

PWDVA No.270/2018
Padmshri Chudappa
V/s.
Ashish Chudappa.

Order below Exh.04.

Perused the application, say and affidavits of assets and liabilities at Exh. 15 and 17.

02. Heard learned Advocate for both parties.

03. The brief facts of applicant's case are as follows:-

The applicant no.01 got married to the respondent on 17/01/2011 as per Hindu rites and rituals at Terapanthi Hall, Jaysingpur. The applicant no.02 viz. Arush is born on 02/10/2011 out of said wedlock. It is the averment of the applicant no.01 that, her father had incurred the marriage expenses and given ten tolas gold in the said marriage. It is the further averment of the applicant no.01 that, after the marriage she went to reside at the matrimonial house along with respondents initially at Kothali and thereafter at Pune. It is the averment of applicant no.01 that, the respondent never looked after the basic needs of applicants. It is the further contention of applicant no.01 that, the respondent never treated her with love and affection and used to harass, abuse and ill-treat her on petty issues. Another contention of the applicant no.01 is that, respondent was habitual smoker and drinker and used to assault the applicant no.01. The respondent used to doubt at the character of the applicant no.01.

04. It is the further averment of the applicant no.01 that, in the month of April 2018 the respondent without any reason dragged

applicant no.01 and 02 out of the house and since then applicants are residing at her parental abode. Likewise, the applicant has alleged various instances of verbal, emotional and economic abuse caused to her. It is the contention of the applicant no.01 that, the respondent is a diploma engineer and works with ITC company whereby he draws salary in tune of Rs. 70,000/- to Rs.80,000/- per month. It is further contented that, the respondent earns ample income from his agricultural land. The applicant no.01 has specifically stated that, she has no any source of income to maintain herself and her son. In support of her contention the applicant no.01 has relied on various documents. In view of above contentions, the applicant no.01 has prayed for Rs.30,000/- each towards interim maintenance for herself and her son. The applicant no.01 has further prayed for grant of Rs.50,000/- towards the educational expenses of the applicant no.02. Lastly, the applicant no.01 has prayed for restraining the respondent from alienating or disposing the properties owned by the respondent.

05. The respondent vide his say at **Exh.09** has denied all allegations made by the applicant no.01. The marriage has been admitted by the respondent. It is the assertion of respondent that, he had given golden and silver ornaments to the applicant no. 01 in the marriage and had incurred marriage expenses. The respondent has categorically stated that he had fulfilled and provided applicants with all their needs. It is the contention of the respondent that, the applicant no.01 used to speak for hours with her mother and was in habit of frequently visiting her parental abode. The applicant no.01 refused to reside at the native place of the respondent and never performed her matrimonial duties. The respondents have specifically contended that, the applicant no.01 was of arrogant and stubborn nature. She used to beat the applicant no.02 on petty issues. Another contention of the

respondent is that, in the month of may 2018 the applicant no.01 taking all her gold and clothes had left matrimonial home without any reason. Thereafter, on repeated requests the applicant no.01 did not return to matrimonial home.

06. The respondent averred that, he is working works with ITC company and draws salary in tune of Rs.68,626/- per month. Further, the respondent has contended that he has only half acre of agricultural land. The respondent has specifically stated that, he has pay Rs.11,452/- towards loan installment, Rs.15,000/- towards rent and other expenses which takes his monthly expenditure towards Rs.43,994/- per month. It is denied by the respondent that, he ever caused violence or harassment to applicants. Lastly it is contented that, the applicant no.01 had herself withdrawn from the matrimonial tie, therefore, prayed for rejection of the application.

07. Considering the rival contentions, following points arise for my determination to which I record my findings for reasons recorded thereunder;

Sr. No.	<u>Points</u>	<u>Findings</u>
1.	Whether applicants prove that, they were subjected to domestic violence by the respondent?	...In the affirmative.
2.	Whether the applicant no.01 prove that she is entitled for interim maintenance of Rs. 30,000/- per month for herself and her son from the respondent?	...Yes For amount of Rs. 10,000/- per month to applicant no.01 and Rs. 5,000/- per month to applicant

		no.02 from the respondent.
3.	Whether the applicant no.01 prove that she is entitled for amount of Rs. 50,000/- towards education expenses of applicant no.02 from the respondent?	...In the affirmative.
4.	Whether the applicant no.01 prove that she is entitled for order restraining the respondent from alienating or disposing the properties owned by the respondent?	...Partly affirmative only in respect of sharehousehold.
5.	What order?	...As per final order.

