

MHNS230013872020



Criminal M.A. No. 211 of 2020

Meerabai Bhatate Vs. Somnath
Bhatate & ors.

ORDER BELOW EXH.10

By filing present application, the applicant Meerabai Bhatate is seeking for monetary relief under Section 20 of The Protection of Woment from Domestic Violence Act, 2005 (In short “DV Act”).

Facts of the case of applicant in nutshell:

02 The applicant no.1 Meerabai Bhatate is the first legally wedded wife of deceased Shantaram Bhatate. The respondent no.2 is the second wife of deceased Shantaram Bhatate and respondent no.1 is the son of him from respondent no.2. The applicant no.1 has two children named Akash and Konsabai i.e. applicant no.2. The husband of applicant no.1 i.e. Shantaram Bhatate died on 09/12/2018. After demice of Shantaram, the respondent no.1 assured applicant no.1 that he will give half of the pension of deceased Shantaram to her and relying on his words, the applicant no.1 gave consent for pension account in the Bank to be given to the respondent no.2. However, after such consent, their behaviour was changed and they denied share of applicant no.1 in the agricultural income and pension of deceased Shantaram. The respondents physically harassed the applicant. There is no independent source of income to the applicant no.1. She has medical issues for which expenses are incurred every month. Hence, present application is moved by her for satisfying her basic needs including medical expenses.

03 The respondents appeared before the court and filed their say to the main application at Exh.6 and to the application for interim maintenance at Exh.15. The respondents denied all contentions leveled against them and prayed for rejection of the said application. The applicants informed the court vide pursis at Exh.9 that there is no prayer for applicant no.2 as she is married after filing of the said application.

Argument advanced by Ld. Advocate Shri. B.S. Lahane for applicant :-

04 In addition to the contentions averred in the application for interim maintenance, the Ld. Advocate for the applicant vehemently submitted that the respondents took undue advantage of uneducated applicant and get her consent for drawing pension of deceased in the name of respondent no.2. He also filed on record 8A extract of House No.406 in which applicant presently resides and as per his contention, respondents tried to encroach upon her house. As the respondent no.1 has handsome source of income from bakery business, he claimed for monetary relief to the applicant.

Argument advanced by Ld. Advocate Shri. R.G.Waje for respondents :-

05 The defence took up by Ld. Advocate for respondents is that the applicant is second wife of deceased Shantaram and not first wife. He further casts doubt on fact that whether the applicant is legally wedded wife of deceased Shantaram or not. Further it is also contended by the respondents that there was no medical expenses incurred for deceased Shantaram by the applicant as he was died at home and not in the hospital. Further it is also submitted by him that pension amount was also given to the applicant. It is also submitted that the son of applicant named Akash is doing private job and is

earning sufficient income. Hence, the respondents prayed for rejection of the application.

06 Considering the rival arguments of both parties and documents filed on record, following points arose for my determination and my reasoned findings to them are as follows:

Sr. No.	Points	Findings
1)	Whether the applicant no.1 <i>prima facie</i> shows that domestic violence caused to her at the hands of respondents?	Yes.
2)	Whether the applicant no.1 is entitled for interim maintenance as prayed?	Yes, Rs.2000/- per month
3)	What order?	Application is partly allowed.

REASONS

07 The substantiate her claim, the applicant filed on record affidavit in support of main application as well as for interim maintenance application at Exh.4 and 11 respectively. The Aadhar Cards of both the applicants are filed on record along with Exh.03. As the marriage invitation card of applicant no.2 is at Exh.19, the same is regarded as admitted fact and the monetary relief claimed under it is considered only for applicant no.1. Additionally, 8A extracts of House no.340 and 406 are also filed on record at Exh.13 by the applicant.

08 On the other hand, the respondents filed on record 8A extract of house no.406 in which the applicant is presently resided. Details of amounts received by deceased Shantaram after his retirement are also filed on record by them.

As to Point nos.1 and 2:

09 In order to prove the domestic violence caused to the applicants, firstly, we have to prove that the applicant no.1 is aggrieved person. As per section 2 (a) of the D.V. Act, “aggrieved person” means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent. The expression “domestic relationship”, as per section 2(f) of the D.V.Act means, a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage or through a relationship in the nature of marriage, adoption or are family members living together as a joint family. The law protects women in fraudulent or bigamous marriages, or in marriages deemed invalid law. Thus, if woman is living with a man who abuses her, she can take recourse to the provisions of said Act even though she is not married to him.

