

	<u>Order Below Exh. 05 In P.W.D.V.A. No. 07/2021.</u> (Passed on this 19th day of October 2022) <u>Bhageshri Vrs. Pravin & Ors.</u> CNR No.MHLA060004502021
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01] The applicant has filed the main application U/Sec. 12 of the Protection of Women from Domestic Violence Act, 2005 (Hereinafter referred as 'D.V. Act' for convenience). In the said application the applicant has filed interim application *Vide* (Exh.05) seeking interim maintenance *vide* Section 23 of the D.V. Act, from Non-applicants.

02] In a nutshell, case of applicant, in brief that, she is legally wedded wife of the Non-applicant No.01. Her marriage with the Non applicant No.01, took place 24.12.2014, as per their rites at Nagthan, Tq. Ahmedpur, Dist. Latur. Further applicant has contended that, after marriage she had been to Non-appellants for cohabitation. Initially for two to three years the behaviour of the Non-applicants towards the applicant was good. Then after the behaviour of the Non-applicants were changed towards the applicant and they started harassing the applicant.

03] However, Non-applicants were started providing ill-treatment to applicant on the count of illegal demand of Rs. 10,00,000/-, for doing business. They were harassed physically and mentally on the count of applicant has issue-less. The applicant was forcibly driven out of the matrimonial house. The applicant states that she is a house wife and having no source of income. Their marriage is in subsistence.

04] The applicant has told her parents about the

harassment at the hands Non-applicants. Applicant's father and her relatives went to the house of the non-applicants and have requested not to harass applicant; but in vain. Non applicants were threatened to applicant and driven her out of house. Thereon, applicant has lodged report against the Non-applicants at the Kingaon police station. The P.S. Kingaon was registered Crim No 28 of 2021 for the offence punishable Under Section 489-A, 109, 506 rw. 34. of the Indian Penal Code.

05] The applicant is resided at the house of her parents. The applicant's parental family is poor, therefore, they are not in a position to maintain the applicant. However, the applicant is unable to any work and therefore, the applicant approached to this Court moved the present application. Further, contented that, Non-applicant No.01 is veterinary doctor. He is doing private service, from which he is getting monthly salary of Rs 80,000/- to 90,000/-. Non-applicants having irrigated agricultural land bearing Gat No.138 Adm. 03 Hector 71 Ares at village Bori Bharaj, Tq. Ambajogai, Dist. Beed, from which they are getting yearly income of Rs.10,00,000/-. So as the financial condition of non-applicants are good. Therefore, she has prayed for ad-interim maintenance to the tune of Rs.25,000/- (In words Twenty five Thousand only) till the disposal of main application.

06] Non-applicants appeared and filed their say on main application at (Exh.18). They have adduced pursis below (Exh.20) and submitted that, their say below (Exh.18) be treated as say of present application. According to them, they have not

driven out the applicant, from their house. The applicant has voluntarily left the house of Non-applicants. They are ready to cohabit with the applicant; but applicant is not responding. They further submitted that, applicant is having sufficient income source. Hence, they prayed for rejection of application.

07] On the pleadings of both the parties, I framed the following points and my findings thereon are as follows.

No	<u>POINTS</u>	<u>FINDINGS</u>
1	Whether the application prima faice discloses that Non-applicants have committed domestic violence.	...Yes.
2	Whether the applicant has no adequate sources to maintain herself ?	...Yes.
3	Whether the Non- appellant no.1 has sufficient means ?	...Yes.
4	Whether applicant is entitled for relief as sought.	Yes, per month Rs.8000/-
5	What order	As per final order.

-: REASONS :-

08] I have heard Mr.D.L. Ghogre Advocate for applicant has invited attention towards the various incidents of domestic violence stated in the petition and submits that petitioner was subjected to domestic violence. He further states that due to cruelty, applicant is not residing with Non-applicants. Applicant has no source of income and Non-applicants having sufficient income. Moreover, she is unable to maintain herself and having more expenditures for daily needs. Hence, interim maintenance is granted.

09] I have heard Mr. S. N. Jawale Advocate for Non-applicants. It is submitted that, the applicant has voluntarily deserted the Non-applicants. Non-applicants having no more income. Non-applicant No.01 is living with his parents as joint family member. He is own earning member of his family, therefore all other members are depended on him. Therefore, Non-applicants are unable to pay any maintenance to applicant. As the applicant has voluntarily deserted, she is having sufficient source, she is able to herself. Therefore, applicant is not entitled to interim maintenance.

