

MHKO070005942019



**P.W.D.V.A. Application No. 12 / 2019
Megha Gitaje and ano. Vs. Amol Gitaje
Common Order below Exh. 4 and 24**

Application at Exh. 4 is under Section 23 of Protection of Women from Domestic Violence Act (in short “said Act”) claiming protection order under Section 18 ; residence order under Section 19 in respect of alienation of the properties mentioned in Schedule ‘A’ of application at Exh. 1 ; monetary relief under Section 20 ; and compensation order under Section 21 of said Act. Say of respondent is at Exh. 9. By way of Application at Exh. 24, respondent has requested for direction to applicant No. 1 allowing her to meet applicant No. 2 on every Saturday in public garden located in front of bus stand of Jaysingpur. Say of applicant is overleaf that application.

2- Perused both the applications at Exh. 4 and 24, and say filed by adverse parties thereto. Also perused Domestic Incident Report filed by Protection Officer at Exh. 30. Applicant No. 1 and respondent filed their respective affidavits of Assets and Liabilities at Exh. 29 and 31 respectively. Also perused documents filed on record by both the sides. Heard learned Advocates for both the

sides at considerable length. In the light thereof, following points arise for my determination and I record findings thereto for the reasons discussed thereafter.

Points	Findings
1- Whether there is <i>prima facie</i> :- case in favour of applicants ?	In the affirmative for applicant No. 2 only.
2- Whether applicants are entitled :- for any interim relief ? If yes, what ?	In the affirmative. As per final order.
3- What order ?	:- As per final order.

REASONS

As to Point No. 1 :-

3- It is the contention of applicant No. 1 that immediately after the marriage, respondent physically abused her on various counts and on various occasions. They were residing at Pune and there also respondent physically abused her. After birth of applicant No. 2, respondent use to raise suspicion about his legitimacy. Thereafter respondent started service at Sangali, and therefore the family shifted to Jaysingpur. During the festival of Ganpati in the year 2018, respondent abandoned applicants and left be live deserted life. Applicant No. 1 is doing temporary service in a school at Jaysingpur and maintain both of them at the mercy of her parents. Respondent is doing private service and earn

handsome salary. He also has irrigated agricultural lands and has handsome income from it. Despite thereof, he has not taken care or made any arrangement for livelihood of applicants.

4- All the allegations of applicants are specifically denied by respondent. According to him, on 21.09.2018, when he had been to his place of service, applicants left her marital house without giving any intimation whatsoever to him. As such, she left the company of respondent by her own will. He is ready to maintain applicants, however applicant No. 1 is not willing to reside with him, and thereby she is depriving respondent from natural love and affection towards herself as well as their son. He accordingly requested to reject the application.

5- It is not disputed by respondent that applicant No. 2 is his offspring from applicant No. 1. Whether respondent physically, verbally or economically abused applicants or not is a debatable question, which needs thorough trial. Also whether respondent drove applicants out of his house or they voluntarily left the company of respondent is another debatable question, which can be decided after thorough trial. Pleadings of both the sides on affidavit, cannot be taken into consideration at this juncture to decide as to which one is true and which one is not.

6- However, from the material on record, from his say at Exh. 9 as well as affidavit at Exh. 31 that from October 2018 till

date, that respondent has not made any voluntary contribution for maintaining applicants, and therefore applicant No. 1 has to look after for herself as well as minor applicant No. 2, who is totally dependent on her. It is further seen that respondent has not mentioned anything about agricultural income in his affidavit at Exh. 31, although applicants have filed on record 7/12 extracts of three agricultural lands standing in the name of respondent. Accordingly, *prima facie*, it is seen that respondent has not taken any pain or heed for maintaining applicant No. 2 or look after for his livelihood though having sufficient means as well as intentionally avoided to mention about agricultural lands and income derived therefrom in his affidavit at Exh. 31. However, the aspect as to whether said affidavit at Exh. 31 falls within false evidence or not can be considered after the trial only, and it will not be apt to conclude accordingly at this juncture.

7- Economic Abuse is included in the definition of Domestic Violence. From the abovesaid discussion, it is *prima facie* seen that respondent have committed Economic Abuse on applicant No. 2. Insofar as other forms of Domestic Violence on applicant No. 1 is concerned, I am of the view that the material on record is not sufficient enough to hold the same in favour of applicant No. 1, and the same can be better crystalised after the cross-examination of applicant No. 1 is completed. However, at the

same time, it cannot be denied that apprehension of applicants regarding alienation or creation of third party interest by respondent in said agricultural lands is reasonable and needs to properly addressed.

