

**ORDER BELOW EXH. 5 FOR INTERIM MAINTENANCE U/S. 23
OF DOMESTIC VIOLENCE ACT.**

1] This an application under Section 23 of Protection of Women from Domestic Violence Act, 2005 (hereinafter refereed as D. V. Act, for sake of brevity) seeking monthly interim maintenance of Rs. 18,000/- per month for applicant and her daughter and for cost of proceeding and directions to the non-applicant to handover all clothes of applicant and toys of her daughter namely Vidhi.

2] The application is opposed by the non-applicants by filling written statement below **Exh. 13**.

3] Heard learned counsel for both the sides. Perused record of case along with documents filed on record. Following point arises for my determination to which I have recorded my findings as under.-

Sr. No.	Points of determination	Findings
1.	Whether applicant prima facie to establish that she is subjected to domestic violence as encrypted in Protection of Women From Domestic Violence Act, 2005 at the hands of non applicants ?	Yes.
2.	Whether applicant is entitled for relief claimed ?	Yes. For partly reliefs.
3.	What order ?	As per final order.

Reasons

As to Point No. 1:-

4] For granting interim relief under Section 23 of Domestic Violence Act, the court has to satisfy prima facie that, non applicant has committed an act of Domestic Violence or that there is likelihood that and he may commit such act. As per scheme of Section 23 of D.V. Act, the statement of applicant on affidavit are sufficient to prove prima facie case. In present matter, the applicant has filed affidavit sworn by her in prescribed form. There is nothing on record to show that, the non-applicant No. 1 has made any sufficient arrangement for her maintenance of applicant and her daughter. Considering the story, it is clear that the matrimonial relationship between applicant and non applicants were not cordial. There are specific allegations against non applicants. There is nothing on record to disbelieve the statement made on affidavit. The contents of applications remained unopposed. Thus, the contents of application are sufficient to establish prima facie that, applicant has been subjected to domestic violence at the hands of non applicant Nos. 1 to 3. Hence, I answer **Point No.1 in affirmative.**

As to Point No. 2:-

5] From record prima facie it is seen that, there are several allegations of domestic violence at the hands of non-applicants. There is nothing on record to show that, the non-applicant No. 1 has made any arrangement for maintenance of applicant and her

daughter. Being husband and father, it is his duty to maintain her. Thus, I have no hesitation to hold that applicant is entitled to get interim maintenance order.

6] Now, question remains in respect of quantum of maintenance amount. It is averred by the applicant that, the non-applicant is in private job and earning salary upto Rs. 55,000/- per month. Moreover, he is having agricultural land admeasuring 1 H. 92 R. Ld. Advocate for applicant submits that, the bank statements furnished by applicant shows that, the salary of non-applicant fluctuating from Rs. 31,000/- to 45,000/- as he has suppressed necessary information and taken car loan and person loan. Even, it is falsely stated in the affidavit that, he has taken loan of Rs. 6,00,000/- and he is paying installments of several loans upto Rs. 20,000/- per month. The non-applicant has not disclosed his landed property in assets and liabilities filed by him at Exh. 14 and thereafter same has been shown in second affidavit assets and liabilities filed at Exh. 19. On the other hand, the non-applicant is unable to maintain herself and her daughter.

7) Per contra, it is submitted on behalf of non-applicant that, the salary slips produced by them at list Exh. 16/2 clearly shows that, he received net salary of Rs. 31,714/- for month of June-2023 and Rs. 26,913/- for month of July-2023. It is further submitted that, the applicant is also working in Vipro company and she is earning upto Rs. 14,000/- per month. For said purpose Ld. Advocate for non-applicant invited my attention towards affidavit of assets and liabilities filed by applicant at Exh. 17.

8) I have considered the submissions advance on behalf of both the parties along with record of case. It is seen from the affidavit at Exh. 19, pay slips at Exh. 16 and bank statement of non-applicant that, he earns upto Rs. 30,000/- to 35,000/- net salary per month. In affidavit he has stated that, he is paying installments of Rs. 20,000/- per month towards car loan and personal loan, however the record disclose that, he has taken car loan and personal loan. However, the installments is not such high as alleged by the him. Even otherwise, it is well settled that, the loan taken towards personal and luxurious purpose would not be deductible for calculating net salary of husband. Therefore, the net salary of non-applicant in an average can be considered upto Rs. 32,000/- per month. In case of *Kalyan Dey Chaudhari ..Vs.. Rita Dey Chaudhari*, reported in (2017)14 SCC, 200 Hon'ble Supreme Court held that the wife is entitled for 25% of husband's net salary towards her maintenance. However, in present case it is admitted by the applicant in her affidavit that, she is doing job in Vipro company and having salary upto Rs. 14,000/- per month. It is also seen from the record that, the applicant is required to maintain herself and her infant daughter. Whereas, the non-applicant is also having responsibility to maintain his parents along with applicant and her daughter. In aforesaid background, I am of the opinion that, considering the prevailing prices of essential commodities, cost of living, medical expenses, as well as the financial status and earnings of both parties, in my opinion an interim maintenance of **Rs. 5,000/-** per month from the date of application would be just and sufficient to meet ends of justice. So

far as relief in respect of payment of cost of proceeding will be considered at the time of final adjudication. Moreover, at this stage, there is nothing on record to show that, the non-applicant is in custody of clothes of applicant and toys of her daughter. Therefore, directions to that effect cannot be given at this stage.

As to Point No. 3 :-

9] In view of my findings as to point Nos. 1 & 2, the applicant is entitled for protection and maintenance order. Hence, I proceed to pass following order.

ORDER

1. The application is partly allowed.
2. The non applicants are hereby restrain from committing any act domestic violence, in any manner during pendency of the application.
3. The non applicant is directed to pay **Rs. 5,000/- (Rupees Five Thousands Only) per month** to the applicant and her daughter for their interim maintenance from the date of application.
4. The copy of this order be given free of cost to the applicant and non applicants.
5. Copy of this order be forwarded to the concern Protection Officer.

Sd/-

(A.S. Agrawal)

6th Jt. Judicial Magistrate First Class
Vadgaon Maval, Pune

Date : 15/12/2023

CERTIFICATE

I affirm that the contents of this P.D.F. File Order/Judgment are same, word to word, as per the original Judgment/Order.

Name of the Stenographer	G. B. Mitha,
Name of the Court	Shri. A. S. Agrawal, 6 th Jt. C.J. J.D. & J.M.F.C., Vadgaon Maval, Pune
Date of Order & Judgment	15/12/2023
Order/Judgment Signed by the P.O. On	15/12/2023
Judgment/Order uploaded on	15/12/2023