

	<u>ORDER BELOW EXH. 5 IN PWDVA No. 16/2022</u> <u>CNR MHRT080006692022</u> <u>Dhanashree Kamlakar Gosavi nee Shobha Shriram</u> <u>Gosavi Vs. Kamlakar Rama Gosavi</u>
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1. This is an application filed for the grant of interim relief under **Section 23 of the Protection of Domestic Violence Against the Women Act, 2005** (herein after referred to as 'the D.V. Act').

Facts of the case of the applicant:

2. The applicant Contended that, her marriage with the nonapplicant no. 1 (hereinafter referred as N.A.) was performed on 24/05/2010, out of arranged marriage system. The financial background of maternal family of applicant is weak. After their wedlock, the couple used to reside in nivali, tal- Chiplun. For few months, it was going on well. However, later on applicant came to know that non applicant no. 1 was just a function decorator. Non applicant no. 2 who was his elder brother used to receive whatever income N.A. no. 1 would get. Hence, N.A. no.1 had to depend on him for his basic needs. Even though N.A. No. 2 and 3 have different family, they enjoy shared household. N.A. no. 2 and 3 used to abuse applicant and beat her whenever she used to ask for money to meet her daily needs.

3. The couple have one son named Gaurav. He studies in 4th std. when applicant was pregnant, N.A. no. 2 and 3 used to make her work which she was restricted to do. In such a way, series of incidents have been narrated in the complaint. The incidents of physical and mental torture are narrated in the complaint. Date wise incidents of physical abuse are mentioned in the complaint. Applicant has also lodged FIR against non applicant for his acts under section 323, 504, 506 of Indian penal code at Sangameshwar police station.

4. It is alleged that non applicant no. 1 gets annual income of about Rs. 5,00,000 (five lakh only) out of his business. He has his residential house at Niwali, Tal-Chiplun. They have agricultural land there where they yield sufficient amount of income about Rs. 3,00,000 (Three lakh Annually). No one else is dependent on N.A. No. 1. The custody of the son is with applicant. Hence, she has to look after herself as well as upbringing of her son, to meet their daily needs. Applicant is uneducated. Due to physical torture, happened to her, she is already in trauma and hence she has to take medical treatments. Apart from this, applicant currently resides at her maternal house. Hence, she has to look after another shelter and to meet her daily needs, she needs to be financially sound. Hence, by way of this application, applicant is praying that Non applicant no. 1 be directed to pay interim maintenance as

the main application will be decided after a considerable time. No specific amount of interim maintenance is claimed in an application.

5. Nonapplicant no. 1 appeared and filed say below exhibit 21. The marriage and relation between parties are admitted. Other contentions are denied. The specific allegation of the non applicant is that applicant has suppressed few facts from this court. she has instituted in this Court Cr. M.A. 8/2012 which was compromised in National Lok Adalat dated 04/03/2012. It was agreed as per that compromise that applicant would reside along with N.A. no 1. Since that day she resides along with N.A. no. 1. The date of marriage of them is 23/05/2010 on Sunday. Hence date and day of the marriage is also written improperly. It is alleged that the expenses of the marriage were borne by the family of N.A. No. 1 only. No any gold ornaments were given in marriage to applicant by her father and mother. It is also pleaded that age of N.A. no. 1 at the time of marriage was 34 years; while age of applicant was 19 years and this fact was well versed to their family before marriage. After death of father of N.A. no. 1 he started business by borrowing loan amount. He used to get hardly Rs. 500-600 monthly. After his father, the whole responsibility of their family came on the shoulders of N.A. no. 1. Applicant never performed her matrimonial duties. She used to reside at her parents

house for months and months. Many attempts at their level were made in order to reconcile both of them. However, behaviour of applicant was not well. After birth of their son, for few months she was not doing household chores. However, now when their son has grown by age, still she avoids doing any chore. Due to her so behaviour, he had to look after his house and because of the same he met with financial loss in his business. During covid period he has met with financial loss. During that period, he and his family used to survive on the pension which his mother used to get. However, after demise of his mother in the Oct. 2020, that source is also closed. Due to bad economic condition, he had to borrow loan by pledging ornaments of his mother. Many incidents are narrated in the say by way of which N.A. no.1 has pleaded that applicant was not ready to cohabit with him. Applicant currently resides in Mumbai. Applicant and her son, resides along with her parents at Muchri. She earns about Rs. 8000 per month out of her income from maid service. She can maintain herself and son. N.A. no. 1 has no landed property in his name. he is ready to cohabit with applicant no. 1 and 2. Hence, he has not refused to maintain her. Hence, an application be rejected as prayed by NA. no.1.

6. Perused the application and say filed by respondents. Also gone through the documents filed on

record by both parties and the counter pleadings. Heard learned advocates for both sides.

7. Ld. Advocate Shri. L.V. Jadhav for the applicant argued that the specific allegations date wise are mentioned in an application. The FIR Lodged at Sangameshwar police station about physical torture is also annexed. If it is the contention of the N.A. no. 1 that he has unsound financial background, no explanation is given as to how son of N.A. no. 2 has become engineer now. This shows that their paying capacity is high. Hence, interim maintenance which would meet the ends of justice would be granted.

