

**IN THE COURT OF METROPOLITAN MAGISTRATE,
67TH COURT, BORIVALI, MUMBAI**

C.C.NO.215/DV/2021

Mrs. Renee Aaryl D'Sa

... Applicant.

V/s.

Mr. Aaryl Gerwon Arthur D'Sa

... Respondent

ORDER BELOW INTERIM APPLICATION
(Passed on 08.02.2023)

1. This is an application filed by the applicant U/sec.23 of the Protection of Women From Domestic Violence Act, 2005 (herein referred to as to "Domestic Violence Act") for grant of monetary reliefs and other reliefs.

2. In view of pleadings of the applicant, following points arise for my determination in which I have recorded my findings for the reasons there under-

POINTS

FINDINGS

1. Whether applicant has made out prima-facie proof of incident of domestic violence against her ?

In the affirmative.

2. Whether the applicant is entitled to interim maintenance against the Respondent ?
If yes, at what rate ?

Yes.

As per final order.

- | | |
|--|---------------------|
| 3. Whether applicant is entitled for separate accommodation ? | Yes. |
| If yes, what would be the amount of rent ? | As per final order. |
| 4. Whether applicant is entitled for education fee of child viz Avior? | In affirmative. |
| 5. Whether applicant is entitled for Protection order ? | In the negative |
| 6. What order ? | As per final order. |

REASONS

3. Perused the application. Read entire documents placed on record and written notes of argument filed by respondent as well as heard Ld Advocate for both sides at length.

4. Before discussion on the points, I would like to mention here that the applicant is wife of respondent and she is residing separately from respondent No.1 alongwith her son viz Avior.

AS TO POINT NO.1.

5. Interim maintenance being an ancillary relief to the main relief. It is necessary for the applicant to make out prima-facie case for that purpose. It means she has to prima-facie prove domestic relationship, her inability to maintain herself, sufficient material, respondent's income and refusal or neglect on the part of respondent to maintain the applicant as well as the domestic violence on the part of respondent.

6. At the time of deciding application for interim relief, report of Protection Officer and affidavit of the applicant is sufficient to prove prima-facie incident of domestic violence. In the present case protection officer has not filed his report. Contents of application are supported by affidavit of applicant. According to contents of the application, there was physical and mental torture to the applicant by the hands of respondent as well as he ill-treated her. Therefore, she lodged present complaint against the respondent. These facts are prima-facie incidents of domestic violence.

7. According to the respondent that, he has not committed any domestic violence upon the applicant. On the contrary, applicant has filed present application only with intent to humiliate and harass him as well as his family as the applicant went through depression and was hallucinating which was diagnosed as a 'schizophrenic relapse' and she abruptly stopped taking medication hence he asked for earlier original medical records and have been insisting that applicant must avail of medical treatment. The present application is not maintainable because the applicant has filed the present application by suppressing true facts. Under such circumstances this fact needs to be prove after concluding trial. However, at this stage, nothing material came on record to disbelieve the contents of the said application of the applicant. Therefore, applicant prima-facie proved that there is incident of domestic violence against her. Hence, I answer point No.1 in the affirmative.

AS TO POINT NO.2.

8. Applicant requested for interim maintenance of Rs.1,00,000/- per month for herself and her minor son viz Avior. It is settled Principal of Law that, if any person having sufficient means of income and he refuses or neglects to maintain his wife, who is unable to maintain herself, then wife is entitled for maintenance u/sec.125 of Cr.P.C. It appears from record that applicant is wife of respondent and at the time of discussion on point, it is found that prima-facie there is incident of domestic violence against the applicant. Hence, applicant has sufficient reason to reside separately from respondent. Nothing material came on record to show that respondent made arrangement for separate maintenance for the applicant. It means, the respondent refused and neglected to maintain the applicant.

9. According to the applicant, respondent is working in the shipping industry and working onboard the ship as the chief officer and earns Rs.5,00,000/- to Rs.6,00,000/- per month. Hence, he can easily give monthly maintenance to herself. However, respondent No.1 is denied this content and states that upto 28th December 2019 he had been sailing as a Marine officer and on-board vessels around 6 months or so in a year as determined by contracts. He was scheduled by his company to join the vessel on or around 20th March 2020 however, due to lock downs due to the covid-19 pandemic in India and abroad he did not receive any employment contract. Currently he employed with Tele Performance Pvt Ltd as a Senior Customer Service Associate from 5th July 2021 and drawing salary Rs.24,240/- gross per month. He also filed affidavit with respect to employment status and submitted that, he discontinued on 15th September 2021 as the organization required him to their Thane office

and he was suffering from persistent backache due to long travel hour. He joined Klpta business solution and worked from 27th September 2021 till December 2021 and drawing salary Rs.22000/- gross per month. Presently he is taking home tuitions and undergoing treatment for persistent backache due to muscle spasm and drawing an amount of INR 15000/- per month. Hence he is unable to give separate maintenance to the applicant. On the contrary, applicant is well educated with MBA in Finance and Inter CA and worked at Globe Op Financial Service till 20 April 2011, from 25 April 2011 to 17 January 2015 at Morgan Stanley but also at Mumbai Metro Rail Corporation Ltd from 26th October 2015 to 31st July 2017 under the maiden name Renee Robert Rodrigues and presently she is employed with Genmart generic Pvt Ltd since 01st July 2020 hence she maintain herself.

10. As per argument advanced by the Ld. Advocate for respondent that, there is no any evidence to support the claim by applicant that respondent treated her with cruelty and applicant is sufficient source of income and maintain herself therefore she is not entitled for maintenance. With these submission she relied upon following citation of The Hon'ble Supreme Court as well as The Hon'ble High Court.

