



Cri.M.A.No.61/2022

Sushma Salunke vs Harishchandra Salunke

CNR NO. MHRG090002152022

**ORDER BELOW EXH.5
(Passed on 15.07.2023)**

Through this application applicant no.1 to 3 are seeking monthly interim maintenance vide Sec. 23 sub-clause 2 and Section 18 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred as 'DV Act' in short).

02. That, the case of applicant can be capitulated at narrow compass that, the applicant is the legally wedded wife of the Non-applicant No.1 The applicant has contended that the non-applicant No. 2 is her Mother-in-law and non-applicant no.3 is sister-in-law. The marriage between the applicant and non-applicant No. 1 is solemnized on 29.04.2007 at Mumbai as per Hindu rites and rituals and is still in existence. From the said wed-lock the couple have two daughters namely Gouri age 14 yrs and Jidnya age 13 yrs. After marriage they both resided at Ratanagiri where the non-applicant no,1 doing a job. After one year of marriage the behaviour of the non-applicant no.1 has been changed. After one year of marriage the non-applicant started to taking doubt on the character of applicant no.1. The non-applicant no,1 used to hareess the applicants mentally and physically. The applicant had registered N.C against the non-applicant no.1 as he has mentally, financially and physically harnessed her. In the year 2015 i.e on 16.09.2015 the applicant had filed a D.V. Cri.Mis. Application No.137/2015 the non-applicant was present after service

of notice and on certain terms and conditions the matter was settled in Lok-adalat. After withdrawing the case he has well behaved for few months. Again from the month of June 2016 the non-applicants harassed her by doubting on her character. He used to stay at his mothers place in the vacation and had not brought any grocery items for day to day purpose. He has not given money for the girls for chappal,cloths and for books. On 21.12.2017 the non-applicant no.1 forcefully wants to keep physical relation but as the applicant no.1 was not well she has denied for the same on that count the non-applicant no.1 abused her by taking doubt on her character. Further the applicant submitted that, on 22.12.2017 the non-applicant no.2 called non-applicant no.1 at her house at Nalasopara. The non-applicant went at Nalasoparara by taking all ornaments and money along with him. She called her husband at house but he denied for the same. On 23.12 2017 the applicant registered N.C against the non-applicant no.1 and came at her parental house at Roha. In the year March 2018 the non-applicant called the applicants at his house and on June 2018 the non-applicant no.1 shifted at Panvel for Job transferred. The non-applicant continuously started to take doubt on the character of the applicant and abused her. Therefore the applicant filed this application. The applicant prayed monthly interim maintenance of Rs. 25,000/-per month contending that, Non-applicant No.1 is working in Maharashtra Industrial Development Co-operation and thereby drawing salary of Rs.65,000/- per month.

03. Per contra the Non- Applicant no.1 appeared and filed resistance to the application vide Exh.14. Non-applicant no.1 contended that, the applicant is having extra-marital affairs with multiple men. The

applicant has filed present application with the sole intention to extort money from non-applicant no.1. The applicant is educated enough to maintain her self and she left the matrimonial house on her own accord without sufficient reason. The non-applicant is having the responsibility of his 66 years old mother i.e non-applicant no.2 and the non-applicant no.3 i.e his sister living with non-applicant no.1. The non-applicant no.1 further submitted that, he is a mentally disabled person and for the same he has given supportive document in the list at Exh.21. He submitted that, his sister is also mentally unstable and they both are undergoing the treatment with monthly expense of Rs. 1000/- each for medicines. Therefore, he is not able to pay maintenance to the non-applicant no.1.

04. Having heard rival counsel for the applicant and the Non-applicant and on perusal of record following points arose for my determination and I record my findings against each of them for the reasons enumerated below.

Sr. NO.	POINTS	FINDINGS
1	Does the applicant prima facie established that she was in domestic relationship with Non-applicant No.1 and Non-applicant has caused domestic violence ?	Yes.
2.	Does the applicant entitled for maintenance under D.V.Act?	... Yes
3	What order?	As per final order

REASONS

As to point Nos.1 & 2 -

05. So far as concerned to the application under section 23 of the Act, the applicant has mentioned that, she is legally wedded wife of the respondent, same is not disputed. Further the salary of Non-applicant

No.1 of Rs. 35,000/ It is palpable that, since their separation, Non-applicant No.1 did not exert to make any arrangement of the maintenance of his wife.

06. So far as concerned to the allegations made in the application and counter allegations asserted in reply, both the rival parties have made vast and serious allegations against each other. In order to ascertain those allegations trial is entailed. However, the fact cannot be brushed aside that, Non-applicant No.1 has not disputed the fact that, applicant is residing at her parents house with his two daughters and he has not made any arrangement for their livelihood. At the cost of repetition I am to state again that, at this stage both parties are having counter allegations against each other, nothing can be inferred without evidence. The applicant no.1 being wife does not mean that, her every word is the gospel truth and the respondent being husband stating blatant lie. Also it is not universal truth that, there is cruelty behind every broken marriage. Marriages do fail for various other reasons which usually are not put up before the court. Hence, to ascertain the truth trial is required. Further being a husband the non-applicant no.1 cannot run away from his moral responsibility.

