

PWDVA No.24/2023
Vanita Vs. Ganesh
CNR No.MHSO170000002023

ORDER BELOW EXH.08

(Passed on 01st July, 2024)

This is an application under **Section 23 of The Protection of Women From Domestic Violence Act, 2005** (herein after referred to as the **D.V.Act**)

2. It is the contention of the applicant Vanita that she is the wife of non-applicant Ganesh. After their marriage, she went for cohabitation with non-applicant. They have one daughter Shivnya out of their wedlock. After initial days of cohabitation, non-applicant has subjected her to domestic violence in the form of physical abuse and emotional abuse. Several instances of such abuses are quoted in the application which are affirmed by a sworn affidavit. As per applicant, non-applicant is not willing to cohabit with her. He never took care of applicant during her first and third pregnancy. Therefore, she got miscarriage. He used to beat applicant on the count of his illegal demand of money from her parents towards medical expenditure. He always demanded household articles viz. Sofa etc. from the applicant's parents. He never provided medical treatment to the applicant on time. He threatened applicant to perform second marriage. Therefore, she lodged N.C. bearing No.457/2022 at Karmala police station. Therefore, by keeping grudge in his mind, on 15/03/2022, he expelled applicant along with her daughter out of matrimonial house.

3. The applicant is ready and willing to co-habit with non-applicant. She does not have any source of income. Thus she is unable to maintain herself and her daughter. Per contra, non-applicant is doing agricultural work in his land and earn the amount of Rs.20,00,000/- to

25,00,000/- p.a. He also does business of Banana crop out which he receive amount of Rs.1,00,000/- per month towards profit. He is having sufficient means of income. No one is dependent on him except applicant and her daughter. In spite of that, maintenance is not provided to applicant during their separate residence. During pendency of main application, applicant has claimed interim maintenance relief, protection order and relief of production of Aadhar card and Birth Certificate of her daughter.

4. On the other hand, it is the contention of the non-applicant that, he has never subjected the applicant to any act of domestic violence or any kind of abuse as pleaded by her. Since beginning, applicant was not interested to cohabit with non-applicant. She always insisted non-applicant to reside at her parental house and to do agricultural work at farm of her parents as she has no brother. She always used to quarrel with non-applicant on petty things. She threatened non-applicant to kill herself. He helped father of applicant of amount of Rs.1,50,000/- to cultivate his land. The applicant demanded amount of Rs.1,00,000/- to non-applicant to build house of her father. On denied to do so, applicant abused non-applicant and his mother and left her matrimonial house on 15/09/2021. She did not came to the funeral ceremony of her father-in-law and mother-in-law despite of being informed by non-applicant. The non-applicant has taken many efforts to cohabit with applicant. However, all his efforts were in vain. Therefore, he has send notice to cohabit with him, however, she did not reply. He never threatened applicant to perform second marriage. He has filed H.M.P. No.176/2023 under Section 9 of Hindu Marriage Act. As applicant herself without any reasonable and sufficient cause left his house. Therefore, she is neither entitled to any final nor to any interim relief as claimed. Lastly, he has prayed for rejection of this application.

5. It is pertinent to note that the marriage between applicant and non-applicant and their daughter Shivnya out of their wedlock are admitted facts by both the parties.

6. Perused the counter-pleadings and the documents filed by the parties. Heard the arguments advanced by learned advocates for both parties. Instead of reproducing the list of the documents, they will be addressed at relevant stage of discussion.

7. Considering the material brought on record, following points do arise for my determination. findings thereon are recorded for reasons discussed here under ;

Sr.No.	POINTS FOR DETERMINATION	Findings
1	Whether this application prima facie discloses that non-applicant is committing, or have committed or there is a likelihood that he may commit an act of domestic violence against applicant ?	... Yes.
2	Whether applicant is entitled to the interim maintenance, protection order and production of Aadhar card and Birth Certificate of Shivnya as claimed ?	... Partly Yes. As per order.
3	What order ?	...Application is partly allowed.

REASONS

As To Points No.01 & 02

8. As both the points are linked with each other and pertaining to

similar incidents both these points are taken together for discussion.

9. While considering an application under **Section 23 of D.V.Act**, which is certainly a prima phase of interlocutory adjudication, the Court is not supposed to penetrate deep into the merits of the case or the evidence which may be brought on record at trial. Even at this stage, it is not expected of an aggrieved person to bring the proof of pleaded allegations. Same thing is applicable to the non-applicant who is also not supposed to prove or disprove any allegation by him or against him. The only aspect of consideration remains is that, whether the application prima facie discloses that non-applicant is committing, or have committed or there is any likelihood that he may commit an act of domestic violence against applicant.

