

Order Below e-application Exh.5 in Cri.M.A 78/2024**Vidhya Bansode Vs Ankush Bansode & ors**

The instant application (Ex.5) is under Section 23 of the Protection of Women from Domestic Violence Act, 2005 (the DV Act) for interim monetary relief @ Rs.10,000/- (Rs Ten Thousand only), from Respondent 1.

2 Brief facts:-

The applicant is the legally wedded wife of non-applicant 1. The marital tie between the applicant and respondent 1 is intact. Non-applicants 2 and 3 are respectively, the mother and sister of respondent 1. The marriage of the applicant with respondent 1 was solemnized on 13/06/2003 as per the Hindu rites and customs. Sagar (21 years) and Anjali (17 years) are born out of the said wedlock. The expenses of the marriage were born by the parents of the applicant.

3 The applicant was treated well initially for few years. Respondent 1 developed habit of liquor. Respondent 1 used to beat the applicant under the influence of liquor and further, threatened to kill. The respectable panchas tried to convince respondent. However, respondent 1 started harrasing to the applicant. The applicant and respondent 1 used reside at Mauje Rele. Respondent 1 could not earn livelihood. The applicant and respondent 1 started residing at Jath since 2012. Respondent 1 is doing managerial job in a jewellery shop and also doing work as a casual driver. Respondent 1 has agricultural land at Mauje Mangalvedha bearing Gat Nos. 448/2, 793/4, 815/1, 817, 424, and 825. Respondent 1 used to take cash crops Maize, wheat, Sunflower etc., and earn the huge income. Respondent 1 has transferred some of the lands in favor of third parties. Respondent 1 has neglected and failed to maintain. The applicant has been constantly ill treated. She was kept hungry with the connivance respondents 2 and 3. The applicant beared all the things. Respondents 2 and 3 tried to see that the applicant is constrained to leave the matrimonial house. The financial position of the applicant's father is weak. Respondent 1 is doing agricultural work and getting Rs.700 to 800/- per day from selling milk and used to earn Rs.35-40 Thousand per month, from the income of casual driver. In short, respondent 1 has 5 to 6

Lakh rupees per annum as the income. Anjali, was illegally taken away by respondent 1 on 12/05/2025.

4 Brief facts of respondents' case:-

Respondent 1 contested the interim relief(s) by filing detailed say cum ws. The factum of marriage and the relation inter se the parties is an admitted fact. The paternity of the children is also an admitted fact.

5 It is denied and disputed by the respondent 1 that the applicant was ever treated or met with physical, mental, or otherwise cruelty or harassment, or economic abuse. It has been denied and disputed that the applicant was driven out of the matrimonial house.

6 It is contended that application is misconceived and suppressing the material facts. It has been denied that respondent 1 is habitual to liquor. The applicant can maintain herself and therefore, he has no right to claim maintenance. The applicant was doing and carrying on the business of selling cloths. Respondent 1 has incurred heavily and thereby started a shop under the name style Anjali Collection. The applicant used to say that she does not like to reside in village and used to pick up quarrels. The brother of respondent 1 is passed away. The applicant used to pick up quarrel and insisted for residing at Jath. Considering the same, respondent 1 started residing at Jath. The respondent 1's father has gifted land bearing No.793, 0 H 67 R situated at Mauje Rade in favor of Sagar on 01/10/2020. The applicant insisted for divorce. In 2011 the applicant and respondent started residing at Jath. The respondent 1 started working as labour with Balaji Jewellers at Jath. The applicant is doing work of Pico Fall/tailoring. The applicant's father passed away on 20/03/2021 and her brother passed away on 06/01/2024. The applicant was not supporting respondent 1. Hence, the application is opposed.

7 Perused the application, Say, the documents on the record, and the affidavits of assets and liabilities of the applicant and respondent 1 respectively.

8 Heard both sides at length.

9 The following points arise for my determination, to which I record my findings together with reasons thereof.

Sr.No	Points for determination	Findings
1	Whether the applicant is an aggrieved :- person under the DV Act?	Yes
2	Whether the applicant prima facie makes :- out incidents of domestic violence?	Yes
3	Whether the applicant who is a doctor, :- still can claim interim monetary relief, against respondent 1?	Yes
4	Whether the applicant is entitled to :- interim monetary reliefs? If yes, the quantum thereof?	Yes (As per the final order)
5	What order? :-	As per the final order

Reasons

Point No.1 to 4

10 The above points for determination are taken up for hearing together for the sake of brevity, convenience and to avoid repetition.

11 It is sine qua non for the applicant, to **prima-facie** prove that she is an **aggrieved person** within the meaning of **Section 2(a) of the DV Act**. An aggrieved person is any woman who is, or has been, in a **domestic relationship** and who alleges to have been subjected to any act of **domestic violence** by the respondent.

12 One of the relevant provisions in Section 23 of the Act, which provides for the power of the Court, is to grant interim and ex-parte orders.

