

**IN THE COURT OF METROPOLITAN MAGISTRATE,
17TH COURT, BORIVALI, MUMBAI.**

C. C. No.113/DV/2019

Mrs. Kaksha Vishal Doshi

..... Applicant

V/s

Mr. Vishal Vijay Doshi and ors

..... Respondents

ORDER BELOW EXH.4
(Delivered on 30.10.2021)

1. Applicant in her application has stated that she has filed application under Section 12 of the Protection of Women from Domestic Violence Act, 2005. She has further stated that she has more particularly described the incidents of Domestic Violence committed by the respondents in detail in her main application filed under Section 12 of the said Act. The respondents have subjected her to suffer various mental torture, abuse, physical assault, emotional and financial cruelties and violence since beginning of their married life. The respondents have always tried to dominate her and did not accept her as family member. After committing several such incidents of Domestic Violence, respondents started pressurizing her to go out of matrimonial home and told her if she did not go, be ready to face dire consequences and deprived her of her rights to reside in matrimonial home. Therefore, she prayed for protection order.

2. The applicant has stated that she has monthly expenditure of around Rs. 1,00,000/- including payment of rent of premises of Rs. 50,000/- per month and Rs. 50,000/- per month to maintain her status and lifestyle the way she used during the period since her marriage in

2018 as well as she has to take care of her day to day essentials. She has further stated that the respondent No. 1 has a great source of income from his service in a Multi-National Company (MNC) having presence across the globe and he is earning salary to the tune of around Rs. 25 lakhs per annum, apart from the additional incentives he is earning on the basis of his performance as well as from his huge investments and assets. The respondents are also owing luxuries 2BHK in Ghatkopar, Central Mumbai. Therefore, she prayed for maintenance of Rs. 1 lakh per month, as per provisions under Section 20 of Protection of Women from Domestic Violence Act, 2005.

3. The applicant has stated that she need to take a flat at Kandivali Poisar Hiranandani or Mahavir Nagar area, close to her parents as now she is alone and doesn't wish to be burden on her parents. In that area, rent would be around Rs. 50,000/- and deposit requirement is of Rs. 2 lakhs. Therefore, applicant seeks aforesaid amount from the respondent as per provisions of Sec. 19 (f) of the Act. Lastly she prayed to allowed her application.

4. The respondents filed say at Exh. 15. In the reply, respondents submitted that present application is unwarranted, illegal and filed by concealing material facts. Hence, applicant may be held responsible as “suppresiovari suggestio false” and may be penalised as per Law. Application may be dismissed with cost. Respondents denied the allegations in the application.

5. Respondents stated that applicant is working as per her contention on page 58, 61, 63 of her FIR statement, still she falsely stated that she is not working. Thus, her own statements are

contradictory. The applicant is running business as partner with Treasure Jewellery at Laxmi Industrial Estate, Above Audi Showroom, Andheri (West). She is also participating as an entrepreneur in BNI, an organization which promotes the entrepreneur. Respondent No. 1 stated that he married with applicant on 20.02.2018. Their marriage is arranged marriage and it is not registered. There is no issue born from the said wedlock. After marriage, applicant came to reside with him at A-32, Girdhar Nagar, Jidaya Lane, LBS Marg, Ghatkopar (West). Since marriage, applicant was pressurizing respondent No. 1 to purchase new big car. Once in every week she used to discuss and fight on this topic. Applicant also used to threaten respondent No. 1 that if new big car is not bought, she will leave the house. Respondent stated that after coming at home from office, applicant used to call her boss Mr. Haresh. She was giving update of every minute to him. Mr. Haresh used to call her late night. If respondent No. 1 asked her about caller, she used to tell random name to cover up such blunders. Mr. Haresh used to pickup applicant from Azad Nagar Metro station every day for their office.

6. The respondents further stated that the applicant has filed complaint against respondent and his family on 24.09.2018. Mr. Haresh and applicant's uncle (mama) had come to threaten the respondent and his family at midnight at 11:30 pm and started abusing them. Applicant's boss Mr. Haresh also tried to hit respondent No. 1 by bashing him against wall and threatened him saying “abhi tereko dikhata hu...tere passse 50 lakh kaise nikalta hu... Saale.....”. Respondent No. 2 came and rescued respondent No. 1. They both started screaming bad words about respondents to spoil their reputation in society. Due to the conduct of applicant, respondent No. 1 suffered tremendous cruelty.

