

ORDER BELOW EXH.10.
(Passed on 05th October, 2019)

This is an application filed under section 24 of the Hindu Marriage Act, 1955 (here-in-after referred as 'the Act') by respondent/wife for interim monthly maintenance pendente lite of Rs.5,000/- per month, towards expenses of the proceedings of Rs.10,000/- and traveling allowances Rs.600/-.

02) The Non-applicant/petitioner has opposed application vide say Exh.16 inter-alia contending that their marriage is solemnized on 12.03.2012; within 15 days after the marriage the applicant shown her intention to reside at her parental house as she was not willing to reside at village of the respondent; he has tried his best level, but the applicant was not ready to reside with him; as such, the applicant has withdrawn the society of non-applicant without reasonable cause; he is ready to reside separately with the applicant, but not ready to go at parental house of the applicant for residing purpose; therefore, the applicant has made false allegation against him; he has no independent source of income and doing labour work; the applicant also has source of income by doing labour work; he has no concerned with the agricultural land in said 7/12 extract filed on record and he unable to provide separate maintenance to applicant, as sought for. The non-applicant has admitted that his minor daughter Trupti is residing with the applicant. However, he has urged to reject application on grounds, stated supra.

03. Heard the learned Advocate Mrs. S.P. Jaiswal for applicant/respondent. She has almost pointed out the facts, which

are contended by the applicant. According to her, the 7/12 extracts placed on record along-with list Exh.9 shows that the parents of non-applicant are having agricultural land Gat No.31/4, admeasuring 02H:23R at village Sonbardi, Tq. Kelapur. Thus, she submits that it can be held that non-applicant has source of income by ancestral agricultural land and by doing labour work as well, being able bodied person. Hence, she has urged to allow application.

04. In spite of giving reasonable opportunity, nobody turned up for tendering argument on this application on behalf of non-applicant. Today, on behalf of his learned Advocate pursis filed at Exh.24 with assertion that for want of contact with since long, and information from non-applicant, he is going to withdraw his Vakalatnama. The said pursis is taken on record, subject to endorsement it should be accompanied with copy of notice, postal receipt regarding communication made with non-applicant. In such circumstance, contents made in say Exh.16 are taken up for consideration being argument of the non-applicant.

05. The contents of application are supported by an affidavit of applicant. It pertains to note that the original proceeding initiated at the instance of petitioner-husband himself before this Court, within its jurisdiction he used to reside. As per title clause of petition Exh.1 itself, the respondent-wife is residing at Karanji (Shelu), Tq. Mahur, Dist. Nanded. It is well settled that at this stage, minute pros and cons need not requires to be considered. According to the non-applicant, the applicant has independent source of income for maintain herself by doing labour work.

However, admittedly minor daughter of the parties residing with the applicant. Thus, on the basis of natural conduct of human being during the course of common business, it can prima facie held that the applicant is not in a position to do labour work regularly as she has to look after minor daughter. Therefore, prima facie it could be inferred that she does not have such type of income source.

06) At the outset, I would like to point out that the applicant has alternative remedy for getting monthly maintenance and incidental reliefs being deserted wife and minor child by invoking the provisions of either The Protection of Woman from Domestic Violence Act, 2005 or under section 125 of the Code of Criminal Procedure etc. Thus, this application will have to determine in the light of provisions of Section 24 of the Act only.

07) According to the applicant, the non-applicant has source of income by ancestral agricultural land and doing labour work. As pointed out on behalf of the applicant, the 7/12 extract filed along-with list Exh.18 indicates that the parents of non-applicant are having 02H:23R agricultural land at village Sonbardi, Tq. Kelapur. It is not the case of the non-applicant that he has no concerned with his parents. Per contra, the contentions made by him itself shows that he used to reside with his parents. As per title clause of petition Exh.1 itself, the non-applicant/petitioner is also doing labour work. Now-a-days, the able bodied person can earn at least Rs.5,000/- per month. Thus, at this stage, most probable inference could be drawn that the non-applicant must be earned at least Rs.6,000/- per month. Therefore, I have no hesitation to infer

prima facie that the non-applicant is having reasonable source of income for providing monthly interim maintenance and proceeding expenses to the applicant.

08) In terms of section 24 of the Act, under such proceeding, if the Court found that either the wife or the husband as the case may be, has no independent income sufficient for her or his support and unable to bear the expenses of the proceeding, on application by either such party, other side/non-applicant can direct to pay the applicant the expenses of the proceeding and monthly during the proceeding such sum as having regard to the nature of income of the parties. In view of aforesaid discussions, there is prima facie material on record to hold that the applicant does not have sufficient income and unable to bear the expenses of the proceeding and the non-applicant has earning source of income at least Rs.6,000/- per month.

09) The non-applicant has legal obligation to provide monthly maintenance and expenses of this proceeding as well as traveling and miscellaneous charges to the applicant-wife for proper prosecution of the case, on her behalf. It is evident that now the applicant residing at her parental house, as discussed supra. It is most probable that the applicant must be accompanied with her parental one relative for attendance and prosecution of the present proceeding on fixed date. One child is also dependent on her. By taking judicial note, it can infer that there is about Rs.150/- S.T. bus fare for one person to travel between village Karanji (Shelu), Tq. Mahur to Pandharkawada. Needless to say that, there may be other traveling incidental expenses on every trip. Roznama shows

that the matter used to kept at least once in every month. Thus, the applicant for herself and one accompanied person must requires Rs.600/- for incurring round trip traveling expenses in every fixed date.

10) In view of foregoing discussions, in my opinion, the applicant is required Rs.2,500/- per month as maintenance pendente lite including to and fro charges. Likewise, she is further required Rs.5,000/- lump-sum being the proceeding expenses of the present case. As such, the non-applicant is able and liable to provide Rs.2,500/- per month and lump-sum Rs.5,000/- towards the expenses of this proceeding to the applicant. In the result, I pass following order.

ORDER

- 1) The application (Exh.10) is partly allowed.
- 2) The non-applicant/original petitioner do pay Rs.2,500/- per month maintenance pendente lite from the date of this application i.e. 15.02.2018 and Rs.5,000/- lump-sum being the expenses of the proceeding to the applicant/original respondent.

Date : 05.10.2019.

(S. S. Budruk)
Civil Judge (Sr. Dn.),
Kelapur.