

**ORDER BELOW EXH.5.**

This is an application Under Section 23(1) of the Protection of Women from Domestic Violence Act, 2005 [for short “the Act”]. Seeking protection order, direction to pay home loan installment on time and not to alienate the same. Applicants further seeking interim maintenance of Rs.25,000/- per month till the final decision of main petition.

2. Perused application and say filed by respondents. I have gone through the documents filed on record and counter-pleadings. Heard both side at length.

3. Considering the material brought on record, following points arise for my determination. Decisions thereon are recorded for reasons discussed here under ;

Sr. No.	Points	Findings
1]	Whether this application prima facie discloses that respondents are committing, or have committed or there is a likelihood that they may commit an act of domestic violence against the applicants?	..Yes.
2]	Whether applicants are entitled for interim relief of ... Yes. As per final order. maintenance? If yes ? At what rate ?	
3]	What order ?	Application is partly allowed.

REASONS**As to Point No.1 and 2 :-**

4. Reasons pertaining to both these points are same hence, they are taken together for discussion. While considering the prayer of interim maintenance under

section 23 of the Act, which is certainly a prima phase of interlocutory adjudication, the Court is not supposed to look deep into the merits of the case or the evidence which may be brought on record at trial. Even at this stage, it is not expected of an aggrieved person to bring the proof of pleaded allegations. Same thing is applicable to respondent who is also not supposed to prove or disprove any allegation by him or against him. The only aspect of consideration is that, whether the application prima facie discloses that respondent is committing, or has committed or there is any likelihood that he may commit an act of domestic violence against the applicant.

5. In the present case the relations between applicants and respondent are not denied by the respondent. It is admitted fact that marriage of applicant No.1 and respondent solemnized on 08-06-2000. The wedlock of applicant No.1 and respondent is still in existence and applicant No.2 to 4 are born from said wedlock.

6. Petition discloses the instances of domestic violence subjected by respondents to applicant No.1. On minutely observing the contents in petition, there are specifications in regard to verbal and emotional abuse and also of physical abuse. Applicants have filed on record copies of N.C. dated 26-06-2020, 13-07-2020 28-11-2020 given to police station.

7. It can be seen that applicants in their petition have not mentioned the date of separation. In affidavit of asset and liabilities applicant No.1 mentioned date of separation as 25 May 2020 whereas respondent in his say and affidavit of asset and liabilities has mentioned date of separation as May 2020. Petition discloses the instances of domestic violence subjected by respondent to applicant No.1. There are specifications in regard to verbal and emotional abuse and also of physical abuse. It appears that since the separate residence of applicants, respondent has not provided any sort of maintenance to applicants. This certainly amounts to refusal as well as neglect on the part of respondent to

ensure the living and to maintain applicants. Such instances narrated by applicants, certainly fulfill the ingredients of the terms “Domestic Violence” as defined in section 3 of the Act. Therefore, the circumstances as well as allegations in the petition certainly display the prima facie existence of domestic violence. As the existence of 'domestic violence' is prima facie shown, let's shift the focus of discussion on whether applicant No.1 has any prima facie source of income.

8. As per pleading applicant No.1 is serving as teacher. As per affidavit of asset and liabilities monthly salary of applicant No.1 is shown as Rs.66,000/- per month. Applicant No.1 has filed on record copy of pay bill wherein her monthly gross salary for June 2021 is shown as Rs.69,213/- and net salary is Rs.62,012/- . Applicants are residing in Flat No. 302 Ganesh Royal, Sudarbaug Colony, Dapodi which is purchased jointly by applicant No.1 and respondent. Applicant No.1 getting rent of Rs.12,000/- p.m. from Ganesh Garden Flat which is in the name of applicant No.1. Thus, applicant No.1 is having definite source of income from salary as well as from house rent. Applicants averred that applicant No.1 has to pay installment of personal loan Rs.25,000/- p.m., household, education, medical expenses, LIC policy etc.

9. Applicants contended that respondent is serving in Dyanamic Reality Enterprises as Senior Manager and his monthly salary is around Rs.75,000/-. According to applicants, respondent having Maruti Baleno Car, high end mobile and laptop. He is living very luxurious life style. Apart from house installment, he has no responsibility. Therefore, respondent be directed to pay Rs.25,000/- as maintenance to applicants.

10. Per contra respondent in his affidavit of asset and liabilities given his post as Accountants Head and his salary is Rs.47,800/- p.m. As per salary slip for the month of April 2021 to October 2021, monthly gross salary of respondent is Rs. 48,000/- and net salary is Rs.47,800/-. As per respondent, he has to pay

Rs.9,608/- towards EMI of Car, Rs.46,995/- towards EMI of Flat, Rs.9000/- towards rent of flat where he is residing and Rs.7,000/- towards mess expenses. He has no penny left in hand for himself. Therefore, he is unable to pay maintenance to applicants.

