

**ORDER BELOW EXH – 8**  
(Passed On 12<sup>th</sup> day of July, 2023)

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.**) by applicant.

2. Applicant is the wife of opponent no.1. In the application, serious and several allegations of domestic violence are raised in the form of mental abuse, verbal abuse and economic abuse against opponents. Till the decision of the main application, interim reliefs in the form of interim monetary & other reliefs are sought by applicant. Opponents have countered all these allegations by alleging them to be false. They have raised counter-allegations on applicant and lastly prayed for rejection of this interim application as well as the main petition. Counter-pleadings are voluminous and even its concise reproduction is avoided for maintaining brevity.

3. Perused the counter-pleadings and documents filed by the parties. Heard the oral arguments advanced by learned advocates for both parties. Instead of reproducing the list of the documents, they will be addressed at relevant stage of discussion.

4. Considering the material brought on record, following points arise for my determination. Decisions thereon are recorded for reasons discussed here under ;

**POINTS FOR DETERMINATION**

**DECISIONS**

- |  |                    |
|--|--------------------|
| 1. Whether it prima facie appears that domestic violence is caused on applicant by opponents ? | ... Yes.           |
| 2. Whether applicant is entitled to the interim reliefs as claimed ?                           | ... Partly Yes.    |
| 3. What order ?  | ...Partly allowed. |

## **REASONS**

### **As To Points No.01 & 02**

5. 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 prima phase of interlocutory adjudication, the Court is not supposed to penetrate deep into the merits of the case or the evidence which may be brought on record at trial. Even at this stage, it is not expected of an applicant to bring the proof of pleaded allegations. Same thing is applicable to opponents, who are also not supposed to prove or disprove any allegations by or against them. Both parties have filed affidavits to make their pleadings look believable. Therefore, here is a 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 the counter-party. The only aspect of consideration remains is that whether the application prima facie discloses that opponents are committing, or has committed or there is any likelihood that they may commit act of domestic violence against applicant.

6. There are specific date-wise accounts of mental abuse, emotional abuse and economic abuse. It is the contention of the opponents that applicant had previously filed application P.W.D.V.A. No. 9/2023 against opponents under the provisions of D.V. Act. The said application was filed on 27.2.2023 by applicant. In the said application, she had not contended that she was subjected to any kind of domestic violence on 2.1.2023 by opponents. It is to be noted here that on perusal of the contents of said application P.W.D.V.A. No. 9/2023, it appears that the applicant has not mentioned specific dates of domestic violence but she had stated various instances of domestic violence at the hands of the opponents in it. She had also contended in the said application that she was driven out of the house by opponents as

alleged in the present complaint. Even though the applicant has not mentioned the said date i.e. 27.2.2023 in the said complaint, it can not wash out her contentions of domestic violence in the present complaint in the form of mental abuse, emotional abuse and economic abuse against opponents. It is also to be noted here that applicant has withdrawn said case P.W.D.V.A. No. 9/2023 and has filed interim application in this main application by asking various reliefs. Even though if it is presumed that there are different allegations made by applicant against opponents in both these cases or there are contradictions, it can not be said that allegations levelled by applicant in this application are totally false at this stage without there being trial.

7. No woman with two infant daughters will ever speak so much false and will choose to reside separately from her husband, without there being any reasonable or sufficient cause. The cause pleaded by opponents for applicant residing separately from them is not justifiable at this moment, though they are having opportunity to prove it at trial. Specific allegations pleaded by applicant certainly prima facie display the existence of domestic violence at the hands of opponents.

8. It is an admitted fact that applicant is serving as Naik lady police constable in police department. She has filed her affidavit of assets and liabilities on record wherein she has herself disclosed that her salary is **Rs. 42,000/-** per month. Opponents have filed on record her salary slip which discloses that she had got salary of **Rs. 47,414/-** in the month of September-2022. Therefore, applicant appears to be having handsome salary.

9. Opponent no.1 has filed on record his affidavit of assets and liabilities and stated that he is serving as a Police Naik Constable and getting salary of **Rs. 60,878/-** per month. It means that he is also having handsome salary and sufficient source of income. It is admitted

fact that applicant and her two daughters are residing separately from opponent no.1. Object of interim relief of any kind under the D.V.Act is to ensure the immediate providing of relief to aggrieved person. The applicant have sought various reliefs against opponent no.1 including monetary relief for herself and two minor daughters.

**10.** Learned advocate for opponents submitted that applicant is not entitled to any relief of interim maintenance as applicant is getting handsome salary and therefore, she is able to maintain herself and her two minor daughters. Since applicant is getting handsome salary as discussed above, she is able to maintain herself. At this juncture, she is not entitled to relief of interim maintenance from opponent no.1. However, her two minor daughters are entitled to the relief of interim maintenance amount from opponent no.1. It is the responsibility of opponent no. 1 to maintain them as his minor daughters and he can not shirk his responsibility of their maintenance.

