



Order passed below Exh. No.4
in Other Mis. Cri. App. No.8/ 2019
(Passed on 30th May, 2023)

The original application is under section 12 of the Protection of Women from Domestic Violence Act (in short PWDV Act) seeking various reliefs in terms section 18 to 23. The present application is filed by the applicant under section 23 of PWDV Act for seeking interim maintenance for herself and her daughter. The applicant has also prayed for residence order and protection order restraining respondents from committing act of domestic violence against the applicant.

02] Perused application and say. Heard both sides.

03] Considering submission made by the parties and after hearing argument advanced by the Ld. advocates appearing for the parties, the Court has to see, whether the applicant is prima facie subjected to domestic violence. It is also necessary to see, whether applicant is entitled for interim maintenance, residence order and protection order as prayed. If it is brought on record that the applicant is subjected to domestic violence, then she would be entitled to get interim maintenance. While passing protection order and residence order, the Court will have to consider whether there are such prima facie circumstances on record which entitle the applicant to receive interim residence and protection order as prayed.

04] While considering the question of domestic

violence, the court has to consider pleading of the parties. It is not disputed that the applicant is legally wedded wife of the respondent no.1. It is also not disputed that the applicant has begotten one daughter out of the said marriage wedlock. It is alleged by the applicant that initial three days after marriage, respondent no.1 abused and beat her on the reason ornaments and estate. Respondent no.2 and 3 are parent in laws of the applicant. They also started abusing and beating her. They tried to set on fire the applicant by pouring kerosene on her person and tried to kill her on three occasions.

05] It is further alleged that after three days of marriage i.e on 18/05/2017 , respondent no.1 take suspicion on the character of the applicant alleging that she has relations with her deemed brother Prathmesh Kaskar and tried to push the applicant in well by beating her. Before five months of filing application, relations between the applicant and her maternal relatives were improved. From that time applicant was severely subjected to domestic violence. Respondents were harassing the applicant for bringing money from her parents. All respondents used to threaten the applicant with dire consequences. Respondent no.1 once said to the applicant that there is tradition of performing second marriage in their family and he will kill her and will perform second marriage by showing her death as suicide.

06] It is further alleged that on 22.05.2017, respondents nos. 1 to 3 took the applicant to one unknown place and tried to hypnotized her. On 24.09.2017, the applicant purchased one refrigerator from her own income , on that , respondent no.1 said

to her to not to expend money as per her wish and started to beat the applicant. On 20.02.2018, the applicant got noticed that she was pregnant. The applicant immediately inform the said fact to respondent no.1 but he said to the applicant to abort pregnancy as she did not bring money and gold form her parents. Respondent no.1 beat that applicant and tried to cut her throat by sickle when she was six month pregnant. Thereafter , on 07.10.2018 applicant begotten one female child but respondents 1 to 3 were hating that little girl child. When the applicant celebrated twelve-day ceremony of her daughter on 18.10.2018, neither respondent nos.1 to 3 nor their relative came to see the daughter and they never took the daughter with love.

07] It is further alleged that respondent no.1 and her parent in laws badly beaten the applicant on 14.06.2019 on the reason of demand for money. The applicant with presence of mind secretly made a phone call to her mother and called her. In the meanwhile, respondent no.1 and her father in law caught hold her and her mother in law tried to set her on fire. The applicant any how saved herself form the said incident and thereafter she returned to her maternal house along with her daughter. Thereafter Respondent no.1 came to the maternal house of the applicant and ask her to forgive him and he also assured that he will not beat the applicant again.

08] It is further alleged that on 17/07/2019, when the applicant made a phone call to respondent no.1, he said to the applicant to die at her maternal house by saying that he does not wish to continue relations with her. On that day , the applicant

went to temple in the evening , while she was returning home, respondent no.1 restrained her on the way and started to abuse and beat her. When mother and brother the applicant tried to intervene, they were abused by respondent no.1 in vulgar language. The applicant lodged police complaint regarding said incident but there was no change in the nature of the applicant.

09] The applicant submitted that the applicant is a poor lady, therefore, interim maintenance be awarded for livelihood of herself and her daughter. The applicant has also prayed for residence order and protection order.

10] Beside , respondent 1 to 4 have filed reply below original application and present application. They have categorically denied allegations made by the applicant and made counter allegations against her that she willingly left company of respondent no.1. It is contended that the applicant went for marriage of her brother but did not return to matrimonial house even after completion of five months. It is further contended that the applicant insisted to respondent no.1 to take separate room on rent, and accordingly, respondent no.1 arranged rented room but she did not come back. It is further contended that in June 2019, the applicant came to matrimonial house but left by beating her mother in law. In addition to this, other counter allegations are made against the applicant.

11] Considering submission of both parties and after perusing domestic incident report, it is just and proper to mention here that allegations made by the applicant and counter

allegations made by respondents need to be considered on merits of the case. However, if prima facie allegations made by the applicant are considered, it prima facie appear that she has been prima facie subjected to domestic violence by respondents. As such, it appears that the applicant is entitled for getting interim maintenance for herself and her daughter.

12] The applicant and respondent no.1 have filed on record affidavit of asset and liabilities. The applicant in her affidavit has stated that she has no source of income but she specifically stated in her affidavit that respondent no doing business of electric fitting and plumbing and he earns rupees 400000/- per year. However, respondent no.1 in his affidavit has submitted that he works as a labor and he earns rupees 3000/- per month. He also own an Aactiva Scooter. It is further submitted that he has obtained loan of rupees 30000/- . Beside, it is submitted that the applicant work in a Bachat Gat Hotel and she earns rupees 5000/- per month. However, nothing is produced on record to show that fact. The applicant has also not brought on record any documentary evidence to show annual income as alleged by the applicant.

13] Considering income source of the applicant and prima facie evidence available on record , it would be just and proper to award interim maintenance of rupees 2500/- per month from the date of filing application to till the decision of original application for the applicant and her minor daughter. The applicant has prayed for residence order but she has not given detail or made any specific pleading in respect of shared

household. It is also pertinent to note that the applicant is residing at her maternal house, therefore, it is not just and proper to pass residence order. It is also pertinent to note that after July 2019, to till date no any further incident is reported to this court to show that respondent till continue to commit any act of physical violence against her. In the circumstance, it will not be just and proper to pass protection order as prayed. Hence, following order is passed.

ORDER

1. The application is partly allowed.
2. Respondent no.1 is directed to pay interim maintenance of rupees 2500/- per month to the applicant and her daughter from the date of filing application for interim maintenance i.e 20.08.2019 to till the decision of original application.
3. The prayer of the applicant for interim protection order and interim residence order stands rejected.
4. Respondent no.1 do pay rupees 1000/- as Costs of the present application to the applicant.
5. Copies of order be given to the parties free of Costs.

Malvan
Date - 30/05/2023

(A.D.Tidke)
Judicial Magistrate, First Class,
Malvan.