



**ORDER BELOW EXH. No. 05 IN PWD.VA. NO.
24/2023.**

Priyanka Ravindra Nikam Vs. Ravindra Amruta Nikam Etc.01

This is the interim application of the applicant, filed u/s. 23 of the Protection of Women from Domestic Violence Act, 2005 (*hereinafter will be referred as the 'D.V.Act'*) for claiming interim maintenance, residence order, compensatory order along with the permission to meet the children.

Brief facts of the applicant case is as under:-

02. The applicant & non-applicant no. 1 are wife & husband of each other. Their marriage was solemnized on 11/12/2009 as per the Hindu rituals. Two son Aarush & Anshul are born to them out of wedlock. Anshul is of 13 years age and Aarush is of 08 years age. Both the children are residing with non-applicant no. 1.

03. It is specifically submitted that, 14 years has been elapsed since solemnization of marriage of both the parties. Initially the relation between both the parties was smooth. In fact, till January 2023 their relations were normal, but thereafter dispute was arose between them on account of extra marital affairs of non-applicant no. 1. Non-applicant no. 1 was misbehaving with the applicant. In fact, the non-applicant no. 1 was living extra marital life. However, to counter the same, non-applicant has started to allege on the character of the applicant. Non-applicant has specifically alleged that the applicant is in extra marital relationship with Sandip Patil, on that account on 07/03/2023 the non-applicant has assaulted the applicant. In fact, the applicant was driven out from her

residential matrimonial house on the said allegations by non-applicant no. 1. In spite of mediation in between both the parties through some senior persons, the non-applicant is not ready to accept the applicant.

04. It is the case of the applicant that on 13/03/2023, the applicant has approached before the Superintendent of Police, Kolhapur. However, application of grievance submitted by the applicant was decided by giving understanding to both the parties by the police. The applicant has registered offence u/s. 498 of the Indian Penal Code against the non-applicant. So also the non-applicant no. 1 has filed Divorce petition bearing H.M.P no. 123/2023 against the applicant. Both these proceedings are pending. The non-applicant is doing business of lodging. He is having house properties as well as agricultural properties. He is running business of Swarajya lodging at Nadi-kinara, Sidhnerli. Some shops are given on rent by him. Thus, he is earning a good amount. Therefore, he is capable to give interim maintenance of Rs. 15,000/- per month to the applicant. On the contrary, the applicant is having no means to satisfy her basic needs. She is solely depending on non-applicant no. 1 for her livelihood. Resultantly, as non-applicant no. 1 is earning Rs. 80,000/- to Rs. 85,000/- income per month, for claiming interim maintenance and other captioned reliefs, the current application is filed.

Brief facts of the non-applicants case are as under:-

05. The application is objected by the non-applicants through their say at Exh. No. 11. The non-applicants have specifically admitted relation between them. The non-applicants have admitted relation of Anshul & Aarush with them. It is specifically submitted by the non-applicants that after the solemnization of marriage, for two to three years, relation

between both the parties were smooth. Anshul was born on 04/07/2011 & Aarush was born on 28/08/2016. It is specifically submitted that, the applicant was misbehaving with non-applicant no. 2. She was misbehaving with non-applicants brother. She was in illicit relations with Sandip Patil. The same fact was known to the villagers. Sandip Patil was often used to call applicant. In fact, the said fact was known to the applicant's father. However, he was involved with the applicant. The applicant was in habit to steal & give the valuable properties to her father from her matrimonial house.

06. It is specifically submitted by the non-applicant no. 1 that, the applicant was in illicit relation with Sandip Patil. She was mixing some unknown powder in their food, which was directly affecting on the body of family members of the non-applicant. In fact, the said powder is given by Sandip Patil to her. Due to mixing of said powder in the food and because of consumption of that food, sexual life of non-applicant no. 1 was affected. As a result of which he was taking treatment from Dr. Shivanand Patil. In fact, it is alleged that the said powder was affecting on sexual life of the non-applicant no. 1 and therefore, intentionally said powder was given by Sandip Patil to the applicant for mixing it in the food.

07. It is specifically alleged by the non-applicants that, non-applicants brother has constructed a new house in the village. The said house was adjacent to the house of Sandip Patil. The applicant was using said house for keeping her illicit relations with Sandip Patil. The applicant has always resisted non-applicant no. 1 from keeping sexual relations with her. She was intentionally keeping distance with non-applicant no. 1, so that he can not establish sexual relations with her. The applicant

was use to keep some tablets in her vaginal part, so that non-applicant no. 1 could not establish sexual intercourse with the applicant. The said fact was later on came to the knowledge of non-applicant no. 1. It is specifically submitted that, the applicant was having some marks of scratching & biting on her body which were created by Sandip Patil, as Sandip was not liking physical relations of the applicant with non-applicant no. 1. Thus, due to these facts, the applicant has left her matrimonial home on 09/03/2023. Since then, she has not returned to her matrimonial home. She has instituted false case against the non-applicants family. The said misbehaving of the applicant is affecting on the minds of their childrens. Therefore, their childrens are avoiding to meet the applicant. On the basis of these reasons, the non-applicants have submitted to reject the application.

