



ORDER BELOW EXH.4

This is an application for interim relief filed by the applicant under Section 23 of Protection of Women from Domestic Violence Act, 2005 (Hereinafter referred to as the DV Act).

2. Brief facts of the case is that the applicant is wedded wife of the respondent. Their marriage is solemnized on 21.12.2008. She has two issue namely Advita and Aryan from said wedlock. The applicant mentioned in her application that, in laws started taunting on very first day of marriage alleging that she did not bring one or other thing at the time of her marriage. Respondent No. 1 has supported in laws in unlawful demands. The applicant was forced to wash big utensils. Respondents used to talk in abusive and filthy language. Respondents did not take care of the applicant during her first pregnancy. Respondent No. 1 assaulted several times and thrown her out of matrimonial home.

3. The applicant contended that she was against 2nd child due to harassment. Respondent No. 1 assaulted and pressed the neck and attempted to kill her. The applicant lodged N.C. report against respondent No. 1 and he promised in police station that he shall not repeat ill-treatment. It was decided to purchase a new flat

in the joint name and applicant has paid Rs. 10,00,000/- for purchase of new flat. Respondent no. 1 used to lock the bedroom from inside and sleep alone. The applicant faced hardships and lost the very fond of marriage.

4. The applicant contends that respondent No. 1 did not take care during her 2nd pregnancy and after delivery also. He did not look after nor spent a thing when the applicant was in her parental house. Respondent No. 1 was not ready to take care the necessities of the children. The applicant herself took LIC for the son Aryan. The applicant lodged N.C report against abusing and assaulting of respondent Nos. 1 and 2. Respondent No. 1 had prepared divorce deed and forced the applicant to sign. Respondent no. 1 left the house on 11.10.2018 and has taken away all utensils and gold ornaments (Stridhan). The applicant had dropped children at the flat of respondent No. 1 on 12.10.2018. Respondent No. 1 did not give back the custody of children and he had hid the children. The applicant rushed to police station where respondent No. 1 asked the applicant to leave her job and not to leave children with her mother

5. The applicant contended that respondent No. 1 did not give a single penny for satisfaction of necessities. Respondent No.1 committed domestic violence. He is earning of Rs. 1,50,000/-

salary with other benefits. He also earns Rs. 1,00,000/- per month from business of estate agent and tours and travels. He is having immovable property and vehicles. The applicant is seeking relief of protection order, restraining respondent No. 1 from dispossessing or disturbing the possession in the said flat, restraining respondents from entry in said flat and from alienation order of Rs. 30,000/- towards monthly installments, Rs. 15,000/- for herself and Rs. 20,000/- each for children and order of compensation.

6. Respondent Nos. 1 and 2 filed reply at Exh.9 and they refused entire contention and allegation of the applicant. They denied allegation of domestic violence. They contend that applicant suppressed the material fact as to her adulterous relation and she admits later-on i. e. after filing of reply by respondents. They contend that the applicant was unready to balance dreams with realities of marriage institution. She is aggressive and short tempered. Her sister lodged report u/s 323, 504, 506 of the IPC against the applicant. The applicant imposed condition of purchase of flat for 2nd pregnancy. Respondent No. 1 purchased flat out of his funds and loan. He paid E.M.I regularly. The applicant is adulterous relationship with Viraj Dinesh Patil. There was no single N.C or private complaint until revelations of adulterous relation. Respondent No.1 is residing in rented room. FIR against the applicant for theft and violence was not registered for the reason

that API Traffic Panel has interest in the applicant. Respondent No.1 sent legal notice and instituted divorce petition on the ground of adultery. Respondent No. 1 discharged his marital responsibilities. They contend that applicant is financially independent and she is earning Rs. 40,000/- p.m. They prayed to reject application.

7. Following points arise for determination which are answered as below for following reason :-

No.	POINTS	FINDINGS
i)	Whether the applicant is entitled for interim relief as prayed?	No.
ii)	What order ?	As per final order

REASONS

POINT NO.1 :-

8. Heard both side. Perused notes of argument of both side. The applicant submitted that, she was subjected to harassment by respondents. She narrated about incidents of ill-treatment meted out by respondents. The applicant has made allegation of verbal, emotional, sexual, physical and economic abuses, which are supported by affidavit. It is settled position of law that, the applicant is not required to establish and prove allegations by strict

evidence at the stage of interim. The question is whether averments narrated in an application are sufficient to attract provision of Section 23 of the Act? This question is posed because respondents come with allegation of suppression of material facts and want of domestic violence. To get the answer, it is necessary to consider contents of application as well as reply of respondents. Re-joinder and reply to the re-joinder are also material which need to be taken in to consideration.