REASONS

AS TO POINT NO. 01 :-

08. The marriage of applicant with respondent was solemnized on 17/01/2011, which is not disputed by the respondent. The son viz. Arush is born on 02/10/2021 out of said wedlock. The applicant no.01 has alleged various instances of verbal, emotional and economic abuse caused to them by the respondent. The applicant no.01 has specifically stated that, the respondent never looked after the basic needs of applicants. This obviously would amount to economic abuse of applicants as contemplated in the definition of domestic violence. Another contention of the applicant no.01 is that, respondent was habitual smoker and drinker and used to assault the applicant no.01. The respondent used to doubt at the character of the applicant no.01 and used to beat the applicant no.02 on petty issues. It is the further averment of the applicant no.01 that, in the month of April 2018 the respondent without any reason dragged applicant no.01 and 02 out of

the house and since then applicants are residing at her parental abode. It seems from the contention of applicants that, they were subjected to domestic violence. Thus, it prima facie appears from the averment in application supported by affidavit that, applicants were subjected to domestic violence. Here it is pertinent to note that, the applicant has not specifically prayed for grant of protection order. However, as I hold that applicants are prima facie victim of domestic violence and as the protection of applicants is need of an hour, it is necessary to pass the protection order. In turn, I answer point No.1 in the affirmative.

AS TO POINT NO. 02 and 03 :-

09. Admittedly, the applicant no.01 along with her son is residing separately from the respondent. Now, if the applicant no.01 resides separately it is pertinent to see the justification for the same. It takes me to the contentions of the applicant no.01 regarding instances of domestic violence as discussed above. Thus, its can be prima facie said that, the applicant no.01 is compelled to reside at her parental abode. Additionally, the respondent has failed to show that, he has made any provision for the maintenance of the applicant and her son. This obviously would amount to economic abuse of applicant and her son as contemplated in the definition of domestic violence. It would be therefore just and proper to grant interim maintenance to applicants u/s. 23 of the said Act. The object of granting interim maintenance is to ensure that, the dependant applicant is not reduced to destitution and not as an punishment to the respondent. There is no straitjacket formula for fixing the quantum of maintenance. The guiding factors are status of parties, their standard of living, reasonable needs of the applicant, applicant's independent source of income etc. On the other hand, the financial capacity of respondent, his actual income, reasonable expenses

of his own maintenance and his dependant family members whom he is obliged to maintain under law, liabilities if any would be required to be taken into consideration, to arrive at the appropriate quantum of maintenance to be paid.

10. At the outset, it is submitted that, the applicant no.01 is not working and has no any source of income. The applicant no.01 has filed her affidavit of assets and liabilities at Exh.17. The learned advocate for applicants submitted that, the applicant no.01 has to spend Rs.13,500/- towards her own monthly expenses and Rs.10,000/- towards monthly expenses of her son. It is further submitted that, the applicant no.01 has to spend approximately Rs.50,000/- per year towards education of the applicant no.02. To substantiate said fact the applicant no.01 has filed details of school fees of academic year 2019-2020, school fee challans of the Shri. A.B. Patil English School, school bus fee challans, bills as to school stationery of the applicant no.02. So also it is submitted that, the applicant no.02 is suffering from medical ailments and the applicant no.01 needs to spend on the medical expenses of the applicant no.02. In support the applicant no.01 has filed on record medical prescriptions, medical reports, discharge card and medical receipts of the applicant no.02.

11. The learned advocate for applicants further submitted that, the respondent is a diploma engineer and works with ITC company whereby he draws salary in tune of Rs. 70,000/- to Rs.80,000/- per month. Here, it is important to note that, the respondent has admitted the fact that he works with ITC company whereby he draws salary in tune of Rs.68,626/-. In support the respondent has filed his copy of salary slip of the September 2020 which shows his net payable as Rs.68,626/-. Moreover, same thing reflects in his affidavit of assets and

liabilities at Exh.19. It is further contented by the applicant no.01 that, the respondent earns ample income from his agricultural land. In support of her contention the applicant no.01 has filed copy of 7/12 extracts. Perusal of copies of said 7/12 extracts clearly bears the name of the respondent and his father.