10 As per section 2(s) of the D.V.Act the term “shared household” means a household where the aggrieved person lives or lived in a domestic relationship, either singly or along with the respondent. Shared household also includes a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or person aggrieved has any right, title or interest in the shared household. The D.V.Act provides for exhaustive definition of the term a “domestic violence” which means any act, omission or commission or conduct of the respondent. It includes causing physical abuse, sexual abuse, verbal abuse and economic abuse. In determining whether any act, omission or commission or conduct of respondent constitutes domestic violence,

the over all facts and circumstances of the case shall be a guiding factor. Even a single act of omission or commission may constitute domestic violence.

11 In the present case, it is averred in the interim maintenance application that the applicant is residing in a separate house no.340, mouje Manikkhamb and respondents are trying to encroach upon and disturbed the possession of applicant no.1. The respondents, through their say at Exh.15, admitted their legal right in house no.340 and 406 and also submitted that they never try to expel the applicant from said house. It suggests that the applicant and respondents are somewhere shared household for some time. Though the main application does not clearly speaks about current resident of applicant no.1, the 8A extract of the property no.406 contains the name of applicant no.1 and deceased Shantaram in the column of owner's name. The respondents admitted their share in the said property no.406 through their say at Exh.15. The main application as well as interim application contain that the respondent caused physical and mental abused to applicant no.1 by misleading her about her share in pension of deceased Shantaram.

12 The defence of respondents is based on the factual supposition that the applicant no.1 is not a legally wedded wife of respondent. However, in case of interim maintenance under D.V.Act, only *prima facie* proof regarding domestic violence is sufficient. The applicant specifically stated through her application that she has not given any share in pension amount of deceased Shantaram. The respondents filed on record details of amount received by deceased Shantaram after his retirement in which it appears that family pension

is given to the respondent no.2. Therefore, the fact that applicant no.1 has not given any share in the pension amount of deceased Shantaram is *prima facie* seems to be proved. The applicant is an aggrieved person and lived in shared household with the respondents for some time. Hence, domestic violence caused to the applicant is *prima facie* proved.

13 So far as the quantum of maintenance is concerned, it shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed. In the present case, the Ld. Advocate for the applicant submitted that the respondent no.1 has sufficient income source through bakery business and the respondent no.2 is getting family pension of the deceased Shantaram. He further stated that applicant no.1 has no independent source of income and has medical issues for which medical expenses are required every month.

14 On the other hand, Ld. Advocate for the respondents submitted that the respondent no.1 has no source of fixed income and has responsibility of his mother i.e. respondent no.2 whose mental health is affected for which medical treatment is carried out every month. He further contended that, the son of applicant no.1 has sufficient earnings and applicant has also engaged in cooking business and therefore, the applicant is not at all financially dependent on respondents.

15 So far as, the liability of respondents towards maintaining applicant no.1 is concerned, the D.V.Act specifically provides under section 2(q) the definition of term “respondent” which is read as respondent means any adult male person who is, or has been, in a

domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act. Thus, the respondent no.1 is liable for interim maintenance towards the applicant no.1. Other sources of income of applicant no.1 are not brought on record by the respondents. Income from agriculture is not specifically disclosed by both parties through supporting evidence like 7/12 extract of land etc. The income source of respondent no.1 is stated in the main application as well as affidavit annexed with it. Considering the facts of the case, standard of living of the parties, requirements of applicant and earning capacity of respondent no.1, the monthly amount of Rs.2000/- will be just and proper to meet the ends of justice. Accordingly, I pass following order:

ORDER

1)	The application for interim maintenance at Exh.10 is partly allowed.
2)	The respondents are directed to pay the amount of interim maintenance of Rs.2000/- (Rupees Two Thousand only) per month from the date of filing of this application till disposal of this proceeding.

Date: 04/10/2022
Place: Igatpuri

Sd/-
(S.G. Kuvalekar)
Jt. Judicial Magistrate F.C.,
Igatpuri
(J.O Code -MH03248)