

MHSN030010532022



Order below Exh. 6

This application is for interim reliefs under Section 23 (1) of *Protection of Woman from Domestic Violence Act, 2005* (in short PWDVA). To understand the question, the facts of case are as under.

2. The applicant is legally wedded wife of respondent no. 1. Their marriage was solemnized on 01/09/2013 at sangli. After marriage she had been to her matrimonial home for cohabitation. Soon after their marriage, the respondent and his family members started mental and physical abuse of the applicant. The respondent used take doubt on character of the applicant. The respondent even physically assaulted the applicant many times. During birth of applicant no. 2 all respondents neglected applicant no.1.

3. Thereafter, few instances of violence occurred. On 20/03/2016 applicant gave birth to applicant no. 3. But respondent not even bothered to have his child in his hands and meet applicant no. 1. Respondent demanded money from applicant no. 1. In home that, there will change in the behavior of the respondent no.1 , mother of the applicant gave Rs. 3,00,000/- to respondent. After birth of applicant no.4 in 2018, mother of the applicant no.1 has to bear expenses of delivery. Respondents used to demand money from applicant time to time.

4. In September 2021, the applicant was driven out of her matrimonial house by the respondent. Since then, the respondent neglected her and never tried to bring her back with him. All of sudden in March 2022, respondent no.1 issued notice to applicant no.1 for restitution of conjugal rites.

5. As per the applicant she is completely depend on her parents. Therefore, the applicant prayed for interim maintenance of Rs. 30,000/- per month from respondents.

6. Respondents have appeared and filed their say at Exh.20. He admitted date of marriage of parties. He denied rest of allegations by the applicant. It is contended that, the applicant's behavior was not good after few days of marriage. As per him, applicant went to her maternal home after each delivery of their child. When respondent tried bring her back, she denied to him. Respodnent no.1 wanted to live with applicant no.1. But she has filed false FIR against him at Sanjaynagar Police station. Then, respondent no.1 had filed petition for restitution of conjugal rights PA.no. 307/2022. It is further contended that, respondent no.1 never neglected applicant. As per respondent no.1, applicant on her own went to her maternal house. Finally, respondents prayed for rejecting this application.

7. Perused the application, say and record. Heard the learned advocate of applicant and the respondent. Considering it, 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 applicant is entitled for monthly maintenance of Rs. 30,000/- under Section 20 (1) (d) and Section 20 (3) of PWDVA Act?	She is entitled for lumpsum maintenance under Section 20(3) of PWDVA.
3.	What Order?	As per final order.

Reasons

As to points no.1 to 3

8. The Sec 3 of DV Act defines 'domestic violence' and it covers physical abuse, sexual abuse, verbal abuse, emotional abuse and economic abuse. Needless to say, a trial under DV Act is summery trial and much strict evidence and proof of each and every fact is neither necessary nor expected. In order to get the relief under Section 23(1) of PWDVA, primarily applicant has to *prima facie show* there are instances of domestic violence.

9. To accentuate towards the aspect of domestic relationship it is necessary to look into the document submitted with Exh. 3. Applicant no.1 submitted documents marriage invitation card, photographs snapped at the time of marriage, copy

of notice issued by her to respondent, copy of FIR filed at Sanjaynagar Police station. On the other hand, respondent no.1 produced documents at Exh. 25 certified copy of order for interim maintenance passed in Cri MA 19/2022.

10. Learned advocate for the applicant argued that, marriage of the applicant and respondent no.1 has not been denied by respondent no.1. The instances of the violence are specified in the application. The application is supported with affidavit of the applicant no.1.

11. Learned advocate for respondents argued that, the applicant without any sufficient cause withdrawn herself from the company of respondent no.1. Respondent no. 1 has filed petition for restitution of conjugal rite against applicant . He further argued that, all allegations made in this application are imaginary false and frivolous.