12. Moving ahead, let's turn to the liabilities of the respondent. Firstly, it is submitted by the respondent that, he has to pay amount of Rs.15,500/- towards rent. In support to his contention the respondent has filed on record rent receipts. Secondly, it is the averment of the respondent that, he has pay loan installment of Rs.11,452/- and to substantiate said fact the respondent has filed on record bank statement of ICICI Bank. Thirdly, it is submitted by the respondent that, he has to pay amount of Rs.4959.64/- towards premium of his son's policy. In support to his contention the respondent has filed on record statement of premium paid to the LIC and Bharti AXA Life Aajeevan policy. He has to spend some amount on mess and travelling expenses. Thus, considering the contentions of the respondent, his per month expenditure is approximately Rs.43,000/-. At the same time, these facts go to show the capability and standard of living of the respondent.

13. Apposite to mention, there is nothing on record which shows that, at present the applicant no.01 is working. Moreover, it is an admitted fact that, the respondent earns net salary Rs.68,626/- per month. So also, considering the expenditures of the respondent it can be said that handsome amount remains in his hand from his salary. The applicant no.01 is the legally wedded wife of the respondent. Therefore, he is under legal and moral obligation to maintain the applicant and their son. Thus, in view of the above discussion, facts and circumstances and considering the status of the parties, needs of the applicant, her

justification to reside separately, own expenses and liabilities of the respondent and their standard of living; interim maintenance of Rs. 10,000/- per month to applicant no.01 and Rs. 5,000/- per month to applicant no.02 from the respondent would serve the purpose. Admittedly, even after filing of this application, respondent no.1 made no provision of the maintenance of the applicant. Therefore, the benefit of this order has to be given to applicants from the date of application. Moreover, applicant no.01 has prayed for grant of Rs.50,000/- towards education expenses of the applicant no.02. To substantiate said fact the applicant no.01 has filed details of school fees of academic year 2019-2020 and relevant school documents of the applicant no.02. Considering the hardship of the applicant no.01 to maintain themselves and educational expenses which she requires to bear of the applicant no.02, it would be just and proper to direct the respondent to pay Rs.50,000/- towards education expenses of the applicant no.02 of the past one academic year. Hence, I answer point no. 02 and 03 accordingly.

AS TO POINT NO. 04 :-

14. Moving ahead, the applicant no.01 has prayed for order restraining the respondent from alienating or disposing the properties owned by the respondent. In support of her contention the applicant no.01 has filed on record copies of 7/12 extracts and house assessment extracts. Perusal of copies of said 7/12 extracts clearly bears the name of the respondent and his father. However, the father of the respondent is not party to present application. Hence, it would not be just and proper to restrain them from acting upon properties. Moreover, perusal of the house extract no.08 in respect of house property bearing no. 1498 situated at Khothali Dist. Kolhapur clearly shows that, the said property lies in the sole name of the respondent. So also, it is contention of the

applicant no.01 that she has resided in the said share household. Thus, in view of section 19(d) of DV Act, the respondent is hereby restrained from alienating or disposing of the share household or encumbering the same.

AS TO POINT NO. 05 :-

19. The up-shot of aforesaid details can be reflected, by stating that, applicants are found entitled for the relief of interim maintenance, protection order and restraining the respondent. Hence, in view of above discussion, I proceed to pass following order;

O R D E R

1. Application is partly allowed.
2. The respondent is hereby restrained from causing any acts of domestic violence or aiding or abetting in the commission of acts of domestic violence to applicant no.01 and 02.
3. The respondent is hereby directed to pay interim maintenance of Rs. 10,000/- per month to applicant no.01 and Rs. 5,000/- per month to applicant no.02 from the date of this application till disposal of the main application.
4. The respondent is hereby directed to pay one time Rs.50,000/- to the applicant no.01 towards the educational expenses of the applicant no.02 for academic year 2019-2020.
5. The respondent is hereby restrained from alienating or disposing the share household or encumbering the same owned by him.

6. The copy of this order be given to parties free of cost.
7. A copy of this Order be sent to the in-charge of police station within the local limits of whose jurisdiction respondents resides.

SD/-

Place : Sangli.	(Ashish Mahipati Chavan)
Date : 29/10/2021.	2nd Judicial Magistrate First Class,
	Sangli.

CERTIFICATE

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

Name of the Stenographer : Mrs. K. A. Chougule
(Stenographer Grade-III)
Court Name : 2nd Jt. Civil Judge Jr. Division &
Judicial Magistrate First Class,
Sangli.
Date : 29/10/2021.
Signed by P.O. on : 13/11/2021.
Uploaded on : 13/11/2021.