

**CRI. M.A. NO.483/2023 - ORDER BELOW EXH. NO.5**

Pramila Saurabh Khandagale Vs. Saurabh Sanjay Khandagale Etc.

(Passed On 14<sup>th</sup> day of October 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) for the grant of interim maintenance of Rs.10,000/- (Ten Thousand Rupees) per month till final decision of the main application, she has also claimed protection, injunction order against non-applicants. Non-applicants appeared in the matter and filed their say below Exh.11.

2. Perused the pleadings, say, supportive documents and affidavits of assets and liability filed on record by both parties. Documents are discussed at the time of reasoning whenever required.

3. Heard advocate on behalf of applicant and non-applicant.

4. In the instant case below Exh.1 applicant has filed main application as per section 12, 18, 19, 20 and 22 of D. V. Act 2005. She came with the case that, non-applicant no.1 is her husband. Non-applicant no. 2 is her father-in-law and non-applicant no.3 is brother-in-law, applicant no.4 is sister-in-law. Marriage is solemnized on 31/01/2020 at Dongargoan, Tq. Sangola. Marriage expenses of Rs.6,00,000/- (Six Lakh) are beared by her parents. After marriage she went to Sangli for co-habitation in joint family of non-applicant. They treated her well for one year. After that non-applicant no.1 ill-treated her on the account of her dark colour, low financial condition of her father, domestic work. She told this to non-applicant no.2 and 3 but they

along with non-applicant no.1 also started ill-treating her on petty incidents. Non-applicant no.2 to 5 use to provoke non-applicant no.1 to cause ill-treatment.

5. They demanded amount of Rs.5,00,000/- (Five Lakh) for development of hotel business. Applicant wants to co-habit with non-applicant no.1.

6. In may 2023 non-applicant no.1 to 3 have with common intention taken suspicion on her character. On that ground they have physically and mentally ill-treated her. On 31/05/2023 at 7.00 p.m. non-applicant no.1 to 4 have by taking suspicion on her character assaulted her with wooden rod and blows. On 01/06/2023 they thrown her out of matrimonial house. Her parents and respected persons have tried to settle dispute. But non-applicants denied and took condition and to fulfill their demand of Rs.5,00,000/- (Five Lakh). Since that date she is compelled to reside with her parents.

7. Due to ill-treatment she is unhealthy. Hence, able to do any work. Financial condition of her parents is not good. On the other hand non-applicant no.1 to 5 are having joint Hindu family. Non-applicant no.1 is having hotel and club at Sangli and Jaisinghpur. He is getting Rs.1,00,000/- (One Lakh) per month. Non-applicant no.2 and 3 are also having hotel business and getting income from that business. They are having irrigated land of 10 Acr at village Medshingi and get income of Rs.5,00,000/- to 7,00,000/- lakh per year. She is unable to maintain herself. Lastly, prayed for interim maintenance of Rs.10,000/- (Ten Thousand Rupees) per month and to allow her other prayers.

8. Non-applicant no.1 to 5 have filed their say at Exh.11

and denied all the allegations made against them. They have admitted marital relations. As per their say all the marriage expenses are bore by them. At the time of marriage they have given gold and silver ornaments to applicant. On 01/06/2023 without any reason she herself has left company of non-applicants. She is never ill-treated by them as mentioned in the application. She use to refuse to do domestic work. Without any reason she always use to went at her parental house. She always talk through mobile. Non-applicants have never demanded amount as mentioned in the application. After some days of marriage she use to create dispute without any reason. Applicant is educated. Hence, she has obtained job at D'mart Sangli. While doing job she use to talk/chat with third person through her mobile. Non-applicant no.1 to 3 have upon inquiry comes to know that she use to meet third person. They tried to explain her but in order to hide her fault she has on 01/06/2023 left house of non-applicants. Their relatives have tried to settle dispute. By her behavior she disreputed family of non-applicants. They have never committed physical, mental violence against her. Therefore, she is not entitle to get maintenance. In order to harass non-applicant present application is filed.

9. It is further contended that, applicant is well educated and doing job. Out of job she gets 10 to 13 thousand per month. She is having her own house. Due to mental trauma non-applicant no.1 is unable to do any kind of work. He is not having source of income. Therefore, he is not able to give maintenance. Non-applicant no.2 to 5 are having liabilities. Hence, prayed to reject application.

10. Considering the material brought on record, following

points arise for my determination. Findings thereon are recorded for reason discussed hereunder -

Sr. No.	POINTS FOR DETERMINATION	FINDINGS
1.	Whether this application prima-facie discloses that non-applicants are committing, or have committed or there is a likelihood that they may commit acts of domestic violence against applicant ?	Affirmative.
2.	Whether applicant is entitled for interim maintenance as prayed?	Partly Affirmative.
3.	What order ?	Application is partly allowed.