11. It is argued by learned advocate for respondent that applicant No.1 is independent serving woman and earning Rs.67,000/- salary plus Rs.12,000/- from rent. Therefore, she is not entitled for any interim maintenance. It is further argued that applicant No.2 and 3 are daughters whereas applicant No.4 is son of applicant No.1 and respondent. Therefore, applicant No.1 and respondent both have responsibility to maintain their children.

12. Perusal of pleading, counter-pleadings and documents on record depicts that applicant No.1 and respondent both are serving and both have definite source of income. Thus, it is not the case where the applicant No.1 is unable to maintain herself. In fact, the earnings of applicant No.1 is more than respondent which is sufficient to maintain and give her the required comforts of life. It is settled principle that when a spouse is qualified and has the capacity to earn, normally, interim maintenance is not to be granted.

13. In the present case as applicant No.1 is qualified and is actually earning, interim maintenance under Section 23 need not be granted. In regard applicant No.2 to 4, as a parent, it is responsibility of applicant No.1 and respondent to maintain them. In affidavit of asset and liabilities, applicant No.1 shown Rs.30,000/- monthly expenditure for applicant No.2 to 4 (except education expenses). Applicant No.1 shown educational expenses of applicant No.2 to 4 total Rs.94,530/- per annum which comes Rs.7877/- p.m.

14. Upon perusal of record placed before me the maintenance amount of Rs.25,000/- claimed for applicant No. 2 to 4 seems unreasonable in view of income of respondent. If monthly expenses of applicant No. 2 to 4 is considered as Rs.18,000/- per month plus education expenses Rs.8000/- p.m. it would be total

Rs.26,000/- . For the said monthly expenses of Rs.26,000/- as an earning parent applicant No.1 and respondent both have to be contributed in ratio of their monthly income.

15. As already discussed above applicant No.1 is earning monthly salary of Rs.67,000/- plus Rs.12,000/- from rent total Rs.79,000/-, whereas respondent is earning Rs.47,800/- p.m. Thus, towards Rs.26,000/- monthly expenses of applicant No.2 to 4, applicant No.1 has to incur Rs.14,000/- per month and respondent has to provide Rs.12,000/- per month. Considering all these facts and circumstances, I think it fit to grant the interim maintenance at the rate of Rs.12,000/- per month to applicant No.2 to 4 from the date of filing petition till final conclusion of it. Therefore, I answered point No. 1 and 2 in affirmative.

As To Point No.03

16. It is argued by learned advocate for applicants that applicant No.1 and respondent have jointly purchased Flat for which home loan of Rs. 53,76,000/- was taken. Applicant No.1 and respondent both are jointly liable to pay the installment of house loan. However, as respondent is not paying installment, concern bank has issued notice under Secularization Act. Copy of notice is filed on record. Respondent has not disputed about home loan. Even in say and affidavit of asset and liabilities he has mentioned about home loan which is shown as Rs.51,60,906/-. As applicant No.1 and respondent both are jointly taken home loan, in view of their income they both are liable to pay the installment of home loan.

17. Here it is important to note that applicants are residing in Flat No. 302 Ganesh Royal, Sudarbaug Colony, Dapodi which is purchased jointly by applicant No.1 and respondent. So also applicant No.1 getting rent of Rs.12,000/- p.m. from Ganesh Garden Flat which is in the name of applicant No.1. On the other hand respondent is residing in rented flat.

18. As per contention of applicant No.1 she is paying Rs.25,000/- p.m. towards her personal loan of Rs.12,00,000/-. There is nothing on record for what

purpose applicant No.1 has taken said loan. Even if it is considered that applicant No.1 paying Rs.25,000/- towards personal loan out of her total income of Rs.79,000/- (including income from rent), she may definitely pay half of the house loan installment. In such circumstances applicant No.1 and respondent both are required to jointly pay home loan installment .

19. Applicants have sought protection order against respondent. In view of allegations against respondent and material on record it would be necessary to pass protection order restraining respondent not to cause any domestic violence, not to contract directly or indirectly to applicants.

20. From the findings to the points supra, I am inclined to partly allow this application. In the result, In the result, in answer to point No.3 I pass the following order ;

ORDER

1. Prayer of interim maintenance is partly allowed.
2. Respondent shall pay interim monetary relief in the form of interim maintenance at the rate of **Rs.12,000/-** (Rupees Twelve thousand only) per month to the applicant No.2 to 4 from the date of petition i.e. 03-12-2020 till the decision of this case.
3. Respondents is directed not to contact directly or indirectly to applicants and not to cause any domestic violence.
4. Applicant No.1 and respondent each shall pay half of the home loan installment.
5. Copy of this order shall be given free of cost to the parties to this application on an application for copy made in due course.
6. Both parties to expedite the trial of this case and ensure its disposal at the earliest.

(G.R.Tiwari)
Judicial Magistrate, F.C.
Khadki Cantonment, Pune

Date:-10-01-2022