8- As a result of all the abovesaid discussion, I am of the view that applicants have succeeded to establish *prima facie* case only to the extent of Economic Abuse of applicant No. 2. I thus record finding accordingly to point No. 1.

As to Point No. 2 :-

9- In the light of my finding to point No. 1, I am of the view that applicant No. 2 is entitled for financial assistance from respondents. It is not clear from the record as to whether said agricultural properties mentioned in Schedule 'A' of application at Exh. 1 are ancestral properties of respondent or not. It is further seen that although applicants have included some household properties in Schedule 'A', those belong to father of respondent who is not party to this proceeding.

10- Despite thereof, considering the reasonable apprehension of applicants and more importantly considering the interests of applicants allegedly involved in said agricultural lands in the name of respondent, I am of the view that respondent shall be restrained from alienating or creating third party interest in agricultural lands mentioned in Schedule 'A' of application at

Exh. 1 by way or protection order under Section 18 of said Act ; as well as he shall be directed to pay interim monetary relief as per Section 20 to applicant No. 2.

As to Point No. 3 :-

11- In the light of my finding to point Nos. 1 and 2 as well as economic conditions of both the sides, I am of the view that applicant No. 2 is entitled for financial assistance to the tune of Rs.3,000/- (Rs. Three Thousand only) per month from the date of this application ; and considering interests of applicants involved in agricultural lands mentioned in Schedule 'A' of application at Exh. 1, respondent shall be restrained from alienating or creating third party interest in said properties, except for mortgaging it for agricultural loan or crop loan. In addition thereto, I am also of the view that applicant No. 2 is entitled for the costs for the cause.

12- However, it is hereby made clear that non-grant of any relief to applicant No. 1 shall not be construed as her disentitlement for any relief under said Act. It is also hereby made clear that after cross-examination of applicant No. 1, she is at liberty to move any application under Section 23 of said Act.

13- Insofar as the request of respondent to meet applicant No. 2 is concerned, there is absolutely no valid reason for applicant No. 1 to resist. By doing so, she is not only committing emotional abuse on respondent but also committing it on applicant No. 2.

However, unfortunately, it is required to make it clear that as per definition in Section 3, said act of applicant No. 1 cannot be termed as emotional abuse as she is not the respondent in this proceeding and the acts of respondent only are recognised as domestic violence by provisions of said Act. Considering the circumstances on record, I am of the opinion that suitable directions can be given to applicant No. 1 to let visit respondent with applicant No. 2.

14- Thus to conclude and answer point No. 3, I proceed to pass following order

ORDER

- 1-** Application at Exh. 4 is partly allowed and application at Exh. 24 is allowed.
- 2-** Respondent is ordered to pay interim monetary relief to the tune of Rs.3,000/- (Rs. Three Thousand only) per month to applicant No. 2 from the date of this application.
- 3-** He is also directed to pay cost of Rs.5,000/- (Rs. Five Thousand only) to applicant No. 2 towards costs of this application.
- 4-** Respondent is temporarily prohibited from alienating his interest or creating third party interest in agricultural lands bearing Gut No. 541, 546 and 1049 of village Alas, Tq. Shirol, Dist. Kolhapur, except for raising agricultural loan or crop loan, till decision of main proceeding.

- 5-** Applicant No. 1 is directed to bring applicant No. 2 in the garden in front of Jaysingpur Bus Stand on every Saturday between 06.00 pm to 08.00 pm. However, it is made clear that respondent shall not take any liberty to claim permanent custody or take away applicant No. 2 from the custody of applicant No. 1 or to commit any illegal act in respect of custody of applicant No. 2, based on this order.
- 6-** It is hereby made clear that applicant No. 1 shall be entitled for moving separate similar sort of application if respondent fail to cross-examine her within a period of six months from the date of this order.
- 7-** Issue copy of this order to the Protection Officer with direction to execute the order.
- 8-** Copy of this order be given free of costs to both the parties.

Date : 21.01.2023
Jaysingpur

(**Anand D. Karbhajan**)
Judicial Magistrate First Class,
Jaysingpur, Tq. Shirol, Dist. Kolhapur