she gave birth to her son. The respondents came to see her son. When relatives of applicant exhorted respondents, they took applicant for co-habitation with them. However again after few days they started abusing and beating appliance by taking suspicion on her character. However thinking about future of her children applicant endured the abuse of respondents. In the year June 2021 respondents asked applicant to bring Rs. Two Lakh from her father to purchase rickshaw. However due to poor economic condition of parents of applicant, she could not complete their demand. Therefore respondents again kicked her out of the house in June 2021 along with her children. Since then applicant is residing with her parents

and since then respondents have not taken any responsibility of applicant and her children. Since then applicant is leaving under fear and she is not able to do any kind of work to earn for her livelihood and because of which applicant and her children are starving.

5] The applicant further submitted that, respondents own 15 Auto rickshaw and they are given rent of 300 to 400 per day. The respondents are earning One lakh fifty thousand from the same. The respondents own two houses and they have rented 16 rooms from the same. The respondents earn per month Rs. 50000/- in the form of rent. The respondent no. 2 is doing business of plotting and getting ample income from the same. The respondents are earning near about Rs. Thirty lakh per year. Therefore she prayed for interim maintenance of Rs. 30000/- per month for herself and her children from respondents.

6] Per contra, the respondents have denied all averments of applicant resisted the claim of applicant contending that, respondent no. 1 is living on labor work and barely earning Rs. Five to ten thousand per month. The applicant is capable of maintaining herself. The respondents have never caused mental or physical harassment to applicant. The respondents are not able to pay maintenance of Rs. 30000/- per month to applicant. The respondent no. 1 went to bring back applicant for co-habitation however the applicant has denied for the same. The applicant is residing at her parental house along with her children without any reasonable ground. The parents applicant have not gifted any household articles to respondents. The expenses of marriage were borne by respondents. The respondents are ready to

look after applicant however applicant has refused to co-habit with respondents. The applicant had no reasonable ground to file present application.

7] The respondents further submitted that, since marriage applicant was not interested in her marital life. She frequently used to go to her parental house without informing respondents. She used to threaten respondent no. 1 that, she is getting many proposals for second marriage, she dose not want to reside with respondent no. 1 and she is going to perform second marriage. The economic condition of parents of applicant is abundant. The applicant had to do household work in the house of respondents and that's why she never cordially resided with them. The applicant wanted respondent no. 1 to live separate from his parents. However respondent no. 1 is not able to reside separately from his parents. In such circumstances the applicant is voluntarily residing at her parental house. The respondents have never abandoned applicant. On the contrary applicant has abandoned respondent no. 1. The applicant is residing with her parents with her own will therefore she is not entitled for interim maintenance. Hence they prayed to reject the application.

8] Having heard rival sides and on perusal of record following points arose for my determination and I record my findings against each of them for the reasons enumerated below.

Sr. NO.	POINTS	FINDINGS
1	Does the applicant prima facie established that she was in domestic relationship with respondents and respondents have causedYes.

	domestic violence on her or he is likely to be subjected her to the domestic violence?	
2	Whether applicants are entitled for interim maintenance of Rs. 30,000/- as prayed for?Partly Yes.
3	What order?	.. as per final order

REASONS

As to point Nos.1 to 3-

9] So far as concerned to the application under Sec. 23 of the Act, the applicant has mentioned that, she is legally wedded wife of the respondent, same is not disputed, her separate residence with her children is also not disputed. The respondents have only disputed their income mentioned by applicant in present case. It is palpable that, since their separation respondent no. 1 did not exert to make any arrangement of the maintenance of his wife and children.

10] So far as concerned to the allegations made therein application and counter allegations asserted in reply, both the rival parties have made vast and serious allegations against each other. In order to ascertain those allegations trial is entailed. However, the fact cannot be brushed aside that, respondent has not disputed the fact that, applicant is residing separately with her children and he has not made any arrangement for their livelihood. At the cost of repetition I am to state again that, at this stage both parties are having counter allegations against each other, nothing can be inferred without evidence. The applicant being wife does not mean that, her every word is the gospel truth and the respondent being husband stating blatant lie. Also it is not universal truth that, there is cruelty behind

every broken marriage. Marriages do fail for various other reasons which usually are not put up before the court. Hence, to ascertain the truth behind allegation trial is entailed.