8. Ld. Advo. Shri. P. P. Mangale for N. A. no. 1 argued that applicant currently resides with her parents and not at rent. She is employed and earns sufficient income to meet her daily expenses. She had left the house on her own. N.A. No. 1 has not avoided to maintain her. Hence, she is not entitled for any maintenance.

9. Considering the matter before this Court, following points arise for my determination. Decisions thereon are recorded for reasons discussed here under

Sr no.	Points for determination	Findings
1.	Whether petition prima facie discloses the existence of domestic violence and whether it is reasonable and sufficient cause for	Yes.

	the petitioner to reside separately from respondents?	
2.	Whether it is just and necessary to pass interim order as prayed by petitioner?	Partly yes.
3.	What order?	Application is partly allowed

REASONS

AS TO POINT NO. 1 AND 2

10. 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 facie phase of interlocutory adjudication, 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 that an aggrieved person to bring the proof of pleaded allegations. Same thing is applicable to respondents who are also not supposed to prove or disprove any allegation by them 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 its counterparty. Matrimonial relations between the parties are admitted. Separate residence of both of them is the

admitted facts. Further Son Gaurav is in custody of applicant is also admitted fact. Therefore, the only aspect of consideration remains is that, whether the application prima facie discloses that non-applicant is committing, or has committed or there is any likelihood that they may commit an act of domestic violence against applicant.

11. Hence prima facie satisfaction as to commission of domestic violence to the aggrieved person is necessary. The definition of Domestic Violence provided under section 3 of the D.V. Act is very wider, which covers all type of abuse i.e., ***physical, mental, sexual, emotional, verbal and economical.***

12. Application discloses entire month wise and specific Incident wise account of the instances of domestic violence allegedly subjected by non-applicants to applicant. On minutely observing the contents of application, there are specifications in regard verbal and emotional abuse, abusing in front of society. After perusal of submission of both sides, it is transpired that, applicant and non-applicants are not staying together. It is submitted by non-applicants that they tried to bring her from her parents' house but she did not come. It means primary inference can be drawn that, there are some disputes between the applicant and non-applicant. But at this stage, a prima facie inference can be drawn that, no

married women would leave her matrimonial home, without any physical or mental harassment. The question whether, there was really such harassment and ill-treatment or not can be decided by detail evidence of both the parties. The fact that, prior to the filing of this application, applicant had lodged report to the police. This fact apparently shows that, some dispute is there between the applicant and non-applicants. Normally a woman may not reach to police station unless situation compelled her.

13. However, at this stage it reveals from the materials on record that, the applicant is living with her parents and non-applicant has not shown that he has made any provision of residence or maintenance for her. Certainly, she requires food, clothing, medication etc. Not providing these basic necessities, itself amounts to domestic violence.

14. Considering all the above facts and circumstances I am satisfied that the applicant has prima-facie proved that she was and is being subjected to the domestic violence at the hands of non-applicants. Hence it is necessary to restrain the non-applicants from committing further act of domestic violence. **Section 23** of D.V. Act provides that, *the magistrate is empowered to grant interim relief if it is just and proper, on being*

satisfied that the non-applicant is committing or has committed an act of domestic violence.

15. These instances narrated by petitioner, certainly fulfil the ingredients of the terms “Domestic Violence” as defined in section 03 of the D.V. Act. Therefore, the circumstances as well as allegations in the application certainly display the prima facie existence of domestic violence. **Section 23** of D.V. Act provides that, the magistrate is empowered to grant interim relief if it is just and proper, on being satisfied that the nonapplicant is committing or has committed an act of domestic violence. In the present case nothing came on record to show that, the applicant is able to maintain herself or she has a means of income. Mere allegations doesn’t prove anything.

16. No wife will be able to reside with a husband who is continuously subjecting her to intense domestic violence. No doubt, petitioner will have to prove these instances of domestic violence at trial, but at this prima facie stage of interlocutory adjudication, it must be accepted that, no woman will make false allegations to such an intense extent of domestic violence. Therefore, the instances of domestic violence contended by applicant appears to be reasonable and sufficient cause for the petitioner to reside separately from non-applicant. It is not

always necessary to physically drive the wife out of the house, rather, if the circumstances are so created that, the wife cannot reside with husband, then also, it amounts of driving her out of the house. Inaction on the part of husband to fetch his wife back for cohabitation is also a crucial circumstance which display neglect to maintain. This inaction includes not taking of legal steps to ensure restitution of conjugal rights. Therefore, the causing of domestic violence here is prima facie proved.

17. Being husband of the applicant, non-applicant no.1 is liable for her maintenance and other needs. It is the utmost duty of a husband to care, protect and maintain his wife. Husband cannot be allowed to avoid this duty at any cost otherwise it will be grave injustice to the applicant. In view of aforesaid discussion and legal provision I am of the opinion that, the applicant is entitled for the relief of monthly maintenance. while determining the quantum of maintenance amount, the paying capacity of the non-applicant needs to be considered. In present case there is no proof about employment or earning of the applicant.

