

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

C.C.NO.146/DV/2019

Mrs.Mamta Raju Sonkar

... Applicant.

V/s.

Mr. Raju Madhuprasad Sonkar

... Respondents.

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 and medical expenses? | Yes. |
| 5. What order ? | As per final order. |

REASONS

3. Perused the application. Read entire documents placed on record. I have heard Ld Advocate for applicant 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 him.

AS TO POINT NO.1.

5. Interim maintenance being an ancilliary 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 report of

Protection Officer is not on record. 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. Notice duly served on respondent. In response he appeared before this court but failed to file his reply. Hence, matter proceeded without say against him. Therefore 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.25,000/- per month for herself. 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 owns two hotels at Charkop and earns Rs. 80,000/- per month. Hence, he can easily give monthly maintenance to herself. But respondent failed to appear before this court and denied this content. In such situation, applicant is dependent on respondent and she has no source of income. To support her contention she filed Affidavit regarding her income, Assets and Liabilities. It shows that she has no sufficient means to maintain herself. On the contrary, respondent is having sufficient source of income but he refused and neglected to maintain the applicant. In such situation, applicant is entitled for interim maintenance from respondent.

10. From the above discussion, looking to the lifestyle of both parties and income of respondent, he can pay Rs.3,000/- per month to herself and Rs.1,000/- per month to her daughter viz Himanshi as interim maintenance from the date of filing of this application till disposal of the main application. Said amount is necessary for maintenance of the applicant. Therefore, I answer point No.2 in affirmative.

AS TO POINT NO.3.

11. The applicant requested for permanent accommodation. 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.

12. 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.3,000/- 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 :-

13. The applicant requested for educational fees/charges of daughter viz. Himanshi. Though she has not filed any documentary evidence to show the educational fees or medical expenses incurred by herself. But if we perusal the affidavit regarding income, assets and liability filed by applicant it shows that she incurred expenses towards educational fees/charge. Hence, considering facts and circumstances of the case, respondent is being father of daughter viz. Himanshi he is bound to pay Rs. 1,000/- p.m. towards educational fees/charges of daughter viz. Himanshi. Accordingly I have answered point no. 4 in the affirmative.

AS TO POINT NO. 5 –

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

ORDER

1. Application is partly allowed.
2. Respondent is directed to pay amount of Rs. 3,000/- (Rs. Three Thousand only) per month to the applicant and Rs.1000/- (Rs.One thousand only) per month to daughter viz Himanshi as an interim maintenance from the date of filing this application, till disposal of the main application.

3. Respondent No.1 is directed to pay Rs.3,000/- (Rs. Three 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.1,000/-(Rs. One thousand only) per month towards educational fees/charges of daughter Himanshi 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.