13 For the sake of convenience and to avoid repeating the same is reproduced herein below

S.23- Power to grant interim and ex-parte orders.- (1) In any proceeding before him under this Act, the Magistrate may pass such interim order as he deems just and proper.

(2) If the Magistrate is satisfied that an application prima facie discloses that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he may grant an ex parte order based on the affidavit in such form, as may be prescribed, of the aggrieved person under Section 18, Section 19, Section 20, Section 21 or, as the case may be, Section 22 against the respondent.

14 The monetary relief under Section 20 (2) of the DV Act, is in addition to the maintenance order granted under Section 125 of the Code of Criminal Procedure, 1973, or any other law, for the time being in force. The monetary relief, if granted should be adequate and reasonable, and consistent with the standard of living to which the aggrieved person is accustomed. The Court is required to consider the nature and circumstances of the case if the monthly payment/ interim monetary relief(s) is to be allowed.

15 For grant of interim monetary relief, it is a sine qua non that the application prima facie discloses that the respondent-non applicant(s) is/are committing or has/have committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence [Section 23(2) of the Act].

16 Prima facie, one of serious allegation is to insist for divorce etc.,

17 The relations are admitted. Further, the parties were living in a domestic relationship i.e., the applicant and respondent 1 as the wife and the husband. The act of domestic violence is not confined to physical cruelty/violence but includes mental or economic abuse, under Section 3 of the DV Act. The application (Ex.1) prima facie specifies incidents of physical, mental, and economic abuse/violence/cruelty at various points in time in the past. There is a **prima facie** mention of physical and mental cruelty to non-applicant No.1 in demanding money etc., more particularly mentioned in the application (Ex.1). Therefore, in the above

premises, it may be prima-facie said that the applicant is an aggrieved person within a domestic relationship. Therefore, **prima facie** it may be said that the respondents committed domestic violence against the applicant.

18 The domestic incident report is on the record. It is vehemently argued that respondent 1 being the husband of the applicant failed and neglected to maintain her and therefore, the application may kindly be allowed in toto.

19 Further, it has been argued that the applicant is running business under the name as style Anjali Collection and therefore, having a source of income is the same titled.

20 Per contra, it is argued that applicant has no bona-fide intention to co-habit with the applicant, and the application is misconceived. The applicant is guilty of deserting respondent 1 levelling false and frivolous allegations. Respondent 1 had a bona-fide intention to co-habit with the applicant. Therefore, it would be prayed that the interim monetary relief/claim of Rs.10,000/- (Rs Ten Thousand only) by the applicant is misconceived and may kindly be rejected.

21 It is the case for more than 4 years. The respondent 1 failed to file his affidavit of assets and liabilities.

22 The applicant 1 has mentioned in the application, her education in her affidavits, assets and liabilities to be 10th. The age of applicant is 36 years. The applicant contended the monthly income of respondent 1 to be between Rs.35 to 40 Thousand, for failure to file mandatory affidavit of assets and liabilities, it may be said that respondent 1 has not placed any material to suggest his financial status and that of the applicant's wife. The contention that respondent 1 started business for the applicant has not been substantiated by any material on record. The except Anjali, the other child is major.

23 Prima facie nothing to suggest that respondent 1 has made any a provision for the maintainance etc., of the applicants. The age of Anjali appears to be 17 years and that of the Sagar to be 19 years.

24 In the peculiar facts, when nothing to prima-facie, suggest proceeding for restitution of consequential rights or at least an attempt vis-a-vis fact that, the applicant is residing at her parental house, mere education or experience may not generate income. Nothing to prima-facie, suggest that the applicant has started a shop or having source of income at her parental house.

25 On perusal of the affidavit of the assets and liabilities of the applicant it is a matter of prima facie fact and record, that no maintenance or interim maintenance has been allowed in any other proceedings in favor of the applicant or against respondent 1.

26 The matter may be examined from the view, that considering for a while, that the applicant holds some experience of selling cloths, if sufficient to maintain herself, the facts remains there is a difference between the holding of qualification capable of earning and actual earning. The arguments that the applicant is earning is without any document.

27 A useful reference may be made of the judgment of Hon'ble the Delhi High Court in **Kanupriya Sharma Vs State and Another 2019 SCC OnLine Del 8816**. In Kanupriya (supra) the settled position in **Shailja Vs Khobbanna (2018) 12 SCC 199** has been relied upon.

33 *In Shailja (supra) Hon'ble the Apex Court, has held that "the wife capable of earning or she is earning are two different requirements. In Shailja (supra) the wife was a lawyer and in that context, the law was laid down, while dealing with an application under Section 125 of the Code of Criminal Procedure, 1793 (the Cr. P.C). In Para 28 and 29 in Kanupriya (supra) it has been held that the claim of maintenance by a wife under the Cr. P.C. is qualified by the expression "unable to maintain herself". There are no such qualifying words under the DV Act.*

28 The law in **Mamta Jaiswal Vs Rajesh Jaiswal II (2000)DMC 170/ 2000 SCC OnLine MP 580** is on the line of a wife cannot sit idle and claim the maintenance having qualification.

