

MHLA090045572023



P.W.D.V.A. Appl. No. 81/2023
Saraswati Vs. Umakant & ors.

ORDER BELOW EXH.5

1. This is an application filed by applicants No.1 to 4 vide provisions of section 23(1) of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as “the D.V. Act” for the sake of brevity and convenience) and thereby sought for interim maintenance of Rs.5,000/- each per month.

2. The case put forth by the applicant in brief is that, applicant No.1 is the wife of respondent No.1, applicants No.2 to 4 are the minor daughters of applicant No.1 and respondent No.1, respondents No.2 and 3 are the parents in law of applicant No.1, respondent No.4 is the brother-in-law, respondent No.5 is the wife of respondent No.4 whereas respondent No.6 is the cousin grand father-in-law of applicant No.1. According to the applicants, applicants No.2 to 4 are the minor daughters and applicant No.1 being a biological mother, is their guardian. The specific case put forth by the applicants is that on 21.04.2006, applicant No.1 married respondent No.1 at Subash Nagar, Tal. Loha, Dist. Nanded as per the prevailing customs in Hinduism. According to them in the said marriage, her parents had given Rs.2,00,000/- as Vardakshina, 1 tola of gold ring and all the household articles. All the expenses of the marriage has been born by her parents.

3. It is the specific case of the applicant that since the second day of her marriage she had been received taunts from the respondents on account of trivial reasons such as her parents did not give dowry for, fall short to do hospitality in the marriage etc. Since she being a newly

wedded bride, still she had to manage all things in the house. According to them, respondents No. 1 to 3 upon instigation by respondents No.4 to 6, were taunting her and thereby give trouble to her on one or the other count. To save the nuptial knot and on the ray of hope that the nature of respondent will change in due course, she keep on cohabitation. According to applicants, while applicant No.1 was pregnant for the first time, she had to do all the household chores as like a domestic maid. On 24.11.2010 she has begotten applicant No.3 and on 04.03.2012 she has delivered applicant No.4, still she never permitted to go at her parental house.

4. According to the applicant, the respondents were used to suspect her character and on its count they used to torture her. They used to say that merely on the income of agricultural field, they are unable to manage the family affairs, they have to set up a flour mill in the village and therefore they need Rs.5,00,000/-. The applicant should bring said Rs.5,00,000/- from her parents. Since her parents were labourers and they do not possess such capacity to pay. Therefore she could not fulfill the said illegal demand. On account of her failure to fulfill such unlawful demand, she had been kept on starvation by the respondents. According to the applicants, on 09.10.2012 at about 11.00 P.M. while applicant No.1 was aslept, respondent No.1 has assaulted her by means of Katti (an instrument used for cutting branches of shrubs) and therefore applicant No.1 had to receive treatment for almost 1 month. Since applicant No.1 has received a serious beating, her parents had brought her at their house and since then she has been residing at the mercy of her parents along with applicants No.2 to 4.

5. On the occasion of festivity of last Diwali, when she had been to her matrimonial house, the respondents have taken a stand that

they are unable to identify her and asked her who she is. On 12.05.2013, when applicant has attempted to cohabit with respondent No.1 by attending her matrimonial house, the respondents did not allow her to cohabit unless she fulfill their demand of Rs.5,00,000/-. Hence, being left with no alternative with her, she was constrained to reside at her parental house. According to the applicants, since her ouster from the matrimonial house, respondent No.1 did not take their care on any point.

6. On the point of income of respondent No.1, it is stated by the applicant that respondent No.1 has ancestral agricultural land, they have a flour mill and therefrom they generates income of Rs.35,000/- to 40,000/- per month. Further the respondents are having an agricultural land in survey No.17 admeasuring 2 H. 12 R and in survey No.170 admeasuring 91 R. Both lands are situated within limits of village Kekatsindgi, Tal. Jalkot, Dist. Latur and are irrigated lands. From the said lands, the respondents get net income of Rs.5,00,000/- to 7,00,000/- per annum. Respondent No.4 has been serving as a police personnel and he gets handsome salary. None of the respondents is dependent upon the respondent No.1 for their livelihood. Due to scarcity of means of livelihood, the applicants are unable to lead their life. The applicants are leading their life at the mercy of parents of applicant No.1. The applicants do not have any source of income. In the present days hike is at its peak and for the purpose of education, food, clothes, shelter, medication etc. they are indeed in need of Rs.5,000/- each per month. Further they have sought for house rent of Rs.8,000/- per month. Hence, the instant application for the relief sought for.

