

**Order number 11
dated 07/06/2023**

Today is fixed for passing necessary order in respect of the interim petition. Both parties file hazira. I am busy with administrative work and so the order could not be passed .

Fix 16/6/2023 for passing Order.

Additional Chief Judicial Magistrate.

**Order number 12
dated 16/6/2023**

Today is fixed for passing necessary order in respect of the interim petition filed by the petitioner. Both parties files hazira.

Considered. Perused the petitioner under section 23(2) of the P.W.D.V Act and the written objection so filed by the opposite parties and also the report of the Domestic incident so submitted by the protection officer and also the affidavit of assets and liabilities so filed.

The opposite parties appeared by filling vokaltnama but only the opposite party number 1 filed written statement and so the case is heard exparte against the rest of the opposite parties.

The case of the petitioner in a nutshell is that the petitioner is the legally married wife of the opposite party number 1 and the said marriage took place on 05/06/2011 as per Muslim Rites and customs and the marriage took place after fulfilling all dowry demands of the opposite parties . It is the allegation of the petitioner that she was subjected to various types of tortures in the matrimonial house by the opposite parties and she had to face severe humiliation in the matrimonial house and also she was pressurized to bring more dowry from the parents house The petitioner claims that she got pregnant in the year 2011 and at the time of delivery the opposite party in an urge to proceed for normal delivery did not provide proper medical assistant and after the birth of the child the child expired. There after the petitioner went to her parents house and resided there for about 5 to 6 months and thereafter there was a undertaking made by her husband and she again came back to her matrimonial house. The petitioner claim that in the year 2014 she gave birth to a female child and thereafter the torture upon her increased by the opposite parties and due to continuous pressure of the opposite parties upon her the father of the petitioner was bound to provide Rs 2,50,000/- to

the opposite parties. The petitioner alleges that the torture upon them continued and the opposite party husband used to physically torture the petitioner and he was in a habit of maintaining immoral relationships with various women and on 15/8/2016 the opposite parties assaulted the petitioner in presence of her father and they ultimately drove the petitioner from the matrimonial house along with her minor child and has forcefully kept in their possession all stridhan property and the petitioner is presently residing with her parents and have no income of her own and the opposite party husband does not take any responsibility of the petitioner and the child and so the petitioner has filed this case being in a condition of helplessness and destitute and living her days in tremendous hardship. The petitioner claims that she has lodged one complaint before the local police station alleging commission of offence under section 498A/323/325/406/494/34 IPC and the said case is being investigated as per law.

On the basis of aforesaid allegations the petitioner has prayed for an interim relief of maintenance to the extend of RS 9000/-. It appears that the petitioner did not mention the amount of maintenance for the minor child and so this court considers such submission of the petitioner to be a consolidated amount of maintenance both for the petitioner and the opposite party.

The petitioner in her affidavit of assets and liabilities have stated in details of her assets and liabilities and she stated that the opposite party husband has an income of Rs 40,000/- per month and his source of income is landed property and also business of building construction material.

The domestic incident report so submitted reflects that ;-

1. The types of violence so caused upon the petitioner by the opposing party is physical torture by punching kicking and pushing and drove her out of the matrimonial house.
2. The petitioner has a child who is minor and stays with her mother.
3. It is also stated that the opposite party has created pressure upon the petitioner and her parents for more dowry and the demand of dowry was to the extend of Rs 10 lakhs along with a car from the petitioner .
4. The domestic incident report also speaks that the opposite party did not give any maintenance for the petitioner and the baby and at present the opposite party is residing with the opposite party number 5 as husband and wife.
5. The domestic incident report consist of copy of identity card and marriage certificate and the birth certificate of the minor daughter .

