



ORDER BELOW EXH. 4

IN PWDVA No. 13/2021

MHRT080007632021 **Farah Bilal Ambedkar @Pharha Kasam Mujawar etc.2
Vs. Bilal Japhar Ambedkar**

1. This is an application filed for the grant of interim relief under section 23 of the Protection of Domestic Violence Against the Women Act, 2005 (herein after referred to as 'the D.V. Act').

Facts of the case of the applicants:

2. The applicant Contended that, her marriage with the nonapplicant no. 1 was performed on 01/05/2019. Their marriage is still in existence. The first wife of non-applicant is deceased. Applicant is also divorcee. She has one daughter out of her first marriage; while non applicant no. 1 had one daughter and two son from his first wife. One daughter and one son reside at their maternal home. While, Applicant no.2 Rayyan lives with applicant. Nonapplicant went to foreign after marriage. He thereafter has returned India in the month November 2021. For first few days she was treated nicely after marriage. However, later on she found extra marital affairs of non-applicant no. 1. Nonapplicant subjected her ill-treatment, he caused her mental and physical torture. They used to abuse, beat and threaten her to kill on several grounds. Non-applicant has posted some defamatory post about his wife on social media many times.

3. Non applicant has been working in foreign since then. He used to get salary of Rs. 80,000- pm as per contention of applicant at the time of institution of this application. Further, being her legally wedded husband and father of Rayyan, it was duty of non-applicant no.1 to provide them monetary

relief for their day to day activities. However, he has wilfully neglected to maintain them. It is also contended that non-applicant has his own house at Songiri including agricultural property there, from which he gets enough income. Apart from this, his father works in Dubai and mother resides at Songiri. The two married sisters of him are cohabiting happily with their family. Hence, there is no such other responsibility on the shoulder of non-applicant no. 1. Time to time, she had raised grievance at various institutions of their religion including Police station, however as non-applicant was residing at foreign country, nothing could be done. Hence the present application for the interim relief.

4. Nonapplicant no. 1 appeared and filed say below Exhibit 23. The marriage and relation between parties are admitted. Other contentions are denied. It is submitted that, the nonapplicant has taken all the care of the applicant. The nonapplicant has provided her with all the necessary things for daily livelihood. The applicant was not behaving properly with the nonapplicant. In fact, time to time she had borrowed personal loan from various banks and which is now being paid by him. Non applicant used to send her money of Rs. 20,000/- for day to day expenses of herself and rayyan. However, during covid-19 pandemic, due to flight services being stayed for a period, non-aplicant couldn't come to India. Thereafter, he has started working as a driver earning Rs. 15000/- per month at Dubai. In fact, applicant earns Rs. 25,000/- per month out of her business. She has left the home voluntarily. Non- applicant is today also, ready and willing to maintain his son. Applicant is able to maintain herself. Non applicant has his family responsibility on his shoulder. Also, after this case, he couldn't went back to foreign. As such, he has lost his job. Hence, he prayed that application be kindly rejected.

5. Perused the application and say filed by respondents. Also gone through the documents filed on record by both parties and the counter pleadings. Heard learned advocates for both sides.

6. Considering the matter before this Court, following points arise for my determination. Decisions thereon are recorded for reasons discussed here under.

Sr. no.	Points for determination	Findings
1.	Whether petition prima facie discloses the existence of domestic violence and whether it is reasonable and sufficient cause for the petitioner to reside separately from respondents?	Yes.
2.	Whether it is just and necessary to pass interim order as prayed by petitioner ?	Partly yes.
3.	What order?	Application is partly allowed

REASONS

AS TO POINT NO. 1 AND 2

7. Reasons pertaining to both these points are taken together for discussion. While considering an application under section 23 of D.V.Act, which is certainly a prima facie phase of interlocutory adjudication, Court is not supposed to penetrate 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 respondents who are also not supposed to prove or disprove any allegation by them or against them. Both parties have filed affidavits to make their pleadings look believable. Therefore, here is a situation of Oath Standing Against Oath. Under such situation, it will not be appropriate to accept the

oath of one party at the cost of discarding the oath of its counterparty. Matrimonial relations between Farah and Bilal are admitted. Separate residence of both of them is the admitted facts. Further Son Rayyan is in custody of applicant is also admitted fact. Therefore, the only aspect of consideration remains is that, whether the application prima facie discloses that non-applicant is committing, or has committed or there is any likelihood that they may commit an act of domestic violence against applicant.

