

CNRNOMHSN09005742022



Order Below Exhibit No. 05 in Cri.M.A.No.115/2022.
[Passed on 25/11/2024]

Perused the application and say given thereon. Heard learned advocate for the applicant.

2] The present application is filed by applicant for herself for the various interim reliefs under section 23 of Domestic Violence Act. [hereinafter referred as 'the Act'].

3] The applicant has made aspersions about domestic violence and cruelty which are denied by the respondents. She has averred that she has no source of income. The applicant has stated that respondent No.1 is serving in the Jahangir Hospital, Pune and earn Rs. 40,000/- per month. Also the respondent is having house property at Shirol, Tal-Shirol, Dist-Kolhapur. So, she has prayed that Rs.7,000/- [Seven thousand rupees] per month be granted to her as an interim maintenance. As such, she has prayed for allowing the application.

4] The respondent's has filed their say at Exh.11 and resisted the same and it is their stand that the applicant on her own accord has left company of respondents. The respondent No.1 submits that the applicant was never subjected to any kind of ill-treatment. Hence, the respondent No.1 has prayed for rejection of the application.

5] On the basis of rival contentions of the parties, following points arise for my determination to which I have

recorded my findings to said points for the reasons given below :

<u>Points</u>	<u>Findings</u>
1 Whether the applicant prima-facie shows that domestic violence is committed ?	... In the affirmative.
2 Whether applicant and her minor son are entitled for the monetary relief as prayed ?	... Partly in the affirmative.
3 What order?	... Application is partly allowed.

: REASONS :

As to Point No. 1 and 2 :-

6] Heard the Learned Advocate for the applicant and respondent's at length. Perused the documents filed on record. From the above contentions and documents filed on record, firstly it is seen that the relationship of the applicant and respondent No.1 is of husband and wife and that they were residing together.

7] Now it is necessary to see whether the applicant No.1 has succeeded to prove prima-facie that whether she was subjected to mental and physical cruelty in her matrimonial house by respondents or not. As mentioned above, she has stated all above-mentioned facts in her application as well as on affidavit. Further, prima-facie it is clear that respondent No.1 has not provided any means for living to the applicant. Before going into details, it is necessary to see what actually domestic violence is.

8] Domestic violence is a state of things which gives rise to a cause of action for the aggrieved woman or anybody on her behalf to commence proceedings under this Act against respondent. Anything done which violates the right to life of a woman comes

within the scope of this section. It may be oral offending her sensibilities, it may be physical causing injuries to her body. It may be threats to do any of these things. It may also be the deprivation of the woman of the necessities of her life on one side and similar acts or threats against persons in whom the woman is interested with a view to coerce her to submission. Further such acts may be with a view to secure dowry. Selling away any properties of the woman or of the respondent to deprive woman of her rights and privileges come within the scope of domestic violence. More important of all these are acts which amount to sexual harassment. In substance, anything done or threatening to cripple a woman physically and mentally amounts to domestic violence. The definition of domestic violence appears to cover many Acts which otherwise come under crimes specified in the Indian Penal Code or as offence punishable under several other enactments such as Dowry Prohibition Act. Therefore, the Act has by Section 31(3) enjoins on the Magistrate trying the case under this Act for domestic violence, to frame charges for offences coming under the Indian Penal Code, particularly for the offences mentioned in section 498(A) of the Indian Penal Code or under Dowry Prohibition Act if the case particulars warrant prosecution of the respondent.

9] The application and affidavit coupled with documents on record of applicant disclose various instances of domestic violence at the hand of respondents which are sufficient to prove prima-facie that the applicant was subjected to domestic violence at the hand of respondents. Here, it must be noted that this is the interim stage where the court cannot go into minute details of the case which requires evidence. At this juncture, the affidavit of the applicant No.1 is sufficient to prove the prima-facie case of domestic violence.

10] Here it is pertinent to note that as per the applicant, the respondent No.1 is serving as Oxygen Operator in Jahangir Hospital, Pune and earns Rs. 40,000/- per month. But, the applicant has not filed any documents on record that the respondent No.1 is earning Rs.40,000/- per month. Per contra, as per respondent no.1 he is working in Jahangir Hospital, Pune and earns Rs.16,500/- per month. From that income he has to pay provident fund of Rs.1400/- per month and rent of Rs.3,000/- per month and commutation charges of Rs.3,000/- per month, mess charges Rs. 2,500/- per month, other daily expenses 2,000/- per month. Also he submits that that he has responsibility of his old age father and mother who are suffering from various ailments due to old age. The respondent no.1 is an able bodied person and is bound to maintain his wife. Also just because he has the responsibility of his parents he can not escape from maintaining the applicant. There is no prima-facie evidence to show that respondent no.1 has taken care of daily needs of applicant in whatsoever manner. The respondent No.1 has social and moral duty to look after his wife and provide money for her daily needs and shelter in peaceful manner. Therefore, in my opinion, considering the circumstances and increasing standard of living, at this juncture, it would be reasonable that respondent no.1 should provide maintenance amount of Rs.3,000/- per month to the applicant. Hence, I answer point No.1 in the affirmative and point No.2 partly in the affirmative.

AS TO POINT NO. 3 :

11] Turning to the aspect of quantum of interim maintenance, considering the living status of both parties, at this stage, in my considered opinion, it will be proper to grant Rs.3,000/- (Three thousand rupees) per month to applicant as an

interim maintenance from respondent No.1 from the date of main application till the decision of the main application. In the circumstances, the application deserves to be allowed partly, and so, as to point No.3, I proceed to pass the following order:-

ORDER

- 1) The application is partly allowed.
- 2) The respondent No.1 is directed not to commit any act of Domestic Violence against applicants.
- 3) The respondent No.1 is directed to pay interim maintenance of Rs.3,000/- (Three Thousand rupees only) to applicant per month.
- 4) The respondent No.1 to pay arrears i.e. maintenance from the date of application till order in three months.
- 5) Free copy of this order be given to both the parties as per section 20(4) and Section 24 of The Protection of Women from Domestic Violence Act, 2005.

Place: Tasgaon.
Date: 25/11/2024.

(Dr.R.S.Kulkarni)
Judicial Magistrate First Class,
Tasgaon.

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

Name of the Stenographer : Abhay Arvind Randive

Court : Judicial Magistrate First Class,
Tasgaon, Dist. Sangli.

Date : 25/11/2024.

Order signed by the
Presiding Officer on. : 25/11/2024.

Order uploaded on. : 25/11/2024.