

:-ORDER BELOW EXH. 1 IN C.C.NO. 27/DV/2021 :-

1. By way of present application and affidavit applicant prayed for interim maintenance for herself and her son. It is contended in the application that she was subjected to the Domestic Violence. The respondent has caused emotional as well as economical abuse. Therefore, she prayed for Rs. 50,000 per month for herself and Rs. 1,50,000/- for her son from the date of application.

2. Per contra application is strongly resisted by the respondent contending that she was subjected to the Domestic Violence rather the applicant has not performed her duty as a wife. She had left the house when sister of the respondent suffering from cancer, she went for the vacation. Even she was not returned from the vacation to attend the funeral of close one. The serious allegation of extra marital affair with one Mr. Saish Shetty was also made in the application. It is contended in the say that the applicant was in Singapore when the Shetty was in Singapore and when the applicant was in Kashmir that said Shetty was in Kashmir. According to the respondent applicant has purchase joint property with Saish Shetty in Pune. Therefore, according to him she is in adulterous relationship with the Shetty. Therefore, he prayed for rejection of the application.

3. Considering the rival controversy between the parties, following points arose for my consideration for which I have given my findings for the reason to follow;

<u>SR.</u>	<u>POINTS</u>	<u>FINDINGS</u>
<u>NO.</u>		
1.	Whether applicant prima facie shows that she is subjected to Domestic Violence ?	...In the affirmative.

2. Whether applicant is entitled for monitory relief ...In partly affirmative.
in the form of maintenance ?

3. What Order ? As per final order.

-: **REASONS** :-

AS TO POINTS NOS.1 AND 2 :-

4. Heard both Counsels for the respective parties. The applicant have made allegation of emotional as well as economical abuse by the respondent. On the other hand respondent have also made an application for not taken care of his family and unnecessarily dragging him in matter along with the collusion of Shetty. She is having extra marital affair with Saish Shetty. Therefore, he prayed for dismissal of the application.

5. The Domestic Violence is concern there is specific allegation of emotional and economical abuse. On the other hand there is allegation of extra marital affair.

6. There is word against word. It is the fact that applicant has purchased the property with the Shetty. However, this fact does not mean that she is having affair with him. Photographs of Shetty are filed on record which was posted on social media. But he alone appears in those photographs. There is no proof that the applicant is with him during his visits to Singapore and Kashmir. Prima facie there is nothing on record to show that she is having extra martial affair with the Saish Shetty.

7. The applicant is asking for the maintenance. Therefore, it is for her to prima facie show that she was subjected to the Domestic Violence.

To show Domestic Violence it is her contention that respondent has not financially helped her, it is causing emotional and economical abused. So far as her contention of not providing financial assistance is concern no where it is contended by the respondent that after the separation he has provided financial help to the applicant or child.

8. It is urged on behalf of the respondent that applicant is having good financial condition. She has taken admission of her son in the reputed school. She is maintaining herself by paying rent of Rs. 45,000/-. She is serving as a teacher and taking tutions. Account of the applicant also shows that there is huge transaction from her account. Merely because the applicant is having good financial condition does not mean that respondent is escape from his liability to maintain the child as a father. Admittedly he has not provided any emotional and financial assistance to the son. Therefore, on the basis of this it can be prima facie said that applicant is subjected to the economical abuse.

9. Apart from it the respondent has made serious allegations against the applicant that she is having extra marital affair with the Saish Shetty. Making allegation on the character of the wife itself is emotional abuse, which is one of the type of Domestic Violence. The respondent has made serious allegation on character of the applicant who is his wife. There is no proof on record in support of this contention but making allegations on the character of the woman is certainly causing emotional abuse to her. Therefore, as emotional abuse is one of the type of Domestic Violence. It prima facie shows the applicant was subjected to the Domestic Violence.

10. Once Domestic Violence is prima facie shown, applicant is entitled for several reliefs in Domestic Violence Act. Firstly, applicant has

asked Rs. 50,000/- for herself son and Rs. 1,50,000/- for her son. Both the applicant and respondents have filed their affidavit of assets and liabilities which shows that the respondent is having income more than 10,00,000/- per annum. Applicant has also filed assets and liabilities along with the bank statement and salary slip. This shows that the applicant is also having good financial condition and she has receiving handsome salary from the school as well as she used to take tutions and earned from it. The bank statement of the applicant shows that she has received cash in her account. Therefore, she can maintain herself. She herself contended that she has paying rent of Rs. 45,000/- per month. It shows her good financial condition. Therefore, she being caring lady can maintained herself and not entitled for maintenance of Rs. 50,000/- per month for herself is liable to be rejected.

11. She has also asking for the maintenance of Rs. 1,50,000/- for her son. She has given the details of the fees structure of her son and ask for the maintenance. While awarding the maintenance the financial condition of the applicant as well as respondent plays an important role. The respondent's income is more than Rs. 10 Lakh per annum. Therefore, he is also having capacity to pay the maintenance to his son. Though maintenance of Rs. 1,50,000/- was asked by the applicant. But it is huge amount and not reasonable. Merely because the applicant is also having good financial condition and she is earning lady. Does not mean that it is her responsibility alone to maintained the child. No doubt she can also help in the education of her son. Therefore, looking the financial condition of the respondent it will be proper to award the maintenance of Rs. 35,000/- per month from the date of application to the son of the applicant as an interim maintenance. Hence, I answer point no. 1 in affirmative and point no. 2 in partly affirmative.

AS TO POINTS NO. 3:-

12. In view of above discussion in answer to this point. I pass the following order -

ORDER

- 1) The application is partly allowed.
- 2) Respondent is hereby directed to pay interim maintenance of Rs. 35,000/- per month to the son of the applicant as an interim monitory relief from the date of the application.
- 3) Copy of the order be given to the parties free of cost.

Date:- 08/07/2022

**(Nadeem A. Patel)
Metropolitan Magistrate,
40th Court, Girgaon, Mumbai.**