


<u>MHWS100002772021</u> 	<u>ORDER BELOW EXH.12 IN D.V. No.29/2022</u> <u>(Tarabai Vs. Rameshwar)</u> (Date :17.11.2022)
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The applicants filed this application, for grant of interim maintenance of Rs.40,000/- per month from respondent and for protection order against the respondent and for residence order. Applicant also prayed for restraining the respondent from alienating the suit property.

2. Perused the application and say. The respondent filed say to this application at Exh.13.
3. Heard Learned Advocate for the applicants and Ld. Advocate for the respondent.
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.	Points	Answers
1.	Whether applicant is entitled for interim maintenance? If yes what is the quantum ?	Yes. As per final order

2.	Whether the applicant is entitled for the relief of injunction restraining the respondent from alienating the property mentioned in the application ?	No
3.	Whether applicant is entitled for protection order and also entitled for right to reside in the house at Patni Chowk Washim, Allada Plot, Dreamland City ?	Yes. In a rented house.
4.	Whether applicant is entitled for relief of interim injunction restraining the respondent from making oral bad publicity ?	Yes.
5.	What order ?	As per final order

REASONS

AS TO POINT NO.1 :-

6. The applicants filed main application under section 12 of the Protection of Women from Domestic Violence Act (the D.V. Act) for various reliefs. The respondent has admitted relationship with applicants. At the time of deciding application for interim maintenance it is not necessary to discuss on merit of the application. The main purpose of granting interim maintenance is to support the person who is unable to maintain himself during pendency of this application.

7. The respondent has denied allegations of applicants. It is the main contention respondent that since last five years they have not resided together. The respondent also denied the income mentioned by the applicants in their application.

8. Applicant No.1 is the mother of respondent. Applicant No.2 is the

sister of respondent. Applicant No.3 is niece of respondent. It is the responsibility of respondent to maintain the applicant being his mother. In the present case, applicant No.1 is the aggrieved persons. On perusal of application it appears that applicant No.2 is the unmarried sister of respondent. Before proceeding further it is necessary to look whether applicants are in a domestic relationship with the respondent. It is not denied from the side of respondent that they have never lived in a shared household. If applicant lived together in a shared household at any point of time then they are in a domestic relationship. Applicant No.1 and 2 are related by family members. They lived together five years ago. The allegations in the complaint shows that respondent has committed domestic violence. Perused the affidavit of Assets and liabilities of applicant and respondent at Exh.18 and 21 respectively. Perusal of the affidavit of applicant reveals that she has no source of income. On the contrary respondent stated that his monthly income is 30,000/- approximately income. As the relationship is not disputed, it the bounden duty of respondent to maintain the applicants. Therefore, *prima-facie* itself appears that, the applicant is unable to maintain themselves. At this juncture, *prima-facie* neglects and refuses to maintain is the sufficient ground to grant the interim relief.

9. Considering the documents and contents of application, *prima-facie* it appears that the respondent has sufficient means of income from his salary. The object of the act is the protection and welfare of the aggrieved person. The applicant No.2 & 3 are residing with applicant. Therefore, I am of the opinion that, the applicant No.1 is

entitled for maintenance.

10. In order to decide main application more time is required. The applicants must be in proper condition to proceed with this application. The respondent is legally as well as morally bound to maintain the applicant No.1 being his mother. At the time of deciding this application it will not just and proper to discuss on merit of the application and on income of respondent. Therefore, taking into consideration *prima-facie* income of respondent and basic needs of applicants and standard living of the applicant and respondent, it is necessary to provide a reasonable interim maintenance to the applicants. Considering all these aspects, I am of the opinion that, the applicant No.1 is entitled for interim maintenance of Rs.4000/- per month from the respondent. Therefore, I answer point No.1 in affirmative.

AS TO POINT NO.2 :-

11. Applicants prayed for restraining the alienation of the property mentioned in the application. The applicants have filed the proclamation below list Exh.15 which shows that the respondent is in haste to dispose of the property. The respondent denied the contention and submitted that the respondent is not in haste to dispose off the property mentioned in the application. Applicants have intentionally created this peace of paper.

12. Applicants have filed sale deeds of the property mentioned in the application. On perusal of the same it appears that the property is

owned by applicant. Therefore she has every right to restrain the respondent from alienating the immovable property mentioned in the application till decision of main application. If the respondent is not restrained then it will be the economic abuse. If the respondent is not restrained then applicant may suffer loss. Therefore, I answered point No.2 in affirmative.

AS TO POINT NO.3 :-

13. Applicants have prayed that respondents are restrained from dispossessing from the house situated at Patni Chowk, Washim. It is the case of respondent that, applicant Nos.1 to 3 are involved in immoral activities. The offences are registered against them. Therefore, since last five years they are not residing with him. Respondent has filed the copy of charge-sheet in Crime No.103/2018 and in Crime No.284/2019. On the contrary, applicants have filed the copy of Judgment in the case of State Vs Tarabai & Ors. The Hon'ble Additional Sessions Judge, Washim acquitted the applicant No.1 from the offence under Section 366 of I.P.C. and Section 3, 4, 5 of Prevention of Immoral Traffic Act in Crime No.284/2019. There is no argument from both sides regarding Crime No.103/2018. It is also the case of respondent that over the plot situated at Dream Land City the building is constructed by the respondent. As the applicants are involved in immoral activities the respondent is unable to live with them.

