


<p>MHSN060018962024</p> 	<p><u>P.W.D.VA.NO.68/2024</u> Arifa Mahamadtahir Shaikh & Ors. Vs. Mahamadtahir Abdulhai Shaikh.</p>
---	--

ORDER BELOW EXH. 5

Facts in brief stated by the applicant:-

1. The applicant has filed the present application under the Protection of Women from Domestic Violence Act, 2005, against the respondents. Through this application praying for interim maintenance from the respondent.

2. The applicant no.1 was married to respondent on 20.02.2008, as per Muslim religious rites and customs. The applicant contended that, her parents gave Rs. 50,000/- to respondent and incurred total amount of Rs.4,00,000/- for gold ornaments and other expenses in their marriage. After marriage, applicant no.1 went for cohabitation with respondent. Respondent is having eight daughters, two brothers, father and mother. After fifteen days of marriage, sister of respondent started quarrel with applicant no.1, shouted on applicant no.1 and came to beat her. applicant no.1 narrated said incident to her parents and her parents took her at Miraj. After some days, respondent came to took applicant no.1 and started residing separately with her. Thereafter, applicant no.1 became pregnant and came at Miraj for the same. Her parents borne expenses of her delivery. Thereafter, respondent started residing at Mumbai alongwith applicant no.1 and her son Mahamadkasim. Thereafter, applicant no.1 became pregnant and came at Miraj for delivery. Her parents borne expenses of the same. Thereafter, applicant no.1 resided at Miraj and from time to time respondent came at Miraj. Thereafter, applicant no.1 gave birth to

applicant no.3 and the expenses of the delivery were borne by her parents.

3. During the said, respondent use to quarrel with applicant no.1 by abusing and beating her. He also neglected towards food, clothing and medical expenses of the applicant no.1. He also neglected towards the education of applicant no. 2 to 4. The father and brother of applicants to take their care. For some period respondent use to sent some amount on the account of applicant no.1, but it is not sufficient to maintain herself. Applicant no.1 asked respondent about household expenses, but he neglected towards it. Applicant no.2 is taking education in 11th standard, applicant no.3 taking education at 8th standard and applicant no.4 taking education in 6th standard. When applicant no.1 asked to respondent on phone about household expenses, he use to abuse and insult her as well torture her physically and mentally. When respondent came at Miraj, he use to abuse and beat her without any reason. As respondent deserted to applicant no.1 to 4, she compelled to file present application.

4. Applicant no.1 is not doing job and she is not having any source of income. Respondent is having fabrication garage at Mumbai and get monthly income of Rs.1,00,000/- to 1,50,000/-. Respondent is having his own home. No one is dependent on respondent.

5. The applicant no.1 states that she is in need of financial assistance for sustenance, residence, clothing, and medical expenses, which respondent is legally bound to provide. The applicant no.1 has approached the court seeking necessary orders for financial support, protection, and other reliefs under the provisions of the Domestic Violence Act, 2005. Hence, prayed for interim maintenance of Rs.10,000/- for applicant no.1 and Rs7,000/- for applicant no.2 to 4,

per month. Applicant no.1 to 4 also claimed Rs.6,000/- per month towards house rent from respondent.

Say filed by respondent :-

6. The respondent states that the applicant's allegations are false, frivolous, and legally untenable. The applicant no.1 is without cause of action and has been filed present application solely to harass the respondent. The applicants should be directed to prove their claims with strict documentary evidence. After marriage applicant no.1 came for cohabitation at his house in Mumbai. After 15 to 20 days of marriage, applicant no.1 started quarrel with respondent without any reason. When his mother tried to convince her, applicant no.1 abused his mother. His family members tried to convince her about her behaviour, but there is no change in her behaviour. Applicant no.1 use to abuse and quarrel with them by threatening that, she will suicide. applicant no.1 insisted respondent to reside separately from his family members, therefore, in the year 2009, they started residing at Mumbai. Applicant no.1 use to say that the atmosphere of Mumbai is not suit to her and insisted him to reside at Miraj. Respondent tried to convince her, but in vain, therefore, respondent started residing at Miraj. Thereafter also, applicant no.1 started quarrel with respondent and harassed him physically and mentally. Applicant no.1 neglected towards his family members. Respondent use to come and go at Miraj from Mumbai, at that time, applicant no.1 threatened him not to go at Mumbai and insisted him to reside at Miraj.

7. The house of parents of applicant is near to the house of respondent at Miraj. The father of applicant use to come at their house and on his say, the applicant no.1 abused him. In the month of October, 2024, applicant no.1 asked him not to reside at home and threatened

that, if he come at home, she will suicide by cutting her vain and drag him in false case. The father of applicant no.1 also threatened to beat him, if he come at Miraj. In the month of October- 2024, respondent brought grocery material for one month by incurring Rs.10,000/-. Respondent also deposited Rs.10,000/- towards tuition fee of applicant no.2 to 4. In spite of the same, in the month of October-2024, applicant no.1 drove him out of house. Due to same, respondent was suffered from physical as well as mental stress and took treatment with Dr.Kurane at Miraj. In the month of November-2024, respondent was suffering from Diabetes and therefore admitted to the hospital of Dr.Ajij Khan, Mumbai. In spite of the knowledge of the same, the applicant no.1 did not inquire for the same.

