

**IN THE COURT OF ADDL.CHIEF METROPOLITAN MAGISTRATE  
24TH COURT, BORIVALI, MUMBAI.  
C.C.NO. 294/DV/2021**

**Mrs. Laxmi w/o Chakrapani Bhati** **.... Applicant**  
**v/s.**  
**Mr. Chakrapani s/o Lalit Bhati & another** **... Respondents.**

**ORDER BELOW APPLICATION EXH.3.**

The applicant has filed proceeding u/sec.12 of the Protection of Women from Domestic Violence Act, 2005 (for short, "D.V.Act"). During pendency of the proceeding, she prayed for interim relief by way of protection order, maintenance for herself and one son aged five years, one daughter aged three years and also other interim reliefs in the form of money, from respondent no.1 – husband of the applicant. In main application, several allegations of domestic violence have been levelled against the first respondent husband as well as second respondent mother-in-law. It is alleged that on a number of dates the husband used to commit violence-physical and verbal, against the applicant, on his own and some times at the instigation of the mother-in-law. The mother-in-law alleged to have committed violence by taunting the applicant on one or the other count. For Exh.3, contents of main application have been adopted. The proceeding and application Exh.3 is supported by Affidavit of the applicant.

2. The respondents entered appearance in the proceeding. On behalf of the respondents, first respondent husband filed written statement at Exh.7. All allegations made against them have been denied. In addition thereto, the allegations are made against the applicant/ wife blaming her to be the negligent person. It is contended that being husband he discharged his all obligations and his mother never made any violence, physical or verbal against the applicant. It is prayed that the main proceeding as well as application for interim reliefs are liable for dismissal and be dismissed.

3. In view of directions of the Hon'ble Supreme Court in case of *Rajnish v. Neha & another*, (2021) 2 SCC 324, the applicant as well as first respondent filed their affidavits in respect of their income, assets and liabilities.

4. Heard arguments of learned advocates appearing for the respective parties at length. By way of synopsis or summary the parties also filed written contentions at Exh.13 & Exh.12. I have carefully considered the submissions, rival grounds raised and the rival pleadings

as well as supporting documents submitted by the parties on record, for the purpose of decision on Exh.5.

5. The relevant facts to be noticed at this stage are that the family of the applicant is settled at Bombay, at least from before marriage of the applicant. Arranged marriage of the applicant and first respondent performed at Ajmer on 4/5/2015. Admittedly, respondents and their family members are from Ajmer, Rajasthan State. The couple resided in joint family of the husband at Ajmer until their separation i.e. upto 18/04/2018. Male child born on 13/07/2016 and a female child born at Bombay on 09/09/2018, after separation of the couple.

6. The material allegation in respect of separation made by the applicant is that due to domestic violence made against her, she compelled to leave her matrimonial house and since date of separation, she has been residing at her parental home situated in Malad (W), Mumbai. Both- a son and a daughter are in her care and custody. All of them have been maintained by her parents.

7. According to respondent husband, applicant wife left matrimonial home on her own, without any reason and without giving information to his family. She left house for second delivery. She did not return back to matrimonial house in-spite of efforts made by them. She wanted that the husband and herself should settle down at Mumbai. It was not possible for him. Lastly, the husband filed petition for restitution of conjugal rights bearing petition no.170/2020 in the Family Court at Ajmer.

8. Record shows that in April, 2021 applicant wife received summons of above petition. Subsequently on 10/08/2021, she filed complaint to Malwani Police Station at Mumbai for offences u/sec. 498-A, 406, 323, 504, 506 of IPC, followed by present proceeding under D.V.Act.

9. As per submissions, allegations of the applicant are relied upon on her behalf and for respondents, the contentions raised on their behalf are pressed. The crucial point put forward on behalf of the applicant is that the applicant needs same level accommodation which she enjoyed while residing with the husband. The description thereof is ground plus first floor and terrace having area of 3500 sq.ft. approximately. It is a villa of seven bed rooms, hall kitchen having five bathrooms and a garden in front of the house plus parking place. The family of the husband own four cars, one motorcycle and one car

demanding and given by brother of the applicant. The family also owns agricultural lands at Ajmer.

