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IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS,
SHEGAON

(Presided over by V. V. Kulkarni)

P.W.D.V.No. 1/2018

Exh.30.

- 1) Sau. Rohini Amit Mishra,
Age – 30 years, Occupation – Household,
- 2) Ku. Kritina Amit Mishra,
Age – 04 yrs., Minor,
Applicant no. 2 being minor represented by
applicant no.1 as natural guardian mother,
Both C/o. Ramnath Vaikunth Pande,
R/o. Balaji Fail, Shegaon,
Tq. Shegaon, Dist. Buldana.

... **The applicants.**

-versus-

- 1) Amit Prakash Mishra,
Age 35 years, Occup. Medical Shop,
- 2) Dr. Tushar Prakash Mishra,
Age 33 years, Occup. Homeopathic Clinic,
- 3) Sau. Alka Prakash Mishra,
Age 55 years, Occup. Household,
Nos. 1 to 3 r/o. Flat no. 203, “A” Wing,
Sai Atharva Housing Society, Near Kate Petrol Pump,
Pimple Saudagar, Pune, Dist. Pune 411 027.
- 4) Dr. Prakash Kunjanprasad Mishra,
aged about 65 yrs., Occup. Homeopathic Clinic,
R/o. Sanjivani Clinic, Chinchkhed, Dhule,
Tq. & Dist. Dhule.

- 5) Sau. Sunita Arun Trivedi,
Age 53 years, Occup. Household,
r/o. Sabadra & Sons, 7, Sumangal Builder House,
Sadhu Waswani Road, Near Mayco Circle,
Holaram Coloney, Nashik,
Dist. Nashik – 422 002.
- 6) Sau. Puja Dipak Pande,
Age 50 years, Occup. Household,
R/o. Pande Sweets, Near Gurudwara Road,
Opp. Vilas Medical, Kopargaon,
Dist. Ahmadnagar – 423 603.

... **Non applicants.**

**Under sections 12,17,18, 19, 20 and 22 of The Protection of Women
From Domestic Violence Act, 2005.**

Advocate for the applicants : Shri. S.W. Shegokar.
Advocate of the non-applicants : Shri. C.B. Deshmukh.

J U D G M E N T

(Passed on this 04th day of February, 2019)

The present application is filed by the applicants under section 12, 17, 18, 19, 20 and 22 of the Protection of Women From Domestic Violence Act, 2005(hereinafter ' the PWDV Act ').

2. It is the case of the applicants that applicant no.1 is legally wedded wife of non applicant No.1. Their marriage was solemnized as per the Hindu rites and rituals on 24/02/2012. Non-applicant no.2 is brother-in-law of applicant no.1. Non-applicant nos. 3 and 4 are father-in-

law and mother-in-law of applicant no.1, non-applicant nos. 5 and 6 are sisters of non-applicant no. 3. At the time of marriage, the family members of applicant no.1 have given several golden ornaments such as golden chain, ring and other valuable household articles such as Fridge, Cooler, T.V., Dining Table etc. The non-applicants have treated well to applicant no.1 for some days. Later on, they have started showing their original colour. They always used to torture to applicant no.1 on various count. She was subjected to mental, physical violence at the hands of the non-applicants.

3. The applicants further contended that non-applicant nos. 1 to 3 have started residing at Pune. Non-applicant no.2 is a Homeopathic Medical Practitioner. He is running a hospital at Pune. Non-applicant no.1 has started medical in the name and style as Jeevan Pharmacy. Thereafter, applicant no.1 has started to reside with them. Meanwhile, she gave birth to applicant no.2. But despite of this fact, there was no change in the nature and behaviour of the non-applicants. They always used to torture to applicant no.1 on count of satisfaction of illegal demand of Rs. Five Lacs for purchasing a flat in Pune. Non-applicant no.1 is a physically incapable person. He unable to satisfy the physical needs of applicant no.1. He always used to quarrel with applicant no.1. He refused to have a physical contact with applicant no.1. She has repeatedly stated to non-applicant no.1 to obtain a good treatment from doctor. But he refused to do so. On 05/09/2017, all non-applicants have compelled to applicant no.1 to live in her parental house. They threw away her from matrimonial house. She is living on mercy of her parents.

4. Non-applicant no. 1 has a good and well financial background. He is earning more than Rs. Ten Lacs per month from the medical shop. Non-applicant no. 2 is a doctor. Being a husband of applicant no.1 and father of applicant no.2, non-applicant no.1 has a paramount duty to maintain them. Non-applicant no.1 is capable to pay monthly maintenance of Rs. 30,000/- each to the applicants. Further, the applicants have prayed the protection order, residence order and the compensation of Rs. Five Lacs for the domestic violence at the hands of non-applicants.

