



ORDER BELOW EXH. 3 IN PWDVA APPLICATION No. 09/2019

(Shobha and Another Vs. Antram)

(CNR No. MHLA 130008802019)

The present application is filed by the applicants under section 23 of the Protection of Women from Domestic Violence Act, 2005.

2] By filing the present application, it is submitted by the applicants that, the applicant no. 1 is mother of applicant no. 2 and the non-applicant is the husband of applicant no. 1 and father of applicant no.2. The marriage of applicant no. 1 and non-applicant was solemnized according to Hindu rites and rituals on 19-04-2001. Out of said marriage applicant no. 1 gave birth to applicant no. 2 Radha. Now the applicant no. 1 is taking care of applicant no. 2. The applicant no. 2 is now taking her education at Dayanand Science Collage, Latur in 11th Standard.

3] Further it is submitted by the applicants that, the non-applicant filed divorced application bearing HMP No. 204/2017. Being aggrieved by the said decision the applicant no. 1 has filed appeal before Hon'ble High Court bench at Aurangabad.

4] Further it is submitted by the applicants that, after marriage of applicant no. 1 and non-applicant, for first two years the non-applicant cohabited with applicant no. 1 in good manner but thereafter, he started demanding Rs. 2,00,000/- from the father

applicant no. 1 and started physical and mental torture. The father of applicant no. 1 gave Rs. 2,00,000/- to the non applicant and the non-applicant used the said amount for the purpose of constructing the house at Renapur, where the applicant no. 1 is residing now. Thereafter, also the non-applicant keep demanding the amount from the father of applicant no. 1. The non-applicant has got Government Job on the place of his deceased first wife on the compassionate ground. The applicant no. 1 was residing with non-applicant at the places where the non-applicant was posted. During the year 2014, when the applicant was residing at the house of non-applicant at Renapur, the non-applicant filed application u/s. 9 of The Hindu Marriage Act, for restitution of conjugal rights bearing No. 22/2014. Before Hon'ble Civil Judge Senior Division, Latur. In the said application the non applicant purposefully gave the address of applicant no. 1 as residing at Sumanwadi Tq. Ambajogai Dist. Beed, even though the applicant no. 1 was residing with non-applicant and misleading the court and he got the decree. It is further submitted by the applicants that, applicant no.1 filed an application U/s. 12 of The Protection of Women from Domestic Violence Act, 2005, bearing no. 137/2014 before Judicial Magistrate First Class, Latur. After filing said application the non-applicant approached to the applicant and he assured the applicant no. 1 that, he will treat her well therefore, she did not proceed with the said application.

5] The applicant no.1 further submitted that, she has no source of income and due to Court cases her state of mind is not well and therefore, she is sick. It requires Rs. 14,000/- per months for her livelihood and medical expenses. The Applicant no. 2 is taking her education at Dayanand Science Collage, Latur and including her collage and tuition fees it requires Rs. 20,000/- per months. On the other hand

the non-applicant is having government job and he is getting salary of Rs. 40,000/- per month. The non-applicant is having two houses other than the house wherein the applicants are residing at present and those houses are given on rent. The non-applicant is getting Rs. 18,000/- as a rent from those houses. Therefore, by filing the present application the applicant no. 1 has prayed Rs. 14,000/- per month as interim maintenance and the applicant no. 2 has prayed Rs. 20,000/- per month as interim maintenance and Rs. 2,00,000/- for her educational fees.

6] The non-applicant filed the say on main application at Exh. 8 and filed a Pursis at Exh. 10 stating that, the say filed on the main application be treated as say on interim application. By filing his say, he has admitted his marriage with applicant no. 1 and admitted the paternity of applicant no. 2 but denied other contents regarding demand of money. He admitted that, the decree of divorced is passed but denied pending of Appeal before Hon'ble High Court Bench at Aurangabad. According to non-applicant, he had made every attempt to call the applicant no. 1 for co-habitation and when applicant no. 1 did not come then he filed application for restitution of conjugal rights. In the said proceeding also applicant no. 1 did not appear. When after passing the decree of restitution of conjugal rights the applicant no.1 did not come to cohabitation for the period of one year he filed petition for divorce bearing no. 22 /2014. According to the non applicant the said petition was decreed and the decision is in existence as the applicant no. 1 has not challenge the said decree. The applicant no. 1 filed application under the provisions of Protection of Women from Domestic Violence Act, bearing no. 137/2014, in the said proceeding the applicant no. 1 did not proceed therefore the said application was dismissed for want of prosecution. As the earlier application of the applicant no. 1 is dismissed for want of prosecution she is not entitled to