10. By way of interim maintenance, the applicant gave details of her monthly expenses and she prays for monthly maintenance of Rs.1,10,800/- for herself and two children, wherein she included Rs.40,000/- per month by way of expected house rent. It is ascertained that the husband is doing business of manpower supply in the name and style "MED Expert CARE Nursing Care at Home", business of customized bikes as well as third business under title "SS Group" and earning not less than Rs.2 lakhs per month.

11. It is admitted fact that the respondent husband took education of Diploma in Automotive Marketing – Business Administration from a college in Canada.

12. On behalf of first respondent husband, it is submitted that applicant wife is a Doctor, has been practising and had also practised Medical profession as a Dentist in a number of hospitals in Mumbai. She is capable of earning to maintain herself. The respondent is ready to maintain children if given in his custody. The prayer for protection order is resisted submitting that communication is the only source to remain in touch with the wife and the children. Since the respondent is residing at Ajmer, there is no question of commission of any violence against the applicant.

13. It is submitted that as the prima-facie case is not made out by the applicant, she is not entitled for interim reliefs particularly relief of maintenance. The following case laws are relied upon by the respondents -

*i) Decision of the Hon'ble Madhya Pradesh High Court  
in case of Mamta Jaiswal v. Rajesh Jaiswal, II (2000)*

*DMC 170.* While considering revision petition in respect of interim alimony granted u/sec. 24 of the Hindu Marriage Act, it is observed that section 24 has been enacted for purpose of providing monetary assistance to such spouse who is incapable of supporting himself/ herself in spite of sincere efforts. Spouse well qualified to get service immediately with less efforts is not expected to remain idle to squeeze out his/her purse by cut in nature of pendente lite alimony. How can well qualified woman possessing qualification like M.Sc., M.C.M.Ed. can remain without service. Lady who is fighting matrimonial petition filed for divorce, can not be permitted to sit idle

and put her burden on husband for demanding pendente lite alimony from him during pendency of matrimonial petition.

*ii) Judgment of the Hon'ble Karnataka High Court*

*in case of E. Shanthy v. Vasudev H.K., AIR 2005 Karnataka 417.* In said decision, it is observed that petitioner wife working as Doctor prior to marriage, continues her name on Board of clinic where she practised a long with her brother. Petitioner wife capable of earning and having required qualification can continue the same profession. Held that, such wife is not entitled for separate maintenance during pendency of divorce petition by respondent husband. The husband working as Medical Officer directed to pay sum of Rs.2,500/- per month to maintain her minor daughter.

*iii) Judgment of the Hon'ble Delhi High Court*

*in case of Sanjay Bhardwaj & Ors. v. State and another, II (2010) DMC 574.* It is observed that Domestic Violence Act does not create any additional right in favour of wife regarding maintenance. Act is silent about duties of husband and wife. No law provides that a husband has to maintain a wife, living separately, irrespective of fact whether he earns or not. Court can not tell husband that he should beg, borrow or steal, but give maintenance to wife, more so when both are equally qualified and capable and earning. Fixing of maintenance by court without there being even proof of husband being employed in India is contrary to law. An unemployed husband holding MBA degree can not be treated differently who unemployed wife also holding MBA degree. Both are on equal footing, one can not be asked to maintain other unless one is employed and other is not employed. Parents can not be burdened to maintain husband and wife. Ultimately, order passed by Metropolitan Magistrate and confirmed by the Additional Sessions Judge fixing maintenance without there being any prima-facie proof of the husband being employed are held to be not tenable under Domestic Violence Act and are set aside.

