

C.C. No. 171/DV/2018
CNR No.MHMM18-009478-2018

Raziya Sultana Iqbal Hussain Sayyed	... Applicant
Vs.	
Sayyed Iqbal Hussain	...Respondent

Order below application Exh-P-3 for interim relief.

1. Perused the application and affidavit, say of respondents Exh-P-4 and documents on record. Heard both sides at length. Applicant sought protection order, interim maintenance @ Rs.40,000/- per month, residence order in alternative rent and also sought to restrain respondent from alienating the shared household.

2. The relations and the marriage are not in dispute. It is also not in dispute that the applicant is not residing in the matrimonial house since the year 2018. It is not in dispute that the respondent No.1 was working abroad. The applicant alleged that her marriage was performed on 06.04.2011. According to her there was no dispute between her and her husband i.e. respondent No.1. However, the other respondents used to harass her for dowry demands and other petty issues. She alleged that when in the year 2017, respondent No.1 came in India for holiday his behaviour was changed. He was avoiding the applicant. At that

time, she learnt that respondent No.1 had developed illicit relations. When applicant made inquiry, she was assaulted. In the month of May 2018, when again respondent No.1 came in India he disclosed his intention to marry with the other lady with whom he had relations. It is alleged that on 19.09.2018, she was taken to her native place at Bihar where he pronounced Talaq to her followed by quarrels. Again when they returned back to Mumbai on 17.08.2018, he forcefully without her consent pronounced triple Talaq in the presence of Kazi. He also threatened her and her daughter for twice. Therefore, she lodged successive NC reports. She was thrown out of the shared household, which is lying in her name. Thus, she apprehending that the respondent may sale or transferred said household to any third person.

3. The applicant is residing with her brother. She has no income to maintain herself. She has to take care of the maintenance of her daughter and her school and other expenses. The respondent No.1 is working in Saudi and earning Rs.1 Lac per month. According to her, all her gold ornaments are lying with the respondent. Thus she claim the interim reliefs as mentioned above.

4. On the other hand the respondents denied the entire allegations in toto claiming that the application is false, frivolous and fabricated only to extract money and to harass the

respondent. The respondents denied the allegations of domestic violence by pleading specifically that the matrimonial house was stands in the name of respondent No.5 which was later on transferred in the name of applicant for obtaining electricity meter on the name of applicant as the respondent No.1 was residing abroad. It is contended that after two months of marriage, when respondent No.1 left for Saudi Arabia, he had to return back within a month. Because, the applicant was caught red handed with another man in a compromising situation. The applicant had admitted her acts and asked for apology. Since the respondent No.1 was in love with the applicant, he accepted her apology and continued the matrimonial relations.

5. Thereafter, he again went to Saudi Arabia and regularly send money for the household expenses. But, the applicant used to argue with the respondent No.1 and started avoiding him which caused him mental torture. Similarly, she used to quarrel with the respondent No.3 and used to disturb the peaceful atmosphere of matrimonial house. Which again caused the respondent No.1 to visit India. Despite this, there was no change in the behaviour of applicant. She continuously committed the act of nuisance, thereby caused mental harassment and torture to the respondent. She was forcing respondent No.1 to construct the matrimonial house which incur various debts upon him. Even after the birth of daughter there was no change in the behaviour of applicant. Due

to her behaviour the respondent used to visit India. On various occasion, he took applicant to her native. However, nothing changed. When in the month of June, 2018 respondent No.1 visited India and took applicant to her native, the applicant and her father quarrelled with him and made allegations of extra marital affairs. They also abused him. Despite this the respondent No.1 convinced her to continue marital relations and made her to accompany to matrimonial house. Thereafter, again when respondent fly back to his job, applicant created ruckus in the matrimonial house by quarreling and abusing respondents by making demand of Rs.2 Lacs with threatening to implicate false cases. Thereafter again respondent visited India. In a meeting of the relatives, the applicant and her father disclosed their intention to implicate the respondents if their demands were not complied. Due to all these events, the respondent lost his job.

6. Respondent also pointed that the applicant had already filed application under section 125 of Cr.P.C. at Bihar as she is residing in Bihar. Despite this she filed present application before this court only to harass the respondent. Thus respondents sought to dismiss the application. They claimed that the applicant is the owner of a room situated at Shivaji Nagar and she is staying there with her daughter. The applicant is a skilled tailor and she has tailoring shop in the said room, through which she is earning Rs.15,000/- per month.

7. Having heard both sides at length and having considered the documents and submissions, following points arise for consideration :-

- | | |
|---|---------------------|
| i) Whether applicant suffered domestic violence as alleged ? | No. |
| ii) Whether applicant entitled for interim reliefs as claimed, if yes, what reliefs ? | No. |
| iii) What order ? | As per final order. |

8. In order to grant interim reliefs, there has to be satisfaction that an application *prima-facie* discloses that the respondents are committing or has committed an act of domestic violence. Such orders could also be passed *ex-parte* on the basis of an affidavit. The present application being argued after appearance of the respondent and after filing of their say, the court has to take into consideration the say & submissions of the respondents to record finding of *prima-facie* case. Thus, the mere affidavit of applicant is not decisive.

9. The applicant has raised various allegations as to verbal taunting, abuses and harassment against the respondent. She alleged that she has suffered physical, mental and economic abuse. She has narrated the incidents occurred from 2017, though she married in the year 2011. So before 2017, she made no complaint anywhere. The respondent on other hand has made

several allegations against the applicant denying the every allegation made by the applicant.

10. Having carefully gone through the allegations and counter allegations, it can be said that both the parties have raised equally probable stories. Therefore, unless evidence recorded, it is not possible to ascertain as to whether the applicant had really suffered the alleged domestic violence.

11. In these circumstances, there appears no reasonable cause to consider the interim application to grant any relief. Even the relief of maintenance cannot be granted unless recording of finding of *prima-facie* case of domestic violence.

12. In view of this I recorded findings and pass following order :-

ORDER

Application stands rejected.

Date : 27.08.2019
Mumbai
ssl.

(Sudhir N. Shinde)
Metropolitan Magistrate, 32nd Court,
Bandra, Mumbai.