9. Ld. counsel vehemently argued that the applicant is victim of domestic violence committed by respondents. Respondents did not look after in pregnancy of the applicant and forced her to do hard domestic work. Respondents used to beat and abuse the applicant. The applicant contributed amount for purchase of flat. The applicant performed her marital responsibility rather respondent No. 1 neglected to look after the applicant and children. The applicant has no illicit relation. Ld. Counsel pointed out that person who makes such allegation of illicit relation then his mentality to commit domestic violence can not be denied. Respondent No.1 himself the company of the applicant and he has taken away all ornaments, clothes and Activa vehicle. He is not avoiding to pay installment with intention to make trouble with applicant. Documents such photos and messages details do not amount to adultery. Ld. Counsel further submits that respondent

No.1 was restrained from entering in to the said flat by order of Hon'ble Session Court, Vasai. Despite the said order, respondent No.1 made entry in the said flat and committed domestic violence after filing this case. He did not pay any maintenance since 2018. He is enjoying luxurious life as he earn Rs.1,50,000/- by salary and he has other sources of income.

10. Contrary, Ld. counsel for respondents submitted that the applicant is not entitled to claim any relief as she has suppressed material facts and she did not come with clean hands. Respondents relied on authority to support their contention. The applicant is short tampered and her sister lodged report against her. The applicant has filed this case after thought and she has no cause. Respondent No.1 never stopped installment of loan amount of flat. Respondent No.1 has performed his marital responsibilities and he has taken care of his children all the time. He has purchased flat where applicant is recently living. The applicant did not contribute for purchase of said flat. The applicant forced respondent No. 1 to leave the said flat and he is residing in rented house. The applicant has not filed affidavit of asset and liabilities as per formate provided by Hon'ble Supreme Court. Respondent No.1 relied on some authority which may be discussed at relevant stage of discussion.

11. Respondent Nos. 1 and 2 contended in their reply that notice dt. 20/11/2018 was issued to applicant wherein applicant's extra marital affair was alleged. True is the case that applicant did not sent reply and she chosen to file present case. It is contention of respondents that present case is result of notice dt. 20/11/2018 and case is instituted after thought. In view of definition fo domestic violence, the said contention as to after thought, has no substance. So fas as issuance of notice dt. 18.11.2018 is concerned the applicant kept mum. However, she admitted the fact of issuance of notice dt. 18.11.2018, in her rejoinder. Respondents have made allegation of extra marital affair silence of applicant about the fall of allegation of extra marital affair in the main application is not digestible as no prudent person will remain silence from refusing such allegation.

12. It is argued by the applicant that documents produced on record in the form of photos and messages details do not amount to adultery. I do not hold at this stage that such contention is true or false. But, it is expected from prudent man to mention averments of such allegation being specifically contended by respondents in their notice which is sent prior to the filing of this case. Unfortunately, such mentioning in main application is not done by the applicant. It forces to draw adverse inference that the applicant has intentionally suppressed some material facts from the

court. Such suppression of material facts on part of the applicant creates prima facie doubt at this stage about the allegation of domestic violence.

13. The applicant is seeking direction against respondent No. 1 for payment of Rs. 29,000/- installment of flat as he has stopped payment. It is mentioned in para 17 of main application. The applicant admits in her rejoinder that respondents is paying continuously the said installments. However the said admission is resulted due the contention of respondent in reply at Exh.6. The applicant contends that she has contributed amount for purchase flat. Respondents denied the said contention. However, it is admitted fact that respondent No.1 has been or is paying the installments of said flat. It is the contention of the applicant that respondent No. 1 is performing his responsibility towards children. The applicant has produced receipt of school fees. Respondent No. possess SBI A/c. And from the bank statement it appears that respondent No.1 has paid school fees by way of cheque No.919090 of SBI bank. Denial of the applicant about payment of school fees by respondent No.1 without base, itself makes clear that respondent No. 1 is performing his responsibility and there is no substance in the contention of the applicant. The applicant produced copy of N.C report dt. 02.06.2018. It is her contention that she lodged report on the count of assault and threatening by

respondent No.1. However N.C report dt. 02.06.2018 discloses that respondent no. 1 assuaged for the reason of delay being caused the applicant to reach home. This entire conduct on the part of applicant by making bare allegations appear that the applicant did not come with clean hands at this interim stage and her story as to commission of domestic violence does not to be prima facie believable at this stage

14. Respondents produced photos and messages details in support of his contention as to the extra marital affair of the applicant. It would not be proper to deal at this interim stage with that materials produced on record. It would not be proper to express any opinion without dressed trial. Therefore, it is up to respondents to establish the relevancy of those materials at appropriate stage.