7. The respondents denied that they are not willing to keep the applicant and treating her with cruelty and violently at her matrimonial home. Respondents admitted contents of para Nos. 2 to 4 of main petition of applicant. Respondent No. 1 stated that applicant never accepted him as her husband and respondent family as her own family. Respondent stated that all the jewellerys are in the possession of the applicant including her belongings.

8. Respondents further stated that on 24.09.2019, respondent No. 1 bought applicant at her matrimonial home as per signed agreement in the Woman Cell. In order to knock down money from the respondent, suddenly her occupation is changed to 'housewife'. As applicant made false complaint, during puryusan period, respondent No. 1 was called in police station and harassed by the police.

9. Respondents stated that applicant is still partner of Treasure and represents treasure in BNI Magic, Mumbai group which is a Entrepreneurial Organization. Respondent No. 1 is working in Alon Laboratories India Pvt. Ltd. and earning salary of Rs. 80,198/- per month plus quarterly incentive which are variable and not fixed. Those are approximately Rs. 4,50,000/- per annum and not Rs 25 lakhs per annum as alleged. Respondents are staying in 1BHK flat belonging to his grandmother in which they all are all tenants as it is on rent basis and not in 2BHK alleged to be luxurious flat. The respondents don't have any asset. Respondent No. 1 is only bread earner in whole family who has to look after his old parents. As applicant is earning, she is not entitled for maintenance. Lastly, by denying all the allegations of applicant, respondent prayed to reject the application with cost.

10. From the rival contentions of both parties, following points arise for my consideration, against which, I have given my findings for the reasons mentioned below-

<u>SR. NO.</u>	<u>POINTS</u>		<u>FINDINGS</u>
1.	Whether applicant is entitled to interim relief of maintenance for herself ? If yes, what would be the amount ?	:	Yes. Rs. 15,000/- per month to the applicant.
2.	What order ?	:	As per final order.

REASONS

11. Heard the Ld. Counsel for the applicant Shri. Dharmendra Damani and the Ld. Counsel for the respondent Smt. Bhavna Jadhav. It is the submission for the counsel for applicant that the marriage of applicant and respondent is an admitted fact. The grievance raised by the applicant is that one day before the marriage, applicant was called by one Kalpana and she told about her relationship with the respondent. Also, the respondent No.1 admitted having an affair and relationship with Kalpana Sharma when they met at Oberoi Mall, Goregaon. However, respondent gave an assurance to stay with the applicant for the rest of his lifetime and applicant trusted the words of respondent No. 1. Ld. Counsel for the applicant brought my attention to the documents filed at Sr. No. 35 and 36 vide list annexed with the complaint at Exh. 1, which are copies of face-book post and likes. It is the contention of the counsel that respondent is still in contact with said Kalpna Sharma and doing the business with her.

12. Despite of this fact, the marriage between applicant and respondent was solemnized on 20.02.2018. The parents of the applicant incurred the expenditure of above 24 lakhs on the marriage and ornaments worth Rs. 17,15,245/- were given. However, the applicant received the gold weighing 358 grams i. e. worth Rs. 16 lakhs in a 498 (A) case against the respondent and still the gold worth Rs. 9 lakhs is with the respondents. The applicant was working as a Free-lancer. The salary which the applicant was getting from her job had to be given completely to her mother-in-law and she used to decide as to how much to be given out of the same to the applicant for her personal expenses. When she refused to hand over the entire salary to respondent No. 2 and 3, then they used to force her to do the entire household chorus including brooming, sweeping for the entire month though they had maid.

13. That after 25 days of marriage, her husband and in laws started demanding from her a Toyota car worth Rs. 15 to 18 lakhs as they are now growing family and they have a small car Wagon R which is insufficient for their family. The respondents were claiming Rs. 10 lakhs if the demand of car is not made out. The applicant has stated in her application that respondent No. 1 after coming home at night was not having any conversation with her about how was her day and things that couple used to discuss in normal course. The only thing he was interested was in having sexual relationship and that too, he forced himself upon the applicant. Respondent No. 1 behaved in cruel manner by biting the applicant during such act and also forced her to perform unnatural sex to which the applicant had own reservation and was not willing to abide for such weird demands of respondent No. 1. On her denial to do so, respondent went to the extent of assaulting applicant by

hitting her and by pulling her by hair. Respondent No. 1 on several occasions have abused and assaulted the applicant after midnight around 3-4 am and had forced her to leave matrimonial home.

