

ORDER BELOW EXH.5
(Passed on 11th April, 2017)

01 Applicant Lalita has moved this application under section 23 of the Protection of Women From Domestic Violence Act (here-in-after referred the Act for brevity) for reliefs under section 18, 19, 20 & 22 of the Act. Perused the petition and this application.

02 The applicant Lalita is the younger sister of respondent nos. 1, 2 & 4 whereas respondent no. 3 is her sister-in-law who is the wife of respondent no. 2. Applicant and respondents father has died on 28/8/2012 and their mother is died on 14/2/2017. During the life time of their mother applicant Lalita used to reside with her in her house at Kalmeshwar wherein respondents used to reside separately.

03 It is alleged by applicant Lalita that respondent nos. 1, 2 & 4 being the sons of their mother have neglected her completely. During her life time she has never been maintained by her son and she was living with her daughter applicant in their house separately. In order to maintain themselves applicant and her mother used to cultivate their agricultural land bearing Survey no. 151, admeasuring 3.33 H.R. situated at mouza Kalmeshwar. They used to cultivate this land without the help of respondents and used to earn their living therefrom.

04 During the life time of applicant's mother, respondents have neglected her to maintain from all aspects. Not only that they have subjected their

mother along with applicant Lalita to Domestic violence in the form of verbal, mental and physical harassment. On count of their consistent harassment, applicant's mother got mentally and physically weak and was constrained to be admitted at Lata Mangeshkar Hospital, Hingana, Nagpur whereat, she was looked after personally by applicant Lalita and her respondent sons have neglected to look after her. From December 2016 to February 2017, applicant's mother was admitted and during this period in her absence, respondent no. 4 took its disadvantage and accordingly, respondent no. 1 sold out the cotton harvest weighing 16 to 17 quintals from their land, behind the back of applicant and her mother. After getting discharged from hospital, applicant and her mother came back and after discovering this fact when they asked about it to respondent no. 4, he quarreled with them due to which applicant's mother suffered mental agony and accordingly, her health got deteriorated resulting into her demise on dated 14/2/2017.

05 Respondent nos. 2 & 4 have also forcefully sold away the remaining cotton harvest weighing 4 to 5 quintiles with the orange produce from their land of worth Rs. 25000/-. In all, respondents have sold away the agricultural produce of Rs. 1,30,000/- behind the back of applicant and her mother forcefully. After demise of their mother, when applicant went upon their land, at that time respondent nos. 2 & 4 came on her person being armed with axe and sickle.

06 On count of this sell of agricultural produce applicant has no income source and all of her produce has been sold by respondent subjecting her to

economical abuse. Applicant alleges that when she asked about the same to respondents, they abused her verbally and threatened to drive her from their house. On 18/3/2017 when applicant asked respondents about the crop loan which she and her mother has taken to cultivate the land, at that time respondent abused her verbally and subjected her to physical violence. Accordingly, applicant has filed one complaint at Police Station but, police have not taken any cognizance.

07 Respondent no. 4 has told applicant to leave the house within 2 days. All the acts of domestic violence done by respondent nos. 1, 2 & 4 upon applicant are done on the instigation of respondent no. 3. On count of this incident and that of consistent domestic violence of applicant at the hands of respondents, applicant is having apprehension to her life and accordingly, she is constrained to reside at her sister's house from dated 19/3/2017. In view of above factual matrix, applicant is constrained to move the petition along with this interim application.

08 Considering the allegations made by applicant against respondents, it prima facie reflects she along with her deceased mother were subjected to domestic violence by respondent during her life time and after her demise they continued with the same upon applicant. Being the real brother, respondent nos. 1, 2 & 4, were obligated to look after their younger sister but, rather than looking after her, in view of above allegations, they have subjected her to all sought of domestic violence except sexual abuse defined u/s 3 of the Domestic Violence Act.

09 Considering the age of applicant, she is not a minor person and therefore she is not entitled for claiming any maintenance from her brothers as she is physically and mental fit to maintain herself. As per allegations, she has been threatened to leave her mother's house wherein, she with her mother and respondents used to live. Admittedly, no documentary evidence regarding the title the house property is brought on record by applicant, showing that said house is owned by applicant's mother. But, in view of her submissions in the petition and application, on count of her continue residence in this house, she is entitled to reside therein without any interference from respondents and accordingly, she is entitled for protection order for her peaceful residence therein.

10 Applicant has prayed for order restraining respondents from alienating their agricultural property or from creating third party interest therein. Applicant has produced the 7/12 extract and it appears that land property bearing no. 151 adm. 3.33 H.R. is standing in the name of their deceased mother Shantabai Lad. As this property is standing in the name of their mother, it might be possible that respondents might get mutate their names in revenue record of this property and might also alienate said property to third person. Therefore, in view of this possibility, it would be justifiable to restrain respondents from creating third party interest in said property. No documentary evidence regarding selling of agricultural produce of Rs. 1,30,000/- by respondents is brought on record by applicant and therefore, for want of evidence in this respect no order could be passed at this initial stage of proceeding.

11 Considering the initial stage of proceeding, without evidence, no order regarding interim compensation, as claimed, could be passed. Therefore, in view of above factual matrix, I pass following order :-

ORDER

- i) Application is partly allowed.
- ii) Respondents are restrained from drawing applicant from the portion of house wherein she resides, situated in Kalmeshwar.
- iii) Respondents are further restrained from entering into the portion of the house wherein applicant resides.
- iv) Respondents are restrained from subjecting applicant to any sought of domestic violence and they are further restrained to communicate with her in any form.
- v) Respondents are restrained from alienating landed property bearing Survey no. 151 adm. 3.33 H.R. to any other person till the final adjudication of this petition.
- vi) Copy of this order be given to applicant free of cost.
- vii) The copy of this order be forwarded to Protection Officer and to Police Inspector of concern Police Station for information and implementation.

Sd/-

(Vinay B. Kamble)

Judicial Magistrate, First Class,
Kalmeshwar.

Place :- Kalmeshwar

Date :- 11.04.2017.