

सुकृति सिंह
SUKRITI SINGH
महानगर दाय. विभाग-04
Metropolitan Magistrate-04
नई दिल्ली
कोर्ट नं. 06 / Court No. 06
दक्षिण जिला साकेत न्यायालय नई दिल्ली
South District, Saket Court, New Delhi

(1)

20 CT Cases 1704/2021

REEMA KHURANA Vs. GAURAV KHURANA

PS Ambedkar Nagar

18.07.2023

Present: Complainant along with Ld. Counsel Ms. Monika Sharma.
Sh. Nitish Banka, Ld. Counsel for the respondent no. 1 (joined
through VC).
Summoning of the respondent no. 2 was declined vide order
dated 11.01.2022.

Let the extra sets of petitions and registered couriers be
disposed off.

Relist the matter at 04.00pm for orders.

-sd/-
(SUKRITI SINGH)

MM-04 Mahila Court/SD/18.07.2023

Metropolitan Magistrate-04
दक्षिण जिला, साकेत न्यायालय नई दिल्ली
(Mahila Courts), South District
नई दिल्ली
New Delhi

At 04.00pm

Present: None.

1. The matter is listed for orders on the application of the complainant under Section 23 of the Protection of Women from Domestic Violence Act, 2005 (PWDV Act) wherein it is prayed that the respondent Gaurav Khurana be directed to pay Rs. 20,000/- per month as maintenance, as well as a direction to allow the complainant to reside in the shared-household and provide rented accommodation to the complainant. Only the maintenance amount has been pressed at the time of arguments.

2. In order to be entitled to the reliefs under the provisions of the PWDV Act, it is for the complainant to show that she has been in a



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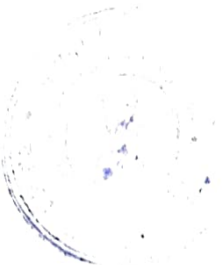
domestic relationship with the respondent and that the respondent has subjected her to domestic violence. It is an undisputed fact that the complainant and respondent were first married on 04.12.2007, divorced on 03.08.2018 and re-married on 25.11.2020. It is also admitted that they were in a domestic relationship and have a child namely Palakshi out of such wedlock. In her petition under Section 12 of the PWDV Act, the complainant has mentioned instances of mental and physical harassment by the respondent against the complainant soon after the date of their wedding on 04.12.2007 as well as 25.11.2020.

3. The allegations of the complainant have been corroborated *prima facie* by the complaint to CAW Cell dated 29.09.2021 and FIR No. 272/2022 PS Ambedkar Nagar. The respondent appeared after notices issued and filed his reply whereby he refuted the allegations made by the complainant. He also placed on record a copy of divorce decree in MP No. 681/2015. As such, the allegations and counter allegations have to be proved by both the parties in the course of trial by way of evidence. A mini-trial is not warranted at this stage based on such counter allegations. However, the complainant has brought sufficient material on record to *prima facie* establish herself as an “*aggrieved person*” under Section 2(a) of the PWDV Act. Moreover, both parties have accepted that a second marriage was solemnized after the decree of divorce was granted to the respondent. The complainant has made allegations after the date of this second wedding as well.

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4. Coming to the quantum of interim maintenance, reference is being made to the written submissions as well as oral arguments advanced on behalf of both the parties.

5. In her main petition dated 16.12.2021 at para 25, the complainant has stated that her parents have been bearing all her expenses, as well as those of her daughter, since 23.04.2014. Further, in para 26, the complainant has stated that since 23.04.2014, she and her daughter have been living on the meager income of the complainant who is working privately as a Party Assistant earning Rs. 15,000/- to Rs. 16,000/- per month. The affidavit accompanying the petition has been verified on 26.10.2021. By way of her interim application, the complainant has sought grant of Rs. 20,000/- per month towards expenses of food, clothes, medicines, house rent and other household expenses and also sought directions restraining the respondent from disposing his assets including the shared-household. In her income affidavit dated 26.10.2021, the complainant has stated that she is class 12th pass and residing in her parental home. Her general monthly expenses are stated to be Rs. 20,000/- per month. She has stated that a sum of Rs. 5,000/- was granted as maintenance under the PWDV Act vide an order dated 24.03.2018, however, no such order has been placed on record and neither has the status of continuation/vacation of such order been specified. The complainant has declared one dependent family member i.e. her daughter and the expenses incurred on account of the daughter are stated to be Rs.