### **REASONS**

11. List of documents filed by applicant on record -

Sr. No.	Document	Exh.
1.	Assets and liability of applicant	12
2.	7/12 extract of Gat No.307/2/१ situated at Medshingi, Tq. Sangola.	14/1
3.	7/12 extract of Gat No.139/4 situated at Miraj, Tq. Miraj.	14/2
4.	House extract of non-applicant situated at Sangli.	14/3

12. List of documents filed by non-applicant on record -

Sr. No.	Document	Exh.
1.	Assets and liability of non-applicant no.1	15
2.	7/12 extract bearing the name of applicant's father.	17/1 17/2

**AS TO POINT NO.1 -**

13. Reasons pertaining to both these points are taken together for discussion. While considering an application under section 23 of D.V. Act, which is certainly a primary phase of interlocutory adjudication, the Court is not supposed to look deep into the merits of the case or the evidence which maybe brought on record at the trial. Both parties have filed affidavits in support of their pleadings and affidavits of their assets and liability. Therefore, here is the situation of Oath Standing Against Oath. Under such situation, it will not be appropriate to accept the oath of one party at the cost of discarding the oath of its counter of its counter-party. The only aspect to consideration remains is that, whether the application prima-facie discloses that non-applicants are committing or have committed or there is any likelihood that they may commit any act of domestic violence against applicant.

14. Application discloses specific account of all the instances of domestic violence allegedly subjected to applicant by non-applicants. On minutely observing the contents in application, there are specifications with regard to physical abuse, verbal abuse, emotional abuse by the non-applicant no.1 to 5. There are allegations on non-applicants that after one year of their marriage non-applicants started ill-treating her on petty issues. They taunt her on the ground of not performing marriage as per their status, her dark colour. They have taken suspicion on her character. They have assaulted her and thrown her out of house. She is willing and ready to co-habit with non-applicant no.1 hence her parents and relatives are tried to settle dispute. In-spite of several attempt non-applicant no.1 never shown his genuine willingness to cohabit with applicant.

15. Marital relation is not disputed. Also it reveals that, since separate residence of applicant, she is not provided with any means of livelihood by non-applicants. This certainly amounts to refusal as well as neglect on the part of non-applicant no.1 to ensure the living and to maintain the applicant. Moreover, negligence of non-applicant no.1 to provide expenses of livelihood to applicant during her separate residence itself discloses prima-facie violence against the applicant.

16. Upon perusal of say of non-applicant [it is not signed by non-applicant] no.1 and 2 to 5. In their say they have admitted that, they have taken suspicion on the character of applicant and also have made inquiry. This shows that, non-applicant no.1 to 4 have suspicion on the character of applicant. Truth-ness of allegation will come on record after evidence of both the parties. Above discussion shows that, allegation made in the application are prima-facie proved by applicant. Protection officer report at Exh.16 also supports contents of application and allegations made in the application.

17. Therefore, instances of domestic violence demonstrated by applicant prima-facie appears to be reasonable and certainly fulfill the ingredients of the terms “Domestic Violence” as defined in section 03 of the D. V. Act. Thus it prima-facie sufficient to show the existence or likelihood of instances of domestic violence. Hence, in view of discussion supra, I answer point No.1 in the affirmative.

#### **AS TO POINT NO.2 -**

18. Here, it is important to see, whether the applicant is having any source of income to maintain herself. At Exh.12

applicant has filed affidavit of her assets and liability. In which she has mentioned her monthly expenses of Rs.20,000/-. As per her contention non-applicant no.1 is having hotel and club business and agricultural earnings of Rs.1,00,000/- (One Lakh) monthly and 7,00,000/- (Seven Lakh) yearly respectively. She is unable to maintain herself. She is ready to co-habit with non-applicant no.1. But non-applicant no.1 denied.

19. On the contrary it is the case of non-applicants that applicant is well educated and earning Rs.10,000/- to 15,000/- per month by doing private job. Financial condition of her parent is very sound. Non-applicant no.1 is unable to give interim maintenance to applicant. She is having her own source of income to maintain herself. Hence she is not required interim maintenance. But he has not filed document in support his contention which shows that, presently applicant is having source of income. Hence it is proper to presume that presently applicant is not having any source of income.

20. As per applicant, non-applicant no.1 is having hotel and club at Sangli and Jaysinghpur and out of hotel and club he earn Rs.1,00,000/- (One Lakh) per month and out of joint Hindu family agricultural land non-applicant no.1 to 5 jointly get Rs.5,00,000/- (Five Lakh) to 7,00,000/- (Seven Lakh) per year.

21. On the contrary the non-applicant no.1 in his say contended that, he is at present not doing any kind of work. He is not having any source of income. Income of joint family is with his father. As per his affidavit of assets and liability at Exh.15 applicant is having income out of domestic animals. Out of her parental agricultural land she get Rs.3,00,000/- (Three Lakh) per 3

years.

