

ORDER BELOW EXH.NO.4
(Passed on 19th January, 2017)

01] The original application is filed by the applicant under Section 12 of the Protection of Women From the Domestic Violence Act seeking various relief in terms other sections, in which the application at Exh.No.5 is filed by her for getting interim maintenance at the rate of rupees 15000/- per month.

02] Perused application and say filed by the respondents. The applicant has submitted that she is legally wedded wife of respondent No.1 and her marriage was solemnized on 4th May, 2008. After marriage, the applicant went to reside at the house of respondents. Before marriage respondent No.1 has told that he is educated up to B.A. and having Government job but after marriage, it came in the knowledge of the applicant that respondent No.1 was educated up to 12th standard and working as a Security Guard in WCL Employees Society. The respondent No.1 is having bad habit of consuming liquor. He had consumed heavy liquor at the time of marriage. He used to beat applicant mercilessly for one and another reason after consuming liquor by any object which found in the hands. He always used to give physical and mental trouble to the applicant for the reason that her parents have not given sufficient cash amount and articles at the time of the marriage. It is also submitted by the applicant that respondent No.1 shows porn video clips in his mobile and tried to act like it and on the refusal by applicant, he beat her mercilessly. Respondents always demands money from the parents of the complainant. On the festival of Akhadi, applicant came to the house of her parents at Kanhan as per customs. After completion of this festival, applicant called to respondent No.1 and requested to take her back but respondent No.1 clearly stated that

unless complainant bring Rs.50,000/- from her parents, he will not take her back in his house. The mother of the applicant also requested to respondent No.1 but he had not listened to her also. After 20 days, mother of the applicant arranged amount and given to the respondent No.1 then he took the applicant back to his house. At the time of marriage, the applicant was taking education, after some days she applied for admission for B.Ed. course and her name was shortlisted for admission. The complainant requested to respondent No.1 for admission but he clearly stated that he has no money for her admission. The applicant has also requested to the mother of the respondent No.1 immediately she came in anger and throw big still spoon to the applicant and started to talk in filthy language. The mother of the respondent No.1 used to say to the applicant that she is a girl of loose character, therefore, her parents deliberately married her with the respondent No.1. The mother of the respondent No.1 always abused and used to talk in filthy language and pinch to the applicant for household work and preparation of meals. The mother of the applicant had arranged Rs.10,000/- and given to the mother of respondent No.1 so that applicant could take admission for B.Ed. course. The parent-in-laws and sister of applicant always used to abuse her in filthy language and beat for one and another reason and restrain to talk with the respondent No.1. They always used to say respondent No.1 to give divorce to applicant and to performed second marriage.

03] Further submitted that the applicant is very poor lady and unable to maintain herself. On the other hand the respondent No.1 is able bodied person having good health and working in Kolsa Khadan Kamgar Sahakari Pat Sanstha Maryadit, Sillewada Project, Chankapur, Khaparkheda, and having salary more than Rs.25,000/- per month. He is having his own

house No.694 and one plot at Dahegaon (Rangari) and agricultural field Survey No.140 and 232/1 at Takli (Bhansali), Patansawangi, Tah.Saoner, Dist-Nagpur. Respondent No.1 is having sufficient source of income and he has no liability of any other, therefore, he can easily pay Rs.15,000/- per month. Thus, the applicant has prayed for interim maintenance of Rs.15,000/- per month.

04] Respondents in his reply have clearly denied all allegations made by the applicant. Respondents has submitted that the relationship between him and the applicant has been exhausted. He further submitted that the applicant is not his wife. The status of the applicant has been changed in view of the Judgment and Decree of divorce petition passed by 4th Jt.Civil Judge (Sr.Dn.), Nagpur, on 9th August, 2016. The application is filed on 9th of August, 2016. The complainant was fully aware about her status. The application is filed beyond the period of limitation. The cognizance of the complaint has to be taken within 1 year from the date of separation of the parties. The applicant has not given reasons in support of filing application. The applicant has suppressed material fact of decree of divorce passed against her. The status of the applicant as a wife of respondent No.1 is wrongly defined.