07. As per the applicant she is residing separately at the mercy of others. Admittedly, she has not been provided with maintenance. In this context I am to state that, Sec. 23 of the D.V Act is enacted with intent to provide safe guards to aggrieved person. The ultimate object of the provision is that, during time required for trial no one should be starved. So also the court would not ignore that, the applicant is a well educated lady and able to earn the livelihood. Indeed, in view of rival pleadings one thing remained undisputed that, the applicant is left without maintenance with her two daughter which is sole responsibility of Non-applicant No.1 being a husband and the Father.

08. What is left now is to determine the quantum of interim maintenance in this context the applicant has prayed for Rs.25,000/- per month stating that, the Non-applicant No.1 is drawing salary of Rs. 35,000/- per month. On the other hand, the Non-applicant No.1 has submitted that, the applicant is working as a L.I.C agent and she is earning money from the same. The applicant submitted on record her LIC agent termination action letter which is of the year 2014 at Exh.26 on the contrary the non-applicant submitted on record a LIC copy of his daughter which is of the year 2019 containing the name of applicant as an agent with agent code mentioned therein which shows that, she was a LIC agent in the year 2019. Both the parties have filed affidavit of assets and liabilities on record. In the affidavit of assets and liabilities the applicant has not shown any fixed income. The Non-applicant no.1 has filed monthly income i.e payment slip at Exh.23 which shows that the non-applicant no.1 is having net income Rs.35,000/- (Thirty-Four Thousand Seven Hundred and Twenty-Five only) As per the contention of the non-applicant no.1 he is having responsibility of his mother and sister and he is himself a mentally disabled person. The learned advocate for the non-applicant submitted that, the court has to take into consideration that, the non-applicant no.1 is 45 percent disabled he has filed on record the disability certificate in the list of documents at Exh.21. After perusing the said certificate it can be seen that, the applicant is suffering from mental illness is of 45 percent which is of temporary nature. The said illness directly or indirectly does not affect his job or his monthly income. Therefore the non-applicant cannot escape himself from his moral responsibility as a husband and Father.

09. To support the contention of the domestic Violence the learned advocate for the applicant relied on some rulings:

a) **Rafeeq vs Summayya** It is held by Hon'ble Kerala High Court that,

physically challenged husband cannot be exempted from his statutory liability to maintain his wife and children. The ruling cited by the learned advocate are taking into consideration.

10. After scanning the entire story of both the parties I am to state that, the marriage of both the parties is not in dispute, further on perusal of documents filed on record it is seen that, the applicant has filed the domestic violence case second time against the non-applicant as the non-applicant has not followed the consent terms decided between them. Therefore domestic violence is prima facie shown by the applicant. Now to decide the quantum of maintenance the applicant has not filed any evidence to show her exact income. On the contrary the non-applicant filed on record the payment slip which shows his income approximately Rs.35,000/-.The applicant is living with her two daughter one is of 14 years old and another is of 13 years old. Admittedly they both need the educational , medical ,and other expenses. As per the contention of the non-applicant no.1 he has the facility to avail the reimbursement of the amount spent on children's education from his office/ employer and for that purpose he shall need the school fees receipts and marksheets of the children. The applicant is also ready to provide the school Fees receipts and other required documents for said reimbursement to be made to Non applicant no. 1. But it is also true to say that, being teenaged daughters, except educational expenses there are many other necessary expenses such as medicines, cloths, tution fees and other expenses which has to fulfilled by non-applicant no.1 being a father.

11. Now while deciding the issue of maintenance the court has to see the earning capacity of both the parties. Therefore this court cannot deny that, the applicant can earn her livelihood but at the same time as a husband of the applicant it is the moral as well as legal liability of the non-

applicant no.1 to maintain the applicant no.1,2 and 3. At the same time this court considering the living standard of the applicants and non-applicant no.1. to state that, the applicant cannot be allowed to be left at stack, starving till the conclusion of trial. so also having been considered the situations four cornerly, I reckon to pass the following order.

ORDER

01. Non-applicant No.1 shall pay interim maintenance of Rs. 2,500/- (Rs. Two Thousand Five-Hundred Only) to the applicant per month from the date of filing of the application till the disposal of the case.
02. The Non-applicant no.1 shall pay monthly educational, medical and other expenses to applicant no.2 Gouri Harsihschandra Salunke Rs.5000/- (Rs.Five Thousand Only).
03. The Non-applicant no.1 shall pay monthly educational, medical and other expenses to applicant no.3 Jidnya Harsihschandra Salunke Rs.5000/- (Rs.Five Thousand Only).
04. The Applicant shall furnish school/college fee receipt, marksheet and other relevant documents to the Non applicant no. 2 for reimbursement.
05. The non-applicant no.1 to 3 are directed not to harass the applicants in any manner.
06. Copy of order be given to both the parties free of cost and one copy be sent to concerned police station and one to protection officer..

Date:15.07.2023.
Place:Roha.

(Megha C. Hasge)
Addl. Judicial Magistrate First Class,
Roha-Raigad.