8. Respondent use to sent money for monthly expenses of the applicants upto December 2024. In spite of the same, in order to grab money from respondent, the applicants filed present application. Respondent is ready to cohabit with applicant no.1. On the contrary, applicant no.1 deprived him marital relations. Respondent no.1 use to pay light bill and brought grocery items as well as deposited Rs.7,000/- per month for their expenses. Respondent did not neglect applicants. On the contrary, applicant no.1 in collusion with her father, filed false application in order to harass the respondent. Respondent is jobless. The mother of respondent is having property at Mumbai and she gets some amount of rent from it, by which she use to manage her medical and other expenses. His mother use to give remaining amount to him for his medical expenses. Respondent is dependent on his mother for his livelihood. Recently, respondent is suffering from diabetes and use to spend Rs.5,000/- per month. His father is dead. Respondent is having younger brother and sister. His mother use to borne their educational expenses. As applicant deprived him from physical relations, his physical condition become weak, therefore he is not able to do job. Due to

repeated demands of applicants, he become debtor, therefore, he sold his house at Nalasopara and paid debts from the said amount. He is not able to pay the maintenance amount claimed by applicants. Applicant no.1 herself deserted him from October, 2024. Applicants are residing in the home which was build by him. Therefore, applicants are not entitled to claim for rent. The applicant no.1 and second wife of her father had forcibly taken away son of Kabila Shaikh from the house and kept him locked up in the house. Therefore, the respondent registered complaint against applicant no.1 and his father. Keeping in mind the said fact, due to anger, the applicant no.1 filed false application against him. The father of applicant forced to took home at Miraj and thereafter, drove the respondent out of house and took possession of the same. Applicant no.1 and her family members have taken all the gold ornaments of respondents. Hence, he prayed to reject the application.

9. Considering the submissions of applicants, the following points arise for my consideration. My findings to the said points with reasons thereof are as follows :

Sr. No.	Points for Consideration	Findings
1.	Whether the applicant prima facie proves that she is in a domestic relationship with the respondents?	Affirmative
2.	Whether the applicant proves that she was subjected to Domestic Violence by the respondent?	Affirmative
3.	Whether the applicant proves that she does not have sufficient means to maintain herself?	Affirmative
4.	Whether the applicant proves that the respondent willfully neglected to maintain the applicant?	Affirmative
5.	Whether the applicant is entitled to interim maintenance and other reliefs as prayed for?	Partly affirmative
6.	What order?	As per Final Order

REASONS FOR THE FINDINGS

AS TO POINT NO.1:

10. The applicant has contended that she is the legally wedded wife of respondent no.1, their marriage having been solemnized on 20/02/2008 as per Muslim rites and customs. The pleadings and documents on record indicate that after marriage, the applicant no.1 resided and cohabited with respondent no.1 as his wife, and out of the said wedlock children, namely applicant nos. 2 to 4, were born. The respondent has not disputed the factum of marriage with applicant no.1, nor has he denied the paternity of applicant nos. 2 to 4. The relationship of husband and wife between applicant no.1 and respondent no.1 and the relationship of father and children between respondent no.1 and applicant nos. 2 to 4 therefore stand established.

11. In view of these undisputed facts, it is prima facie proved that the applicants are in a domestic relationship with the respondent within the meaning of Section 2(f) of the Protection of Women from Domestic Violence Act, 2005. Hence, Point No. 1 is answered in the affirmative.

AS TO POINT NO. 2:

12. The applicant no.1 has specifically alleged that after solemnization of her marriage with respondent no.1, she was subjected to harassment, quarrels, physical assault and mental cruelty at the hands of the respondent. It is contended that respondent no.1 neglected her basic needs such as food, clothing and medical expenses, and also failed to provide for the educational expenses of applicant nos. 2 to 4. The applicant has further stated that whenever she demanded money for household expenses, respondent no.1 abused and insulted her and also assaulted her without any just cause. She has narrated several instances wherein she was driven to reside with her parents at Miraj due to the ill-

treatment of respondent no.1.

13. On the other hand, the respondent has denied these allegations, contending that it was the applicant who misbehaved, quarreled unnecessarily, and filed a false application in collusion with her father. However, apart from bare denial, no cogent material has been produced by respondent no.1 to dislodge the consistent version of the applicant. The material placed on record, coupled with the admitted fact that applicant no.1 was constrained to reside separately at Miraj with her children, supports the contention of the applicant that she was subjected to neglect and ill-treatment.

14. Therefore, on the basis of the pleadings and circumstances brought on record, it is prima facie established that applicant no.1 was subjected to domestic violence within the meaning of Section 3 of the Protection of Women from Domestic Violence Act, 2005.

Hence, Point No. 2 is answered in the affirmative.