05] It is further submitted by respondents that the applicant has been residing separately from May-2010 and the present complaint is filed on 9th August, 2016. The application is filed after 6 years of separation. As the complaint is filed after 6 years of separation, it is not tenable in the eyes of law. The applicant is well educated and she is educated up to M.Ed., it can not be said that she has not made any attempt for getting job and she is

sitting in the house without any job. The application and her mother, in their cross-examination before the Hon'ble 4th Jt.Civil Judge (Sr.Dn.), Nagpur, clearly admitted that she is doing job and earning handsome amount from her job. The gross salary of the respondent No.1 is Rs.8,000/- per month after deduction, he is getting Rs.4,356/- per month. Out of this income, he has to maintain himself and old age parents, therefore, he is not able to pay any maintenance to the applicant. The applicant is earning handsome amount of Rs.25,000/- per month and her father is getting handsome pension. The mother of the applicant is also working and she is having house property. With these contentions, the respondents have prayed for dismissal of the application.

06] It is alleged by the respondent that the application is not within the period of limitation. However, the provisions of Protection of Womens From the Domestic Violence Act did not provide for any limitation period for filing an application under Section 12 of the Protection of Womens From the Domestic Violence Act. More so, the definition of the Domestic Violence has given under the Act shows that it covers the present as well as past incident which can be termed as a Domestic Violence. More so, nothing is produced on record by the respondents so as to show that the bar of limitation would applied to the present case. In such circumstances, the period of limitation for filing application can not be considered at this stage and it will be proper to consider it on merit.

07] The applicant has made various allegations against respondents and considering all allegations made in the application, it shows that the applicant is prima-facie subjected to domestic violence. It is submitted by the respondents that the decree of divorce has been passed and the

applicant is no more wife of the respondent No.1, therefore, she is not entitled for maintenance. It is pertinent to mention here that even divorced wife is also entitled for maintenance unless she re-marries. It is not the submission of the respondent that the applicant has got re-married. If the decree of divorce has been passed by the Hon'ble 4th Jt.Civil Judge (Sr.Dn.), it can be said that the status of the applicant and the respondent No.1 as husband and wife will come to an end from the date of Judgment and Decree passed by the Hon'ble Civil Judge (Sr.Dn.), Nagpur.

08] However, passing of the Judgment and Decree of divorce is not barred for filing application under section 12 of the Domestic Violence Act. Even in respect of the past incident of domestic violence, the applicant can approach before this Court by filing application. The applicant has prayed for interim maintenance of Rs.15,000/- per month by alleging that respondent No.1 earns Rs.25,000/- per month. However, no document has been produced on record by the applicant so as to show that the income source of the respondent No.1. On the other hand, respondent No.1 has specifically stated in his reply in respect of his income source and liabilities. As per the contentions of the respondents, his gross salary is of Rs.8000/- and he is getting net salary of Rs.4,356/- per month from his job. It is also submitted by the respondent No.1 that his old aged parents are dependent upon him. It is submitted by the applicant that respondent No.2 is carrying business of plot and respondent No.3 is a Teacher in Zilla Parishad School. Whether parents of the respondent No.1 are dependent upon him or not? This question will be seen on the basis of merit. At this juncture, there is no evidence to come to the conclusion about the liabilities of the respondent No.1.

09] It is also pertinent to mention here that the present application under section 12 of the Protection of Women From the Domestic Violence Act is filed by the applicant after near about 6 years from the date of her separation from the matrimonial house. It is also pertinent to mention her that one another application bearing No.MCA 287/2016 is filed by the applicant for recovery of interim maintenance against of Rs.1000/- granted to the applicant in an application filed by her under section 125 of the Code of Criminal Procedure. The application for the enforcement of the said interim maintenance order of Rs.1000/- is pending before this Court. Considering over all facts and circumstances, available at present. More so, considering the delay for filing application and fact of interim maintenance awarded to the applicant in the maintenance case filed under section 125 of the Code of the Criminal Procedure, I am of the opinion that it would not be just and proper to grant interim maintenance. It is also pertinent to note that the applicant is well educated lady than the respondent , therefore, it can not be said that she is sitting idle and doing nothing for her future. In such circumstances, considering income source and capacity of maintenance, and interim maintenance of Rs.1000/- already granted to the applicant in a proceeding under section 125 of the Code of Criminal Procedure, I am of the opinion that the respondent is not able to pay more than Rs.1000/- to the applicant. Thus, following order is passed :-

ORDER

- 01] Application stands rejected.
- 02] No order as to costs.

Kamptee
Dated : 19/1/2017

(A.D.Tidke)
Judicial Magistrate, First Class,
Kamptee

