



ORDER BELOW EXH. No. 05 IN P.W.D.V.A. NO. 20/2019.

Bhagyashri Sandip Patil Vs. Sandip Shamrao Patil

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'*) with request to obtain interim maintenance of Rs. 10,000/- per month & house rent of Rs. 5,000/- per month from the non-applicant no. 1, from the date of this application.

Brief facts of the applicant case is as under:-

02. The applicant is legally wedded wife of non-applicant no. 1. Their marriage was solemnized on 02/06/2017 at Kagal. The expenses of marriage were born by the applicants family. Initially relation between the applicant & non-applicant was smooth & cordial. But on different grounds the disputes were arose between the parties. However, by bearing those disputes, the applicant was co-habiting with the non-applicant. During her residence with the non-applicant, the non-applicants were used to abuse her in a filthy language.

03. As per the applicant, while fixing marriage, it was told to the applicants family that the non-applicant no. 1 is having 04 acre agricultural property, he is having 4 R plot. However, in fact the non-applicant is not possessing any such property as is told by him. The said fact is also misrepresented in the bio-data of the marriage given by non-applicant no. 1. On revealing such fact, when the applicant had asked explanation to the non-applicant, the non-applicant has raised dispute with the applicant. The non-applicant used to torture the

applicant. He used to harass her mentally as well as physically. In spite of fact that, non-applicant is wealthy person, he used to demand money from the applicants family. In the year November 2017, the non-applicants have demanded Rs. 1,00,000/- for repairing work of their house. When the applicant has refused to fulfill said demand, the non-applicants have driven out her from their house. The applicants maternal family have tried to resolve the dispute, but their efforts went in vein.

04. It is the case of applicant that, after leaving of matrimonial home, the non-applicants have not made any arrangement for her livelihood. The applicant on 29/08/2019, through her advocate Shri. Nitin Shinde has issued notice to the non-applicants for demanding maintenance. The notice was falsely replied by the non-applicants through their advocate Shri. Sandip Jadhav. The non-applicant is doing a work in private company at Kolhapur. He is earning Rs. 22,000/- per month. He is having 01 acre agricultural land situated at Kembali. He is earning Rs. 1,50,000/- income from the same. He is having cattles at his home, through which he is earning Rs. 18,000/- to 20,000/- per month. The non-applicants have intentionally avoided to maintain the applicant. Resultantly, to claim relief against it, this application is filed.

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

05. The application is objected by the non-applicants through their say at Exh. No. 10. It is specifically submitted that all the allegations made in the application are false. The non-applicants have never caused any harassment of the applicant as stated in the application. They have never demanded Rs. 1,00,000/- from the

applicants family. The non-applicants have never abused the applicant. The non-applicants have specifically submitted that marriage of the applicant with non-applicant is duly performed as per the consent of both the families. The non-applicants no. 2 to 5 are residing separately. Therefore, they are no way concerned with this case.

06. It is specifically submitted by the non-applicants that, the applicant was willing to marry with Niraj Sakhalkar resident of Anant roto, Kagal. However, forceably marriage of the applicant was performed with this non-applicant. On that aspect, Niraj Sakhalkar has given threat to the non-applicant no. 1. As a result of which, on 10/07/2017 the non-applicant no. 1 has filed report before Kagal Police Station. On inquiry with the applicant, the non-applicant came to know that her marriage with the non-applicant was performed against her will. The applicant has opposed to establish any marital relations with the non-applicant no. 1.

07. As per the non-applicants, inspite of due admonition & understanding, the applicant is not willing to co-habit with the non-applicants. The applicant herself has left her matrimonial home on 15/07/2019. Thereafter, she has issued false notice through her advocate to which this non-applicant has given proper reply. The non-applicant is not doing any work in the company. He is the agricultural labor. He is earning Rs. 300/- per day when he used to get the labor work. He is not having any income as submitted by the applicant. Therefore, with these contentions, the non-applicants have submitted to reject the application.

08. Heard Adv. N.J. Shinde for the applicant & Adv. K.S. Kasote 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 prima-facie prove that, non-applicant no. 1 has committed Domestic Violence on her ?	In the Affirmative.
[2]	Whether the applicant is entitled for the interim maintenance of Rs. 10,000/- per month from the date of this application ?	In the partly Affirmative.
[3]	Whether the applicant is entitled for the house rent of Rs. 5,000/- per month from the date of this application ?	In the partly Affirmative.
[4]	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, marriage of the applicant & non-applicant no. 1 is not disputed. In fact, both the parties have admitted their relations with each other. It is also not in dispute that till today marriage between the applicant & non-applicant no. 1 is still in existence. The applicant has specifically pleaded about the ill-treatment & harassment given to her on different grounds by the non-applicant no. 1 & his family. Those allegations are specifically quoted by the applicant in her notice, which was issued by her to the non-applicants. Those contentions are in-consonance with the pleading made in the current application. No doubt, this is the

interim application. As per the provision of Sec. 23 of the D.V. Act, if those contentions are made on affidavit, they have to be taken into consideration at this stage. The allegations as submitted in the application are made on affidavit. Resultantly, by taking base of provision u/s. 23 of the D.V. Act. Those allegations stands prima-facie proved. Hence, I answered point No. 1 in the affirmative.

As to point No. 2:-

11. The applicant has demanded Rs. 10,000/- per month as a interim maintenance. However, no except oral submission, no definite source of income is produced on record by the applicant. The applicant has pleaded that the non-applicant no. 1 is earning Rs. 22,000/- per month from his salary and he is earning different incomes from the agricultural as well as cattle properties. However, there is no document to corroborate those source of incomes. The affidavit of assets & liabilities of both the parties is on record. The affidavit of applicant is on record at Exh. no. 10/A and the affidavit of non-applicant is on record at Exh. no. 11. The applicant has mentioned in the affidavit about the income source of the non-applicant no. 1. The non-applicant has specifically mentioned in the affidavit that he is agricultural labor and he is earning Rs. 300/- per day whenever he used to do the work.

12. Indeed, it is not the case of non-applicants that, they have not made any arrangement of the applicant for her livelihood. At the moment, relation between the applicant & non-applicant is in existence. Therefore, as a husband it is duty of the non-applicant no. 1 to maintain his wife i.e. the applicant. Indeed, it appears that, the non-applicant is qualified person who has completed B.A. degree. It is not his case that, he is unable to earn income due to his physical inability.

Even if it is considered that he is earning Rs. 300/- per day, it implies that he is getting some income from his labor work. There is no determinate income source on record so as to entitle the applicant to get interim maintenance of Rs. 10,000/- per month. However, she will definitely be entitled to receive some sort of interim maintenance around from the non-applicant no. 1. In the result, I answered point no. 2 in the partly affirmative.

As to point No. 3:-

13. Through this application the applicant has demanded Rs. 5,000/- per month house rent from the non-applicant. But, there is no document on record to denote that house rent of Rs. 5,000/- is going on at the premises where the applicant is currently residing. As per the provisions of Sec. 19 of D.V. Act, it is the responsibility of non-applicant no. 1 to make arrangement for the residence of the applicant. Resultantly, the applicant will be entitled to receive house rent, but not of Rs. 5,000/-. Resultantly, I answer point no. 3 in the partly affirmative.

As to point No. 4:-

14. As point No. 1 answered in the affirmative and points No. 2 to 3 in the partly affirmatives, the application is liable to be partly allowed. Resultantly, in answer to point No. 4, 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. Copy of this order be given to both the parties free of costs.

Kagal.

Date: 01/12/2023.

Sd/-.

(A. B. Jawale)

J.M.F.C, Court No. 2, Kagal.