AS TO POINT NO. 3 & 4:

15. Both these points being interlinked, they are discussed simultaneously in order to avoid repetition.

16. The applicant has filed on record her affidavit of assets and liabilities at Exhibit 13. In the said affidavit, she has stated that her educational qualification is DMLT, but she is unemployed and has no independent source of income. She has further deposed that her total monthly expenditure for herself and her three children comes to around Rs.45,000/-. She has further disclosed that the respondent is a motor mechanic by profession, having his own motor garage and residence at Mumbai, and is earning sufficient income therefrom. The applicant has claimed interim maintenance of Rs.10,000/- per month for herself and

Rs.7,000/- per month for applicant nos. 2 to 4 till disposal of the main application.

17. The respondent, on the other hand, has filed his affidavit of assets and liabilities and contended that his educational qualification is only 10th standard. He has further stated that he is burdened with the responsibility of maintaining his aged mother. According to him, the applicant is not totally dependent as she is a B.Sc. graduate and earns approximately Rs.15,000/- per month by conducting private tuition classes. He has further submitted that he has been paying water and electricity bills of the Miraj house, sending amounts for children's educational expenses through G-Pay, and has also filed medical treatment papers to show his own financial difficulties.

18. However, the respondent has not produced cogent documentary evidence to show that the applicant is in fact earning Rs.15,000/- from tuition. Bare allegations without proof cannot be relied upon to deny maintenance. Even assuming that she earns some income from private tuition, such meager income cannot be treated as sufficient to maintain herself and three school-going children, especially when her disclosed monthly expenses are much higher. On the contrary, it is undisputed that the respondent is able-bodied and runs a motor garage, which provides him with regular earning capacity. His responsibility towards his wife and children is statutory and cannot be avoided on the ground that he has to maintain his aged mother.

19. In light of these circumstances, it is proved that the applicant does not have sufficient means to maintain herself and her children, and it is further proved that the respondent has failed to provide adequate and regular maintenance despite having the capacity to do so. Hence, Point Nos. 3 and 4 are answered in the affirmative.

AS TO POINT NO. 5:

20. The applicant has prayed for interim maintenance of Rs.10,000/- per month for herself and Rs.7,000/- per month each for applicant nos. 2 to 4, contending that her monthly expenditure is around Rs.45,000/-. She has asserted that she has no independent income. The respondent, on the other hand, has contended in his affidavit of assets and liabilities that he is only 10th standard pass, has responsibility of maintaining his aged mother, and further alleged that the applicant is a B.Sc. graduate earning Rs.15,000/- per month by conducting private tuition. He has also relied upon certain documents such as water and electricity bills of the Miraj house, G-Pay transactions towards children's educational expenses, and his medical treatment certificate, to show that he has been contributing and is financially strained.

21. While assessing interim maintenance, the Court has to strike a balance between the reasonable needs of the wife and children and the paying capacity of the husband. The exaggerated claim of Rs.31,000/- per month made by the applicant at this prima facie stage cannot be accepted in toto, as it does not appear proportionate to the earning capacity of the respondent. At the same time, the occasional payments or bills produced by the respondent do not amount to regular or adequate maintenance. Even assuming that the applicant earns some nominal income from tuition, the same is insufficient to maintain herself and three school-going children.

22. Considering these circumstances, it would be just and reasonable to award interim maintenance of Rs.4,000/- per month to applicant no.1 and Rs.2,000/- per month each to applicant nos. 2 to 4, making a total of Rs.10,000/- per month. This amount, though modest compared to the applicant's claim, would substantially assist the

applicants in meeting their day-to-day expenses and ensure that they are not left destitute during pendency of the proceedings. At the same time, it would not cause undue hardship to the respondent, who, being able-bodied and engaged in the motor garage business, is reasonably capable of paying this sum. The final quantum of maintenance can be determined after leading of evidence in the main application. Hence, Point No. 5 is answered partly in the affirmative.

AS TO POINT NO. 6:

23. In view of the reasons discussed above, Point Nos. 1 to 5 are answered in the affirmative. Accordingly, I proceed to pass the following order;

ORDER

1.	The application filed by the applicant under Section 23 of the Protection of Women from Domestic Violence Act, 2005 is hereby partly allowed.
2.	Respondent is directed to pay a sum of Rs.4,000/- (Rupees Four Thousand only) per month to the applicant no.1 and Rs.2,000/- (Rupees Two Thousand only) per month each to the applicant no.2,3 and 4 i.e. Total Rs.10,000/- (Rs.Ten Thousand) as interim maintenance, commencing from the date of filing of the application, and to be continued until disposal of the main application.
3.	The amount shall be paid on or before the 10th day of each succeeding month, either in cash or by bank transfer to the applicant's account.
4.	The arrears of interim maintenance, i.e. from the date of filing of the application till the date of this interim order, shall be paid within a period of three

	months from the date of this order.
5.	A copy of this order be provided free of cost to both parties and also forwarded to the Protection Officer, Miraj, for necessary compliance and record.

Place: Miraj
Dated: 22/09/2025

(P.D.Gaikwad)
Judicial Magistrate First Class, Miraj