5. The non-applicants have strongly opposed the present application by filing reply at Ex. 11. They have admitted the matrimonial relationships of applicant no.1 and non-applicant no.1. Rest of all contentions have been denied by them in toto. They submitted that applicant no.1 is always used to quarrel with non-applicant no.1. She has started showing her original nature after some days of marriage. Non-applicant no.1 always used to tell her from not doing all the notorious things. But she didn't pay any heed to him. She always used to threaten the non-applicants by implicating them into matrimonial cases with assistance of her sister, who is a lawyer at Nagpur. In fact, non-applicants have sustained a great mental agony due to the nature of applicant no.1. She always used to keep aside to non-applicant no.1 from physical relations.

6. They further contended that applicant no.1 has again started to harass them when she was in Pune. Even she has cancelled the admission of applicant no.2 from Potdar National School. In fact, non-applicant no.1 has paid Rs. 39,500/- for the better future life of his

daughter. But the applicant no.1 has vanished his dreams. She always used to throw utensils on the person of non-applicant no.1. She always used to talk in threatening language with non-applicant no.1 that she is not satisfied with him. In fact, had it been the contention of applicant no.1 that he is unable to satisfy her then how it could be possible the birth of Kritina. The entire allegations made by applicant no.1 are false and imaginary. She has bombarded all the allegations upon the non-applicants in order to satisfy her own wish and will to live separately. She always used to threaten to non-applicant no.1 from living separately. But, non-applicant no.1 being a son of non-applicant nos. 2 and 3 always used to peruse her. But she didn't pay any heed to him.

7. They submitted that the family of applicant no.1 has a criminal background. In fact, before the marriage, they have wrongly stated the education of applicant no.1 as M.B.A. Ph.D. Air Hostess and Fashion Designing. But in fact, applicant no.1 is having a B.A. qualification. Thus, applicant no.1 has clearly furnished the false information before the marriage. In fact, non-applicant no.1 is earning Rs. 25,000/- to 30,000/- p.m. He has to pay the loan premium of Rs.9,000/- of Vishveshwar Co-operative Bank and Rs. 12,000/- of Bajaj Finance. He has to pay the premium of LIC Jeevan Anand. He has a responsibility of his family members. The annual income of non-applicant no.1 of year 2015-2016 is Rs. 1,77,576/- and of year 2016-17 of Rs. 3,06,726 and of year 2017-18 of Rs. 4,59,666/-. He submitted that he is unable to pay Rs. 30,000/- p.m. to the applicants as a monthly maintenance. They submitted that the entire allegations made in the application are false. Thus, they submitted to reject the application being devoid of merits.

8. Heard argument of both sides.

9. From the rival contentions of the parties, following points arise for my determination and findings on each of them as follows:

Sr.No.	Points	Findings.
1.	Whether the applicant no. 1 has proved the domestic violence at the instance of non applicants ?	Yes.
2.	Whether the applicants are entitled for protection order as prayed ?	Yes.
3.	Whether the applicants are entitled for monetary reliefs as prayed ?	Yes.
4.	Whether the applicants are entitled for compensation as prayed ?	Yes.
5.	Whether the applicants are entitled for residence order as prayed ?	No.
6.	What order ?	Application is partly allowed.

: EVIDENCE :

10. The applicant no.1 has examined herself by adducing the evidence affidavit at Ex. 14. She relied upon the copy of notice at Ex.15 and the answer given to the notice by non-applicant at Ex. 21 and 22. She closed her evidence by filing pursis below Ex. 23. Per contra, the non-applicants have examined Amit (D.W.1) at Ex. 24. The non-applicants have closed their evidence by filing pursis below Ex.25.

11. It is evident to go through the admitted facts first. Which are as follows ;

- a) *Solemnization of marriage between applicant no. 1 and non applicant no. 1 dated 24/02/2012.*
- b) *Birth of applicant no.2 out of their marital wedlock.*
- c) *Applicant no.1 and non-applicant no. 1 are residing separately at present.*

AS TO POINT NO : 1

12. At the very outset, it is pertinent to note that the applicant no.1 in order to be entitled to the relief under the PWDV Act, 2005 is required to establish that there is a domestic relationship as defined under section 2 (f) of the above said Act between herself and the non applicants. It is pertinent to note that the relationship between the applicant and non applicant no. 1 is undisputed. On perusal of the evidence of Rohini (P.W.1) it is crystal clear that she has categorically deposed in respect of the relationship with the non-applicants. The evidence of Rohini (P.W.1) shows that she was residing with the non-applicants at Chinchkheda and at Pune. Per contra, the evidence of Amit (D.W.1) shows that he himself and other non-applicants have resided with applicant no.1 at Chinchkheda and at Pune. Therefore, the evidence on the record is cogent and reliable to come to the conclusion that applicant no.1 was in domestic relationship with the non-applicants.