12. On perusal of the application and say, it appears that, marriage between parties is not disputed. So, the applicant is legally wedded wife and lived with respondent at her matrimonial house. Applicant no. 2 to 4 are children born out of this wedlock. From the tenor of the application, it *prima facie* appears that, the applicant had to face ill-treatment in her matrimonial house soon after marriage. Since September 2021, applicant is living at her maternal house. Nothing brought on record to show that, respondent no. 1 look after applicants since 2021.

13. It is case of respondent that, he wanted to live with

applicants. So, he filed marriage petition PA no. 307/2022. The applicant has filed copy of FIR filed by her due to alleged physical assault by respondent no.1. All these aspects will be decided during trial on merit. But at this stage, applicant has filed affidavit with this application. Therefore, *prima facie* it can be said that, applicant has sufficient cause to live apart from respondent no. 1.

14. The applicant has specifically stated that, respondents used to taunt the applicant and respondent no.1 physically assaulted her. It *prima facie* appears from the contention of the applicant that, there are instances of domestic violence. Soon after she was driven out to her maternal house, respondent no.1 never supported her financially till today. All these instances and allegations by the applicant *prima facie* shows that, she was subjected to verbal, emotional and economic abuse by respondents.

15. Therefore, its *prima facie* appears from the averment in application supported by affidavit that, the applicant was subjected to domestic violence. Hence, I answer to point no. 1 in affirmative and record may findings thereon accordingly.

16. Now as the applicant is the legally wedded wife of respondent no.1 and applicant no. 2 to 4 are children of respondent no.1. At this stage, it is not case of respondent no.1 that, he is physically unable to earn for his family. Therefore, he is under legal and moral obligation to maintain the applicant. The applicant has filed her affidavit of assets and liabilities at Exh.12. Respondent no.1 has also filed his affidavit of assets and liabilities at Exh.23. At this juncture, the assets, liabilities, income and

expenditure of parties are necessary to be determined to fix quantum of maintenance.

17. Applicant no.1 stated at Exh. 12 that, her monthly expenses are upto Rs.35,000/-. Her education is 9th pass. In PA no. 19/2022 order for interim maintenance of Rs. 5,000/- per month was passed for applicant no. 1 to 4 and she has filed purshis that, till toady respondent no. 1 has not paid any amount to her at exh. 28. It is well settled law that, while deciding the quantum of maintenance in the subsequent proceeding, the civil court/family court shall take into account the maintenance awarded in any previously instituted proceeding, and determine the maintenance payable to the claimant.

18. Respondent no. 1 stated at Exh. 23 that, his monthly earning is upto Rs. 3,500/-. His parents are dependent on him and their expenses including medical expenses are Rs. 5,000/- per month.

19. Perused the documents produced by both parties. 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 to the other spouse. But from this affidavits and documents produced it can be *prima facie* inferred that, financial capacity of respondent no.1 is sound. Even, the applicant is getting interim maintenance of Rs. 20,000/- per month from respondent in PA no. 19/2022 But till today she has not received any amount from respondent.

20. The capacity to pay monthly maintenance of respondent is not rebutted at this stage. But the court is bound to assess the capacity of respondent to pay considering his liabilities. The affidavit Exh.23 shows that, respondent is laborer. Respondent no. 1 stated that, he is earning Rs. 3,600 per month. At this stage there is no documentary evidence to *prima facie* show exact income of respondent no.1.

21. Both sides have not submitted documentary evidence to show their earning capacity with proofs. The affidavit Exh. 23 does shows exact income which is receivable by respondent no.1. But as he has incurred loan from financial institutes then his financial capacity is definitely sound. Therefore, he could provide maintenance to the applicants.

22. It is also necessary to be alive to the situation that, this application under Section 23 (1) of PWDVA is allowed in letter and spirit for monthly maintenance, the relief in the main application under Section 12 of PWDVA will remain under abeyance. The progress in the main application will get delayed. Therefore, I have arrived at a conclusion, that this is a fit case to award lumpsum maintenance at this stage because obviously there is no serious dependency on maintenance of applicant is projected at this stage.