The opposite party number 1 being the husband of the petitioner has filed written statement and in the said written statement he has denied every material allegations of the petitioner and stated that the fact is that the petitioner did not seriously wanted to lead a healthy conjugal life with the opposite party and she is a suspicious lady and she did not exhibit the required respect and regards for the elder members of the family of the opposite party and the petitioner always created pressure upon the opposite party to reside in a separate mess and the opposite party denied to such proposal and thus the dispute occurred. The opposite party claims that the opposite party is a paid employee in the business of his father and has no income of his own . The opposite party claims that he is always ready and willing to reside with the petitioner but the petitioner has filed this case only to harass the opposite party and his family member s.

So from the above materials on consideration it appears to me that in the instant case the petitioner being an aggrieved person who had been subjected to act of domestic violence and it is not disputed that the petitioner had lived with the opposite party at an earlier point of time in a domestic relationship as the petitioner is the married wife of the opposite party number 1 and so prima facie a domestic relationship was established between the parties .

In this case it has been adequately stated that the petitioner is surviving with great difficulty and she alleges that she was driven out from the house of the opposite party and at present the husband being opposite party number 1 is residing with the opposite party number 5 as husband and wife and such fact has not been denied by the opposite party nor the opposite party has described about the exact relation which he has with the said opposite party number 5 . In this case as it appears that the petitioner does not have the sufficient means to maintain herself . So prima facie the materials shows that there has been domestic violence caused upon the petitioner and the petitioner is leading her life in acute hardship along with her child and so she is in need of protection.

It appears that in this case as a interim relief the petitioner has opt for a maintenance for her self and her minor daughter to the tune of Rs 9000/- per month.

The obligation of the husband to maintain his wife arises out of marital status and not under any contractual obligation, therefore the husband cannot be absolved from the liability for providing maintenance to his wife on pleas that he has no means to pay and that he has no source of income to make payment. “ Means “ does not mean the tangible property or source of income of the husband but also means his capacity , potentiality and status. A person healthy and able

Reg no. 29 of 22

abled man must be taken to have means to support his wife. So where the husband is an able bodied man it has to be inferred that he has the means to pay the maintenance. Even when a husband is insolvent or a professional beggar or a monk he must support his wife and child as long as he is able bodied and can earn his livelihood. Rule of best evidence that is documentation as to income of husband is not applicable in maintenance proceedings in view of being quasi civil in proceedings. This enlarges the scope of drawing reasonable inference as it is being done in the case of an able bodied man.

In this case the opposite party husband claims that he is an employee in the business of his father and earns a salary and has an income of Rs 4000/- per month but as it appears that the opposite party did not file any document in support of his claim of income nor did he file the affidavit of assets and liabilities as per law.

So from the above discussion when it can be prima facie considered that the petitioner has been subjected to domestic violence in the matrimonial house by the opposite parties and she is in need of care and protection and she has not income of her own and the opposite party husband has sufficient means to maintain his wife and child and so the petitioner is entitled to get the interim relief of maintenance as claimed for.

Thus the prayer for interim relief as per section 23(2) PWDV Act as prayed for by the petitioner in this case praying for maintenance order in interim form in this case is here by allowed on contest against the opposite party number 1 and exparte against the rest of the opposite parties .

The opposite parties are hereby restrained from causing any sort of Domestic violence upon the petitioner and the opposite party number 1 is hereby directed to make payment of RS 5000/- per month for the petitioner and 3000/- per month for the child as monthly maintenance. The said order of interim maintenance shall be paid from the month of August 2022 . So the opposite party number 1 is directed to make payment of the arrear maintenance amount from the month of August 2022 till June 2023 that is 11 months @ Rs. 5000/- + 3000/- = 8000/- x 11 months being 88,000/- in eleven equal installments. The said installment of arrear amount shall be payable along with the current monthly maintenance amount. The said amount of current monthly maintenance and the installments for the arrear amount shall be paid with in 10th day of each month positively.

Let a copy of this order sheet be given to the petitioner free of cost.

So the petition for interim relief is hereby disposed on contest.

Fix 20.07.23 for evidence.

Typed by me

Additional Chief Judicial Magistrate