

P.W.D.V.A. No. 27/2022

Urmila Rahul Dalvi & Anr

Versus

Parvatabai Shankar Dalvi & Ors.

ORDER BELOW EXHIBIT 17

Applicants have filed this application for interim residential order or amount for residence as per section 23 of the Protection of Women from Domestic Violence Act, 2005. (Hereinafter referred as 'The Act')

2. It is contended in the application that, applicant got married on 06/12/2016 with Rahul Shankar Dalvi and they have one son named Saksham. Husband of applicant died on 15.10.2020 due to Covid -19. In this situation, respondents had driven applicants out of her matrimonial house. It is further contended that, there are 4 rooms in address of respondents mentioned in the application out of which 1 room and kitchen platform is built by the husband of applicant. Also, when the husband of applicant was alive, they lived in the said room. It is further contended that, applicant no. 2 is studying in 1st standard in Shri Education Society, Shivaji Nagar, Sinnar. It is contended that, applicant does not have any place of residence and therefore she is residing at her paternal house and is having no source of income. It is prayed that, applicant has prayed in main application for residence order. However, it will take time to decide the main application. Therefore, she prayed for one room in which she earlier used to reside with her husband and son or alternatively she prayed for Rs. 10,000/- from respondents for rental expenses.

3. Respondents resisted the application by filing his say vide Exh. 20. It is contended that, application is false and illegal. He denied all the allegations of domestic violence made by the applicant. It is

contended that, after the demise of Rahul Shankar Dalvi, applicant no. 1 herself left the house and went to reside at her paternal house along with applicant no. 1 at Ankai, Taluka Yeola, District Nashik. Further it is contended that, as she resides in Yeola, no question arises as to applicant no. 2 studying in Shri Education Society School in Sinnar. Applicant has filed this application to harass respondents. Further it is contended that, applicant has filed this application in order to seek rights in the property of respondents. Therefore, he sought to reject the application.

4. Following points arise for my determination and my finding along with reasons thereof:

Sr.No.	POINTS	FINDINGS
1.	Whether the applicants are unable to maintain themselves?	Yes.
2.	Whether applicants are entitled to interim maintenance?	Yes.
3.	What order?	Partly Allowed.

REASONS

AS TO POINT NO. 1 AND 2

5. It is admitted that, applicant no. 1 is wife of late Rahul Shankar Dalvi and out of the said wedlock they have 1 son named Saksham i.e. applicant no. 2. Respondent no. 1 is mother and Respondent no 2 to 4 are brothers of Late Rahul Shankar Dalvi. Also, before the demise of Rahul Shankar Dalvi applicants were residing in the mentioned address of respondents.

6. Learned advocate for applicants reiterated the contentions of his application and argued that, applicants are in need of residence. Hence, prayed for one room in which she earlier used to reside with her husband and son or alternatively prayed for Rs. 10,000/- from respondents for rental expenses.

7. Learned Advocate for respondent argued that, applicants has falsely alleged about the domestic violence incidents in the application. Further it is argued that, if applicant is alleging incidents of domestic violence against the respondents, why she want to reside in the same house. The present application is only filed to harass the respondents. However, prayed to reject the application.

8. Perused the present application along with supporting affidavit vide Exh.18. Applicant has filed death certificate of her husband Rahul Shankat Dalvi, Birth Certificate and Adhar card of applicant no. 2, copy of N.C.R., 7/12 extract of joint family property in the name of applicants and respondents located at Yeola Taluka District Nashik and fee receipt of applicant no. 2 studying in Shri Education Society Shivaji Nagar, Sinnar.

9. For the relief under Section 23 of the Act, 2005, there should be *prima-facie* proof of domestic violence, if the interim order is prayed. Section 3 of the Act, 2005 defines domestic violence and it comprises physical abuse, sexual abuse, verbal and emotional abuse and economic abuse. Domestic violence may be an act, omission or commission or conduct of the respondents. For this purpose, over all facts and circumstance of the application are required to be taken into consideration.

10. Section 23 of the Act of 2005 provides to pass such interim order as Magistrate, deems just and proper and that too, on satisfaction from the application disclosing the act of domestic violence by respondents. For this purpose, the application is required to be read as whole. The averment in the application speaks about the act of respondents. It is contended in the main application that, after the demise of her Rahul Shankar Dalvi i.e. husband of applicant no. 1 and father of applicant no. 2, respondents drove applicants out of her matrimonial house. From the copy of N.C.R. dated 24.01.2022, it seen that applicant had filed report against respondent no. 1 and 4 that, they are forcing her to sign and if she refuses she will be driven out from her matrimonial house. At this junction, *prima facie* it can be said that, the incidents described discloses the act of domestic violence as is required by section 23 of the Act of 2005.

11. It is mentioned by the applicant in her main application that, the house of respondents is built on the plot which is in the name of respondent no. 1 in which they are presently residing. However, out of the said rooms, one room and kitchen platform was built by the husband of applicant no. 1. and that, they were residing together before the demise her husband.

12. Applicant no.1 has filed her asset and liability statement as per the directions of Hon'ble Supreme Court in the case of **Rajnish Vs Neha 2021 SCC 324** at Exh. 21. On the contrary, respondents have failed to file their asset and liability statement on record. From the statement of applicant, it is seen that applicant has no source of income. At this interim stage, it has to be accepted that applicant no. 1 has no source of income and she is unable to maintain herself and applicant no. 2.

13. For the interim residence order under Section 23 of the Act, it is to be *prima facie* proved that, the aggrieved person i.e. applicant lives or at any stage lived in the shared household in the form domestic relationship along with the respondents. It is admitted that, applicants resided in the same house along with her husband before his death. Therefore, applicants have right to reside in the same house as earlier. Therefore, *prima facie* it can be said that she is entitled to interim residence order. However, the object of the Act is to protect the women from domestic violence and as the acts of domestic violence has been described by applicant no. 1 in her main application and the present application, at this stage it will be inappropriate to grant her residence in the same house along with that of respondents. In view of above discussion, applicants are entitled for rent expenses of Rs. 3000/- per month from the respondents and the cost of the interim proceeding is quantified at Rs.500/-. Hence, I answer point no. 1 and 2 in Affirmative. In answer to point no. 3, I pass the following order:

ORDER

1. Application is partly allowed.
2. Respondents are directed to pay monthly Rs. 3,000/- (Three Thousand Rupees Only) for rent expenses to applicants, till 10th day of each month from the date of the application till final decision of the main application.
3. The respondents are restrained from committing any acts of domestic violence by either torturing, taunting or subjecting the applicants to cruelty and also from aiding or abetting the commission of any acts of domestic violence, as described under section 3 of the Act during the pendency of this case.
4. Respondents shall pay Rs. 500/- (Rupees Five Hundred only) to applicant no. 1 as cost of litigation.

5. Copy of this order be given to both the parties free of cost as per Section 24 of this Act.
6. Copy of this order be sent to the concerned Police Station and Protection Officer vide Section 24 of the Act

(Dictated and pronounced in Open Court.)

Sd/-xxx

Date: 17/12/2022

Place: Sinnar

K.S. Khandre

2nd Jt. J.M.F.C, Sinnar