

**In the Court of Ld. Metropolitan Magistrate 4th
Court, Calcutta**

Present :Sri Anindya Sen,
WB01146

CIS. REG. MISCN 22/2021
CNRWBCS02-035175-2021

MISCN 22/2021

Date : 13.05.2022

Today is fixed for passing order with respect to the petition u/s 23 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the 'D.V Act'). Parties file hazira. Record is taken up for passing order.

The petitioner is a mother of 3 children who has alleged that the Respondents i.e. husband and in-laws, have subjected her to domestic violence over a considerable period of time. She has alleged that she was subjected to physical, verbal, emotional and economic abuse. She has stated that she and her children are staying at her paternal house at Kolkata upon being forced to leave her matrimonial home due to such domestic violence upon her. She has also stated that the Respondent No 1/ Husband has remarried without any intimation to her and is presently staying with his other wife. She has further stated that she requires urgent relief since she has no income of her own and requires financial assistance for sustenance of herself and the dependent minor children, as well as continuation of the education of her first child.

The petitioner has further submitted that the Respondent no.1/husband is a highly qualified medical professional running a well established Nursing Home along with Respondent no.2. She has also stated that the monthly income of the Respondent no.1 is about ₹ 1,50,000/- and has prayed for interim maintenance for her and her children along with other reliefs.

The Respondents have entered appearance in this case and have filed written objection. The Respondents have inter alia stated that the allegation of domestic violence against the Respondents is false and unfounded and thus denied. They have further stated that the Petitioner has left her matrimonial home along with her children in her own accord and not due to any domestic violence as alleged. It has been further submitted that the Respondent no.1 has been paying monthly maintenance to his wife, the Petitioner herein, since last 5 months as per his financial ability. The Respondents have admitted that Respondent no.1 has

indeed contracted a 2nd marriage and stated that he is liable to maintain the 2nd wife as well.

Respondent no.1 has denied the statement of the petitioner that he runs a diagnostic Center. It is further stated that the hospital referred to by the Petitioner is not run by the Respondents, but by a welfare trust of which the Respondents are trustees and hence Respondent no.1's income from profession is nothing close to what has been claimed by the petitioner. As such, the Respondents have prayed for rejection of the petition u/s 12 as well as 23 of the D.V Act.

Heard submission of the Ld. Advocates for both sides. Considered. Perused the documents filed during hearing by the Respondent. The petitioner has filed an affidavit u/s 23(2) of the Protection of Women from Domestic Violence Act , 2005 praying for interim relief against the Respondents.

Both sides have also filed Affidavids of Assets and Liabilities as mandated in ***Rajnesh Vs. Neha and Anr.*** Reported in [(2021) 2 SCC 324].

The Petitioner has contended that she needs urgent financial relief to maintain herself as well as the three children who are all staying with her. She has stated on Affidavit that she has no independent source of income while the Respondent no 1/husband is a highly qualified Doctor.

The Petitioner has alleged physical assault and mental and financial abuse. I have also gone through the Domestic Incident Report of the Protection Officer. Considering all aspects, I am of opinion the contentions stated in the instant petition prima facie discloses act of domestic violence upon the Petitioner by the Respondents. It also prima facie appears that the Petitioner has no source of income and the Respondent no 1/husband is an able bodied person with capacity to earn. The Respondnet No. 1 is admittedly a highly qualified Doctor attached with a Hospital looked after by the family. Although the quantum of earning as claimed by the Petitioner has been denied by the respondent, the Petitioner's right to maintenance does not get thwarted. As such, the spirit of welfare legislation mandates urgent relief to the Petitioner at this stage.

However, I shall not pass any order as regards alternate residence for the Petitioner at this stage before adducing evidence in this regard.

Hence,

ORDERED

that the Petition u/s 23(2) of the Protection of Women from Domestic Violence Act, 2005 is allowed.

The Respondents are restrained from committing/aiding/abetting any act of domestic violence upon the Petitioner.

The Respondent no 1/Husband is further directed to pay monthly maintenance allowance to the Petitioner in the tune of Rs.36,000/- (Rupees Thirty Six Thousand only) , being Rs.15000/- (Rupees Fifteen thousand only) as allowance for herself and Rs. 7000/- (Rupees Seven thousand only) for each of the three children, within the 10th day of every calendar month.

The order is effected from 10-11-2021 and the interim maintenance shall accrue till May, 2022.

The accrued interim maintenance of Rs. 2,52,000/- (i.e Rs.36000/month for 7 months i.e. November, 2021 till May, 2022) may be made in twelve equal monthly installments of Rs. 21000/- each, in addition to the maintenance amount falling due for the corresponding month.

Should the Respondent No. 1 choose to pay the arrear amount by installments, the Respondent No. 1 shall pay Rs. 57,000/- (Rupees Fifty Seven thousand only) as total monthly maintenance to the Petitioner (inclusive of installment of arrear maintenance) on or before 10-06-2022 and continue successively paying this sum every month till 10-05-2023. Thereafter, regular payment shall be made of Rs.36000/- within the 10th day of each succeeding English calendar month.

Let a copy of this order be sent to the O/C, Bowbazar PS at once to monitor the compliance thereof by the Respondents. Let another copy of the order be sent to the Protection Officer for information.

Let a copy of this order be supplied to the parties free of cost.

To 05-07-2022 for evidence in the main petition.

D/C

Sd/-

Metropolitan Magistrate,
4th Court, Calcutta.

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