

ORDER BELOW EXH.02

(Passed on 30-09-2019)

01. Perused the main petition, present application and the reply/say (Exh. 10) of the non-applicant No. 1.

02. Ld. Advocate Shri. Shaikh Ansar for applicants submitted that, applicants have *prima facie* shown that non-applicant No.1 has committed domestic violence on applicant No.1. The copy of police complaint dated 27/07/2017 in that regard is placed on record. The contentions in the application are supported by an affidavit of applicant No. 1. Applicants incur huge expenses for prosecuting this case and also for their livelihood. They have no source of income. Non-applicants earn Rs. 1,50,000/- per month from their business of selling meat. N.A. No. 1 owns two meat shops at Sonala, Dist. Adilabab. N.A. No. 1 also gets income of Rs. 10,000/- per month as rent from residential house. Thereby, it is prayed to grant the relief of interim maintenance, as prayed.

03. Per contra, Ld. Advocate Shri. N.B.Dawne for non-applicants submitted that, non-applicants never gave any sort of ill-treatment to the applicant No. 1. Applicant No. 1 was insisting the N.A. No. 1 to reside with her separately at her parental house. When N.A. No. 1 refused said proposal, applicant no. 1 quarreled with him and she started residing at her parental house by her own will. She has sufficient source of income to maintain herself and her daughter. Non-applicants do not have sufficient source of income. N.A. No. 1 has responsibility of his age-old parents. Hence, he is unable to pay any maintenance to the applicants, as prayed.

04. In view of rival contentions of both the parties, following points arise for my determination. I have recorded my findings thereon for the reasons to follow :

<u>Sr. No.</u>	<u>POINTS</u>	<u>FINDINGS</u>
01.	Whether applicants have made-out their <i>prima facie</i> case ?	..Yes.
02.	Are the applicants entitled to get interim maintenance allowance from N.A.No.1 ? If yes, what is the quantum of interim maintenance ?	..Yes. Rs. 1,200/- per month to applicant No. 1 and Rs. 800/- per month to applicant No. 2.
03.	What order ?	..As Per Final Order

REASONS

AS TO POINT Nos. 01 TO 03 :-

05. The relief of interim maintenance as per section 23(2) of the D.V. Act being an ancillary relief to the main relief, it is necessary for the applicants to make out *prima facie* case for that purpose. Applicants must *prima facie* show their inability to maintain themselves, sufficient income source of N.A. No. 1 and refusal or neglect on the part of non-applicants to maintain them. Applicant No.1 must also *prima facie* establish that she is an aggrieved person.

06. The contentions in the original petition supported by verification of applicant No. 1 *prima facie* reveals that, non-applicants used to give physical and mental ill-treatment to her on various counts as stated in the application. Non-applicant No. 1 used to beat applicant No. 1 by making illegal demand of money. Applicant No. 1 lodged Report dated

27/05/2017 at Bitergaon Police Station regarding the ill-treatment suffered by her from non-applicants. Therefore, applicant No. 1 was constrained to reside at her parental home with her daughter. Since then, non-applicant No. 1 has not provided any financial help to them.

07. Although these contentions are specifically denied by the non-applicants, but at this preliminary stage, there is nothing on record to discard or disbelieve the applicant's contentions supported by her affidavit. Furthermore, at this stage, there is nothing on record to show that applicant No.1 is living at her parental house with her minor daughter on her own accord. Therefore, contention of non-applicants that applicant No. 1 left her matrimonial house without any reasonable and sufficient cause, is not *prima facie* acceptable. In the given circumstances, contention of applicant No.1 regarding domestic violence suffered by her *prima facie* appears to be more probable than the contention of non-applicants. The copy of police complaint dated 27/05/2017 placed on record further support the contentions of the applicants at this stage. Hence, I hold that applicant No.1 has *prima facie* shown that, non-applicants have subjected her to the domestic violence and that she is an aggrieved person.

08. Non-applicant No. 1 has not placed any material on record to show any specific independent income of applicant No.1, as alleged. Applicant No. 1 is a minor girl. Therefore, at this preliminary stage, it can be said that applicants are unable to maintain themselves.

09. It is contended by the applicants that, non-applicant No. 1 earns Rs. 1,50,000/- per month from his two meat shops and he also earns

Rs. 10,000/- per month as rent from the residential house. However, no acceptable evidence is placed on record by the applicants at this stage to substantiate said contentions. However, N.A. No. 1 has stated that, he does the labour work. The relationship between the parties is not denied. N.A. No. 1 does not appear to be a physically disable person. Thus, at this preliminary stage, it can be said that, non-applicant No. 1 is capable to provide interim maintenance to the applicants.

10. Applicants have *prima facie* shown that they are unable to maintain themselves. Admittedly, applicant No. 1 is residing with her minor daughter at her parental house since long. It is obvious that, they are in need of money for meeting their daily needs. Applicants will also incur expenses for prosecuting this case.

11. At this preliminary stage, considering the fact that non-applicant No.1 is an able-bodied person and does the labour work, it can be said that he is capable to provide interim maintenance to the applicants. Non-applicant No.1 has contended that, his old-aged parents are also depended upon him. Thus, giving thoughtful consideration to the facts and circumstances of the case, in my considerate opinion, it would be just and proper to direct non-applicant No. 1 to pay Rs. 1,200/- per month to applicant No. 1 and Rs. 800/- per month to the applicant No. 2 as interim maintenance till the final decision of this case. Hence, I answer point Nos. 1 and 2 accordingly. In the result and in answer to point No. 3, I proceed to pass following order :-

ORDER

- 01) Application (Exh. 02) is partly allowed.
- 02) Non-applicant No. 1 Shaikh Asif Shaikh Salman is hereby directed to pay Rs. 1,200/- (Rupees One Thousand Two Hundred) per month to applicant No. 1 and Rs. 800/- (Rupees Eight Hundred) per month to the applicant No. 2 towards interim maintenance allowance from the date of this order till the final disposal of the main petition.

Sd/-

Date : 30-09-2019

(Sachin S. Tat)

Place : Umarkhed

Judicial Magistrate First Class,
(Court No. 01), Umarkhed.