

MHSN030000312023



ORDER BELOW EXH 5 IN PWDVA No.3/2023

(Sou Deepali Saundade v. Bajirao Saundade & Ors)

01] Read. Heard the learned advocate of applicant. In order to give a glimpse to this application, without making much ado therefor, this application is for interim relief under Section 23 (1) of Protection of Women From Domestic Violence Act, 2005 (PWDVA Act). To understand the subject matter, facts are succinctly put hereunder.

02] The applicant is legally wedded wife of respondent No.1. They have solemnized their marriage as per Christian religious customs. Applicant is Hindi by her caste and respondent is Christian by his caste. The said marriage was inter caste marriage. Parents of both sides have knowledge about the inter caste marriage. They have no objections regarding the said inter caste marriage. Till date applicant and respondent No.1 have existing marital identity *inter se*. After marriage, respondent No.1 had taken her to his own village at Soni. She had cohabited her marriage for about 15 days. After 15 days she was ill-treated by respondents. She was mentally tortured by respondents. Respondent No. 1 is addicted to drinking liquor. According to her, respondents in collusion mentally and physically tortured her. He neglected to provide her medical as well as financial support. She was compelled to undergo abortion. Due to continuous ill-treatments she is suffering from mental agony due to such ill-treatments. Respondent No.1 deserted her. She being destitute has been residing with her female friend. Respondent No.1 is in service at local gas agency and he gets monthly income of Rs. 15,000/-. In order to protect her, she sought protection order as well as interim maintenance of Rs. 25,000/- per month. She further claim Rs. 10,000/- towards separate rented accommodation as

well as for medical expenses. Accordingly, claimed to allow this application.

03] Respondents were served with notice as per the report of Protection Officer o/w No. 129/2023 dated 27/03/2023. Thereafter, respondent No. 1 appeared in person and filed application Exh. 12 and 14 for time to grant say against main application. They have appeared through their learned advocate vide VP at Exh. 13. Sufficient opportunity was given to the respondents for filing their say. They failed to file their say. Hence, by order dated 06/10/2023, application proceeded without their say.

04] Considering the pleading of applicant on this application, I deem it appropriate to frame the following point against which I given my finding and reasons to follow-

Sr. No.	Point	Findings
1.	Does applicant <i>prima facie</i> disclose that respondent is committing or has committed an act of domestic violence or there is likelihood that respondent may commit and act of domestic violence ?	Yes
2.	Whether application is entitled for the protection order under Section 18 of PWDVA ?	Yes
3.	Whether applicant is entitled for the relief of maintenance for monthly maintenance of Rs. 25,000/- per month under Section 20 (1) (d) or Section 20 (3) of PWDVA ?	<i>She is entitled for lump-sum maintenance under Section 20(3) of PWDVA.</i>
4.	Whether applicant is entitled for rent and order of medical expenses of Rs. 10,000/- per month under Section 19 of PWDVA ?	<i>Does not survive at this stage for the want of proof.</i>
5.	What Order ?	<i>As per final order.</i>

REASONS

As to points No. 1 to 5

05] In order to get the relief under Section 23(1) of PWDVA,

primarily applicant has to prove the domestic violence under Section 3 of PWDVA. It is necessary to assess act, omission, commission or conduct of respondent in order to assess the domestic violence. The court has to taken into consideration overall facts and circumstances catalytic for the need of order under Section 23 (1) of PWDVA. Considering this, proper discretion has to be exercised to pass just and appropriate order.

06] It is worthwhile to be noted that, entire application is unchallenged. The facts of domestic violence narrated in this application are deemed to be admitted true. Therefore, at this stage it would be appropriate to consider those allegations of mental and physical abuses to be true and correct. The marriage as well as domestic relationship after marriage is also undenied. Respondents did not deny about the earning capacity of respondent No. 1. Applicant has submitted the documentary evidence such as her affidavit of assets and liabilities, photocopy of her photograph with respondent No. 1, notice dated 13/05/2022 issued to respondents, the 7/12 extract of property block No. 979, 1016 and 1031 at Soni in the name of Bajirao Jivan Saudande. It is an undeniable responsibility on respondent No.1 to look after his wife. The record would reveal that, he is thoroughly reluctant to maintain his wife. The extract of assets and liabilities at Exh. 11 would reveal that, applicant has no source of earning. *Per contra*, her husband appears to be well to do as to his earning and capacity to earn. Since the excerpts of entire application remained unchallenged, it carries presumption as to their correctness. It is probable to believe act, omission and commission by respondents for committing the alleged domestic violence. It is also manifest from the record, for the want of denial, respondent No.1 has admitted his source of earning. I have no hesitation to *prima facie* believe that, the domestic violence is proved.

7] The claim of maintenance sought by applicant to the tune of Rs. 25,000/- is something which is very exorbitant and is not in parity with the monetary earning of respondent No. 1 so alleged i.e. Rs. 15,000/-. His

agricultural income is not supported with any documentary proof. Considering these lacunae, I am not in a position to accede to the claim of applicant on the point of monthly maintenance. So far as the claim of separate rental accommodation in the form of rent and medical expenses are concerned, there is no documentary evidence to support the said contentions. Applicant has been residing with her female friend. Name of such female friend is not mentioned in the application. Therefore, the second claim is undeserving for any consideration. So far as first claim of maintenance is concerned, in my opinion it would be logically proper to allow lump-sum maintenance of Rs. 15,000/- at this stage. If this application is allowed for monthly maintenance, possibility absolutely cannot be ruled out that, applicant would delay the evidence and would transmogrify this application in to a recovery case. If this happens, whole purpose of deciding the application in speedy manner would get frustrated. Resultantly, I have answered the above points accordingly and in answer to point No. 5 I proceed to pass following order.

	<u>ORDER</u>
1.	This application Exh. 5 for interim relief under Section 23 (1) of PWDVA is partly allowed.
2.	Respondents are directed to not to commit, aid abate or instigate in any manner by themselves or through their agents, servants or relatives, the domestic violence against applicant. Violation of this order shall be treated as offence.
3.	Respondent No. 1 is directed to pay Rs. 15,000/- (Fifteen thousand only) as lump-sum maintenance under Section 20 (3) of PWDVA to applicant positively.
4.	Issue letter to the Protection Officer for implementation of this order. Copy of the order be sent to the Protection Officer.
5.	Applicant shall conduct evidence promptly. Any adjournment beyond three dates would entail adverse order. Respondents shall conduct cross examination promptly on next date. Failure on their part will attract adverse order.

6.	Applicant and respondent No.1 may resort to mediation for their reunion.
7.	Copy of the order be given free of costs to applicant under Section 24 of PWDVA.

Date: 26.02.2024

Sd/--
(Wahab A. Syed)
Judicial Magistrate, F. C.,
(Court No. 2), Sangli.

(The validity of digital signature has expired hence uploaded without digital signature.)

CERTIFICATE

I affirm that the contents of this PDF file are same as per original.

Name of Stenographer :- A.P.Patil.

Name of the Court :- J.M.F.C. Court No. 2, Sangli.

Date of decision :- 26.02.2024

Order signed by P.O. on :- 28.02.2024

Order uploaded on :- 28.02.2024