

MHWS100012052021



ORDER BELOW EXH.4 P.W.D.V. NO.26/2021

(Nirmala Pralhad Dakhore Vs. Pralhad Tukaram Dakhore)

(Date : 27th April-2023)

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 his say at Exhibit-09.
3. Heard learned Advocate for the applicant and respondent.
4. I have given thoughtful consideration to the argument advanced by learned advocates for both parties. Considering the argument advanced by the learned advocates following points arise 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 ?	Yes.
2.	What order ?	As per final order.

REASONS

AS TO POINT NO.1 :-

5. The applicant filed main application under Section 12 of the Protection of Women from Domestic Violence Act for various reliefs. The respondent denied the 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 herself during pendency of this application.

6. It is the averments of respondent that applicant is not his wife. She is the legally wedded wife of one Moritam Girhe resident of Malegaon. Alternatively, he submitted that respondent is old aged person. He is suffering from various diseases. He used his salary for medicines. The application is not maintainable under the Protection of Women From Domestic Violence Act. Therefore, prayed to reject the application.

7. As the relationship is disputed, I have carefully gone through the contention of the applicant. It is the contention of the applicant that he is legally wedded wife of respondent. She has one son and one daughter. Respondent has performed second marriage with one Aruna . Respondent constrained the applicant to left the house of respondent. Respondent committed domestic violence.

8. Before deciding the interim maintenance amount, it is

necessary to consider whether the applicant *prima-facie* shows the domestic violence. As the relationship is disputed the respondent contended that he is the legally wedded wife one Motiram Girhe. In order to support the contention of the respondent has not produced any document on record which shows applicant is legally wedded wife of Motiram Girhe and her marriage with him is in subsistence. On the contrary, the applicant has filed one copy of Judgment of the proceeding filed by applicant in the case bearing No. MJC No.215/2016 below list of document at Exh. 23 . The same is under Section 128 of the Criminal Procedure Code, 1973. On perusal of the order below Exh.01 in MJC No. 215/2016, it appears that the non-applicant is sentenced to suffer simple imprisonment for default of payment of maintenance amount. Therefore, this order shows that applicant is wedded wife of respondent. There was previous litigation between them.

9. The learned advocate for the applicant relied on the Judgment of the Hon'ble Supreme Court in the case of *Prabha Tyagi Vs. Kamlesh Devi* in a *Criminal Appeal No.511 of 2022* wherein one of the issue of consideration is whether there should be the subsisting domestic relationship between the aggrieved person and the person against whom the relief is claimed. In this Judgment Hon'ble Supreme Court has held that "The subsisting domestic relationship must be interpreted in a broad and expansive way, so as to encompass not only a subsisting domestic relationship in presentia but also posted domestic relationship. Therefore, the parliament has intentionally used the expression 'domestic relationship' to mean a relationship between two persons who not only live together in

the shared household but also between two persons who 'have at any point of time lived together' in a shared household”.

10. Applying the aforesaid decision to the facts of the present case, it *prima-facie* appears that applicant is in a domestic relationship with respondent and they have lived together. Applicant is legally wedded wife of respondent. The applicant gave birth to two children of respondent. Even, there is no possibility that one women will connect her relationship with a stranger. *Prima-facie* on perusal of the allegations in the application it appears that respondent has committed domestic violence.

11. As applicant is in domestic relationship with respondent, it is the bounden duty of the respondent to maintain the applicant. At present, applicant is residing at her parental house with her children. Therefore, the respondent is having responsibility to maintain the applicant. *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 protect and welfare of the aggrieved person. Therefore, I am of the opinion that applicant is entitled for interim maintenance. In order to decide the main application more time is required. The applicant must be in a proper condition to proceed with the main application. Respondent 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 and the merits to the application and income of

respondent. Therefore, taking into consideration *prima-facie* income of respondent, basis needs of applicant and standard leaving of the applicant is necessary to consider to provide reasonably interim maintenance to applicant. On perusal of the assets and liabilities of applicant and respondent filed at Exhibit Nos.10 and 21 respectively, it appears that applicant is having responsibility of her daughter. The respondent having salary of Rs.12,000/-. He is the government employee. He is having responsibility of her wife Aruna Dakhore and other two children. His monthly expenditure is Rs.12,000/-.

12. Though the respondent has filed the affidavit of assets and liabilities showing the more expenditure than income, it is the responsibility to maintain the applicant. Considering all these aspect, I am of the opinion that applicant is entitled for interim maintenance of Rs.3000/- (Three Thousand Rupees only) per month from the respondent. Hence, I answer point No.1 in affirmative.

AS TO POINT NO.2 :-

13. 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. This application is partly allowed.

2. The respondent do pay interim maintenance of Rs.3000/- (Three Thousand Rupees only) to the applicant each per month from the date of filing this application i.e 02.08.2021 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 : 27.04.2023

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 : 27.04.2023

Order signed by the

Presiding Officer on : 29.04.2023

Order uploaded on : 29.04.2023