11] Concomitantly, the fact cannot be forgotten that, due to disharmony between the applicant and respondent no. 1 the children are getting suffered. As per the applicant she is residing at her parental and unable to maintain her children alone. Admittedly, they have not been provided with maintenance.

12] In context of the above mentioned circumstances I am to state that, Sec. 23 of the D.V Act is enacted with intent to provide safe guards to aggrieved person or her children. The ultimate object of the provision is that, during time required for trial no one should be starved. Indeed, in view of rival pleadings one thing remained undisputed that, the applicant and her children are left without maintenance which is the joint responsibility of respondent and the applicant being their parents.

13] Rather delving to the depth of the allegations and counter allegations the one thing is clear that, at the one end the respondent has made the counter allegations that, as the applicant was not willing to do household work she left the company of respondent no. 1 and residing with her parents. However in natural course no woman can leave house of her husband along with her children only because she has to do household work. The respondent has stated that the he tried to bring back applicant to co-habit with him however from bare perusal of his say it does not appear that he has made any sincere efforts for that. Moreover respondents have submitted that applicant is

able to maintain herself. However they have not made any statement regarding earning source of applicant.

14] Prima facie bi-folded inference is draw-able either in favour of applicant or the respondents. Without trial nothing can be said. However, at this stage not providing economic help to applicant and her children and making them live on mercy of parents of applicant is without proof amounts to cruelty. The domestic incident report filed on record by protection officer also supports the averments made by applicant. Indeed, applicant succeeded at this stage to establish the prima facie case of domestic violence against the respondents.

15] What is left now is to determine the quantum of interim maintenance, in this context the applicant has prayed for Rs. 30,000/- per month stating that, respondents own 15 Auto rickshaw and they are given on rent of Rs. 300 to 400 per day. The respondents are earning One lakh fifty thousand from the same. The respondents own two houses and they have rented 16 rooms from the same. The respondents earn per month Rs. 50000/- in the form of rent. The respondent no. 2 is doing business of plotting and getting ample income out of it. The respondents are earning near about Rs. Thirty lakh per year. On the contrary respondents submitted that, respondent no. 1 is living on labor work and barely earning Rs. Five to ten thousand per month. They have submitted that earning of respondent no. 1 is so meager that it is not enough for his own living. They also submitted that applicant is able to maintain herself and economic condition of her parental house is affluent, therefore there is no need

to grant maintenance to her. Both parties have filed on record affidavit pertaining to their assets and liabilities. The respondent no. 1 has stated that he is earning Rs. 3000-5000 /- per month by doing labor work. However as their say respondents have mentioned that respondent no. 1 is earning up to Rs. 10000/- per month. It shows that respondent no. 1 has good earning capacity. As per affidavit of applicant she is not earning anything.

16] The applicant has filed on record extract of Gao Numana No. 8 of Milkat No. 9438 and Milkat no. 2959 and 9441 situated at village Ranjangao, Tal. Gangapur, Dist. Aurangabad. The applicant has not filed on record any other document to show the income source of respondent no. 1. The respondents have not filed on record any document to show income source of applicant. The respondent no. 1 by saying that applicant is able to maintain herself, cannot escape from his legal as well as moral liability to maintain his wife and children.

17] Indeed, considering the living standard, earning of the respondent I am to state that, as the applicant does not have any independent earning source the respondent no. 1 is liable to pay maintenance to applicant and her children. Considering the living standard of both parties, wants of applicant and her children and earning capacity of the respondent no. 1 I am of the view that it would be just and proper to grant Rs. 3000/- monthly maintenance to applicant and Rs. 2000/- each to her children. In result I pass the following order.

((9))

ORDER

1. Respondent no. 1 shall pay monthly maintenance of Rs. 6,000/- (Rs. Six Thousand Only) to the applicant nos. 1 to 3 cumulatively from the filing of application for interim maintenance.
2. The respondents are restrained to cause any violence physical or mental to the applicant.
3. The applicants and respondents to lead their evidence as expeditiously as possible without unwarranted adjournments.
4. Copy of order be given to both the parties free of cost.

Jafrabad
Date: 22/06/2023

(Aparna D. Gade)
Judicial Magistrate F. C.
Jafrabad.

CERTIFICATE

I affirm that the contents of this PDF file are word to word as per original order.

Date 22/06/2023

Sd/-xxx
(Ahemad I.Shaikh)
Stenographer.