

ORDER BELOW EXH. 01
(Dated 21.01.2022)

By filing instant application annexed to Exh.01 the applicants have prayed for grant of interim maintenance at the rate of Rs. 10,000/- per month from the non-applicant no. 1 u/s 23 of Protection of Women from Domestic Violence Act. (Hereinafter mentioned as “PWDV ACT”)

Admitted fact:

2] Applicant is the wife of non-applicant. Relationship between applicant and non-applicants is admitted. The birth of minor child from the said wedlock is not in dispute. The minor child is in the custody of non-applicant no. 1.

3] Heard Advocates for applicant and with her assistance perused the record. Following points arise for determination and I have given findings alongwith reasons thereon.

Sr. No.	Points	Findings
1)	Whether the applicant prove <i>prima-facie</i> act of Domestic Violence ?	Yes.
2)	Whether the applicants are entitled for grant of interim maintenance order ? If yes, at what rate ?	Yes, to the tune of Rs. 2,000/- per month.
3)	What order?	As per final order.

REASONS**As to Point No. 1 :-**

4] It is pertinent to note that for the assessment of interim maintenance only *prima-facie* evaluation is required.

5] According to applicant, the non-applicant no. 1 is a habitual drinker. He used to assault and abuse the applicant over the petty issues under the influence of liquor. The non-applicant no. 1 used to say to her that “you are insane, you cannot co-habit with me, I want divorce. From now you look for yourself and I will look after myself”. On one occasion he assaulted the applicant by means of iron instrument on her teeth due to which one of her teeth has broken and blood start oozing from her mouth. Non-applicant used to persistently say to the applicant that your father has given less dowry in the marriage and has given less gold ornaments. Non-applicant no. 1 and 2 abused the applicant by saying माहेरी झवायला जाते का ? The non-applicant always used to suspect her character. Once, he said to the applicant that she frequently looks at other men. The non-applicants have not permitted the applicant to meet her own son. Non-applicant once said to the applicant that मादरचोद माई-या घरातून आताच बाहेर निघ, मी तुला नांदवत नाही. The assets and liability of applicant and non-applicant no. 1 filed below Exh. 20 and 18 respectively. As per their respective affidavits there is difference in the date of separation. According to non-applicant, date of separation is April 2010 while as per applicant no. 1 date of separation is January 2018. However, parties are residing separately is an admitted fact on record. The non-applicants in their reply contended that applicant is mentally ill. However, no documents is produced by the non-applicants to fortify their

assertion. The medical report produced by the non-applicants are not sufficient to draw an inference about mental illness. On the contrary, they indicates that they are of the year 2017. Where as according to non-applicants themselves, applicant is residing separately from the year 2010.

6] There are instances of demeaning, humiliating or undermining statements and use of abusive language by non-applicant no.1. The act of restraining the applicant from meeting his own son has a potential to cause mental abrasion over the mind of applicant. The non-applicant no. 1 has also not claimed to have voluntarily contributed towards the maintenance of applicant from the date of separation. Therefore there are specific instances of domestic violence quoted in the application which need not be again reiterated. All the aforesaid acts *prima-facie* indicates physical, verbal, economic and mental abuse at the hand of respondents. Therefore, a *prima-facie* case qua maltreatment and existence of instances of Domestic Violence are made out. Therefore, I answer point No. 1 affirmative.

As to point No.2 :

7] The assets and liabilities of of applicant no. 1 and non-applicant no. 1 are filed on below Exh. 17 and 18.

8] It is apposite to note that as per the affidavit of assets and liabilities Exh.18, non-applicant has shown his monthly income of Rs. 6,000/- and he works as labourer. As per affidavit of assets and liability (Exh.20) monthly income of non applicant no. 1 is shown to be 20,000/- per month. Thus,there is variance in the monthly income of non-applicant no. 1. The veracity of the affidavits would be tested at the time of trial. The burden to show the income of non-applicant no.1 is on the non-applicant no. 1 as it

is within his exclusive knowledge. The non-applicant is an able bodied person. There is no material on record to suggest that applicant is gainfully employed and is able to maintain herself. The non-applicant no. 1 has not elaborated in his affidavit of assets and liabilities as to whether he is a skilled or unskilled labour. Even now a days labours are earning 6,000/- to 7,000/- per month.

9] It is well settled that maintenance has to be granted considering the standard of living of the parties, capacity and liabilities, responsibilities of the non-applicant and reasonable needs of the applicant. The husband cannot abdicate his responsibility of providing the minimum financial assistance to his wife. It is the duty of the husband to look after his wife and son. The wife is entitled in law to lead a life in the similar manner as the husband, had she lived in the same house together. That is where the status and strata come into play, and that is where the obligations of the husband, become a prominent one.

10] In the present case, for objective assessment of the approximate amount to be awarded as interim maintenance, Rs. 6,000/- to 7,000/- per month is accepted as earnings of non-applicant no.1. Applicant cannot be permitted to be left unattended in the twilight of her life and pragmatic approach is to be adopted while granting maintenance. The prices of essential commodities for instance petrol has gone high up to Rs. 110/- per litre. The non-applicant in his affidavit of assets and liability (Exh.18) column A, Row no. 7 has shown his general monthly expenses of Rs. 5,500/-. This indicates the lifestyle and standard of living of the non-applicant no.1. Therefore, considering the status, life style to which the applicant is accustomed and capacity of the non-applicant, gross inflation

index and escalation in price of essential commodities, Rs. 2,000/- towards maintenance of applicant appears to be just and proper. The reasonable needs of applicant such as food, clothing, shelter, educational cannot be lost sight off. In a proceeding of this nature, the husband cannot take subterfuges to deprive his wife of the benefit of living with dignity. The aforesaid amount is neither extravagant which may become oppressive and unbearable for the non-applicant no.1. The maintenance amount should also not be so meagre that it drives the wife to penury. The quantum of maintenance is so adjudged that the applicant will be able to maintain herself with reasonable comfort. The non-applicant No. 1 would also be able to look after his dependents.

11] It is clarified that the above assessment is *prima facie* and would be subject to final orders passed after parties have led their evidences.

12] The aforesaid amount is sufficient for her maintenance and the non-applicant will also be able to pay it. The applicant is also not receiving maintenance from any other proceedings as there is no document to indicate to the contrary. Hence it is necessary to direct the non-applicant to pay interim maintenance from the date of application. Therefore, I answer point No.2 in affirmative.

As to Point no. 3:-

13] In view of finding of point no.1 and 2, I pass the following order.

ORDER

1. The interim maintenance application annex to partly allowed.

2. The non-applicant no.1 – **Durgesh Bhute** is directed to pay Rs. 2,000/- (Rs. Two thousand only) per month to the applicant **Puja Bhute** on or before 7th of each month without fail towards interim maintenance from the date of application till the conclusion of main application by any recognized mode such as RTGS, money order or by depositing in court.
3. On failure comply the order by the non-applicant the applicants would be at liberty to file appropriate proceedings for taking appropriate action against the non-applicant.

Date:- 21/01/2022.

(Anupam S.Sharma)
Judicial Magistrate First Class,
(Court No.6) Wardha.