18. An affidavit as to assets and liabilities is filed by applicant and non applicant at Exh. 18 and 25 respectively. Exh. 18 states that applicant requires Rs. 20,000- monthly for her daily expenses. She has one 10

years old son on whom Rs. 10,000/- methyl are spent. She has no other source of income. N.A. no. 1 is 12th pass out and earns about Rs. 8,00,000(Eight lakh) per year. He has no one to look after the,

19. On the other hand, affidavit of N.A. at Exh. 25 shows that he requires about Rs. 3000 for himself monthly to meet his daily needs. He earns about Rs. 7000 per month. No loan is borrowed by him. He has no share in his ancestral property as mentioned.

20. Considering, the prima facie material on record, it is transpired that, he is capable to provide maintenance to his wife. The relevance and admissibility of each documentary evidence is a matter of evidence. Whether entire family is dependent on him or not? This question can be looked into after sufficient evidence of both sides. Hence at this stage I am of the opinion that non applicant no 1 is liable to provide interim maintenance to his wife.

21. To consider criteria for determine quantum of maintenance it is fruitful to rely on precedent of Hon'ble Supreme Court in the matter of **Rajnish Vs. Neha and ors. Criminal Appeal No. 730/2020**, Wherein it is held that,

“The factors which the objective of granting interim/ permanent alimony is to ensure that the dependent spouse is not reduced to destitution or

vagrancy on account of the failure of the marriage, and not as a punishment or the other spouse. There is no straitjacket formula for fixing the quantum of maintenance to be awarded. The factors which would weigh with the Court inter alia are the status of the parties; reasonable needs of the wife and dependent children; whether the applicant is educated and professionally qualified; whether the applicant has any independent source of income; whether the income is sufficient to enable her to maintain the same standard of living as she was accustomed to in her matrimonial home; whether the applicant was employed prior to her marriage; whether she was working during the subsistence of the marriage; whether the wife was required to sacrifice her employment opportunities for nurturing the family, child rearing, and looking after adult members of the family; reasonable costs of litigation for a nonworking wife."

22. In view of guidelines laid down by Hon'ble Supreme Court in above cited judgment, let's see whether applicant has any prima facie source of income. So far as income source of applicant is concerned, it is alleged that she is not earning single penny. N.A. has denied this fact. However, no proof to support this contention is filed on record. However, N.A. is having income about Rs. 7,000

pm. Over Rs. 3000 are spent per month as an expenditure. However, applicant has stated that her son is now of age 14 years. And including all expenses, Rs. 20,000 per month is her monthly expenditure. Also, N.A. has agricultural land at his village. To support this, applicant has filed on record, 8 A extrcats of survey no. 581 and 288 situated at Niwali which prima facie shows name of non applicant no. 1. Hence, it cannot be denied that there is no agricultural property in the name of N.A. no. 1. However, all these aspects have to be seen while deciding main application.

23. During pendency of this case, petitioner would be certainly requiring maintenance to enable her to lead her life with dignity and to contest this petition. Therefore, applicant must be awarded with some sort of interim monetary relief in the form of interim maintenance for herself and her son. But it is pertinent to note that, non-applicant is not ready to furnish maintenance to her and is ready to take care of both of them admittedly. However, nothing has brought on record as to what steps or what care till date has been taken by non-applicant for his care and protection. Hence, he being a father is having responsibility of taking care and maintenance of his son.

24. It is settled legal position that, it is the duty of the husband to maintain his wife and children having no

means of income. Not providing these basic necessities, itself amounts to economic abuse and result in domestic violence. It is the legal and moral obligation of the husband to maintain his wife and children who are unable to maintain themselves. Considering all the above facts and circumstances I am satisfied that the applicant has prima facie proved that she was and is being subjected to the domestic violence at the hands of nonapplicants. Hence it is necessary to restrain the nonapplicants from committing further act of domestic violence.

25. However, considering the basic needs such as food, clothing, basic medication, basic entertainment etc, of petitioner, coupled with tentative income of N.A. no 1 , and education expenses of son of applicant I deem it fit to grant the interim maintenance at the rate of Rs.3,500 /per month to petitioner from the date of this application.

ORDER

- 1) Application is partly allowed.
- 2) The non-applicants are hereby restrained from causing any sort domestic violence to the applicant.
- 3) Non applicant no. 1 is directed to pay interim maintenance of Rs. 3500/ (Three Thousand Five Hundred Only) per month to the applicant from the date of main application till the disposal main application.

- 4) Nonapplicant no.1 is directed to pay the amount of maintenance in court on or before 10th day of each month.
- 5) Free copy of this order be given to both the parties and police officer in charge of the concerned Police Station as per **section 20(4) and Section 24 of The Protection of Women from Domestic Violence Act, 2005.**
- 6) The Officer in charge of nearest police station within the jurisdiction of which the said house is lies is directed to give protection and assistance to the applicant while implementing this order. Expenses of interim application be included at the final disposal of main application.

Place- Deorukh
Date- 25/08/2023

Shruti H. Patil
Judicial Magistrate F.C.,
Deorukh.