

**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. 25,000/- per month for applicant No. 1 to 3.

2] The application is opposed by the non-applicants by filling written statement below **Exh. 8**.

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 has made any sufficient arrangement for her maintenance and residence of applicant. Considering the story, it is clear that the matrimonial relationship between applicant and non applicants were not cordial. There are specific allegations against non applicant and 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. 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. It is contended that, due to conduct of non-applicants the applicant is residing separately. There is nothing on record to show that, the non-applicant No. 1 has made any arrangement for maintenance of applicant and her minor son and daughter. Being husband and father, it is his duty to maintain them. 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 No.1 is in private job and earning salary of Rs. 65,000/- per month. It is further averred that, the non-applicant No. 1 is also having income from agricultural land and his yearly income is up to Rs. 10 Lakh per year. On the other hand, the non-applicant No. 1 has not disputed that, he is in job. He has stated in his reply and affidavit of assets and liability that, he is working as operator in M/s. Hitachi Astemo Pvt. Ltd. and his getting net salary of Rs. 30,000/- per month. He has annexed pay slip for month of May-2023, which shows that, his gross salary is Rs. 67,525/- per month out of which there are deductions of Rs. 29,710/- under several heads. Accordingly, the net salary of the non applicant No.1 is shown to be Rs. 37,815/-. However, it is significant to note that an amount of Rs. 4,445/- is shown to be deducted under head of provident fund, Rs. 200/- under professional tax and Rs. 666/- under canteen deduction. However, it is not mentioned that, for which purpose remaining deductions are made. As per affidavit of non-applicant No. 1, he has not taken personal loan of Rs. 10 Lakh and he is paying EMI of Rs. 17,000/- per month. In my opinion, the deduction towards bank loan can not be considered for computing financial position of husband to pay interim maintenance of wife and child. In this context, it is profitable to refer observations made by Hon'ble Andhra Pradesh High Court in case of ***Chepuri Hanumantha Rao ..Vs.. Chepuri Uma Bala, Cril. Revision Case No. 79/2016,*** wherein it is held that only voluntary deductions are permissible

for considering the income of husband.

7] Considering aforesaid observations, there is nothing on record to show that for what purpose the non applicant No. 1 has taken aforesaid personal loan. Therefore, in my view the deduction towards said loan does not come under statutory deduction and same may be considered while computing net salary of the non applicant No.1. Thus, the carry home net salary of the non applicant No.1 is about **Rs. 54,815/- (Net Pay Rs. 37,815/- + EMI of personal loan Rs.17,000/-)**. There is nothing on record to show that the non applicant No.1 is having income from agricultural land. On the other hand, from the affidavit of applicant at Exh. 10 would reveal that, **she is receiving rent of Rs. 20,000/- to 22,000/- per month.** However, her monthly expenses for herself and education of her 17 years daughter and 10 years old son is shown up to Rs. 30,000/- per month. It reveals that, the non applicant No. 1 is having responsibility to maintain his parents. It is well settled that wife and children of an individual are entitled to live in commensurate status of said person. There is nothing on record to show that the applicant is able to maintain herself. On the contrary, from aforesaid discussion and documents on record, the non applicant No.1 is receiving carry home salary at about Rs. 54,815/- 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. In present case, the applicant is having two daughters and they are residing separately.

Therefore, considering the aforesaid discussion, the prevailing prices of essential commodities, cost of living, medical and educational expenses, as well as the financial status of both parties and amount of rent received by applicant, in my opinion an amount of **Rs. 12,000/-** per month for residence and monthly maintenance of applicant No. 1 to 3 from the date of application would be just and sufficient to meet ends of justice.

As to Point No. 3 :-

8] In view of my findings as to point Nos. 1 & 2, the applicants are entitled for protection, maintenance and residence order. Hence, I proceed to pass following order.

O R D E R

1. The application is partly allowed.
2. The non applicant Nos. 1 to 3 are hereby restrain from committing any act domestic violence, in any manner during pendency of the application.
3. The non applicant No. 1 is directed to pay Rs. 12,000/- (Rupees Twelve Thousand Only) per month to the applicant for maintenance of herself and her daughter & son 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.

Date : 12/07/2023

(A.S. Agrawal)
6th Jt. Judicial Magistrate First Class
Vadgaon Maval, Pune

C E R T I F I C A T E

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	12/07/2023
Order/Judgment Signed by the P.O. On	12/07/2023
Judgment/Order uploaded on	12/07/2023