

ORDER BELOW EXH.4 IN (DV) M.A.NO.1/2018
(CNR No.MH14-000074-2018)

1. Present application has been placed on behalf of applicants under Section 23 of Protection of Women from Domestic Violence Act, 2005 (hereinafter referred as 'Act') claiming interim maintenance of Rs.30,000/- per month for herself and Rs.15,000/- per month for applicant No.2. She has also prayed to pass direct the respondent No.1 to pay the rent for separate residence u/s.19 of the Act and medical expenses of Rs.2,00,000/- u/s.20(b) of the Act. Respondents have resisted the application by filing their say at Exh.12. Perused the application and say. Heard learned Advocates appearing on behalf of applicants and respondents. Before, I proceed to decide the claim of applicants in nature of interim relief, a glance upon the circumstance under which the interim relief vide Section 23 of the Act can be passed, need to be kept. As per section 23 of the Act, if the Magistrate is satisfied that an application *prima facie* disclose that the respondent is committing, or has committed an act of domestic violence or that there is an likelihood that the respondent may commit an act of domestic violence, he may grant an *ex-parte* order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under section 18, section 19, section 20, section 21 or, as the case may be, section 22 against the

respondent. For granting the interim relief under Section 23 of the Act, the application must be disclosed the commission of domestic violence. Considering the essentials of Section 23 of Act and relief claimed by applicants, following points have been arisen for my determination and discussion. My findings against each point alongwith its reason are as under :-

Sr.No.	Points	Findings
1	Whether the present application <i>prima facie</i> discloses that the respondents have committed the act of domestic violence against the applicant No.1?	In the affirmative
2	Whether the applicant No.1 is entitled to get interim maintenance from respondent No.1?	In the affirmative
3	Whether the applicants are entitled for the rent for separate residence under Section 19 of the Act? If so, to what extent?	In the negative
4	Whether the applicants are entitled for the medical expenses under Section 20(b) of the Act? If so, to what extent ?	In the negative
5	Whether the applicants are entitled for the compensation under Section 22 of the Act?	In the negative
6	What order?	As per final order

: REASONS :As to Point No.1 :

2. Respondent No.1 has taken the stand that he has given the *Talaq* by issuing three different notices to applicant No.1, therefore, his domestic relationship with applicant No.1 came to an end. The respondents have produced the xerox copies of notices wherein it is contended that the respondent No.1 has given *talaq* as per Shariyat Law to the applicant No.1. While entertaining an application u/s.12 of the Act, the fact as to whether or not the *talaq* has been taken place between the parties, need not be evaluated. However, the document executed to that effect can be perused so as to draw an inference as to the conduct of the parties. From the xerox copies of notices tendered on record, it appears that the respondent No.1 has prepared those notices with intent to revoke and terminate the marriage. I must mention here that unless the intention of both the parties for being separate reflects from their conduct or document, the domestic relationship between the parties cannot be said to have end. Notices tendered on record reflects the intention of respondent No.1 only for being separate from applicant No.1. Therefore, merely on the basis of issuance of notices, the domestic relationship between the parties cannot be said to have an end. If, merely on the basis of issuance of notices of such nature, the domestic relationship is considered to

have an end, in each and every case, the husband would send the notices of such nature and take stand that his domestic relationship with his wife came to an end. The notices tendered on record appears to have been executed with intent to deprive the applicant from claiming the relief under various statute. Therefore, issuance of notices of such a nature itself amounts to emotional and mental abuse.

3. From the averment made in application, it appears that after her marriage, applicant No.1 had been residing with respondents under the single roof. Though at present applicants are not residing with respondents, the domestic relationship cannot be said to have ended. The expression “live or have, at any point of time, lived together” itself denotes that only because the parties are residing separately from each other, the domestic relationship between the parties cannot be said to have an end. Considering said facts and circumstance, applicant No.1 appears to be in domestic relationship with respondents.

4. In the present application, applicant No.1 has made allegation of domestic violence against all the respondents. From the overall contention of the applicant, it appears that, during cohabitation with respondents, they have subjected her to mental and physical ill-treatment by way of making the illegal demand of cash amount, by taunting the applicant for the

reason of bringing the washing machine and water purifier of low quality, for bringing the refrigerator of small size and low quality, by abusing her in filthy language, by beating her mercilessly, by torturing the applicant by asking her to give birth to male child, threatening the applicant to throw her child in the dustbin, by raising the questions about the paternity of her child, compelling her to work like a servant, by giving her insufficient food, by threatening the applicant to desert her and solemnizing the marriage of respondent No.1 with another woman due to non-fulfillment of their demand. From the contention of applicant, it also appears that, the respondent No.4 to 11 used to sleep on the bed of applicant No.1 in odd time and whenever applicant used to make the complaint about it, respondent No.1 used to beat the applicant mercilessly.