**11.** During pendency of this case, two minor daughters of applicant and opponent no.1 would require maintenance for their education and other basic needs. Therefore, they must be awarded with some sort of interim monetary relief. Balancing the basic needs such as food, clothing, basic medication, basic entertainment and their educational expenses coupled with income and liabilities of opponent no.1 on records, I think it fit to grant the interim maintenance at the rate of Rs.3,000/- per month to each of them from date of this application.

**12.** Applicant has prayed for the interim reliefs of protection orders. Basic object of the D.V.Act is to protect woman from any sort of domestic violence, as defined under section 3 of D.V.Act. As per **section 18 of D.V.Act**, if the allegations prima faice discloses the causing of or the likelihood of committing domestic violence, then the Court must prohibit it. In the case at hand, applicant has filed on record N.C.R copies wherein it appears that applicant had made complaint

against opponent no.1 to police station under section 506 and 507 of the Indian penal code, 1860. Hence, it is prima facie seen that domestic violence has been caused and it is also likely to be caused against applicant and her two minor daughters at the hands of opponents. The applicant has specifically pleaded that opponent no.1 is obstructing school i.e. Mount Litera Zee School situated at Pusad from issuing transfer certificate to applicant in respect of her two minor daughters. He is also obstructing her two minor daughters from entering and taking admission in school situated at Umarched, Dist. Yavatmal. To ensure that, object of D.V.Act is achieved and to protect applicant from such acts of domestic violence, opponent no.1 must be prohibited from causing, aiding or abetting any such act of domestic violence, entering the place of employment of the applicant, school of her two minor daughters and other reliefs during pendency of the application.

**13.** Applicant has also sought relief that opponent no.1 be prohibited from taking custody of her two minor daughters illegally without her consent. However, such prohibitory relief can not be granted as it is in respect of the custody of daughters. It can not be termed as prohibitory relief under section 18 of D.V. Act. However, considering apprehension of applicant, opponent no.1 can be prohibited from attempting to communicate in any form, whatsoever, with applicant and her two minor daughters i.e. Aastha and Advika till decision of this case in the interest of justice. Hence, as discussed above, I am granting protection to applicant during pendency of the application.

**14.** Finally, I conclude that applicant is prima facie subjected to domestic violence by opponents but she is not entitled to interim maintenance. Her two minor daughters i.e. Aastha and Advika are entitled to interim maintenance amount at the rate as discussed above. Applicant and her two minor daughters are entitled to the protection orders as prayed. Resultantly, I answer point No.01 in affirmative and point No.02 in Partly affirmative.

**As To Point No.03**

15. From the findings to the points supra, I am inclined to partly allow this application. Copy of this order shall be supplied to both the parties free of cost after application for copy made in due course. In the result, I answer point No.03 as prayers for interim relief are partly allowed and pass the following order ;

**ORDER**

i. Application is partly allowed.

ii. **Order Under Section 20 r/w. 23 of The Protection of Women From Domestic Violence Act, 2005,**

Opponent no.1 shall pay interim monetary relief in the form of interim maintenance at the rate of **Rs.3,000/-** (Rupees Three Thousand Only) per month to applicant for minor daughters i.e. Aastha and Advika **each** from the date of filing of this application i.e from **6.6.2023**, till the decision of this case.

iii. **Order Under Section 18 of Protection of Women From Domestic Violence Act, 2005,**

a. Opponents are prohibited from causing, abetting or attempting any act of domestic violence against applicant and two minor daughters i.e. Aastha and Advika till the decision of this case.

b. Opponent no.1 is prohibited from entering the place of employment of applicant and school of two minor daughters i.e. Aastha and Advika till the decision of this case.

c. Opponent no.1 is prohibited from obstructing school situated at Pusad i.e. Mount Litera Zee School, Pusad from issuing transfer certificate to applicant in respect of two minor daughters i.e. Aastha and Advika till the decision of this case.

d. Opponent no.1 is prohibited from obstructing applicant or two minor daughters i.e. Aastha and Advika from entering and taking

admission in any school situated at Umarkhed, Tal. Umarkhed, Dist. Yavatmal till the decision of this case.

e. Opponent no.1 is prohibited from attempting to communicate in any form, whatsoever, with applicant and two minor daughters i.e. Aastha and Advika, including personal, oral or written or electronic or telephonic contact till decision of this case.

iv. **Order Under Section 24 of The Protection of Women From Domestic Violence Act, 2005,**

Copy of this order shall be given free of cost to the parties to this application.

v. Opponent no.1 shall pay interim maintenance amount to applicant for minor daughters i.e. Aastha and Advika till 5<sup>th</sup> day of each month.

vi. Both parties to expedite the trial of this case and ensure its disposal at the earliest.

vii. Prayer in regard to other reliefs which are not granted supra are hereby rejected.

Pusad.  
Date:- 12.7.2023.

Sd/-  
**( Vishwajit B. Chavan )**  
Judicial Magistrate First Class,  
(Court No.06), Pusad.