

Order below Exh 5 in
Cri. Mis. Appl.No.54/2017
(CNR-MHSN12-000377-2017)
(Surekha Kadam Vs. Kiran Kadam & Ors.)

The applicants have filed the application as per section 23 of The Protection of Women From Domestic Violence Act, 2005 for the relief of interim maintenance & injunction.

(2). The applicant no.1 is legally wedded wife of the respondent no.1. The applicant no.1 married with the respondent no.1 on 29/07/2014. After few days respondent no 1 started to harass the applicant by this or that way. Meanwhile applicant no.1 remain pregnant & daughter Aarohi i.e. applicant no.2 was born on 24/10/2015. Thereafter, all the respondents again started to harass the applicants. The applicant no.1 was beaten by the respondents & compelled to left the matrimonial home. Hence, both applicants constrained to go to parents house of applicant no.1. The applicant no.1 made efforts for cohabitation. But all went in vain. The respondent no.1 is doing the job Cane Agro Shakari Sakhar Karkhana Raigaon & getting income of Rs 25,000/- per month. All the respondents are having agricultural land & getting annual income of Rs.20,00,000/- from it. The respondent no.1 is able to maintain both the applicants. The applicants are not having independent source of income. All the respondents have committed the domestic violence upon them. Accordingly, applicant no.1 & 2 has prayed for interim maintenance of Rs.10,000/- each. The

applicants have also sought the relief that respondents be further restrained from selling their agricultural lands & house property.

(3). The respondent no.1 to 3 filed their say to the main application at Exh.15 & adopted their say to the present application by way pursis at Exh 27. The respondent no.4 failed to file say. Hence, application is proceeded without his say. The respondents have denied entire allegations except the relationship with both applicants. It is contended that no cause of action arose to file the present application. All the allegations made against the respondents are baseless. All the respondents have never made any sort of domestic violence or any sort of harassment of both the applicants. On the contrary, applicant no.1 alongwith applicant no.2 has left her matrimonial home on 06/04/2016 without any reason. The applicant no.1 had frequent conversation with third person through mobile phone. The behavior of the applicant no.1 is doubtful. Under such a circumstances the respondents have tried to convince the applicant no.1 many a times, but she did not come for cohabitation. Hence, respondent no.1 has filed the application in court of Sangli for restitution of conjugal rights vide H.M.A.No 133/2017. Hence, applicants are not entitled to the reliefs sought by them.

(4). Heard both sides. After going through the rival contentions of both the parties, following points arise for my

determination and my findings with reasons stated thereon are as follows.

<u>Points</u>	<u>Findings</u>
1) Whether the applicants are entitled for the relief of interim maintenance as Prayed for ? If yes, to what extent ?	Partly Affirmative Rs 1,000/- p.m. to the applicant no.1 & Rs.1,500/- p.m.to the applicant no2.
2) Whether applicants are entitled for relief of injunction as prayed for ?	Negative
3) What order ?	As per final order.

REASONS

POINT NO 1

(5). Perused record and proceeding. It is undisputed that the applicant no.1 is legally wedded wife of the respondent no.1 & applicant no.2 i.e. daughter Aarohi is born out of marital relationship. It is also undisputed fact that the relationship between the applicant no 1 and the respondent no.1 as that of husband and wife, is still in existence. Learned advocate for the applicants has relied upon documents filed alongwith Exh.17A.

(6). As per the contentions of the applicant no.1 she was dragged out of home on 13-05-2017 and she is residing with the applicant no.2 at her parents since then. That the respondent no.1 has not made any arrangement for her food and shelter. The Ld. advocate for the applicants has submitted that the

respondents are having annual income Rs.20,00,000/- by way of his ancestral agricultural land. Moreover, respondent no.1 getting the monthly income of Rs.25,000/- by doing the job. Hence, respondent is having the income source. Hence, interim maintenance of Rs.5,000/- each may be awarded to both the applicants. The Ld. advocate for the applicants has invited my attention towards case of Smitha V Sunil Kumar. 2013 CJ(Ker) 611, wherein it was held by the Hon'ble Kerala High Court that when the husband is not showing his income source under maintenance proceeding. Then adverse inference can be drawn against him as per section 114(g) of Indian Evidence Act. i.e. the evidence which could be & is not produced would if produced, be unfavorable to person who withholds it.

(7). He has further relied upon the case Vishal Damodar Patil Vs Vishakha Vishal Patil 2009 CRI.L.J. 107 wherein it was held by the Hon'ble Bombay High Court that During the pendency of the application under Section 12 of Act interim maintenance can be granted & for that separate application under Section 23 is not necessary. Here the applicants have already filed separate application under Section 23 of the Act. Hence, with due respect to the said ratio laid down by Hon'ble Bombay high court is not applicable to the case in hand.