23. Applicant no.1 has responsibility of her own and applicant no. 2 to 4. Considering living standard of parties, liabilities on them, their daily expenses, medical expenses and educational expenses of applicant no. 2 and 3, medical expenses of respondent no. 2 and 3 amount of interim maintenance must be

decided. *Prima facie* it appears that, applicant no.1 is not working anywhere.

24. But as applicant no.1 has to take care of expenses of applicant no.2 to 4. Applicants are living at Sangli. Monthly expenses of applicant no. 1, 2 and 3 are given in the application as Rs. 10,000/- per month. But considering that, applicants are living at Sangli. So monthly expenses of applicant no. 1 would be approximately Rs. 6,000/-. Already applicant no. 2 to 4 awarded with interim maintenance of Rs. 5,000/- each by Hon'ble Family court in PA no. 19/2022.

25. This case is filed in 29/03/2022. Since then, respondent no. 1 has provided no financial assistance to applicants. It will take some time approximately at least an year to decide the main application. As per Sec 28 of PWDVA, *Nothing in sub-section (1) shall prevent the court from laying down its own procedure for disposal of an application under section 12 or under sub-section (2) of section 23.*

26. Considering monthly expenses of applicants of Rs. 6000 - Rs. 5000 = Rs. 1000/- only. And as applicant no. 2 to 4 have got sufficient maintenance by the order of Hon'ble Family Court in PA. no. 19/2022. Therefore, respondent no.1 must pay interim maintenance to the applicant no. 1.

27. It is well-settled law that, interim maintenance should be awarded from the date of application. If so, then maintenance must be calculated from March 2022. At this stage lump-sum

maintenance would sub-serve the purpose. From these discussion, it appears that, monthly expenses of applicants is Rs. 1,000/-. Therefore, from March 2022 to Nov 2023 that amount would be Rs. 20,000/-. Considering conduct of parties since date of application, some time would be required to decide this application even if direction to proceed expeditiously is passed. So, lumpsum maintenance will be Rs.20,000. So, total amount of interim maintenance of Rs. 20,000/-. Hence, I answer to point no. 2 in partly affirmative and record my findings thereon accordingly.

28. At the same time applicant no.1 and 2 shall remain present on each and every date. In the event of failure to remain present adverse order will be passed. It is also necessary to direct applicant to conduct evidence promptly to expedite this matter.

29. Resultantly, as I have answered point no. 1 and 2 in the affirmative and in answer to point no. 3, I proceed to pass following order.

	<u>ORDER</u>
1.	Application for interim relief under Section 23 (1) of PWDVA is partly allowed from the date of application.
2.	Respondent is directed to pay Rs.20,000/- (Rs. Twenty Thousand only) as lumpsum maintenance under Section 20 (3) of PWDVA to applicants positively from date of this order. On

	failure adverse orders will be passed against respondents on date fixed for payment of maintenance.
3.	Issue letter to the Protection Officer for implantation of this order. Copy of the order be sent to the Protection Officer.
4.	Applicant shall conduct evidence promptly.
5.	Applicant and respondent may resort to mediation for their reunion.
6.	If respondent no. 1 failed to pay maintenance amount applicant may take legal steps on that date accordingly.
7.	Copy of the order be given free of costs to the applicant under Section 24 of PWDVA.

Place :- Sangli

Date :- 30/11/2023

(Divya P. Kale)
7th Judicial Magistrate
First Class, Sangli.

C E R T I F I C A T E

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

Name of the Stenographer : Self

Court Name : 7th Jt. C.J.J.D. and J.M.F.C., Sangli

Date of judgment/order : 30/11/2023

Date of Judgment/Order signed by

the Presiding Officer on : 30/11/2023

Judgment/Order uploaded on: 02/12/2023