

MHYA210024172019



Order Below Exh.02 IN PWDVA No.46/2019
Sau.Suvarna Nandkishor Jivtode Vs. Nandkishor Ramkrushna Jivtode

1. The application is made for grant of interim maintenance amount as provided under Section 23 of the Protection of Women from Domestic Violence Act, 2005 (in short the 'Act').
2. Perused the application, reply (Exh.20), domestic incident report (Exh.13), pleadings, assets and liability affidavit of applicant (Exh.25), assets and liability affidavit of respondent no.1 (Exh.27), documents and the record. Heard, the learned Advocate Shri.G.P.Neet for the applicant and the learned Advocate Shri.B.N.Dhawas, for the respondents.
3. The applicants have submitted that respondent no.1 and applicant no.1 are legally wedded couple. Their marriage was solemnized on 16.05.2008. During cohabitation period, the respondents had committed the act of domestic violence by making repeated assaults out of liquor addiction and extra marital affairs with respondent no.4, driven out of house, denial for cohabitation and providing economic assistance. Out of such harassment and declining for cohabitation, applicant no.1 with other applicants constrained to take shelter of her parental house. She has no source of income and unable to maintain herself and children. Respondent no.1 is a diesel engine mechanic and having Rs.30,000/- per month. In addition to them, he possessed 26 Acre ancestral land and earns therefrom Rs.8,00,000/- annually. None is dependent on respondent no.1, except the applicants. Hence, prayed for grant of interim maintenance of Rs.15,000/- per month and interim protection order.

4. The respondent admitted the marital relations. However, denied the allegations of domestic violence. In view of defence, applicant no.1 is of suspicious character. She always used to raise doubt on respondent no.1 and thereby used to raise quarrels. She used to give threat to indulge the respondents in false criminal cases. Respondent no.1 always ready and willing for cohabitation. She herself withdrawn his society without any reasonable cause. Respondent no.1 suffering harassment by the conduct of applicant no.1. He tried to resume cohabitation, however, applicant no.1 declined. Applicant no.1 earns from labour work and tailoring work. Applicant no.1's father have agricultural properties. Applicant no.1 is also having share therein. Applicant no.1 have sufficient means of income. She has no legal necessity of the maintenance amount. Hence, prayed for rejection of application.

REASONS

5. The applicants have alleged the commission of domestic violence at the hands of respondents. Considering the averments on affidavit, D.I.R.Report (Exh.13) and the documents, there is a prima facie material as to corroboration of allegations. There is no strong circumstances to raise doubt as to existence of such incidences. At this stage, the reliability of the allegations cannot be expected to be proved. The allegations will be proved on recording evidence and hearing the parties. It will take time. The applicants are not expected to be deprived from getting the economic assistance for their livelihood, vis-a-vis, bear the expenses incurred for present litigation. Considering applicants to bear the economic burden, specially in the circumstances of lack of means to fulfill the same, would be hardship and it will amount to denial of fair opportunity. Therefore, the applicants are entitled for interim relief.

6. Respondent no.1 alleged the availability of sufficient means for livelihood of the applicants. He alleged the income source of labour work, tailoring work and agricultural sources. No material placed on record as to labour and tailoring work. Initially, the applicants screening as to possessing share in the agricultural properties. The respondents filed 7/12 extract of ancestral agricultural properties. In some of properties her name is included as co-sharer. In view of affidavit (Exh.28), applicant no.1 sworn that though her name is included in the agricultural properties vide Gat no.160/2 (1.90 H.R.) and 183/1 (1.24 H.R.) at village Bhalar, however, the said properties are in actual cultivation of his brother. She does not get any income therefrom in person. No adverse material, as to earning actual income out of agricultural properties, hence, prima-facie, no evidence that the applicants are actually earning. Applicant no.1 alleged to be lack of sufficient means for livelihood and dependency for that on respondent no.1.

7. Applicant no.1 alleged the availability of source of income to respondent no.1 out of Diesel Engine Mechanical work and agricultural income. However, there is no documentary evidence on record. Respondent no.1 denied the said sources of income and shown his inability to pay interim maintenance.

8. The applicants alleged the source of income of respondent no.1 as Mechanic. For that, in a common parlance, no documentary evidence expected to be available with the applicant. Even, respondent no.1 claimed to be lack of economic sources, he cannot be escaped from the legal liability cast upon him out of matrimonial responsibility. The applicants are his wife and children and he has obligation to maintain them and to provide legal assistance to fulfill their basic needs. Considering the present economic conditions, the liability of maintenance of applicant no.1 and her two minor child and the economic status of the respondents, I pass the following order.

ORDER

1. The application (Exh.2) is partly allowed.
2. Respondent No.1 is directed to pay Rs.5,000/-(Rs.Five Thousand only) per months to the applicants, from the date of application Exh.1, till passing the final decision of the present proceeding, towards joint maintenance, litigation expenses and the other incidental expenses of the applicants.
3. The respondents are restrained from committing any kind of violence against the applicants, till the final adjudication of the application.
4. Copy of the order be provided free of costs to both the parties, the Protection Officer, P.S.O.Wani, for due compliance of order No.2 and 3.
5. The application is disposed of accordingly.

Date : 26.07.2022

(Sudhir M. Bomidwar)
Judicial Magistrate (First Class),
Wani.