MHKO050065062023

Order Below Exh.4 in
PWDVA Application No.115/2023
Supriya Alias Swati Mayur Awale Vs.
Mayur Bapu Awale
CNR No.MHKO050065062023

The instant application is filed by applicants under section 23 of The Protection of Women From Domestic Violence Act 2005 for grant of interim maintenance.

2. Perused the application and reply filed by the non-applicant no.1 below Exh.16. Heard respective counsels appearing for both sides. Perused the assets and liabilities affidavits filed by both the parties.

3. According to the applicant, the relationship between the applicants and non-applicant no.1 is not disputed. The applicant no.1 is the legally wedded wife of non-applicant no.1 and applicant no.2 is the son born out of the said wedlock. After marriage applicant no.1 was subjected to acts of domestic violence by all the non-applicants. The applicant has submitted in detail the acts constituting the domestic violence subjected to her by the non-applicants. The applicants have submitted that they are residing separately due to said acts from the non-applicant no.1.

4. The applicants further submitted that the non-applicant no.1 is working as a Junior Engineer in Maharashtra State Electricity

Development Corporation at Kurundwad and earns Rs.70,000/- per month as monthly salary. According to the applicant no.1, the non-applicant no.1 also has agricultural land of 30 *Guntas* at taluka Shirol from which he earns substantial amount. According to the applicant no.1 she is unemployed and not currently working anywhere. She is in need of Rs.50,000/- per month for their survival and basic necessities. Accordingly, the applicants prays for grant of interim maintenance to the tune of Rs.50,000/- per month.

5. Per contra the non-applicant has vehemently opposed the instant application on the ground that the applicant was never subjected to any acts of domestic violence from the non-applicant. According to the non-applicant no.1, the entire allegations leveled against him are false. He submitted that no such incidents took place. He submits that the entire contention about his earning is false and the applicants are not entitled for any maintenance. The non-applicant no.1 submits that he earns Rs.49,195/- as monthly salary and after all deductions he merely earns Rs.32,369/- per month. The non-applicant no.1 accordingly prays for rejection of the instant application.

6. I have carefully gone through the record. Both the parties have filed their affidavits showing assets and liabilities below Exh.8 & Exh.20 respectively. At the very outset, it is pertinent to note here that the relationship of applicants and non-applicant no.1 is not disputed at all. The applicant no.1 is legally wedded wife of non-applicant no.1 and applicant no.2 is their son. Hence, it is the legal

as well as moral duty of the non-applicant no.1 to maintain the applicants. It is also not disputed that the non-applicant no.1 is serving as Junior Engineer in Maharashtra State Electricity Development Corporation. Having said so now, I proceed to discuss the quantum of maintenance to be paid by the non-applicant no.1 to the applicants.

7. To prove the income of the non-applicant no.1, the applicants have relied on assets and liability disclosure affidavit filed below Ex.8 and affidavit filed by the non-applicant no.1 below Exh.20. Perusal of the assets and liability affidavit filed by the applicant shows that non-applicant no.1 earns around Rs.70,000/- per month. Further, the applicant has also filed on record the salary slips of the non-applicant no.1 acquired under the Right To Information Act. The said slips are filed along with list of documents at Exh.19. The said salary slips pertains to the month January 2020 to December 2023. The last salary slip is of the month December, 2023 and thus the same being latest, needs to be considered. Perusal of the said pay slip goes to show that the gross salary of the non-applicant no.1 is Rs.90,793/-. However, in the said salary, the non-applicant no.1 received arrears of dearness allowance amounting to Rs.9,560/-. Thus, the same has to be excluded which would show that the gross salary of non-applicant no.1 is approximately 81,500/-. Thereafter, it is seen that the non-applicant no.1 has availed deduction amounting to Rs.50,023/- resulting in net pay of Rs.40,770/-.

8. The non-applicant no.1 contends that he only earns

Rs.,32,000/- per month after necessary mandatory deductions and has submitted that major part of his salary goes towards deduction of various heads such as EPF, Company Contribution, Income Tax, MSEB Engineers Co-operative Fund, LIC Premium, Mediclaim etc.

9. However, I find no merit in the said submission at all. It is necessary to note here that the non-applicant no.1 cannot claim benefits of loan and deductions to avoid his responsibility to pay maintenance. The said position of law is very well settled by *catena* of judgments in which it has been held that moral and statutory obligations to maintain wife and children cannot be wriggled out by availing huge loans and deduction of EMIs would not be allowed.

10. Recently, the Hon'ble Allahabad High Court on 29/03/2024 has in case of ***Rana Pratap Singh Vs. Nitu Singh and 2 others reported in 2024 :AHC45224 (Criminal Revision No.1762 of 2023)*** held that the alleged deduction from gross salary of the husband due to payment for premium of insurance or installment of plots cannot be taken into consideration as no such deduction from gross salary is permissible in the eyes of law. Similar view was taken by the Hon'ble Punjab and Haryana High Court in ***Seema Vs. Gourav reported in 2019 ALL MR Cri.J. 306*** in which the Hon'ble Court directed that only involuntary deduction such as income tax, PPF etc. are to be excluded. The Hon'ble Court further held that PF, GIS, LIC Premium etc. are assets and the husband cannot be wriggled out of his obligation to maintain only by claiming that he is paying installments. The facts of the instant case are squarely covered

under the rulings cited *supra*. The non-applicant in the instant case cannot claim benefit of pending deductions of LIC, EPF etc. He cannot run away from his moral as well as legal responsibility to maintain the applicants.

11. Thus, out of 81,500/-, after mandatory deductions such as Income Tax, EPF, and mediclaim, the net salary of non-applicant no.1 comes up to Rs.65,700/- approximately. As discussed above merely deducting Co-Operative Fund, EPF and LIC premium cannot be a reason for non-applicant no.1 to not pay the applicants monthly maintenance. Thus, looking into the status, position of the parties, facts of the case, rising inflation and considering the life style as well as salary of the non-applicant no.1, I am of the view that non-applicant no.1 is liable to pay interim maintenance of Rs.10,000/- per month to applicant no.1 and Rs.3,000/- per month to the applicant no.2. Hence, I proceed to pass following order :-

<u>O R D E R</u>

1) Application is partly allowed.

2) Non-applicant no.1 is directed to pay interim maintenance of Rs.10,000/- (Rupees Ten Thousand Only) per month to applicant no.1 and Rs.3,000/- (Rupees Three Thousand Only) per month to applicant no.2 from the date of filing of application till further orders.

4) Parties to take note.

Digitally signed by SAGAR ASHOK INGLEY
Date: 2024.04.16 17:34:15 +0530

(S. A. Ingley)
Judicial Magistrate First Class,
Court No.2, Ichalkaranji.

Date :- 16/04/2024
Ichalkaranji.

CERTIFICATE

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

Name of stenographer	R. D. Jadhav.
Name of Court	S. A. Ingley. 2nd Jt. Civil Judge, Jr. Dn. & Judicial Magistrate F.C. Ichalkaranji.
Date of Dictation	16/04/2024
Judgment/order signed by P.O. on	16/04/2024
Judgment/order uploaded on	16/04/2024