14. The learned advocate for respondent submitted that this is the property dispute. The same cannot converted into the domestic

violence case. The learned advocate for respondent relied on judgment of Hon'ble Bombay High Court Bench at Aurangabad in the case of ***Shubangi Anil Budrukar Vs. Digambarrao Budrukar Reported in 2019 (6) Mh.L.J. (Criminal) 375*** wherein it was held that, "property dispute cannot be converted in domestic violence case. In this case, the dispute between the respondents and husband of petitioner was she was cultivating the land and respondent was obstructing their possession. It is a civil dispute she can approach the civil court for necessary relief. Therefore, petitioner was not entitled for the relief of residence as well as protection with respective agricultural land belonging to her husband under Sections 19 & 18 of the D.V.Act".

15. I have gone through this judgment. On reading it appears that the compromise between husband of petitioner and respondents has been set aside. In the civil suit the question of ancestral property and the issue of ownership or possession is involved. In the present case no such issue is involved. The documents filed by plaintiffs shows that the property is either the self acquired property or the property inherited by applicant No.1 from her mother. Hence, will all respect the judgment is not applicable in the present set of facts.

16. The Learned Advocate for the respondent relied on the judgment in the case of ***Manmohan Attavar Vs Neelam Manmohan Attavar Reported in AIR 2017 SUPREME COURT 3345*** wherein it was held that, "Parties never lived in a shared household which is the property in question then petitioner is not entitled for the relief to reside in a shared household". In the present case it is the averment of the respondent that

he entered in the new house after *Vastu Puja* on 10/6/2022. But he has admitted that it is owned by the applicant No.1. Applicant No.1 has specifically prayed for the right to reside in a shared household situated at Dreamland City.

17. The Learned Advocate for the respondent relied on the judgment of the Hon'ble Andhra Pradesh High Court in the case of **Smt. Kollo Babi Sarojini & Ors Vs. Smt. Kolli Jaylaxmi & Another Reported in 2015 CRI.L.J.74** wherein it was held that, "Shared household not belonging to joint family. Husband had no share in property. It would not come under definition of shared household. No relief can be claimed by wife in respect of such property". In the present case, the property where applicant No.1 is claiming the right to reside is her self acquired property. In this case mother is claiming the right. Hence with all respect the relied judgment is not squarely applicable in the present set of facts.

18. The Learned Advocate for the petitioner relied on the judgment in the case of **Johnson Fernandes Vs Mrs. Maria Fernandes and Ors reported in 2011 CRI.L.J .1505** wherein it was held that, "sister and brother living in separate house and not in a shared household. The sister is not entitled to the relief under D.V.Act." In the present case it is the defense of the respondent that the house in question is constructed by him. It is not the case that they are living separately from inception. Thus with all respect the judgment is not squarely applicable in the present set of facts.

19. The plot where the applicant No.1 is claiming the right to reside is her self acquired property. It is admitted by the respondent. It is the averment of respondent that it is constructed by him. It is question in the trial. It will decide after parties led their evidence. At the same time the relation of the parties needs to be considered. The Hon'ble Additional Sessions Judge, Washim acquitted the applicant No.1 from the offence under Section 366 of I.P.C. and Section 3, 4, 5 of Prevention of Immoral Traffic Act in Crime No.284/2019. There is no argument from both sides regarding Crime No.103/2018. Considering the allegation it is proper to make alternative arrangement of applicants. Hence as per section 19 (1) (f) the Court may direct the respondent to secure same level of alternate accommodation for the aggrieved person has enjoyed by her in the share house hold or pay the rent for the same. In this case also, it is not proper to pass an order in favour of applicants to reside with respondent. Considering the facts and circumstances, it is proper to direct the rent 2000/- per month to the applicant. Applicants are also entitled for protection order. Hence, I answered point No.3 in the affirmative.

AS TO POINT NO.4 :-

20. It is the contention of applicants that respondent is making bad publicity. The case is pending against applicant No.1 and in one case Hon'ble Sessions Court has acquitted the applicant No.1. In such circumstances it is proper to restrain the respondent from making bad publicity which is also the verbal abuse. The bad publicity may cause mental agony to the applicants. Hence, it is necessary to restrain from

making bad publicity of applicants. Hence, I answered point No.4 in affirmative. Hence, in order to answer point No.5, I pass following order.

ORDER

1	This application is hereby partly allowed.
2	The respondent is directed to pay interim maintenance of Rs. 4000/- (Four Thousand only) to applicant No.1 per month from the date of filing this application till the final disposal of the main application.
3	The respondent is restrained from making any alienation or dispose of properties mentioned in the application till the disposal of main application.
4	Respondent is directed to pay Rs.2000/- for rent to the applicant No.1 till the disposal of main application.
5	Respondent is restrained from making bad publicity of applicants till the disposal of main application.
6	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.
7	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. Copy of this order be forwarded to Protection Officer.
8	Respondent is restrained from committing any act of domestic violence in a rented house. The Protection Officer shall file report of the same in every month.
	(Pronounced in open Court)

Date. **17.11.2022.**

Place:Malegaon

Jt.C.J.J.D.& J.M.F.C. 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 : (Pravin U. Kulkarni)
Jt. C.J.J.D & J.M.F.C, Malegaon.

Date of Order : 17.11.2022.

Order signed by the
Presiding Officer on : 19.11.2022.

Order uploaded on : **19.11.2022.**