22. Applicant has not brought on record a single document which shows that, non-applicant no.1 is doing hotel and club business at Jaysingpur and Sangli. Regarding income of agricultural land she has along with Exh.14 brought on record xerox copy of 7/12 extract of Gat no.307/2/A which shows that, non-applicant no.1 to 3 and 5 are co-owners and having common possession. It shows entry of crops only for the year 2017-18. At Exh.14/2 she has filed 7/12 extract of Gat No.139/4 of village Miraj. It shows that, non-applicant no.1 to 5 having common land of 0.00.92R which seems to be non-agricultural land. Upon perusal of 7/12 extracts of agricultural land it does not shows that, non-agricultural no.1 to 5 earns Rs.7,00,000/- (Seven Lakh) per year.

23. As discussed above both parties have failed to brought on record exact monthly income. Non-applicant no.1 has stated that, he is not having any source of income. Applicant failed brought on record source and income of non-applicant no.1. Non-applicant also failed to prove that, applicant is able to maintain herself and having source of income. Till separation applicant and non-applicant no.1 he has maintained her this shows that, he is having capability to maintain applicant.

24. It is not contention of the non-applicant no.1 that due to serious decease he is unable to do any work. As per his affidavit at Exh.15 his age is 24 years. This shows that, he is able to do physical work like labour work. Presently a labour gets Rs.500 to 1000 per day. As both parties failed to brought on record exact income and when there is no document on record regarding their

exact income. At this stage in my opinion it is proper to presume monthly income of non applicant no.1 Rs.15,000/- to 30,000/- as per Minimum Wages Act. Therefore, at this stage considering above presumption of earning of non-applicant no.1 it is to be presumed that his earning is more than Rs.15,000/- per month.

25. He cannot refuse to maintain his wife. It is statutory as well as moral duty of a husband to provide essential requirements to wife and the same cannot be denied or postponed. In absence of exact proof of income of the non-applicant no.1, at this stage as discussed above it is proper to rely on presumed earning. Which shows that he is getting monthly earning which is more than Rs.15,000/- (Fifteen Thousand). Therefore, it can said that the non-applicant no.1 is having sufficient means of income to maintain his wife and he is able to give separate maintenance.

26. During pendency of this application, applicant would be certainly requiring maintenance to enable her to lead her lives with dignity in such costly era and to contest this application. Therefore, applicant 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 etc., of applicant income responsibilities of non-applicant no.1, I think it proper to grant interim maintenance at the rate of Rs.4,000/- (Four Thousand) per month to applicant from the date of filling of this application. Hence, in view of discussion supra, I answer point No. 2 in partly affirmative.

### **AS TO POINT NO.3 -**

27. Applicant has also prayed for protection order against non-applicant. Considering finding of point no.1 non-applicant

no.1 to 5 are prohibited from causing domestic violence against applicant.

28. She has also prayed for injunction order against non-applicants restraining them from alienating their joint family property. But in the application there is nothing contented by applicant which shows that, non-applicants are going to alienate their joint family property. Hence, it is not proper to allow this prayer of applicant.

29. Further she has also claimed restriction against non-applicant no.1 to 5 from entering in the rental house of applicant where she is residing. Applicant has not brought on record a document which shows that, she is residing in the rental house at the time of filing of application. There is no pleading which shows that, after filing of present application non applicants have committed domestic violence against her in her rental house. Therefore, it is not proper to allow this prayer of applicant.

30. From the discussion supra, I conclude that, applicant is entitled to get interim maintenance at the rate of Rs.4000/- (Four Thousand) per month from non-applicant no.1. Non-applicant no.1 to 5 are restrained from causing domestic violence against applicant. Prayer of applicant regarding restraining non-applicants from alienating their joint family property and from entering in rental house of applicant stands rejected. Resultantly, 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 no.1 shall pay interim monetary relief in the form of interim maintenance to the applicant @Rs.4,000/- (Four Thousand only) per month from the date of filling of this application till the final decision of this main application.
3. Non applicant no.1 to 5 are restrained from causing domestic violence against applicant.
4. P.S.O. of Sangola police station and Protection Officer, Sangola is directed to provide protection to the applicant if required.
5. Both parties to expedite the trial of this case and ensure it's disposal at the earliest.
6. Copy of this Order be given to the parties at free of cost as per Section 24 of PWDVA Act.

Sangola.  
Date:- 14/10/2024

**( Mrs. B. M. Potdar )**  
J.M.F.C., Court No.2,  
Sangola.

**CERTIFICATE**

I affirm that the contents of this PDF file Judgment/Order is same word to word as per the original Judgment / Order.

- (a) Name of Stenographer : Shri. S. S. Patne
- (b) Court : Mrs. B. M. Potdar,  
Jt. Civil Judge, J.D.&  
J.M.F.C.Sangola
- (c) Judgment /Order signed by P.O. on : 19/10/2024
- (d) Judgment /Order uploaded on : 19/10/2024