8. Application discloses entire datewise and specific Incident wise account of the instances of domestic violence allegedly subjected by respondents to petitioner. On minutely observing the contents of application, there are specifications in regard verbal and emotional abuse, abusing through social media. It is not disputed by non applicant that, since the separate residence of Applicant, he has not provided any means of livelihood to her after Covid-19 pandemic. This certainly amounts to refusal as well as neglect on the part of respondent No.01 to ensure the living and to maintain applicant. These instances narrated by petitioner, certainly fulfill the ingredients of the terms “Domestic Violence” as defined in section 03 of the D.V.Act. Therefore, the circumstances as well as allegations in the application certainly display the prima facie existence of domestic violence.

9. No wife will be able to reside with a husband who is continuously subjecting her to intense domestic violence. In fact, non-applicant used to reside at foreign country only within a few months of marriage. No doubt, petitioner will have to prove these instances of domestic violence at trial, but at this prima facie stage of interlocutory adjudication, it must be accepted that, no woman will make false allegations to such an intense extent of domestic violence. Therefore, the instances of domestic violence contended by applicant appears to be reasonable and sufficient cause for the petitioner to reside

separately from non-applicant. It is not always necessary to physically drive the wife out of the house, rather, if the circumstances are so created that, the wife cannot reside with husband, then also, it amounts of driving her out of the house. Inaction on the part of husband to fetch his wife back for cohabitation is also a crucial circumstance which display neglect to maintain. This inaction includes not taking of legal steps to ensure restitution of conjugal rights. Therefore, the causing of domestic violence here is prima facie proved.

10. To consider criteria for determine quantum of maintenance it is fruitful to rely on precedent of Hon'ble Supreme Court in the matter of **Rajnish Vs. Neha and ors. Criminal Appeal No. 730/2020**, Wherein it is held that,

“the factors which the objective of granting interim/ permanent alimony is to ensure that the dependent spouse is not reduced to destitution or vagrancy on account of the failure of the marriage, and not as a punishment or the other spouse. There is no straight-jacket formula for fixing the quantum of maintenance to be awarded. The factors which would weigh with the Court inter alia are the status of the parties; reasonable needs of the wife and dependant children; whether the applicant is educated and professionally qualified; whether the applicant has any independent source of income; whether the income is sufficient to enable her to maintain the same standard of living as she was accustomed to in her matrimonial home; whether the applicant was employed prior to her marriage; whether she was working during the subsistence of the marriage; whether the wife was required to sacrifice her employment opportunities for nurturing the family, child rearing, and looking after adult members of the family; reasonable costs of litigation for a nonworking wife.”

11. In view of guidelines laid down by Hon'ble Supreme Court in above cited judgment, let's see whether applicant has any prima facie source of income. So far as income source of applicant is concerned, it is alleged that she earns about Rs. 25,000/- per month out of her business of online selling clothes and other mercantile business. It is contended in his affidavit as to assets and liabilities that he is only 10th passout. There are mother, father, uncle, aunt and three children dependant on him, on which monthly expenses of Rs. 10,000/- occurs. Further loan of amount of Rs. 1,00,000/- is over him. On the other hand, applicant being Teacher, she earns Rs. 66,000 per year. However, no pinch of material is brought on record to show that, petitioner has any source of income. Without income or source of monetary gain, it cannot be concluded that she is certainly unable to maintain herself. However, applicant has herself admitted that she works as a teacher earning such amount.