14. Having given thought to the facts of the present case and case laws, record is being assessed. Whether the applicant is compelled to leave matrimonial house or she left matrimonial house on her own is disputed question of fact. Incidents of domestic violence are asserted by one the party and denied by the other party. In respect of alleged income of the respondent, there are no proofs on record. He denies said income of more than Rs.2 Lakhs and asserts his income as Rs.30,000/- to Rs.35,000/- per month. Thus, all these facts are in dispute and which shall be finally decided on the basis of evidence.

15. It is admitted fact that the applicant has completed his BDS degree from Vasantdada Dental College in the year 2010-11. According to her, for last three years her status is housewife, because of her two minor children. Her income is nil, as shown by her. According to the applicant, her family is doing construction business. It did not come on record that after separation from 18/04/2018 any efforts for co-habitation or for restitution are made by the applicant or her family members. But the respondent husband asserted that he has made efforts in that direction and also the fact is that he has filed petition for restitution for conjugal rights. After receipt of summons in that petition, the applicant wife has filed complaint at Mumbai and subsequently, present proceeding.

16. Relief u/sec. 23 of the D.V.Act is discretionary, subject to the facts and circumstances of the given case. Absence of efforts for co-habitation on the part of the applicant and her parents goes against her. She seeks accommodation or rent for accommodation at Mumbai shows that she intends to reside at Mumbai only. In fact, her matrimonial place is Ajmer in Rajasthan State. This also goes against the applicant. Presently, she has been residing with her parents means the applicant is residing in the house in which she has every right to reside as the law treats daughter and son equal in law in respect of the rights in the properties of the parents. In my considered view, the applicant is not entitled for any relief on account of residence order.

17. Now children are grown up at least they are more than five years and three years. The applicant is Doctor. She resides in Metropolitan city i.e. Mumbai. She is expected to do medical profession as a Dentist and very easily she can get opportunity to do such job in Mumbai. Such a qualified applicant, in view of the ratio laid down in the cases noted herein-above, is not entitle for her maintenance from the husband in present case.

18. So far relief of protection order, no prima-facie case has been made out to grant such reliefs of protection.

19. As far as reliefs in respect of Stridhan and other reliefs of compensation in monetary terms, those are required to be decided on the basis of evidence at the time of final disposal of the case.

20. Undoubtedly, a son and a daughter are in the care and custody of the applicant. Considering age of them, it is proper custody with the mother. The respondent being father is duty bound to maintain the

children. Admittedly, he has not made any expenses for his kids. As seen from his affidavit of income, assets and liabilities, his monthly income stated to be upto Rs.35,000/- appears to be incorrect as his expenses shown on record are approximately Rs.40,000/-plus. He has not explained in detail or in specific manner his earning from the manpower supply business, which he has admitted. In respect of other business, there are no specific details. It is also admitted that father of the respondent, who is no more, was twice MLA. He comes from well to do family. Considering these facts, fair and reasonable maintenance is required to be granted for the children. For the discussion made in preceding paragraphs, the applicant wife is not entitled for monthly maintenance allowance or maintenance in lump-sum. The application deserves to be partly allowed in following terms.

**ORDER**

- i) The application is partly allowed.
- ii) Respondent no.1 Chakrapani s/o Lalit Bhati is directed to pay sum of Rs.10,000/- (ten thousand) per month for maintenance of each son and daughter, total Rs.20,000/-(twenty thousand) towards their maintenance, from the date of filing of application Exh.3 i.e. dated 17/08/2021 and the applicant is entitle to receive the said amount on behalf of the children.
- iii) Prayer for interim maintenance for the applicant and in respect of all other reliefs is rejected.
- iv) Copy of this order be provided free of cost to the applicant and respondent no.1.
- v) A copy of this order be forwarded to the police station in-charge of the concerned police station for information and necessary action, if required.

sd/-

(S.P.Kekan)

**Addl.Chief Metropolitan Magistrate,  
24<sup>th</sup> Court, Borivali, Mumbai.**

Date :26/07/2022

ASD.