08. Heard Adv. Shri. A.J. Desai for the applicant & Adv. Shri. N.C. Patole for the non-applicants.

09. The following points are arise for my determination & my findings with respect to each of the points with reasoning thereon is as under :-

Sr. Nos.	Points	Findings
[1]	Whether the applicant has prove that, non-applicant no. 1 has prima-facie committed Domestic Violence on her ?	In the Affirmative.
[2]	Whether the applicant is entitled for the interim maintenance amount as claimed ?	In the partly Affirmative.
[3]	Whether the applicant is entitled to claim residential order as prayed ?	In the partly Affirmative.
[4]	Whether the applicant is entitled to receive Rs. 50,000/- as a help from the non-applicant ?	In the partly Affirmative.

Sr. Nos.	Points	Findings
[5]	Whether the applicant is entitled to obtain order in respect of meeting of her children for two days in every month ?	In the Affirmative.
[6]	What order ?	As per final order.

REASONS

As to point No. 1:-

10. Perusal of rival pleading of both the parties one thing is clear that relation between both the parties & their son Anshul & Aarush are admitted to each others. It is not in dispute that Anshul & Aarush are living with non-applicant no. 1. It is also admitted that at the moment applicant is living separately from the non-applicant. In fact, it is pleaded that, she is residing at her matrimonial home along with her father. The same fact is also not in dispute.

11. In the application she has specifically pleaded about the ill-treatment that was given by non-applicants family to her. It is specifically submitted by the applicant that non-applicant no. 1 was used to doubt on her character. It was alleged by the non-applicant no. 1 that the applicant was in illicit relations with Sandip Patil. It is specifically alleged that the applicant was keeping physical relations with Sandip Patil. Thus, these things are causing mental harassment to the applicant. On these ground, the non-applicant has assaulted the applicant on 08/06/2023 & 09/06/2023. The applicant was driven out by the non-applicant through his house. No doubt, the same facts are reiterated by the applicant in her supporting affidavit.

12. The provision of Sec. 23 pertaining to the interim maintenance

clearly provides that, if the allegations of ill-treatment or cruelty are supported with the affidavit, then it have to be taken into consideration at the time of deciding interim application. No doubt, the allegations pertaining to the ill-treatment by the non-applicants are made by the applicant on affidavit. There is a copy of First Information Report which denotes that the applicant has registered crime against the non-applicant u/s. 498 of the I.P.C. Recitals in it prima-facie demonstrates that, non-applicants were harassing the applicant on account of her illicit relations with Sandip Patil. One another non-cognizable report is there which denotes that the applicant has registered N.C.R. (Non-Cognizable Report on 29/03/2023) against the non-applicants, for assaulting her by fists & blows. No doubt, the non-applicants have alleged about the illicit relations of the applicant with Sandip Patil. But this is the interim stage, at the moment there is no record or evidence to prima-facie establish the allegations leveled by the non-applicants.

13. Indeed, I am aware that the F.I.R. is not a substantive piece of evidence, but the allegations of illicit relations are appearing in the F.I.R. These allegations are in consonance with the pleading in the application. Thus, as the allegations are made on affidavit. By taking base of the provision of Sec. 23 of the D.V. Act. I come to the conclusion that, prima-facie fact of domestic violence stands proved by the applicant. Resultantly, I answered point No. 1 in the affirmative.

As to point No. 2:-

14. The applicant through this application demanded Rs. 50,000/- per month as interim maintenance from the non-applicant no. 1. She has filed on record documents to suggest that non-applicant is wealthy person. The applicant has pleaded that, non-applicant is getting income

worth of Rs. 75,000/- to 80,000/- per month. Now, affidavits of assets & liabilities of both the parties are on record. Affidavit of applicant is on record at Exh. no. 20, in which she has stated that, she is not having any source of income. Per contra, affidavit of non-applicant no. 1 is on record at Exh. no. 14, which demonstrates that non-applicant is getting income but he is having different loans from different financial institutions. Therefore, after deducting all the expenditure, he is getting Rs. 15,000/- per month as his income, from which he has to satisfy expenditures of his childrens & mother.