1. Judgment of The Hon'ble Supreme Court of India in the case of Sharda v/s. Dharmpal reported in AIR 2003 SC 3450.
2. Judgment of The Hon'ble Bombay High Court in the Case of Ms. Payal Sudeep Laad @ Payal Sharma v/s. Sudeep Govind Laad in Criminal Application No.186/2018.

11. However, Ld advocate for applicant submitted that, respondent totally deserted, neglect and abandoned to the applicant as well as her son since 13/03/2020. He failed to take care and maintain the applicant and child. He has sufficient source of income and he is being the husband of applicant and father of son viz Avior and applicant has not having sufficient source of income hence respondent is duty bound to maintain applicant as well as her son. With these submission he relied upon following citation of Hon'ble High Court.

- (1) Judgment of Hon'ble Supreme Court in case of Anju Gard and anr Vs Deepak Kumar Garg in Criminal appeal No.1693/2022 (Arising out of SLP (Cri) 10353/2018)
- (2) Judgment of Hon'ble Supreme Court in the case of Shamima Farooqui Vs Shahid Khan in Criminal appeal No.564-565 of 2015 (arising out of SLP (Cri) No. 6380-6381 of 2014)
- (3) Judgment of Hon'ble Supreme Court in the case of Sunita Kachwaha & ors. Vs Anil Kachwaha in Criminal Appeal No.2310/2014 (Arising out of SLP (Cri) No.2659/2012)
- (4) Judgment of Hon'ble Bombay High Court in the case of Sanjay Damodar Kale Vs Ms Kalyani Sanjay Kale in Criminal Revision Application No.164/2019

12. I have gone through the submission made by both parties and also perused the above-said judgments and documents placed on record. Though, respondent submitted that, applicant is well educated with MBA and she has sufficient source of income. Therefore, she is capable and maintain herself. But I do not find any substance in his argument because it is settled principle of law that though applicant is

having some income but it does not mean that, she is not entitled to claim maintenance from her husband. On the contrary, respondent is the husband of applicant and he cannot shun away from his responsibility of providing maintenance to the applicant. Therefore, considering the ratio laid down by Hon'ble Apex Court as well as Hon'ble Bombay High Court in above said judgments which is filed by the applicant and income of respondent applicant is entitled for interim maintenance from the respondent.

13. Under such circumstances respondent is the husband of the applicant and it is his moral duty to maintain his wife. In such a situation, applicant is not having sufficient source of income and she is dependent on respondent. Hence, looking to the lifestyle of both parties and income of respondent and considering fact and circumstances of the case Rs.10,000/- per month to applicant and Rs.5,000/- per month to her son viz Avior is necessary for interim maintenance from the date of filing of this application till disposal of main application. Therefore, I answer point No.2 in affirmative.

AS TO POINT NO.3.

14. Ld. Advocate for applicant submitted that, respondent has totally deserted, neglect and abandoned to the applicant as well as her son since 13/03/2020. He failed to take care and maintain the applicant and child. The parent of her went to the Respondent's house on 28/06/2020 but they were not taken inside the house nor did they open the door for the best reason known to them. Hence, applicant is entitled for permanent accommodation.

15. On the contrary Ld. Advocate for respondent submitted that, after the birth of the minor son and the psychotic relapse suffered by the applicant her doctor clearly stated that, she can not be alone in the house. Hence applicant is not entitled for separate accommodation.

16. Heard both sides as well as document placed on record it shows that, nothing material is on record to show that separate arrangement can be made at the hands of respondent. Nothing material is on record to show that applicant has separate accommodation.

17. By considering facts and circumstances of the case, respondent being husband of applicant is bound to make arrangement for separate accommodation. By considering income of respondent, he can pay Rs.10,000/- per month as rent for separate accommodation to the applicant from the date of this order till disposal of main application and it is necessary for the applicant. Therefore, I answer point No.3 in the affirmative.

As to point No.4 :-

18. The applicant requested for educational fees/charges of child viz. Avior. Though she has not filed any documentary evidence to show the educational fees or expenses incurred by herself. But after perusal of the affidavit regarding income, assets and liability filed by applicant it shows that she incurred expenses towards educational fees/charges. Hence, considering facts and circumstances of the case, respondent is being father of child viz. Avior he is bound to pay Rs. 10,000/- p.m. towards educational fees/charges of son viz Avior. Accordingly I have answered point no. 4 in the affirmative.

As to point No.5 -

19. The applicant requested for protection order. According to applicant, that she is residing separate from the respondent. Nothing material comes on record to show that when she is residing separately from the respondent, there is incident of domestic violence against her at the hands of respondent. In such a situation, applicant is not entitled for protection order as prayed. Therefore, I have answered point no. 5 in the negative.

As to point No.6 :-

20. From the above discussion, I proceed to pass the following order :-

O R D E R

1. Application is partly allowed.
2. Respondent is directed to pay amount of Rs. 10,000/- (Rs. Ten Thousand only) per month to the applicant and Rs.5,000/- (Rs. Five Thousand only) to her son viz. Avior as an interim maintenance from the date of filing this application, till disposal of the main application.
3. Respondent is directed to pay Rs.10,000/- (Rs. Ten thousand only) per month, towards rent for separate accommodation, from the date of this order, till disposal of the main application.
4. Respondent is directed to pay Rs. 10,000/-(Rs. Ten thousand only) per month towards educational fees/charges of son viz Avior from the date of this order, till disposal of the main application.

5. Copy of this order be given to both parties, free of cost.
6. Copy of this order be given to PSO of the Police Station where respondent is residing.
(Order dictated and pronounced in Open Court).

Mumbai,
Dated : 08.02.2023

ask
Typed on : 08/02/2023
Signed on : 08/02/2023

(R.G.Bagade.)
Metropolitan Magistrate,
67th Court, Borivali, Mumbai.