10. Application discloses entire specific incident-wise account of the instances of domestic violence subjected by non-applicant to applicant. On minutely observing the contents in application, there are specifications in regard to verbal and emotional abuse and also of physical abuse. There is no document on record which will indicate that, he has provided any means of livelihood to applicant and his daughter during their separation. This certainly amounts to refusal as well as neglect on the part of non-applicant to ensure the living and to maintain her and her daughter. Such instances narrated by applicant, certainly fulfill the ingredients of the terms “**Domestic Violence**” as defined in **section 03 of the D.V.Act**. Therefore, the circumstances as well as allegations in the petition certainly display the prima facie existence of domestic violence.

11. As the existence of 'domestic violence' is prima facie shown, lets shift the focus of discussion onto the reliefs sought in this case. Now, lets see whether applicant has any prima facie source of income. As per the

say of non-applicant, the applicant has share in property of her father. Hence, she is able to maintain herself as well as her daughter. It is pertinent to note that the non-applicant has not filed any document on record which will indicate that, the applicant has any source of income. Hence it is seen that the applicant does not have sufficient means of income and she is unable to maintain herself and her daughter.

12. On perusal of affidavit of assets and liability filed by non-applicant, it reveals that he is doing labour work. He has not filed any documents on record to show his real income. However considering labour work and minimum wages per day, his bank statement and his expenditure mentioned in the affidavit, it can be inferred that the non-applicant has monthly income of Rs.25,000/- per month. Thus the non-applicant is having sufficient means of income and is able to maintain applicant and her daughter. The affidavit shows that no one except applicant and her daughter are dependent upon non-applicant.

13. The non-applicant can not throw his responsibility towards his wife and her daughter. Hence it is moral as well as legal duty of non-applicant to maintain his wife. During pendency of this case, applicant would be certainly requiring maintenance to enable them to lead their life with dignity. Therefore, they must be awarded with some sort of interim monetary relief in the form of interim maintenance. Considering the basic needs such as food, clothing, basic medication, basic entertainment and education etc. of applicants, coupled with income non-applicant, I think it fit to grant the interim maintenance at the rate of Rs.2,500/- per month to applicant and at the rate of Rs.1,500/- per month to her daughter from the date of this application i.e. from 13/10/2023.

14. Protecting a woman from domestic violence is the basic object of P.W.D.V. Act. Sufficient prima facie material has been placed on record to establish that domestic violence is prima faice committed and is likely to be committed at hands of non-applicant. Therefore, till pendency of this case, prohibiting non-applicant from committing abetting or aiding any act of domestic violence against applicant. The non-applicant has nowhere denied the fact that, the Birth Certificate of Shivnya and Aadhar card of applicant and her daughter is in his custody. Therefore, it would be just and proper to give directions to the non-applicant to provide Birth Certificate of Shivnya and Aadhar card of applicant and her daughter to the applicant for education purpose.

15. Finally I conclude that, applicant is prima facie subjected to domestic violence by non-applicant. Hence, the applicant is entitled to the protection order and interim maintenance at the rate of Rs.2,500/- per month to applicant and at the rate of Rs.1,500/- per month to her daughter from non-applicant from the date of 13/10/2023. Also, she is entitled to direction to non-applicant to produce Birth Certificate of Shivnya and Aadhar card of applicant and her daughter. Resultantly, I answer point No.1 in affirmative and point No.2 in partly affirmative.

As To Point No.3

16. In the light of above discussion, I am inclined to partly allow this application. In the result, I pass the following order ;

ORDER

1. Application is partly allowed.
2. Non-applicant shall pay interim monetary relief in the form of interim

maintenance at the rate of Rs.2,500/- per month (Rs. Two Thousand and Five hundred only) to applicant and at the rate of Rs.1,500/- (Rs. One Thousand and Five hundred only) per month to her daughter from the date of filing of this application i.e from 13/10/2023, till the decision of this case.

3. Non-applicant shall pay interim maintenance amount till 10th day of each month.
4. The non-applicant is temporarily prohibited from committing abetting or aiding any act of domestic violence against applicant till the decision of the case.
5. The non-applicant is hereby directed to handed over the Birth Certificate of Shivnya and Aadhar card of applicant and her daughter to applicant within 15 days from this order.
6. Copy of this order be given free of cost to both the parties and PSO of concerned police station.
7. Both parties to expedite the trial of this case and ensure its disposal at the earliest.

Date : 01/07/2024

(V. C. Kshirsagar)
Judicial Magistrate First Class,
(Court No.3) Madha.

CERTIFICATE

I affirm that the contents of this P.D.F. file Order are same word for word as per original Order.

Name of Stenographer	:	N. B. Kamurti
Court Name	:	Smt. V.C. Kshirsagar 3 rd Jt. CJD & JMFC, Madha
Date of Order/Judgment	:	01/07/2024
Order/judgment signed by presiding officer on	:	01/07/2024
Order/judgment uploaded on	:	02/07/2024