Point No. 01 :- (As to prima facie case)

10] Before adverting to the controversial aspects, it is desirable to see the admitted position. The relation between the parties are still in subsistence. After marriage, applicant went for cohabitation with Non-applicants. Both are leaving separate from each other,

11] Needless to state that parties to the proceeding are not required to prove their contentions beyond reasonable doubt. If at all the application is disclosing prima facie incidents of domestic violence then applicant is entitled for reliefs under sections 18 to 22 of the D.V. Act. What is domestic violence is stated in Sec. 3 of the D.V. Act, which includes physical abuse, sexual abuse, verbal and emotional abuse and economic abuse. Said abuses are specifically described in explanation clauses of Section 3 of the D.V. Act. In the backdrop of said provision, it is necessary to determine as to whether or not present petition is

disclosing incidents of domestic violence as contemplated in Section 3 of the D.V. Act.

12] On having scrutiny of application it appears that applicant has made allegation that the non-applicants were started providing ill-treatment to applicant on the count of illegal demand of Rs. 10,00,000/- for doing business. They were harassed physically and mentally on the count of applicant has issue-less. The applicant was forcibly driven out of the matrimonial house. Thus, she has lodged report to P.S. Kingaon. In sum, applicant has *prima facie* shows that she is subjected to 'physical abuse', as well as, 'verbal and emotional abuse' as defined in explanation clauses of Section 3 of the Act. Thus, the application is *prima facie* discloses that applicant was subjected to the domestic violence as contemplated in section 3 of the Act. Accordingly, **Point No.01 is answered in affirmative.**

Point Nos. 02 and 03 :- (As to source of income)

13] In view of affirmative finding to Point No. 01, the *prima facie* case is in favour of plaintiff. In the circumstances, it would need to see the source of income. As mentioned earlier that, both of them denied their source of income. Therefore, I have gone through the record. Applicant has adduced by copy of 7/12 extract of land bearing Gat No.138 and copy of Holding of Non-appellant No.01. Further, she states that Non-appellant No. 01 is veterinary doctor.

14] Non-appellants did not adduce single document to

show the source of income of applicant as pleaded. It means that, the financial condition of Non-applicant N.01 is better one than applicant. Thus, the applicant has prim facie established that, she is unable to maintain herself. Likewise, Non-applicant No. 01 having condition to maintain applicant. As mentioned earlier the applicant is residing at her parents house. Needless to state that it is moral, as well as, statutory liability of the husband to maintain his wife.

15] The only objection raised by non-applicants that, the applicant is voluntarily residing with her parents against his will, is not sufficient to prove. In the present case, it is not the case of respondent that he is maintaining the petitioner. In sum, petitioner is deprived from economic and financial resources to which she is entitled. Hence, petitioner is also subjected to the 'economic abuse' as stated in explanation clause (iv) of S.3 of the Act. Accordingly, **Point Nos.02 and 03 are answered in affirmative.**

Point No. 04 :- (As to relief)

16] At the outset of the matter, it is to be noted that, non-applicant No.01 is not paying expenses toward her maintenance. Thus, applicant is entitled to interim maintenance in present application under Section. 23 of the D.V. Act. However, there is no record about applicant is getting maintenance in any other proceeding from the present Non-applicant No.01.

17] Moreover, while deciding quantum of maintenance, it

is necessary to consider standard of living of parties, basic needs of petitioner, earning capacity of Non-appellant No. 01 and present market. Needless to state that prices of essential commodities are rising day by day. It is necessary to make provision for diet, medicine and clothing of the applicant. In present case it is undisputed that, applicant is not residing with Non-applicants. The final hearing of main application may take long time. During this period applicant cannot be left with the mercy of her fate. Some provision for her livelihood needs to be made. It is legal and moral duty of Non-applicant No.01 to maintain his wife.

18] From record, the main application is filed by applicant on 25.02.2021. Since then, the Non-applicant No.01 has not paid any amount to applicant, which shows economic deprivation of applicant at the hands of non-applicants, considering factual position of matter and relationship between the parties, it is a fit case to grant interim maintenance section 23 of D.V Act. Thus, the applicant is entitled to Rs. 8,000/- (Rupees Eight Thousand only) per month as interim maintenance from the date of application. Accordingly, **Point No. 04 is answered in affirmative.**

Point No. 05 :- (As to what order)

19] In the backdrop of above discussions and in view of my findings on Point Nos.01 to 04, it is crystal clear that, the applicant is prima facie discloses that she was subjected to the domestic violence as contemplated in Section 3 of the D.V. Act.

Thus, the application, Hence, in the result and my finding to Point No.05, I pass the following order;-

:-O R D E R:-

1. The application is partly allowed.
2. The Non-applicant No.01 **Pravin S/o Eknath Shinde** do pay Rs. 8,000/-(Rupees Eight Thousand only) per month to the applicant, as interim maintenance from the date of filing of this application i.e. 25.02.2021 till the disposal of this case.

(Dictated and Pronounced in open Court).

Place :- Ahmedpur.

Date :- 19.10.2022.

(Shyam S. Tondchire)

Judicial Magistrate First Class,
(Court No.3), Ahmedpur.