file the present application. further the applicant does not come under the preview of section 2(1) of The Protection of Women from Domestic Violence Act, 2005. According to non-applicant, the applicant no. 2 is taking the education on he is bearing all her educational expenses therefore, there is no need to give her separate maintenance. The non-applicant further submitted that, he has filed application before Hon'ble District Court, bearing M .A. No. 83/2020 for her custody and said application is pending. The non-applicant denied the contents of his economic condition. According to non-applicant, the applicants are not entitled for any relief therefore, he prayed that, application may be rejected.

7] From the rival pleadings of the parties, following points arise for determination and I have recorded my findings against of each of them for the reasons stated below.

POINTS

FINDINGS

- | | |
|--|---------------------|
| 1. Whether applicant is entitled for interim relief as to maintenance as prayed? | Partly affirmative. |
| 2. What order? | As per final order. |

8] Heard, both the sides. It is the admitted fact that, the marriage of applicant no. 1 and non-applicant was solemnized on 19-04-2001 out of said weed look there is birth of applicant no. 2. Further it is admitted fact that, by way of decision in H.M.P. no. 204/2017 the divorced has been took place between applicant no. 1 and non-applicant.

9] The non-applicant has challenge the present application stating that, earlier the applicant no. 1 had filed an application u/s. 12 of The Protection of Women from Domestic Violence Act, 2005, bearing

137/2014 the said application was dismissed for want of prosecution and without restoring the said application the applicant no. 1 has filed present application therefore, the application is not maintainable. On this point, the learned advocate for applicants submitted that, The Protection of Women from Domestic Violence Act, 2005, for the benefit of women. Section 28 of this Act states that, the Court can lay down its own procedure for disposal of application therefore, subsequent application does not create any bar. The applicants are residing separately, they have no income source, the non-applicant is not maintaining them therefore, it is an economic abuse and it is a continuing cause of action therefore, the applicant can file another subsequent application. Bearing in mind the argument advanced by the learned Advocate for the applicants it is seen that, admittedly there is no provision in the act which states that, there is bar to file subsequent application under this Act also there is no provision regarding to file an application for restoring the previous application therefore, applicant can file subsequent application for maintenance under this Act.

10] The another objection taken by the non-applicant that, as the divorced is taken place the applicant no. 1 is not entitled for maintenance. The learned advocate for the applicants argued that, even though the marriage is resolved by the decree of divorce then also the applicant is also entitled to file an application u/s. 12 of The Protection of Women from Domestic Violence Act, 2005, in order to, substantiate his argument the learned advocate applicants relied on the case of *Juveria Abdul Majid Patni Vs. Atif Iqbal Mansoori and another reported in 2015 ALL M.R. Cri. 2912*. He further relied on the judgment of Hon'ble Bombay High Court, in the case of *Atmaram S/O. Narayan Sanap vs Sangita W/O. Atmaram Sanap And others, Cri. Rev. Application no. 286/2018 decided on 05-11-2019*. On the other

hand the learned advocate for the non-applicant relied on the case of *Smt. Sadhna Hemant Walwatkar vs. Hemant Shalikramji Walwatkar in Cri. Rev. Application no. 121 of 2018* decided on 18-04-2019. Stating that, divorced wife is not entitled for maintenance.

11] Now it is essential to bear in the mind the significance of D.V. Act as a progressive and beneficial piece of legislation, intended to protect women from being subjected to domestic violence and to prevent the occurrence of domestic violence in society. The object of the Statute provides that it is to provide for more effective protection of rights of woman guaranteed under the Constitution of India, who are victims of violence of any kind occurring within the family. The wide definition of “aggrieved person”, “domestic relationship” and “respondent” in sections 2 (a), (f) and (q) and other provisions testify that they are of wide amplitude and the cause of action for any relief under the Act is not confined to the factors of time and space with regard to the matrimonial relationship, but extends beyond their limits, if it has a rational nexus with the domestic relationship, past or present.