13. Now, the burden is on the applicant no. 1 to prove the

subjection to domestic violence by non applicants. As discussed supra the applicant no. 1 and non applicant no. 1 are residing separately. There are several matrimonial cases pending between them. Thus, apparently it shows that there are strain relations between the applicant no. 1 and non applicant no. 1. Thus, it is essential to see whether non applicant no. 1 committed the alleged domestic violence on the applicant no.1. The definition of domestic violence includes any act, omission or commission or conduct of the respondent which harms injuries or endangers the health, safety, life or limb or well being whether mental or physical of the aggrieved person. The Act of constituting physical abuse, sexual abuse, verbal , emotional, economical, abuses are also included in the definition of the domestic violence. However, it is pertinent to note that the Explanation – II attached to section 3 of the Act very specifically provides that for determining whether the domestic violence was committed or not, the overall facts and circumstances of the case shall be taken into consideration and it shall be the guiding factor for determining the fact in issue.

14. In light of the above legal position, it is necessary to assess and analyze the evidence led by the applicant no.1. The applicant no.1 Rohini (P.W.1) deposed that physical, emotional and verbal abuses at the instance of the non applicants. She deposed that non applicants have always used to harass her on count of one and another reason. Nothing has elucidated in her cross-examination to disbelieve on her version as to the domestic violence in form of emotional and verbal abuses at the hands of non-applicants. She has denied all the suggestions in the cross-examination. On the contrary, non-applicant no.1 Amit (D.W.1) has

deposed that applicant no.1 is a quarrelsome woman. She always used to harass him on count of physical relations. But in the cross-examination, he has denied the suggestions in that respect. He denied rest of suggestions.

15. On considering the version of Rohini (P.W.1) and Amit (D.W.1), it demonstrates that though they have made counter allegations that they are not having good physical relations between them. According to Rohini (P.W.1), that non-applicant no. 1 is physically incapable person. Per contra, according to Amit (D.W.1) he is a physically capable person. I consider submissions of both advocates in this regard. Let me mention here that applicant no.1 and non-applicant no.1 have given birth to applicant no.2 Kritana. So, out of their wedlock, one girl child has gifted by the God. Further, the allegations against each of them are private in nature. In the evidence Rohini (P.W.1) has denied in the cross-examination that non-applicant no.1 is physically capable person. Per contra, Amit (DW.1) has also denied in cross-examination that he is not physically incapable person. So, nothing has elucidated in their version so far as the physical incapability of non-applicant no.1. But so far as the domestic violence in the form of physical, mental and verbal abuses at the hands of non-applicants, the evidence on the record is cogent and reliable. On considering the version of applicant no.1, it transpires that she has suffered mental as well as physical violence at the hands of non-applicants.

16. The version of the applicant no.1 inspires more confidence in my mind on the point of subjection of domestic violence at the hands of

non applicants. It is proved that non-applicants have harassed the applicant no. 1 on the various reasons. The said harassment leads to applicant no.1 to reside in her parental house. It is a common knowledgeable fact that in the Indian society no married woman live in her parental house without any reason. The subjection of violence at the hands of non-applicants compelled her to live in her parental house. This act of non-applicants is covered under definition of domestic violence as provided under section 3 of the Act. Thus, considering the overall evidence on the record, I come to the conclusion that applicant no. 1 has subjected to domestic violence at the hands of non applicants. Thus, considering the above discussion, point no. 1 answered in affirmative.

AS TO POINT NO : 2

17. The applicants have prayed to pass protection order. Applicant no.1 has proved the acts of domestic violence at the hands of non-applicants. She is residing separately from the non applicants. The act of domestic violence may create apprehension about repetition of domestic violence at the hands of non applicants. Accordingly, the applicant needs the protection order in order to protect her from the inhuman harassment of the non applicants. Thus, considering the above discussion, point no. 2 answered in affirmative.