12. Apart from that applicant has stated in her affidavits as to assets and liabilities at Exh. 24 that she is Anganwadi Sewika and earns about Rs. 8,325 per month. She has responsibility of one 15 and one 5 year children of her, along with some day to expenses about 20,000/- per month. She has outstanding loan over her income, of which she pays Rs. 11,000/- in a month as a instalment. On the other hand, non-applicant earns out of his salary and also through Auto rikshaw business. Further, he had his residence provided by the owner of business at foreign country. So his expenses as such were only Rs. 10,000/-. Further, she has filed on record income certificate from Kasam menan firm, which prima facie shows that non-applicant earns Rs. 12,000/- per month since 01/02/2022. What more is required to show that he is having handsome source of income and a high standard of living. Hence prima facie it appears that non-applicant has sufficient means of earning.

13. During pendency of this case, petitioner would be certainly requiring maintenance to enable her to lead her life with dignity and to contest this petition. Therefore, applicant must be awarded with some sort of interim monetary relief in the form of interim maintenance for herself and her son. But, it is pertinent to note that, non-applicant is not ready to furnish maintenance to her and is ready to take care of applicant no. 2 Rayyan which is his biological father admittedly. However, nothing has brought on record as to what steps or what care till date has been taken by non-applicant for his care and protection. Hence, he being a father is having responsibility of taking care and maintenance of his son.

14. It is settled legal position that, it is the duty of the husband to maintain his wife and children having no means of income. Not providing these basic necessities, itself amounts to economic abuse and result in domestic violence. It is the legal and moral obligation of the husband to maintain his wife and children who are unable to maintain themselves. Considering all the above facts and circumstances I am satisfied that the applicant has prima facie proved that she was and is being subjected to the domestic violence at the hands of nonapplicants. Hence it is necessary to restrain the nonapplicants from committing further act of domestic violence.

15. **Section 23** of D.V. Act provides that, the magistrate is empowered to grant interim relief if it is just and proper, on being satisfied that the nonapplicant is committing or has committed an act of domestic violence. In the present case nothing came on record to show that, the applicant is able to maintain herself or she has a means of income.

16. However, considering the basic needs such as food, clothing, basic medication, basic entertainment etc, of petitioner, coupled with tentative

income of respondent No.01, I think it fit to grant the interim maintenance at the rate of Rs.5,000/per month to petitioner from the date of this application.

ORDER

- 1 Application is partly allowed.
- 2 The nonapplicant is hereby restrained from causing any sort domestic violence to the applicant in any form including by way of social media.
- 3 Non applicant is directed to pay interim maintenance of Rs. 5000/ (Five thousand only) per month to the applicant from the date of main application till the disposal main application.
- 4 Nonapplicant is directed to pay the amount of maintenance in court on or before 10th day of each month.
- 5 Free copy of this order be given to both the parties and police officer in charge of the concerned Police Station as per **section 20(4) and Section 24 of The Protection of Women from Domestic Violence Act, 2005.**
- 6 The Officer in charge of nearest police station within the jurisdiction of which the said house is lies is directed to give protection and assistance to the applicant while implementing this order. Expenses of interim application be included at the final disposal of main application.

**Place- Deorukh
Date- 06/04/2023**

**Shruti H. Patil
Judicial Magistrate First Class,
Deorukh.**

CERTIFICATE

Order below exh.4 in PWDVA no. 13-2021

I affirm that the contents of this P.D.F. file are same, word to word, as per the original order/judgment/evidence.

Name of the Stenographer : K. V. Vaje (Jr. Clerk)

Court name : Jt. Civil Judge, J. D. and J.M.F.C., Deorukh.

Date : 06/04/2023

Order signed by the : 06/04/2023
presiding officer on

Order uploaded on : 10/04/2023