

IN THE COURT OF THE METROPOLITAN MAGISTRTE,
49TH COURT, VIKHROLI, MUMBAI.
C.C.NO.93/DV/15

Sheetal Khona and others ----- Applicant

V/s.

Gautam Khona and others ----- Respondents

ORDER BELOW EXH.32

1] This is an application for modification of interim order dated 16/01/2016 filed u/sec. 25(2) of The Protection of Women from Domestic Violence Act, 2005 (for short D. V. Act.) Perused application Exh.32 and reply Exh.34. Heard both sides.

2] It is submitted on behalf of respondent no.1 that, respondent no.1 is directed to pay interim maintenance of Rs.12,000/- per month to the applicant and her two children Bharvi, aged 14 years and Chirag aged 12 years collectively from the date of application till final adjudication of the matter. It has not been specifically mentioned as to how much amount of interim maintenance has to be paid to each of the applicant. The applicant no.1 is not properly utilizing the entire amount causing injustice to the applicant no.2 and 3. Therefore, the respondent no.1 prayed modified the order and to divide the interim maintenance amount between the applicants and sought direction to deposit the amount of each applicant in the bank accounts of each applicant separately. Hence, this application.

3] The applicant no.1 has filed for say vide Exh.34 and submitted that there is no change in circumstance as contemplated u/sec. 25(2) of D.V. Act. The respondent no.1 is in arrears of nearly Rs.1,94,000/- (Rupees One Lakh Ninety Four Only). The court has collectively ordered to pay monthly maintenance amount of Rs.12,000/- to the applicant no.1. Hence, there is no question to divide the amount in the

name of each of the applicant as prayed for. Therefore, the application is devoid of any merit. Hence, it be rejected with cost.

4] I have gone through the record of the case. Heard learned counsel for both sides at length.

5] It is not disputed that the applicant no.1 is wife of respondent no.1 and applicant no.2 and 3 are their children. It is also not disputed that my Ld. Predecessor has passed an order dated 16/01/2016 and has directed respondent no.1 to pay interim maintenance of Rs.12,000/- per month to the applicant and her two children Bharvi, aged 14 years and Chirag aged 12 years collectively from the date of application till final adjudication of the matter. Now, it is the contention of respondent no.1 that the applicant no. 2 and 3 are major and applicant no.1 is not looking after them. The applicant no.1 is spending the entire amount of maintenance on her shopping etc.. Hence, he prayed to divide the interim maintenance amount between the three applicants. It is not disputed that the applicant no.2 and 3 are now major. The applicant no.2 Bharvi has filed an affidavit vide Exh.40 and applicant no.3 Chirag has filed an affidavit vide Exh.49. Both of them has submitted that their father is looking after them and applicant no.1 is spending all the maintenance amount on herself on shopping. Bare perusal of order below Exh.06 shows that the amount of Rs.12,000/- has given collective in the hands of the applicant no.1. Now, the children are major. It is specifically submitted by them that they are major and looked after by their father. Hence, now here on they needs no separate maintenance from their father. Therefore, it is necessary to modify the order in the changed circumstances.

6] It is contented on behalf of that respondent no.1 is working as RTO agent and is earning Rs.1,00,000/- per month. He has purchased

Ertiga Car. It is pertinent to note that the respondent no.1 has appeared in this case in July, 2016 itself. Still respondent no.1 has not filed any say to interim maintenance application or in respect of main petition. As already stated the interim maintenance order has been passed ex-parte. Therefore, there is no alternative but to accept the contention of the applicant no.1 that respondent no.1 is working as RTO agent and earning handsomely. However, there is no proof to show that he is earning Rs.1,00,000/- per month. However, it can be fairly assumed that respondent no.1 is earning at least Rs.40,000/- to Rs.50,000/- per month. While deciding the quantum, it is necessary to take into account that this children are dependent upon him. Therefore, quantum of maintenance has to be decided in view of income of the respondent No.1 and the prevailing inflation, the daily needs such as food, clothing, medicine, rent required for the applicant no.1 and expenditure needed for respondent no.1 and Bharvi and Chirag. Thus, having regard to it, it would be proper to direct the respondent no.1 to pay monthly interim maintenance of Rs.10,000/- per month to the applicant no.1 from today.

7] Now question arises as to the arrears of the maintenance. Now, both children have become major. There is no concrete evidence on record to show that the applicant no. 1 had spent the amount of interim maintenance on shopping instead of looking after the children. Therefore, the order of my Ld. Predecessor cannot be modified in view of these affidavits filed on 19/01/2018 and 02/03/2019. It is submitted on behalf the applicant no.1 that she had incurred expenditure for looking after the applicant no. 2 and 3. Her contention is to be believed as no mother would spend the maintenance amount on shopping instead of looking towards her children. On the other hand it is the contention of applicant no.1 that applicant no. 2 and 3 have filed

their affidavits only under undue influence of the respondent no.1 as the applicant nos.1 to 3 and respondent no.1 resides in the same room. The contention of the applicant no.1 that these applicants have filed affidavit under influence of father cannot be ruled out and appears to be plausible one. Therefore, it would be proper to direct respondent no.1 to pay arrears of maintenance as per order dated 16/01/2016 to the applicant no.1 till 01/03/2019. Hence, I pass the following order :-

ORDER

- 1) The application is partly allowed and order below Exh.06 dated 16/01/2016 is modified as per sec.25(2) of D.V. Act.
- 2) The respondent no.1 is directed to pay interim maintenance of Rs.10,000/- (Rs. Ten thousand only) per month to the applicant from today till final adjudication of the matter.
- 3) The respondent no.1 shall pay arrears of interim maintenance amount till 01/03/2019 as per the previous order below Exh.06 dated 16/01/2016 to the applicant no.1.
- 4) Copy of this order be provided to the parties free of cost as per section 24 of the Domestic Violence Act.

(Dictated and pronounced in open court.)

sd/-

(H. B. Sirsalkar)

Vikhroli, Mumbai.
Date : 02/03/2019

Metropolitan Magistrate,
49th Court, Vikhroli, Mumbai.

Dictated directly on computer : 02/03/2019
Typed on : 02/03/2019
Ready on : 02/03/2019

gsp***