29 The law laid down in **Rajnish Vs. Neha (2021) 2 SCC 324** has been considered, and the instant application has been taken up for hearing and order, considering the principles mentioned

therein. In short, the balancing of the rights of the parties, the guess work method etc., have been considered in the reasoning.

30 In **Mamta Jaiswal** (Supra) wherein it has been held that no maintenance to well qualified and capable wife (Vis-a-vis Section 24 of the Hindu Marriage Act) when she do not use her ability to maintain themselves .

31 Even if it is considered that the applicant has knowledge of selling cloths, prima facie, nothing to suggest that such business has been started or financed by respondent 1, if the facts are prima facie considered from the angle, that respondent 1 has started such business then the financial position of respondent 1 may be said to be sound. For the reason that unless, he has sound financial position he cannot dare to enter into a business.

32 The education of respondent 1 appears to be 12th and appears to be working with Balaji Jewellers. Prima facie, the fact of immovable properties whether joint or otherwise situated at Mauje Redde bearing Gat Nos. 448/2, 393/4, 815/1, 817, 824, and 825 have not been denied, and disputed. The domestic incident report does not suggest that the applicant has source of income.

33 The applicant has claimed interim monetary relief of Rs.10,000/- (Rs Ten Thousand only) per month. Respondent 1 contended his monthly income to be nil. **For the law laid down in Rajnesh (supra) a guess work method** has to be applied, for respondent 1 has not produced on the record, the details of income etc., or expenditure. Respondent 1 is a bodily able person. Respondent 1 has not specified his income. Therefore, respondent 1 is capable of and legal and moral duty to support the applicant.

34 There is no decree of restitution of conjugal rights in favor of non-applicant No.1. It is settled law that only when such a decree is obtained, the other spouse may be said to have been deserted.

35 The fact remains that respondent 1 is under a moral and legal duty to maintain the applicant, who is prima-facie unable to maintain herself. No married woman may like to reside at her parental house but for the prima facie compelling circumstances and when one of the child is at the verge of attaining majority and another child is a major one. It is settled law that the source of

income of the parents etc., is of no consideration. The contentions of the non-applicants may be considered on merits at appropriate stage.

36 Respondent 1 has flatly denied his responsibility to pay for any amount towards maintenance to the applicant. Respondent 1 is an able bodily person. Respondent 1 even assumed to be a labour doing work at a jewellery shop and / or casual driver is in a better financial position than the applicant. No specific details of the amount claimed under various heads such as education, food, medicine, etc., or the like mentioned by the applicant or documents to suggest the same. Nevertheless, the interim monetary relief should be just, fair, reasonable, and adequate. The interim monetary relief may not be too luxurious nor too penurious. The necessary considerations are the standard of living of both parties etc., prima facie the income of respondent 1 may be considered to be Rs.800 to 1000/- per day. Therefore, the consolidated interim monetary relief of Rs.7,000/- (Rs. Seven Thousand only) per month may be justified. Admittedly, no interim maintenance has been allowed by any of the competent Civil Court/Criminal Courts, in favor of the applicant. The applicant is dependent upon respondent 1. Respondent 1 is residing at Ankalkhop. The applicant is residing at Jath, Tq.Jath Prima-facie, the standard of living of respondent 1 is on a higher pedestal than the applicant. Accordingly, the points for determination are answered. Costs follow the event. Hence, the following

Order

The application is partly allowed with costs.

- 2 Respondent 1 to pay interim monetary relief to the applicant-Wife a sum of Rs.7,000/- (Rs. Seven Thousand only) per month from the date of filing of the application (Ex.1) i.e., 28/05/2025 and shall continue to pay until disposal of the main proceedings.
- 3 The arrears for 28/05/2025 to 28/02/2026 shall be cleared within 2 months from today.
- 4 Cost of the application is quantified @ Rs.5,000/- (Rs. Five Thousand only) payable by respondent 1 to the

applicant.

- 5 The free copies of the instant order be provided to the parties to the application under Section 24 of the Protection of Women from Domestic Violence Act, 2005.
- 6 Both parties to expedite the disposal of the proceedings and in any case within 6 months from today.
- 7 The applicant shall file a separate execution proceedings for the recovery of the interim monetary relief/amount or part thereof, as the case may be.
- 8 It is made clear that to avoid delay, prejudice, etc., to the parties, the main proceedings has to proceed, and the parties shall of course be entitled to take appropriate objection/defence etc., at the appropriate stage, as per law, if required.

Jath
Date:-06/03/2026

(Sanjay P. Bunde)
J.M.F.C, Jath (Court No.2)