12] In the present case, it is the contention of the non-applicant that, there is a decree of divorce, therefore, the applicant is not entitled to get maintenance. But decree of divorce does not show that, in the application for divorce contents regarding future maintenance of the present applicants. The allegations made in the application are after 2 years of marriage . The marriage is dissolved in the year 2019, then what about the allegations raised by the applicant in the present application. Therefore, any act of violence which satisfies the definition of

Section 3 of the Act has nexus with the past matrimonial relationship. Therefore, the act of domestic violence once committed subsequent decree of divorce will not absolve the liability of the non-applicant. I have also gone through the judgment of Hon'ble Apex Court in the case of *Juveria Abdul Majid Patni Vs. Atif Iqbal Mansoori and anr. decided in Criminal Appeal No. 2069/2014*, wherein the Hon'ble Apex Court has held that, the divorce wife is entitled to get maintenance. Even-though the facts of said case are different from the case in hand as there was divorce between the parties by customary law. But taken into consideration the law laid down in the said case the divorced wife is entitled for maintenance. Specifically the following observations from paragraph no. 30 are relevant:

"30. An act of domestic violence once committed, subsequent decree of divorce will not absolve the liability of the respondent from the offence committed or to deny the benefit to which the aggrieved person is entitled under the Domestic Violence Act, 2005 including monetary relief under Section 20, child custody under Section 21, compensation under Section 22 and interim or ex parte order under Section 23 of the Domestic Violence Act, 2005."

13] So far as the decision in the case of Smt. Sadhana w/o Hemant Walwatkar is concerned, it seems to be per incuriam in as much as the decision in the case of Juveria Abdul Majid Patni has been refused to be followed when it clearly distinguishes the decision in the case of Inderjit Singh Grewal. Rather it has been erroneously observed that the decision in the case of Juveria Abdul Majid Patni was considered by the Supreme Court in the case of Inderjit Singh Grewal. Therefore the non applicant is not entitled to derive any benefit from the decision of Smt. Sadhana w/o Hemant Walwatkar. The Hon'ble Bombay High Court in the case of *Atmaram S/O. Narayan Sanap vs Sangita W/O. Atmaram Sanap And others* in Criminal Revision

Application no. 286 of 2018 decided on 5th November 2019 wherein it was held that, “ Divorced wife is also entitled to get the maintenance under the provisions of the Protection of Women From Domestic Violence Act, 2005”

14] It is come on record that, the non applicant has not made any arrangement for the livelihood of the applicants. The applicant no.1 is not having any source of income, such act of the non applicant comes under the purview of economic abuse. Therefore, prima facie it is seen that, there is economic abuse. Therefore, the applicant is entitled to get maintenance under the Protection of Women from Domestic Violence Act.

15] According to applicant, the non-applicant is serving in the Panchayat Samiti. It means he is having sufficient income source. The exact source of income of the non-applicant will be come on record at the time of hearing, when both the parties will lead the evidence on this point. But meanwhile till deciding the main application it is necessary to grant interim relief to the applicants considering that, applicants have no source of income to take care of themselves day today needs in today's high cost of living. Considering the above discussion I am of the opinion that, if the non-applicant is directed to pay interim maintenance of Rs. 2000/- per month jointly to the applicant nos. 1 & 2 till final disposal of main application will be sufficient. Further it is seen that, the applicants have prayed for Rs. 2,00,000/- as education expenses of applicant no.2 but regarding the same she has not placed any documents on record. Hence, based on above discussion I answer point no.1 as partly affirmative and in order to answer point no.2 I proceed to pass following order :-

ORDER

1. The application is partly allowed.
2. The non-applicant is directed to pay interim maintenance of Rs. 2,000/- (Rs. Two Thousand) per month jointly to applicant nos. 1 and 2 from the date of decision of this application.

(Dictated and pronounced in open Court.)

Date : 26.10.2020
Place : Renapur.

(Omprakash M. Mali)
Judicial Magistrate, F.C., Renapur.