14. The counsel for applicant argued that the applicant tolerated all the ill treatment and tried her best to get the matter resolved amicably but could not materialised. On 06.07.2018, her husband and in-laws forced applicant to leave her matrimonial home and go to her parents place and asked to come back if she is able to fulfill any of their demand, in terms of either Toyota Car or arrangement of funds to buy a property or good amount for jewelery. Later on, due to such ill treatment, applicant lodged the complaint on 23.08.2018 with the police station which is at Sr. No. 50. Also, she lodged the complaint on 03.02.2019. Thereafter, she was forced to leave her home on 03.02.2019 and at present, she is residing with her parents at Kandivali.

15. It is the contention of the counsel for applicant has since pandemic, applicant is jobless and therefore, she prayed for provision of accommodation, alternatively, Rs. 15,000/- per month towards the rent. It is the argument of the applicant that on perusal of the page 29 of the reply at Exh.15, para 23, it reveals that the respondent's family is having 3 maids. This itself goes to show that their financial condition is better. Also, the respondent is working in a company of spectacles and the income tax return verification form filed for the year 2015-2016 shows his gross total income as Rs. 6,08,788/- p.a., form for the year 2016-2017 shows his total income Rs. 9,56,102/-p.a. Income tax return acknowledgment for year 2017-2018 shows that gross total income of the respondent is Rs. 9,00,932/-p.a. whereas Income tax return

acknowledgment for year 2020-2021 shows that gross total income of the respondent is Rs. 13,39,710/-p.a.. Pay slip of the respondent for the month of April 2019 shows that his net pay is Rs. 80,852/- whereas pay slip of May 2019 shows his net pay is Rs. 1,19,911/-, pay slip for the month of July 2019 shows his net pay Rs. 80,852/-, pay slip for the month of August 2019 shows his net pay Rs. 1,55,198/-, pay slip for the month of September 2019 shows his net pay Rs. 80,198/-, pay slip for the month of October 2019 shows his net pay Rs. 80,199/-, pay slip for the month of November 2019 shows his net pay Rs. 1,71,274/-, pay slip for the month of December 2019 shows his net pay Rs. 92,067/-, pay slip for the month of January 2020 shows his net pay Rs. 80,198/-, pay slip for the month of February 2020 shows his net pay Rs. 2,55,560/-, pay slip for the month of March 2020 shows his net pay Rs. 2,23,103/- etc. From the perusal of the pay slips, it reveals that the respondent is earning on an average more than Rs. 1 lakh per month.

16. The Ld. counsel for applicant argued that the designation of the respondent is Sales Manager of Western Region Territory. Therefore, applicant prayed to grant the maintenance of Rs. 1,00,000/- per month, including payment of rent of premises @ Rs. 50,000/- per month and Rs. 50,000/- per month to maintain her status and lifestyle the way she used to live during the period since her marriage. Also, she prayed to pay an amount in the form of monthly rent and security deposit to the tune of Rs. 50,000/- and Rs. 2 lakhs respectively as per provision of Sec. 19 (f) of the PWDV Act, in order to allow the applicant to secure same level of accommodation at Kandivali, Mumbai as enjoyed by her in the said household. Lastly, she prayed to pass an order directing respondent to execute a bond with security for preventing commission of domestic violence as per 19 (b) of PWDV Act.

17. Whereas The Ld. Counsel for the respondent argued in her reply that applicant is having her own business and she is working in BNI Magic Mumbai Company. The net income as assessed from income return verification form shows her gross total income Rs. 2,64,720/- for the year 2018-2019. The net income as assessed from income return verification form shows her gross total income Rs. 4,57,947/- for the year 2019-2020. The applicant has not deliberately mentioned the nature of freelancing work she is doing, she is able bodied person and in a position to maintain herself.

