

ORDER BELOW EXH.5

[Pushpanjali Shinde V/s. Balasaheb Shinde]

In the instant application, the applicant prayed for granting interim maintenance to the tune of Rs.2,00,000/-, residence order, protection order alongwith restraining the respondent from alienating the HUF and ancestral properties. Perused application, say filed by the respondent at Exh.9, 11. Affidavits of assets and liability at Exh.26 and 29. Heard learned advocates for both parties at length. The respondent has filed written notes of argument at Exh.39

[2] Learned Adv. S.R. Pawar for the applicant submitted that, the applicant is entitled for the reliefs under the Domestic Violence Act alongwith the monitory reliefs, as she is not earning and subjected to act of domestic violence at the hands of respondent. In support of his submission, he invited my attention to the various documents regarding the business transaction of the respondent, his income etc.. On the contrary, learned Adv. M.S. Badodkar for the respondent submitted that, the applicant is also engaged in business and also getting income therefrom. In order to substantiate his contention, respondent has also filed documents. At the outset, it is necessary to mention here that, applicant is claiming that, she is not earning and therefore entitled for residence and protection order alongwith the monitory relief. On the other hand, respondent has claimed that, he is declared, as bankrupt and suffered huge financial loss. Accordingly, he has filed on record his affidavit at Exh.32/6, wherein he has stated on oath that, he has not filed income tax return, since the year 2015 to 2019, due to his poor economical condition. However, the same is not acceptable at this juncture, because every person having whatever the income, has to file the tax returns and nobody is escaped from filing return, due to his financial losses.

[3] The applicant has prayed for restraining the respondent from alienating or creating any third party interest in HUF and ancestral

properties. It is pertinent to note here that, both parties have not classified or stated on oath regarding, which properties are ancestral and which properties are self-acquired properties of respondent. Further they have not filed on record mutation entries to show the flow of title. Therefore, it goes very hard to digest the fact that, the entire properties are the HUF/ancestral properties of both sides. So also, it is not the case of applicant that, those assets are enjoyed by both parties or enjoyed by them jointly. It is the case of applicant that, respondent is managing/running business in her name and operating the same in his personal capacity. The same is evident from the receipt issued by R.T.O. Department in respect of vehicle No.MH.13.R/4415, wherein the respondent is shown as applicant's representative/agent (Exh.37/1 & 37/2). Therefore, it cannot be presumed that, those are jointly enjoyed by them. As I have stated earlier, both parties have not clarified the position regarding the classification of ancestral or self-acquired properties. The respondent is businessman and he has every right to expand his business. For that purpose his rights over his self-acquired properties cannot be restricted.

[4] As far as, house property at Solapur is concerned, admittedly, applicant is residing in that house more particularly described in prayer clause-b of instant application. It is also an admitted fact, the same is the respondent's house, as pleaded in second para of page no.7 (Exh.9). Accordingly, the applicant is entitled for reliefs in respect of that house only. In order to prevent multiplicity in litigation in case of apprehended alienation on the part of respondent, the activity of creating third party interest and alienation at the instance of respondent needs to be prevented. Accordingly, the respondent, his agents or any other persons on his behalf is to be restrained temporarily from alienating or creating third party interest in the house (more particularly described in prayer clause para-b of the instant application), till final disposal of the application.

[5] The applicant has relied upon the Judgment of ***Hon'ble Delhi High Court reported in the case of Binita Dass V/s. Uttam Kumar, CRL.***

REV. P. No.659/2017 and Crl. M.A. No.14463/2017, wherein it is held that, qualification of the wife and the capacity to earn cannot be a ground to deny interim maintenance to a wife, who is dependant and does not have any source of income. In the case in hand, though the applicant is qualified but she is not appearing as earning in her own capacity and the same fact is corroborated from the receipts issued by RTO Department while releasing the vehicle wherein respondent is shown as her representative. Therefore, at this stage, prima-facie it is clear that, the respondent is acting on her behalf and running businesses. Therefore, it goes very safe to presume that, despite of qualification applicant is not earning. Accordingly, the case law relied upon by the applicant is squarely applicable to the case in hand.

[6] The respondent has relied upon the Judgment of **Hon'ble Apex Court reported in the case of Manmohan Attavar V/s. Nilam Manmohan Attavar, 2017, CRI. L. J. 4315**, wherein it is held that, when the parties never live together in property in question order permitting women to occupy the premises unsustainable. Learned advocate for respondent submitted that, the house property at Solapur is used for the purpose of office meeting and it is not a shared house wherein both parties live together in domestic relationship. Therefore, applicant is not entitled for residence order in that property. On this background learned Adv. S.R. Pawar invited my attention to the say at Exh.9, wherein it is specifically written that the same is the respondent's house, as pleaded in second para of page no.7 (Exh.9). Accordingly, at this juncture it is clear that, both parties have lived together therein domestic relationship.

[7] It is well settled that, while deciding the application for interim maintenance, it is not required that, there should be cogent and strict proof in respect of the ill-treatment caused to the applicant. It is also not required to show by strict proof that, applicant is driven out without any reasonable cause by respondents. Only the prima-facie evidence in that regard has to be seen. In the case in hand, the relation between the parties is an admitted fact. So also, the bank statements and other documents relating

to business transactions shows that, respondent is earning huge income. According to applicant, respondent has ill-treated her and subjected to the act of domestic violence. The conduct of the applicant about filing of the present application itself can be considered a positive step showing that, she is not being well maintained by the respondent. The respondent is liable to maintain applicant being his wife. In my view, though there is no strict proof about the ill-treatment, the allegations made by the applicant in the application on affidavit can be considered, as a prima-facie evidence against respondent in respect of ill-treatment, while deciding the present application.

[8] Now the question arises as to whether the applicant is entitled for interim maintenance of Rs.2,00,000/- per month. For that purpose also, no strict proof is required, but at least prima-facie evidence of the income of the respondent is to be seen. The sources shown in the application are sufficient to ascertain the income of respondent. Now-a-days, averagely the income of any person is approximately sufficient for maintaining his family members. It is well settled that, spouse is entitled to lead her lifestyle, as per the earlier, while she was in domestic relationship with the respondent. At the same time, it is on the part of respondent to maintain the applicant in that lifestyle. Admittedly, the applicant is residing with her maid servants. In such circumstances, in my view, the maintenance of Rs.50,000/- per month in total to the applicant will serve the purpose and is sufficient towards her interim maintenance. In the result, following order is passed :

ORDER

- i] The application is partly allowed.
- ii] The respondent shall do pay the interim maintenance amount of Rs.50,000/- (Rs. Fifty Thousands Only) per month to the applicant towards interim maintenance amount from the date of filing of the present application, till decision of the main application.
- iii] The respondent is prohibited from committing any act of domestic violence or aiding or abetting therein.

- iv] The respondent is prohibited from alienating or creating any third party interest in the house property situated at Solapur (more particularly described in prayer clause para-b of the instant application).
- v] The respondent is directed to provide the residence and not oust the applicant from the house, wherein she is presently residing (more particularly described in prayer clause para-b of the instant application).

Sd/-

(G.M. Charankar)

Date : 19/11/2021

Judicial Magistrate First Class,
Mangalwedha, Dist. Solapur

CERTIFICATE

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

(a) Name of the Stenographer : A.P.Hipparagi,

(b) Name of the Court : J.M.F.C., Mangalwedha, Dist. Solapur,

(c) Order signed by P.O. on : 19/11/2021

(d) Order uploaded on : 22/11/2021