

MHWS100015532022



ORDER BELOW EXH.05 P.W.D.V.A. NO.49/2022

Priti Vijay Ambhore Vs. Vijay Ramchandra Ambhore
Passed on 27th November, 2023

1. The applicant filed this application, for grant of interim maintenance of Rs.10,000/- (Ten Thousand Rupees only) per month from respondent No.1 till disposal of the main application.
2. Respondent Nos.1, 2, 3, 5 and 6 did not file say to this application. Hence application is proceeded without say. As the application is for interim maintenance from respondent No.1 therefore, the application is taken up for consideration without the appearance of respondent No.4
3. Heard learned Advocate for the applicant.
4. I have given thoughtful consideration to the argument advanced by learned advocates for applicant. Considering the argument advanced by the learned advocate following points arouse for my determination and I record my answers thereon for the reasons stated thereunder.

Sr.No.	<u>POINTS</u>	FINDINGS
1.	Whether applicants are 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 has not 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 contention of applicant that she was subjected to the domestic violence. They have committed physical and economical abuse.

7. I have carefully gone through the contention of the applicant. Applicant is the wife of respondent No.1. Respondents constrained the applicant to left the house of respondent. Respondents have committed domestic violence. The applicant has produced the copy of marriage invitation card. Applicant has contended the allegation in the application with affidavit.

8. Before deciding the interim maintenance amount, it is necessary to consider whether the applicant *prima-facie* shows the domestic violence. In view of submissions it is better to rely on the judgment of the Hon'ble Supreme Court in the case of *Prabha Tyagi Vs. Kamlesh Devi*, 2022(8)SCC 90 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 expensive 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”.

9. 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.

10. In the Prabha Tyagi case (Supra) the Hon’ble supreme Court held that, *“There should be subsisting relationship between the aggrieved person and the person against whom the relief is claimed vis a vis allegation of domestic violence. If a domestic relationship is subsisting then applicant is entitled to file the application under Section 12 of the D.V.Act”*

11. In a given case, *Prima-facie*, on perusal of the allegations in the application it appears that respondents have committed domestic violence and there is domestic relationship. Applicant has resided with respondents. There is no reason disbelieve the contention of the applicants.

12. In the Prabha Tyagi case (Supra) the Hon’ble supreme Court held that, “In absence of domestic incident report, a magistrate is

empowered to pass both ex-parte , interim as well as final order under the provisions of D.V.Act.” In the present case, absence of domestic incident report does not affect to decide the case on merit.

13. As applicants are in domestic relationship with respondents, it is the bounden duty of the respondent No.1 to maintain the applicant and her daughter. At present, applicant No.1 is residing at her parental house with her children. Therefore, the respondents are 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 applicants are entitled for interim maintenance. In order to decide the main application more time is required. The applicants must be in a proper condition to proceed with the main application. Respondent no.1 is legally as well as morally bound to maintain the applicant being his wife and daughter. 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 applicants.

14. On perusal of the affidavit of disclosure of assets and liabilities of applicant, it appears that applicant is having responsibility of her daughter. Respondent No.1 failed to file his affidavit of disclosure of assets and liabilities. As per Judgement of the Hon'ble Supreme Court in

the case of Rajnish Vs. Neha Criminal Appeal No.730 of 2020 Decided on 04.11.2020 wherein it was held that :-

“It is directed to the Trial Courts, Courts may not grant more than two opportunities for submission of the affidavit of disclosure of assets and liabilities to the respondent. On failure to file the affidavit within the prescribed time, the Courts may proceed to decide the application for maintenance on basis of the affidavit filed by applicant and the pleadings on record”.

15. The respondent No.1 neither filed say nor the affidavit of disclosure of assets and liabilities despite the opportunity. Considering all these aspect, I am of the opinion that applicant No.1 is entitled for interim maintenance of Rs.2000/- (Two Thousand Rupees only) and the applicant No.2 is entitled for interim maintenance of Rs 1000/- (One Thousand Rupees only) per month from the respondent No.1. Hence, I answer point No.1 in affirmative.

AS TO POINT NO.2 :-

16. In view of my affirmative answer as to point No.1 the applicants are entitled for interim maintenance of Rs.3000/- (Three Thousand 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 respondents do pay interim maintenance of Rs.2000/- (Two Thousand Rupees only) to the applicant No.1 and Rs. 1000/- (One Thousand Rupees only) per month from the date

of filing this application i.e 14.10.2022 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 : 27.11.2023

[Pravin U.Kulkarni]
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 : 27.11.2023

Order signed by the
Presiding Officer on : 28.11.2023

Order uploaded on : 28.11.2023