18. Ld. Advocate for the respondent has drawn my attention to the Exh. 26 which is a format of affidavit of Assets, Income and Expenditure of the applicant wherein she has stated in clause 36 (iv), her monthly income as 7,500/- per month. She has mentioned in Sr. No. 42, the statement of expenditure about housing, however, no document filed to show that she is paying monthly rent of Rs.52,000/- and no document filed regarding the EMI of Rs. 24,000/- paid by the applicant on personal loan whereas the Sr.No.51 is about discharge of liabilities and in personal loan column it is written as 'Nil'. As per Sr. No. 41 of affidavit, she has shown her total income Rs. 1,92,600/- for financial year 2019-2020 and for financial year 2020-2021, it is shown as Nil. Further she has not filed any receipt of Rs. 10,000/- for repair as per Sr. No. 42 (iii). Also, Sr. No. 43 (vii) shows that she is paying Rs. 8,500/- to part-time helper.

19. The exorbitant expenditure shown by the applicant below column 54 i. e. monthly expenditure to the tune of Rs. 1,70,780/- and annual expenditure to the tune of Rs. 20,49,630/-. It is the contention of the counsel for respondent that applicant has put her case in wrong

manner and by making false statement, she has concealed her income. Therefore, she is not entitled for relief as claimed in her application.

20. Perused the documents filed by both parties on record. The complaints filed by the applicant with the Kandivali police station dated 23.08.2018, 13.12.2018, 03.02.2019, 08.02.2019 regarding the ill-treatment by the applicant prima facie goes to show that there is some substance in the contentions of the applicant. The case under Section 498 (A) read with other sections came to be lodged against the respondents on 08.10.2019. The copy of the same is filed on record vide list at Exh. 28. As per the applicant's story, she was compelled to leave her matrimonial home on 03.02.2019. Since then, the respondent has not made any provision for maintenance of the applicant or at least has not taken pain to file any document regarding the provision made for the period after she left the home. This fact itself goes to show that he has deliberately neglected to maintain her.

21. In fact, it is the duty of the respondent being the husband to take care of his wife. Whatever may be the difference between parties, it is the responsibility of the respondent being husband to take initiative and to solve the matter amicably. However, no such efforts seems to have taken by the respondent to bring the applicant back to home. Respondent has not filed any documentary evidence such as notice calling back the respondent for co-habitation etc. This is the interim application for maintenance and provision for accommodation, therefore, without going into evidence and merit of the case, I am of the opinion that it is the liability of the respondent to pay the monthly maintenance to the applicant as well as to pay towards the accommodation.

22. Also, there is a substance in the argument advanced by the counsel for respondent that the applicant has made exaggerated statements in her affidavit of income, expenditure and liability which ought not to have been made. However, I am of the opinion that looking into the standard of living of both parties, they appear to be from well to do family. Therefore, considering this aspect, I am of the opinion that the applicant is not entitled to the interim maintenance amount as well as amount claimed for the accommodation as prayed in the application. However, considering the basic needs of the applicant as well as income apparent from the documents filed on record and standard of living as assessed from the other documents filed on record, I am of the opinion that applicant is entitled to the maintenance to the tune of Rs. 15,000/- per month. Further, she is entitled to the rent charges to the tune of Rs. 10,000/- per month and in this respect, it will be just and proper to direct to the respondent to make the provision for the accommodation of the applicant in the locality where she is residing at present with her parents. The very purpose of D. V. Act is to prevent vagrancy and destitution of the woman who is expelled from her matrimonial home. Taking into consideration these facts, I proceed to pass following order:

ORDER

- i. The application is partly allowed.
- ii. Respondent No.1 is directed to pay amount of Rs.15,000/- (Rs. Fifteen thousand only) per month to the applicant, towards interim maintenance from the date of application.
- iii. Respondent No. 1 is further directed to pay the rent charges to the tune of Rs. 10,000/- (Ten thousand only) per month, to the

applicant and in this respect, respondent is directed to make the provision for the accommodation of the applicant in the locality where she is residing at present with her parents.

- iv. Respondents are directed to pay cost of Rs. 5,000/- (Rs. Five thousand only) towards this application, to the applicant.
- v. The other reliefs will be decided in the main application.
- vi. Copy of this order be given to the both parties free of cost.

Sd/-

Mumbai,
Dated :30.10.2021

(A.R.Malvade)
Metropolitan Magistrate,
17th Court, Borivali, Mumbai.