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| MHWS100008072022<br> | <b>ORDER BELOW EXH.04 P.W.D.V.A. NO.22/2022</b><br>(Indira Avinash Kamble Vs. Avinash Kashinath Kamble)<br><b>(Date : 29<sup>th</sup> May, 2023)</b> |
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1. The applicant filed this application, for grant of interim maintenance of Rs.10,000/- per month from respondent till disposal of the main application.
2. Perused the application and say. The respondent filed say to this application at Exh.10.
3. Heard learned advocate for the applicant and learned advocate for the respondents.
4. I have given thoughtful consideration to the argument advanced by learned advocates for both parties.
5. Considering argument advanced by both parties following points arose for my determination and I record my answers thereon for the reasons stated thereunder.

| Sr.No. | <u>POINTS</u>                                                                        | FINDINGS                             |
|--------|--------------------------------------------------------------------------------------|--------------------------------------|
| 1.     | Whether applicant is entitled for interim maintenance ? If yes what is the quantum ? | <b>Yes.</b><br>(Rs.3000/- per month) |
| 2.     | What order ?                                                                         | <b>As per final order.</b>           |

## **REASONS**

### **AS TO POINT NO.1 :-**

6. The applicant filed main application under Section 12 of the Protection of Women from Domestic Violence Act for various reliefs. The respondents have admitted relationship with applicant. At the time of deciding application for interim maintenance, it is not necessary to discuss on merits of the application. The main purpose of granting interim maintenance is to support the person who is unable to maintain themselves during pendency of this application.

7. The Ld. Advocate for the applicant submitted that it is the responsibility of respondents to maintain the applicant. Applicant is residing her parental house. She has no source of income. She has the responsibility of her children. Hence, prayed to allow the application.

8. Per contra, the respondents in their say and in the argument submitted that there is no *prima-facie* case to grant an interim maintenance. No document is placed on record which shows that domestic violence has been occurred. There is no any domestic violence. It is concocted story. The allegations are false. The applicant do not want to cohabit with respondent No.1. Hence, prayed for rejection of application.

9. Perused the affidavit of assets and liabilities of applicant at Exh.08 it shows that she has no source of income. Since 07.11.2020 she is residing separately. The custody of children is with respondent No.1. The respondent No.1 has not filed his affidavit of disclosure of assets and liabilities. The opportunity is given to the respondent No.1 to file. He fails to file despite the opportunity. As per Judgement of the **Hon'ble Supreme**

Court in the case of Rajnish Vs. Neha Criminal Appeal No.730 of 2020 Decided on 04.11.2020 wherein “it is directed to the Trial Courts, Courts may not grant more than two opportunities for submission of the affidavit of disclosure of assets and liabilities to the respondent. On failure to file the affidavit within the prescribed time the Courts may proceed to decide the application for maintenance on basis of the affidavit filed by applicant and the pleadings on record”. In the present case, on perusal of proceeding it appears that two dates have been given to the respondent No.1 but he failed to file the same.

10. As the relationship is not disputed, it is the bounden duty of respondent No.1 to maintain the applicant. At present applicant is residing at her parental house. Therefore, the respondent No.1 is having responsibility of applicant. The learned advocate for respondents have filed documents below list Exhibits-12 & 16 respectively. The learned advocate for respondents filed copy of divorce petition, bona-fide certificate, legal notice issued by applicant and the reply for the same, a copy of order of Hon'ble Bombay High Court Bench at Nagpur in the case of Criminal Application No.170 of 2022, 7/12 extract of Gut No.35/1. *Prima-facie*, it appears that applicant is unable to maintain herself. At this juncture, *prima-facie* neglect and refusal to maintain are the sufficient grounds to grant interim relief. The object of the act is to protection and welfare of the aggrieved person. On perusal of divorce petition it appears that the same has not been granted by the Court. On perusal of 7/12 Extract it appears that the name of the applicant is a legal heirs of one Taramati Prakash Dabhade. The respondents have submitted that applicant runs one Beauty Parlour and earn Rs.10,000/- per month. However, there is no document placed on record respondent has no any source of income. It is brought on

record by the respondents that the daughter Shravani is taking Education at Poddar International School, Nanded. Therefore, it needs to be considered that respondent No.1 is taking care of his daughter. The say and documents placed on record shows that there are various litigations between applicant and respondents. Though these facts are on record, at the same time the respondent No.1 cannot turn from responsibility of applicant. Respondent No.1 is able bodied person. It is the bounden duty of respondent No.1. Therefore, I am of the opinion that applicants are entitled for maintenance.

11. In-order to decide the main application more time is required. The applicant must be in a proper condition to proceed with this application. The respondent No.1 is legally as well as morally bound to maintain the applicant being his wife. At the time of deciding this application it will not just and proper to discuss on merits of the application and income of respondent. Therefore, taking into consideration *prima-facie* income of respondent and basic needs of applicant and standard living of the applicant, it is necessary to provide a reasonable interim maintenance to the applicant. Considering all these aspects, I am of the opinion that, the applicant is entitled for interim maintenance. Applicant is entitled for interim maintenance of Rs.3000/- (Three Thousand Rupees only) per month from the respondent No.1. Therefore, I answer point No.1 in affirmative.

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

12. In view of my affirmative answer as to point No.1 the applicant is entitled for interim maintenance of Rs.3000/- (Three Thousand Rupees only) from the date of filing of this application till disposal of main application. Therefore, this application is liable to be partly allowed. Hence,

in order to answer point No.2, I pass following order.

**ORDER**

1. Application is partly allowed.
2. The respondent No. 1 do pay interim maintenance of Rs.3000/- (Three Thousand Rupees only) to the applicant per month from the date of filing this application i.e. 04.05.2022 till the disposal of the main application.
3. Copy of this Order be given free of costs to the parties of application vide Section 24 of the Protection of Women From Domestic Violence Act.
4. Copy of this order be given to Police Officer In-charge of Police Station, Malegaon vide Section 24 of the Protection of Women From Domestic Violence Act.

(Dictated and pronounced in open Court)

Place : Malegaon.

Date : 29.05.2023

**(Pravin U.Kulkarni)**

J.M.F.C. (Court No.2) Malegaon  
Dist. Washim.

**CERTIFICATE**

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

Name of the Stenographer : **Shivam B. Patange (L.G.)**

Court & Judge Name : P.U.Kulkarni  
Jt. C.J.J.D. & J.M.F.C., Malegaon.

Date of Order : 29.05.2023

Order signed by the  
Presiding Officer on : 29.05.2023

Order uploaded on : 29.05.2023