7. Despite sufficient opportunities the respondents have failed to file their either say to the instant application or their affidavits of assets and liabilities. Hence, considering the object of this special legislation

and urgency put forth by the applicants, the instant application is taken up for decision without the say and affidavits of assets and liabilities of the respondents.

8. I have heard Shri. S. B. Kalwale, learned advocate for the applicants for some time. Considered submissions and perused the record.

9. Following points arise for my determination, the reasons therefor along with findings thereon are as under :

| <u>Sr. No.</u> | <u>Points</u> | <u>Findings</u> |
|----------------|---|------------------------------------|
| 1) | Whether the applicant prima-facie shows that, she is an aggrieved person ? | Yes. |
| 2) | Whether the application prima-facie discloses that, the respondents are committing or have committed acts of domestic violence against applicants ? | Yes. |
| 3) | Whether the applicants are entitled for interim maintenance as prayed ? If yes, for what amount ? | Yes, @ Rs.1,000/- each per month. |
| 4) | Whether the applicants are entitled for rent amount of Rs.8,000/- per month ? | Yes, Rs.2,000/- per month only. |
| 5) | What order ? | The application is partly allowed. |

REASONS

ADMITTED FACTS :-

10. The marriage between applicant No.1 and respondent No.1 is an admitted fact. The birth of applicants No.2 to 4 from the said wedlock is also not in dispute. The separate residence of the parties is also not in dispute. However, the reason behind such separate residence is contested by the litigating parties.

AS TO POINTS NO. 1 TO 3 :-

11. Since the above points are interlinked, to avoid repetition of facts and considerations thereon, they are taken together for decision.

12. The applicants have come with the case that, the respondents have committed domestic violence on them and they are aggrieved person. Before adverting to the facts of the instant case, I would like to refer to the above important terms. The term “aggrieved person” is provided under section 2(a) whereas “Domestic Violence” is provided under section 3 of the D.V. Act, 2005. On conjoint reading of both the provisions, it reveals that for being aggrieved, a woman must be in a domestic relationship with respondents and she must have alleged that she has been subjected to any act of domestic violence as provided under section 3 of the D.V. Act, 2005. Section 3 of the D.V. Act, provides certain acts to be called domestic violence.

13. Admittedly, applicant No.1 is a woman and she is the wife of respondent No.1 and daughter-in-law of respondents No. 2 and 3 respectively whereas applicants No.2 to 4 are the minor daughters of applicant No.1 and respondent No.1. Applicant No.1 has stated in her application that after her marriage she had been for cohabitation with respondent No. 1 at village Kekatsindagi. She has resided there along with all the respondents until her ouster. The applicant claimed that the house of respondents is a shared household. Further the applicant has stated that, the respondents were frequently asking her to bring Rs.5,00,000/- from her parents and on account of her failure to comply with said unlawful demand, on 09.10.2012 she has been received beating by means of a Katti and fist and kick blows followed by ouster. At the cost of repetition I would like to state that despite sufficient opportunities, respondent No.1 failed to file his say to the application

under consideration. Therefore, the case put forth by the applicant as to her stay in a shared household prima facie appears to be genuine. Thus, prima-facie I hold that the applicant was resided in domestic relationship with respondents in a shared household.

14. The applicant has specifically contended that her marriage has been solemnized with respondent No.1 on 21.04.2006. During the wedlock, she has delivered applicants No.2 to 4. During her stay with the respondents, they have ill-treated her by keeping on starvation, by taunting, by beating and by making illegal demand of Rs.5,00,000/- for setting up floor mill etc. She further stated that, since she has attempted to resume cohabitation, the respondents have taken stands that unless and until she bring an amount of Rs.5,00,000/- they will not allow her to cohabit. All these allegations have been supported by an affidavit. Thus, the case put forth by the applicant cannot be doubted atleast at this initial stage.