(8). He has further relied upon the case of Basanta Kumari Mohanty Vs Sarat Kumari Mohanty [1981 CJ (Ori) 11] wherein it was held by the Hon'ble Orissa High Court while deciding the

maintenance under Section 125 Of code of Criminal procedure 1973, the object of the provisions being to prevent vagrancy & destitution, it has to be found out as to what is required by the wife to maintain standard of living which is neither luxurious nor penurious, but is modestly consistent with the status of family. The needs and requirements of the wife, child or parents for a moderate living, the earnings of the husband, son or father or his capacity to earn & his commitments are relevant factors.

(9). He has also relied upon the case of *Bharat Hegde Vs Saroj Hegde 2007 CJ (Del) 182*, wherein it was held by the Hon'ble Delhi High Court that self employed persons or persons employed in unorganized sector, truthful income never surfaces. Tax avoidance is the norm & tax compliance is exception in this country. Therefore, in determining the interim maintenance, there can not be mathematical exactitude.

(10). The ld. advocate for the applicants has relied upon the cross examination of the respondent no.1 in the aforesaid restitution proceedings & argued that respondent has failed to prove the suspicious behavior regarding the character of the applicant no.1. He has also filed the certified copy of H.M.A.No. 133/2017 at Ex.26/2 wherein the interim maintenance of Rs.3,000/- per month is granted as per section 24 of Hindu Marriage Act in favour of the applicant no.1. Lastly, He has argued that, this court has power to grant interim maintenance as per the provisions of this Act in spite of the fact that interim

maintenance granted under restitution proceedings.

(11) The Ld. advocate for the respondent no.1 to 3 has argued that respondent no.1 is already paying the maintenance in aforesaid restitution proceeding. Moreover, the respondent no.1 is having the responsibility to maintain himself & his parents. Moreover, the applicant no.1 has left the matrimonial house without any reason. Respondent no.1 is ready to take her for cohabitation. The respondent no.1 is not doing any job as alleged by the applicants. Hence, application deserves to be rejected.

(12). Here it is pertinent to note that respondent no.1 is not age old person and having good physical health. Even though there is no documentary evidence on record. But it can be considered that able bodied person can get wages of Rs.300/- to Rs.400/- per day by doing the work. It is undisputed that the applicant no.1 is residing with her parents at present. Whether the applicant no.1 has left matrimonial home at her own wish or she was compelled to left the matrimonial home, is a question required to be decided at the time of trial. Being husband it is the duty of the respondent no.1 to look after the maintenance of her wife i.e. applicant no.1. Being the father the respondent no.1 has moral & legal obligation to maintain the applicant no.2 i.e her daughter. After perusal of certified copy of H.M.A.No. 133/2017 it reveals that interim maintenance of Rs.3,000/- p.m. is granted only for applicant no.1. The contention of the

applicants that they are unable to maintain themselves are supported by her affidavit. Moreover, the domestic incident report is also supporting the version of the applicants. Considering the facts & circumstances of the case & documents placed on record, It seems that interim maintenance of Rs.3,000/- p.m. already granted under H.M.A.No.133/2017 to the applicant no.1. Hence, it would be proper at this stage of the proceeding to grant interim maintenance of Rs.1,000/- p.m. to the applicant no.1 as interim maintenance. However, interim maintenance of Rs.1,500/- to the applicant no.2 would meet the ends of justice. The interim maintenance is granted from the date of filing of this application till disposal of the main application. Accordingly, I answer point no.1 in the “Partly Affirmative.”

Point No.2 :-

(13) The Ld. advocate for the applicants has argued that respondents may sale their ancestral agricultural land & home during the pendency of this application. Hence, respondents be restrained from selling those properties. Accordingly, relief of injunction be granted. On the other hand, Ld advocate for the respondent no.1 has argued that respondents are not having any alternative home. Hence, question of selling them to third person does not arise. The respondents are not going to alienate the agricultural land as alleged by the applicants. Hence, question of granting the injunction does not arise. After considering the facts & circumstances & arguments advanced by

both sides, it would not be proper to grant the relief of injunction as prayed for. Accordingly, I answer to the point no 2 in the “Negative”.

Point no 3

(14). The applicants at this stage of the application deserves only relief of the interim maintenance to some extent. The applicants have not made out the case for relief of injunction as sought. Hence, the application deserves to be partly allowed. Accordingly, I pass the following order.

Order

- (1). Application is partly allowed.
- (2). Respondent no.1 is hereby directed to pay Rs.1,000/- (Rs.One Thousand) per month to applicant no.1 and Rs.1,500/- (Rs.One Thousand Five Hundred) per month to applicant no.2 as interim maintenance from the date of filing of this application till disposal of the main application.
- (3). Copy of this order be given to both the parties and be sent to Police Officer, Palus Police Station and Protection Officer, Palus free of costs.

(Dictated and pronounced in open Court)

Sd/xx

Palus.

(N.D.Rudhrabhate)

Date :-10/04/2019. Judicial Magistrate First Class, Palus.