15. It is pleaded by the applicant that, non-applicant is running a lodge by name Swarajya lodge. The applicant has produced on record one statement recorded by the police sub-inspector attached with Local Crime Branch, Kolhapur, which shows that the non-applicant no. 1 is doing business of lodging as well as Chinese tumbrel (गाडो). However, the document of Udyog Registration Certificate issued by the Government is there on record filed by the non-applicants which shows that Ravi Nikam i.e. brother of non-applicant no. 1 is owner of the same.

16. It is pertinent to note that, relations between the both the parties is still in existence. The non-applicants have not pleaded that, the applicant is having earning source or she is earning independently. At the moment, the applicant is wife of non-applicant no. 1. Therefore, by law, it is the responsibility of non-applicant no. 1 to maintain the applicant as she is his existing wife. Even though, there are certain documents on record to denote the income sources of non-applicant no. 1, but those documents are not sufficient to determine any fixed income of the non-applicant no. 1 so as to justify to award interim maintenance of Rs. 50,000/-, as claimed by the applicant. In the backdrop of these factual

aspects, the applicant will definitely be entitled to claim some sort of interim maintenance from non-applicant no. 1, but not of Rs. 50,000/-. Resultantly, I answered point no. 2 in the partly affirmative.

As to point No. 3:-

17. Through this application the applicant has demanded residence in her matrimonial house bearing house property no. 622/1 which is situated at Sidhnerli. During the course of argument, the applicant's advocate Mr. Desai has much stressed on the point that the applicant be permitted to reside in some rooms of the above mentioned property. No doubt, the non-applicant has not denied their ownership over this house property.

18. It is pertinent to note that, at the moment, relation of both the parties are much stressed due to the allegations of illicit relationship. It further appears that, non-applicant no. 1 has filed Divorce petition before the Civil Judge Sr. Dn. Kolhapur. The same is pending. The applicant has also filed prosecution u/s. 498 of the I.P.C. against the non-applicant no.1. Thus, these things denote current tough situation going on in between the parties. Indeed, the provision u/s. 19 of the D.V. Act, provides for residence order. The provision of Sec. 19(f) specifically provides as follows:-

Sec. 19(f):- “Directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require.”

19. No doubt, admittedly at the moment, the applicant is residing in her maternal home. By the above provision, it is the bounden duty of the

husband i.e. non-applicant no. 1 to make arrangement for the residence of the applicant. Thus, the non-applicant definitely have to make some arrangement for the residence of the applicant. Here, as discussed above, advocate for applicant Mr. Desai has sought for residence in above particular property. The above captioned provision of Sec. 19(f) vests the discretion in the Court to decide for appropriate order in respect of residence order if the circumstances so require. Thus, considering the on going tough situation in between both the parties, it will not be better to direct the non-applicant to provide her residence in property no. 622/1. On the contrary, it will be better to direct the non-applicant to pay rent for the same. In the result, I answered the same point accordingly.

As to point No. 4:-

20. The applicant is demanding Rs. 50,000/- as instant help to her. Indeed, source of income of the non-applicant is already discussed in point no. 2. The provision of Sec. 23 is itself clear which provides that, the applicant will be entitled to claim any relief u/s. 18, 19, 20, 21 & 22. The provision u/s. 22 deals with compensation order. Resultantly, as there is no determinate income of non-applicant no. 1, the applicant will not be entitled to receive Rs. 50,000/- as specific amount. But as the point no. 1 is answered in the affirmative, she will definitely entitled to receive some sort of compensation from the applicant. Resultantly, I answer the same point in the partly affirmative.

As to point No. 5:-

21. The applicant has demanded visit of her children from the non-applicant no. 1. No doubt, relation between both the parties are admitted. Relations with children are admitted. Therefore, considering the

provision of Sec. 21 of the D.V. Act, being natural mother, the applicant will definitely entitled for the right of visiting her childrens. Resultantly, I answer this point in the affirmative.

As to point No. 6:-

22. As points No. 1 & 5 are answered in the affirmatives and points No. 2 to 4 in the partly affirmatives, the application is liable to be partly allowed. Resultantly, in answer to point No. 6, following order is passed:-

:- ORDER :-

1. The application is partly allowed.
2. Non-applicant No. 1 shall pay amount of Rs. 5000/- (Five thousand only) per month to the applicant as a part of interim maintenance from the date of this application.
3. Non-applicant No. 1 shall pay amount of Rs. 2000/- (Two Thousand only) as a part of house rent to the applicant from the date of this application.
4. Non-applicant No. 1 shall pay amount of Rs. 20,000/- (Twenty Thousand only) as a interim compensation to the applicant.
5. Non-applicant No. 1 shall make an arrangement for visiting the childrens with the applicant on First & Third Sunday of every month.
6. Copy of this order be supplied to both the parties free of costs.

Kagal.
Date: 22/11/2023.

Sd/-.
(A. B. Jawale)
J.M.F.C, Court No. 2, Kagal.