15. While dealing with an application under section 23(1) of the D.V. Act, mere allegations made in the application are sufficient. It is not expected from the applicants to bring the proof of pleaded allegations. Same thing is applicable to respondents as well who are also not supposed to prove or disprove any allegations by or against them. Respondent No.1 has not denied the matrimonial relations between him and applicant No.1 by contesting the instant application. Further he has not denied by filing say the relationship with applicants No.2 to 4 with him. Furthermore, separate residence of the applicants is also not denied. Therefore, the only aspect warrants consideration is whether the application prima-facie discloses that respondent No.1 is committing, or has committed or there is any likelihood that he may commit an act of domestic violence against the applicants.

16. Petition discloses specific instances as to illegal demand, verbal and emotional abuse and also of physical abuse to applicant No.1 by the respondents. It is not on record that despite the separate residence of the applicants, the respondent has provided any means of livelihood to them. This certainly amounts to refusal as well as neglect on the part of respondent No.1 to ensure the living and to maintain the applicants. These instances, narrated by applicant No.1, certainly fulfill the ingredients of the term “Domestic Violence” as defined in section 3 of the D.V. Act. Thus, I hold that the circumstances as well as allegations in the application certainly discloses the prima-facie existence of domestic violence. Further I hold that prima-facie applicant No.1 is an aggrieved person within the meaning of section 2(a) of the D.V. Act. Therefore, I answer Points No.1 and 2 in the affirmative.

AS TO POINT NO. 3 :-

17. As considered above, respondents have prima-facie committed acts of domestic violence. It is relevant to mention here that it is the legal as well sacrosanct duty of the husband to maintain his wife and children, still respondent No.1 is miserably failed to fulfill his legal and moral duties as well. According to the applicants, applicant No.1 does not have any source of income to earn their livelihood. As against this, respondent No.1 is having fertile agricultural land and therefrom he generates an amount of Rs.5,00,000/- to 7,00,000/- per annum. Further, he runs a flour mill and gets amount to the tune of Rs.35,000/- to 40,000/- per month therefrom. Hence, they have claimed an amount of Rs.5,000/- per month each for themselves towards their interim maintenance.

18 On this point, the most celebrated verdict of the Hon’ble Supreme Court in the case of **Rajnesh Vs. Neha (2021) 2 SCC 324**, is

relevant. The Hon'ble Supreme Court has laid down a slew of directions to be considered while determining a quantum of maintenance in all cases seeking maintenance. As per the said decision while considering the quantum of maintenance, the status of parties, reasonable need of wife and children, if the children are school going then their education expenses and fees of extra coaching classes, medical expenses of wife and children, basic needs of wife and children including food, shelter and clothing etc. has to be taken in to consideration. Moreover, the maintenance amount awarded must be reasonable and realistic and avoid either of the two extremes i.e. maintenance awarded to the wife should neither be so extravagant which becomes oppressive and unbearable for the respondent, nor should it be so meager that it drives the wife to penury. The sufficiency of the quantum has to be judged so that the wife is able to maintain herself with reasonable comfort. The applicant No.1 has filed her affidavit as to assets and liabilities whereas respondent No.1 failed to file the same. Thus, it needs to be gone through.

19. In the said affidavit the applicant has stated her general expenses as Rs.20,000/- per month. She has shown expenses of education and summary of general expenses as Rs.5,000/- each per month. She has shown no sources of income to earn her livelihood. Whereas respondent No.1 has failed to file the same on record. In such scenario, adverse inference can be drawn against the respondent No.1. The applicant has stated that the respondents have fertile agricultural land. To fortify her stand she has filed on record 7/12 extracts of land block No.170, 174 and 238 located within limits of village Kekatsindgi, Tal. Jalkot, Dist. Latur. Perusal of 7/12 extract of block No.170 reveals that an area of 91R land stands in the name of respondent No.2, whereas 20 R land also stand in the name of respondent No.2 in block No.174 and 2H 12R in the name of

respondent No.2 and Ambadas Eknath Chate jointly. Further a land of 18R is standing in all four names inclusive of respondent No.2.