15. Respondent No. 1 relied on *Kishore Samrite V/s State of U.P & others*, in Cri. Appeal No. 1406/2012, decided on 18.10.2018 by Hon'ble Supreme Court, wherein, it was held that relief can not be granted to the litigant if he approaches with unclean hand in court. The said supra authority, in my humble opinion, is squarely applicable to the present case for the reason that the applicant has suppressed the material fact of allegation of adultery being made by respondents in their notice. Moreover,

contention of the applicant on material point such as allegation of respondent's failure to look after his children and non-payment of their educational expenditure, appears to be contrary when it is verified with documents. Such conduct also weakens the case of the applicant and it also prima facie creates doubt about the allegation of domestic violence.

16. Respondent No.1 relied on *Sanjivani Ramchandra Kondalkar Vs. Ramchandra Bhimrao Kondalkar and Otrs.* Criminal Writ Petition No. 2547/2016, dated 18.12.2019, wherein order of cancellation of maintenance was upheld for the reason that petitioner was divorced on the ground of adultery. With due respect, this authority is not applicable as there is no allegation of adultery in this case. In *Kaviraj Dattatray Muslonkar Vs. Kachana Kaviraj Muslonkar and Otrs*, Cri. Revision Application No. 50 of 2017, dated 19th April 2017, relied by respondent No.1, that Rachana respondent had filed an application U/Sec. 12 of the D.V. Act along with interim application which came to be rejected for want of domestic violence, against which respondent Rachana preferred first appeal which came to be allowed against order, petitioner Kaviraj, filed revision application which is remanded back for deciding it afresh, for the reason that, first appellate court has not considered pleadings and documents. In view of above facts, respondent No.1 in this case on hand, can not insist the said

authority is applicable to his case as rejection of interim application is yet to be finally disposed off.

17. It is settled position of law that applicant in domestic violence case is entitled for the relief only when the applicant prima facie establishes the domestic violence. In absence of domestic violence, relief of interim reliefs can not be granted to the applicant. In this regard, respondents relied on *Ashwin Kumari Vs. Pushkar Kashmiri*, in Cri. Rev. No.223/2018, wherein observation of first appellate court pertaining to requirement of prima facie proof of domestic violence needs to be made out, is upheld by Hon'ble Himachal Pradesh High Court. In this case on hand also, there is no prima facie convincing facts to show the facts of domestic violence. Suppression of material facts on the part of applicant forces to disbelieve the allegation of domestic violence. Therefore, observation of supra authority is almost applicable. Respondents relied on *Kaushik Anil Gharani Vs. Sangeeta Koushik Gharami & others*, in Cri. W. P. No. 32/2014, decided on 05.05.2014, by Hon'ble High Court, Nagpur Bench wherein also same principal is laid down as of case-law of "*Ashwin Kumari*"

18. Respondent No.1 relied on *Sumit Vijay Kumar Vs. Shardha Gupta Jain*, decided on 13th April 2018 by Honorable Bombay High Court, wherein honorable High Court discussed on

various issues raised against the orders of Family Court. This court has already discussed above that, applicant is not entitled to get interim relief claimed by her for want of prima-facie proof of domestic violence and accordingly the said authority, with due respect, is not useful to either party at this stage. In view of entire discussion as above, I hold prima facie at this stage that the applicant could not establish that she is subject of domestic violence. Thus, point no.1 is answered in the negative.

POINT NO. 2 :-

19. In view of findings to points No.1, the application is deserves to be rejected. Accordingly, in order to answer point No. 2, following order is passed:

: O R D E R :

1. The application is rejected.

Place- Vasai.
Date- 20/12/2021.

(S. S. Jaiswal)
4 th J.M.F.C., Vasai.

CERTIFICATE

I affirm that, the contents of this P.D.F. file order are same, word to word, as per the original order.

Name of Clerk	:-	S.S.Burhanpure
Court's Name	:-	4 th Jt. C.J.J.D. & J. M. F. C. Vasai.