5. The incidents as asseverated in present application in respect of domestic violence appears to have been taken place at her matrimonial home. Therefore, the applicant is most competent person to state about those incidents and an inference as to occurrence or non-occurrence of those incidents need to be drawn on the basis of probability of the fact as asseverated by applicant. Through their say respondents not only denied the allegations of domestic violence but they also tried to bring the conduct of applicant on record. As per the respondents, after the marriage, the applicant has not performed

her matrimonial obligations properly and she was insisting the respondents to reside separately. It is also contention of respondents that applicant herself has deserted him. Considering the rival contentions of the parties and allegation made by them against each other, an inference can be drawn that the relation between the applicant and respondents were strained when they were residing together. Therefore, out of such strained relations, there is a strong possibility of happening of the incidents as enumerated by the applicant in her application. Moreover, allegations of the applicant is supported with the copy of police report lodged by applicant with the D.C.P. Office, Zone-II, Bhiwandi and other documents.

6. It is not contention of respondents that after being separated from the applicants, they have made the financial assistance for the applicants. The conduct on the part of respondents as to non-providing the financial assistance comes within the ambit of economic abuse. From the overall contention of applicant, *prima facie* it appears that the applicant has been subjected to domestic violence on the part of respondents. From the overall contention of both the parties and documents submitted on record, *prima facie* it appears that the respondents have subjected the applicant to domestic violence. Hence, I answer point No.1 in affirmative.

As to Point No.2 & 3 :

7. Applicant has made out *prima facie* case for claiming the interim relief against respondents. Being husband, respondent No.1 is liable to maintain applicant and her son. It is contention of applicant that the respondent no.1 is having 12 pairs of powerlooms at Kalyan Naka and he is earning an amount of Rs.2,00,000/- to Rs.2,50,000/- per month. It is also contention of the applicant that the respondent No.1 has given his three floors' loom on rent out of which, he is getting an amount of Rs.1,00,000/- to Rs.1,50,000/- per month. It is also contention of the applicant that the respondent No.1 is doing the job in HDFC bank and getting an amount of Rs.50,000/- to Rs.70,000/- per month. Through say, the respondents have flatly denied the fact as stated by the applicant in relation to the business of respondent No.1. Though the applicant has not produced the documents showing that certain property or powerlooms is standing in the name of respondent No.1, from the overall contention of the parties and photographs on record, it appears that, the respondent No.1 is indulged in the business therefore, he must be earning an amount of Rs.40,000/- to Rs.50,000/- per month. The respondents have not produced any document showing that the applicant is working for gain. Therefore, she does not appear to be capable to maintain herself and applicant No.2. Hence, applicant is entitled to get interim maintenance from respondent No.1. Considering the income of

respondent No.1, it would appropriate to direct him to pay an amount of Rs.5,000/- per month to applicant No.1 for fulfillment of her own needs as well as the needs of her son. Prior to filing present application, the respondent No.1 has ignored towards the applicant and her son. Therefore, it would appropriate to direct the respondent No.1 to pay the maintenance from the date of filing of application. Hence, I answer point No.2 in affirmative. When the order with regards payment of interim maintenance is being passed, no separate order directing the respondent No.1 to pay the medical expenses need to be passed. Hence, I answer point No.3 in negative.

As to Point No.4 :

8. Though the applicant No.1 has prayed to pass the residence order, it is not her contention that she is not comfortable in her parental home or she wants to reside separately in rented house. If applicant had shifted in rented house, direction would have given to respondent No.1 to pay monthly rent of the house. Since the applicant has not expressed her desirousness in taking residence in rented house, no question arise as to directing the respondents to make the arrangement for separate residence or pay certain amount towards monthly rent.

As to Point No.5 :

9. Section 22 empowers the Magistrate to grant relief like compensation and damages in addition to the reliefs which can be awarded or already awarded under Sections 18, 19, 20 and 21. Such compensation and damages are payable by the respondent. But, the section itself enjoins that for seeking additional relief, the aggrieved women will be required to file a separate application. It means, unless a separate application is filed under section 22, the Magistrate cannot order for additional relief by way of compensation while disposing of the application filed under section 12(1) of the Act. Thus, filing of a separate application for relief under Section 22 is the mandatory requirement of law and court cannot take this requirement as a mere formality and thereby ignore it. Considering the scope of Section 22 of Protection of Women from Domestic Violence Act, 2005, it was essential for the applicant to file separate application under Section 22 of the Act. Since the applicant failed to do so, the relief under Section 22 cannot be granted in her favour. Hence, I answer point No.5 in the negative and pass the following order in regard to point No.6 :-

: ORDER :

- 1) Application is partly allowed.
- 2) Respondent No.1 is directed to pay an amount of Rs.5,000/- per month to the applicant No.1 for fulfillment of her needs and the needs of

applicant No.2, from the date of filing of present application till final disposal of present case.

- 3) Rest of the relief sought by applicant is hereby refused.
- 4) Copy of order be provided free of costs to the applicant No.1 and respondent No.1.

Bhiwandi

Date :- 19/11/2018

(Hamid J. Pathan)

Judicial Magistrate, F.C., Bhiwandi.