20. The applicants have filed on record the valuations certificates of those lands as well. However, the valuations of those lands are not relevant here at this stage. Considering the above 7/12 extracts it is clear that almost 2H 20R land stands in the name of respondent No.2. Though these lands are not directly in the name of respondent No.1, still he has not denied the contentions of the applicant by contesting the same. Thus, vide section 114 of the Indian Evidence Act, 1872 it could be safely inferred that respondent No.1 generates some income from these agricultural lands. Further according to the applicants, respondent No.1 runs a flour mill and gets income of Rs.35,000/- per month. On this point also adverse inference can be drawn against him. The Court is vigilant enough that other family members are also dependent upon the said income. In addition to it the respondent No.1 being an able bodied could certainly earn money from labourer work as well. Thus, I hold that the respondent No.1 has a good source of income.

21. During pendency of this application, applicant No.1 would have certainly required money to enable her and applicants No.2 to 4 to lead their life with dignity and to contest this application as well. The respondent No.1 has not made any arrangement of expenses of the applicants. Being a father, a responsibility cast upon him to bear the expenses of the applicants. Therefore, the applicants must be awarded with some sort of interim monetary relief in the form of interim maintenance. Admittedly the applicants are residing in rural area. Applicant No.1 in the application and in her affidavit as to assets and liabilities mentioned particulars of schooling, tuition expenses of applicants No. 2 to 4 etc. The applicants stated the income of respondent

from agriculture land is of Rs.6,00,000/- per year and Rs.35,000/- per month from flour mill. The applicants have filed the 7/12 extracts of those land, however they have not filed any prima-facie proof as to income from said flour mill. Therefore, considering the basic needs such as food, clothing, basic medication, shelter of applicants and schooling of applicants No. 2 to 4, coupled with tentative income of respondent No.1, I think it fit to grant the interim maintenance at the rate of Rs.1500/- each per month to applicant Nos.1 to 4 from the date of this application. Therefore, I answer point No. 3 in partly affirmative and record my findings accordingly.

AS TO POINT NO.4 :-

22. This point pertains to residence order. According to the applicants, either the respondent should accommodate them in his house or if it do not work then he should arrange them separate residence or pay rent of Rs.8,000/- per month. However, considering the bitter relations between the parties it would not be just and proper to direct respondent No.1 to make arrangement in his own house to accommodate the applicants. Now, I begin to consider where the applicants are residing since her ouster. On this point it is the case of the applicants that they have been residing with the parents of applicant No.1 in rented accommodation. Though no documents filed in support of their averments, still at this initial stage no strict proof is required. It would be out of place to mention here that wherever they resides, they would have paid rent thereof, whether it is the house of her mother or others. Thus, it cannot be expected that had the applicant residing in rented accommodation she would have filed either rent receipts or affidavit of the landlord on record. Thus, I hold that it is not just and proper to expect for rent receipts etc. at this initial stage. Hence, an amount of Rs.2,000/-

per month needs to be granted as against house rent to the applicants. With these reasons, I answer point No.4 in partly affirmative and record my findings.

AS TO POINT NO.5 :-

23. In view of findings recorded to points No. 1 to 3, the applicants is entitled to interim maintenance at the rate of Rs.1,000/- per month each and Rs.2,000/- per month as against house rent, both from the date of this interim application i.e. 16.10.2023. Therefore, in answer to point No.5 following order is passed :

ORDER

- 1) The application is partly allowed with costs.
- 2) Respondent No.1 is hereby directed to pay an amount of Rs.1,000/- (One Thousand rupees only) to applicants No. 1 to 4 each per month towards the interim maintenance.
- 3) Respondent No.1 is hereby directed to pay an amount of Rs.2,000/- (Two Thousand rupees only) to the applicants per month towards the house rent.
- 4) The above directions shall be complied with on or before 5th day of every English Calendar month.
- 5) Respondent No.1 shall pay the above both amounts from the date of filing of this application i.e. from 16.10.2023 till the disposal of the main application.

- 6) A copy of this order be supplied, free of costs, to the applicants and respondent No.1.

Date : 22.08.2024.
Place : Udgir.

(Bhalchandra R. Zende)
Judicial Magistrate (F.C.),
(Court No.4), Udgir.