AS TO POINT NO : 3

18. The applicants prayed to award maintenance of Rs. 30,000/- each per month. According to applicants, non applicant no. 1 is running a

medical shop in the name and style as Jeevan Pharmacy. According to them, he is earning more than Rs. Ten Lacs per month. Per contra, non-applicant no.1 has not disputed the fact that he is running a medical shop. According to him, he is earning Rs.25,000/- to 30,000/- p.m. He deposed about his annual income of financial year 2015-16, 2016-17 and 2017-18. According to him, he is earning Rs. 30,000/- p.m. Further, he is paying the loan premium of Vishveshwar Sahkari Bank of Rs.9,000/- p.m. and Bajaj Finance of Rs.12,000/- p.m. Further, he is paying LIC premium for the better future of applicant no.2. Thus, according to him, he is unable to pay monthly maintenance of Rs. 30,000/- each to them.

19. I consider submissions of both advocates in respect of quantum of maintenance. It is a settled principle of law that while deciding quantum of maintenance, the Court has to take into consideration the standard of living, inflation, expenses for daily needs and other factors. The evidence on record is cogent and reliable to draw an inference that non-applicant no.1 has tried to give better education to her daughter by taking admission in Poddar International School, Pune. Moreover, he is running a Medical Shop. His brother and father are medical practitioners. They are running hospital. Thus, these facts goes to show that non-applicant no.1 has a good financial condition.

20. Per contra, evidence on the record is clear that applicant no.1 has no source of income. Nothing has elucidated in the evidence of applicant no.1 for drawing an inference that she is able to maintain herself and applicant no.2. Despite of the fact in respect of the loan liability and other premiums, which have been paying by non-applicant no.1, but being

a husband of applicant no.1 and father of applicant no.2, he has a paramount duty to look after them. It is a common knowledgeable fact that we are living in a inflationary era. Considering the standard of living of both parties, day to day necessity of applicants, educational expenses of applicant no.2, and financial condition of non-applicant no.1, I think an amount of Rs. 8,000/- p.m. to applicant no.1 and Rs. 5,000/- p.m. to applicant no.2 would be sufficient and proper maintenance amount and which will suffice to the applicants in order to satisfy their expenses to live their life in better manner. Thus, in view of aforesaid discussion, monetary relief of Rs. 8,000/- p.m. to applicant no.1 and Rs. 5,000/- p.m. to applicant no.2 is an adequate, fair and reasonable amount and which would suffice the needs of the applicants. Thus, I answered point no.3 in affirmative.

AS TO POINT NO : 4

21. The applicant proved mental toucher and emotional distress caused by the acts of domestic violence committed by non applicants. Thus, she is entitled to get compensation. Thus, in view of financial status of non applicant no. 1, compensation amount of Rs. 30,000/- is appropriate and reasonable. Hence, point no. 4 answered in affirmative.

AS TO POINT NO : 5

22. The applicants prayed to restrain the non-applicants from dispossessing and alienating the property. She also prayed to pass the order in respect of residence to provide good accommodation to her. At present, the applicant is residing with her father. She is under the care

and protection of her father. Further, applicant no.2 is four years old girl. At this point, if the applicants ordered to reside some other place and to get the amount of rent from non-applicant no.1 that will ultimately hampers to their welfare. Thus, I do not deem fit to pass residence order.

AS TO POINT NO : 6

23. In view of affirmative findings as to point nos. 1 to 4 in affirmative and negative finding as to point no. 5, the application deserves to be partly allowed. In the result, I pass following order.

: ORDER :

1. The application is partly allowed.
2. Non-applicant No.1 do pay monthly maintenance of Rs. 8,000/- (Rs. Eight Thousand only) per month to the applicant no.1 and Rs. 5,000/- (Rs. Five Thousand only) per month to applicant no.2 from the date of this order.
3. The non-applicants are hereby restraining from committing any Act of domestic violence and they are prohibited from communicating the applicants including personal, oral or written or electronic or telephonic contact.
4. Non-applicant No.1 do pay the compensation of Rs. 30,000/- (Rs. Thirty Thousand only) under section 22 of the Act to the applicants within one month from the date of this order.

5. The copy of this judgment be sent to the Protection officer and in-charge of concern police station.
6. The copy of this judgment be given free of costs to the applicants.

(Pronounced in open court.)

Sd/-

Date:- 04/02/2019.

(V. V. Kulkarni)
Judicial Magistrate First Class,
Shegaon, District Buldana.

CERTIFICATE

I affirm that the contents of this PDF file are same word for words as per original.

Name of Steno : A.I. Shastri.
Name of Court : JMFC. Shegaon.
Upload date : 25.02.2019.