

MHPU250016092019



ORDER BELOW EXH. 5 IN CRI. M. A. No. 359/2019

-Sheetal Vs. Khandu-

1] Perused the application, read the reply of the respondents. Heard learned advocate for applicant and respondents.

2] Brief facts of the case so as to appreciate this application are that, the applicant No. 1 is the legally wedded wife of respondent No. 1. Their marriage solemnized on 31.01.2008. Out of their wedlock one child namely Pratik has born to them. It is alleged by applicant that after marriage she was subjected to cruelty on the ground that respondent No. 1 has suppressed the fact of his first marriage from applicant. Respondent No. 1 is having 3 children from his first wife. It is alleged that respondent No. 1 is in habit of drinking liquor. Respondent No. 1 used to beat her under influence of liquor and kept her without food. It is also alleged that applicant was subjected to ill-treatment on account of non fulfillment of unlawful demand of Rs 10,00,000/-. It is further contended by the applicant that respondent drove her out and since then she is compelled to live with her parents.

3] According to the applicant, she is unable to maintain her self and her child. On the contrary respondent No. 1 is carrying on welding work business and thereby earns Rs. 15,000/- to 20,000/- per month. In addition to that, respondents are having agricultural

land at Mauje Sadapur, Tah.- Maval, Dist.- Pune. Respondents are having agricultural income of Rs. 15 to 20 Lacs Per annum. Respondent has not made any arrangement to maintain the applicants. Therefore, applicant is praying for interim monetary relief.

4] Respondents are duly served with summons. Respondent No. 1 appeared and filed say at Exh.20 whereas respondents No. 2 to 4 appeared and filed their say at Exh 16. Respondents in their say have admitted the relationship with the applicants. They have denied the rest of the contentions made in the application. Respondents have specifically denied the allegation of the applicant that the fact of first marriage was suppressed by of respondent No. 1 from her. On the contrary it is alleged that applicant No 1 has treated the children of the respondent No. 1 begotten from his first wife with cruelty. According to the respondent No. 2 to 4 that they are residing separately from the applicant and respondent No. 1 therefore, they have no concern with the dispute between them. Thus, the application filed by the applicant has no substance at all. Respondents further have denied the contentions of the applicant in respect of the income of the respondent No.1. It is also submitted that respondent No.1 has no source of income. Hence, the application deserves to be rejected.

5] In view of rival contentions of both the parties following points arise for my determination and to which I have recorded my findings for the reasons mentioned thereunder -

Sr. No.	Points	Findings
1	Whether applicant has made out prima-facie case to grant interim maintenance allowance ?	In the Affirmative
2	Whether applicant is entitled to interim maintenance allowance ? If yes, at what rate ?	In the affirmative. As per final order.
3	What order ?	As per Final Order.

REASONS

AS TO POINT NO. 1 TO 3 :-

6] I have gone through the pleadings. Applicant has made several allegations in her application against the respondents. It is argued on behalf of the applicant that, respondent treated her well for first few days. Thereafter, he started giving mental and physical harassment to the applicant. According to her respondent No. 1 has suppressed the fact of his first marriage. He is addicted to liquor. It is further contended that Respondent No. 1 used to beat her under influence of the liquor and for unlawful demand of Rs. 10 lacs from her parents. In support of her case applicant has filed the copies of FIR lodged by her against the respondents under section 498A, 323, 504, 506 r/w 34 of IPC. It is also alleged that, respondent drove applicant out of the House. Applicant has filed her affidavit in support of her application. On the contrary, it is the contention on behalf of the respondents that applicant is not entitled to maintenance. Applicant has made false allegations against the respondent. According to him, she was never interested to cohabit

with respondent. It is further argued that applicant has herself has left the house of respondent.

7] Considering the rival pleading, I am of the view that interim maintenance being a ancillary relief to the main relief. Therefore, it is necessary for the applicant to make out prima facie case for that purpose. It means she has to prima-facie prove her inability to maintain herself, sufficiency of respondent No. 1's income and refusal or neglect on the part of respondent No. 1 to maintain the applicant as well as domestic violence on the part of respondent No. 1.

8] Both the sides have made allegations against each other. They will be decided on merit after considering evidence. It is a settled legal position that the conduct of the parties as alleged by them is not relevant for deciding the point of interim maintenance. At this stage it appears from the record that, applicant is residing separately from respondents. Applicant on affidavit stated that the respondent has neglected and refused to maintain applicant and therefore, she is compelled to live with her parents. It is further submitted that respondent is carrying welding work and thereby earns Rs. 15,000/- to 20,000/- per month. In addition to that it is further contended by the applicant that, respondents are having agricultural land at Mauje Sadapur, Tah Maval, Dist Pune. For the same applicant has produced the 7/12 extracts of land Gat No. 1/3, land Gat No 69/1 situated at Mauje Sadapur, Tah.- Maval. According to the applicant respondents are having agricultural income of Rs. 15 to 20 Lacs Per annum. On the contrary, respondent No. 1 has stated that he has no source of income as alleged by the applicant. Main

application will take time to decide. It appears that the applicant No 2 is taking education. It is contended by the applicant in her application that at present she is residing with her son at Kondaji Baba Dere Ashram, Vaishnav Dham, Post- Parunde, Tal- Junnar, Dist- Pune. However, applicant has filed nothing on record to substantiate it. Considering the same it is necessary to provide monetary relief to the applicant till the disposal of the application. Therefore, considering the facts, it will be proper to grant maintenance to the applicant till the disposal of the application. Hence, I answer point No. 1 and 2 in the affirmative and for point No. 3 I proceed to pass following order -

ORDER

1. Respondent No.1 is directed to pay maintenance of Rs. 2,000/- (Rupees Two Thousand Only) per month to applicant No. 1 and Rs. 1,500/- (Rupees One Thousand Five Hundred Only) per month to applicant no. 2 from the date of this application till the decision of the main application.
2. Copy of the order be supplied to the applicant free of cost.

Dated : 23.08.2021.

(Atul M. Kulkarni)
Judicial Magistrate F.C., Junnar

CERTIFICATE

I affirm that the contents of this PDF file order are same word for word as per original Order.

Name of the Court : A. M. Kulkarni,
C.J.J. D. & J. M. F. C. Junnar, Dist. Pune.

Name of the Stenographer : Anil Kashinath Mate

Date of decision : 23.08.2021.

Signed by P. O. on : 23.08.2021.

Upload on : 23.08.2021.