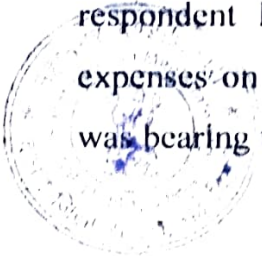
(4)

10,000/- per month. She has declared in such affidavit that she is not employed and has no source of income nor any assets or liabilities in her name. She has declared one bank account at Central Bank of India, Nehru Place. With respect to the respondent, the complainant has stated that he is BA qualified and is earning Rs. 37,000/- per month at Edwise International Overseas Educational Consultant at Mumbai Maharashtra. He is stated to be residing in his own accommodation and also holding FDRs.

6. The complainant filed her bank statement for account held at Central Bank of India in which transactions upto 20.07.2022 did not show any significant amount.

7. In his written submissions, the respondent has pointed out that the complainant has stated in her petition that she is working as a Party Assistant, however, in her income affidavit she has stated herself to be unemployed. Further, the respondent has stated that the complainant has falsely accused the respondent of fraudulently taking a divorce decree while the same was granted to the respondent ex-parte on the ground of cruelty.

8. In his income affidavit, the respondent has stated himself to be a graduate and has stated his general monthly expenses to be Rs. 30,000/-. He has also stated the maintenance granted by order dated 24.03.2018 to be Rs. 5,000/- and has submitted that he is complying with the same. The respondent has listed his mother as a dependent and has stated the expenses on her to be Rs. 15,000/- per month. He has submitted that he was bearing the expenses for minor daughter Palakshi till she was residing



(5)

with him and has stated that he has been making a voluntary contribution towards her educational expenses, but the amount thereof has not been specified. The respondent has stated that he is working in HR and Marketing at Edwise International for Rs. 37,000/- a month. He has declared one bank account at Axis Bank and no assets in his name. He has disclosed a loan of Rs. 37,000/- from Axis Bank for purchase of an air conditioner. With respect to the complainant, the respondent has stated that she is 12th pass and earning Rs. 25,000/- per month working as a Party Assistant in a private company. He has stated that the complainant resides in her own accommodation and has income from FDR, post office, online business and government schemes etc.

9. Respondent has placed on record a copy of the divorce decree bearing MP No. 681/2015 vide which he was granted divorce on the ground of cruelty committed by the complainant. The respondent also filed his bank statements for account held at Axis Bank showing his salary being credited. In between dates, the respondent also filed his salary slips for December, 2022 and January, 2023. In the former, his total pay is Rs. 50984/- and in the latter it is Rs. 50,000/-. The respondent also filed certain medical documents stating that he is undergoing treatment for diabetes and thyroid.

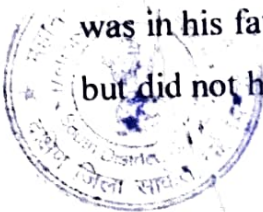
10. The respondent moved an application under Section 91 Cr. PC calling for the employment records and salary slips of the complainant at Market 99 situated at D-153, Pocket D, Okhla Phase-I, Okhla Industrial Estate, New Delhi. On such date, upon enquiry of the court, the



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complainant admitted that she was working at such place and undertook to file an affidavit in this regard. She also admitted having another account i.e. a salary account which is separate from her account held at Central Bank of India. Thereafter, the complainant filed affidavit dated 04.03.2023 stating that she was employed as a Receptionist with M/s Market99 Pvt. Ltd. However, the affidavit still did not specify the date on which such employment commenced. The complainant also filed an account statement for account held at Standard Charter Bank, DLF Gurgaon of which, the oldest statement on record has been drawn up on 31.01.2021. The complainant also filed her pay slip for November and December 2022 and January, 2023 as per which her total earnings are Rs. 27053/-.

11. Ld. Counsel for the complainant argued on her behalf and stated that the mother of the respondent is not dependent on him as she receives the pension of the respondent's father. On the other hand, Ld. Counsel for the respondent argued that his mother was not getting any pension as the respondent's father had taken VRS. He further argued that the complainant was not entitled to any relief from this court as she had knowingly concealed the status of her employment in her income affidavit. A citation of *KN Vs. RG 2019 SCC Online DEL7704* was also filed on behalf of the respondent. With respect to the status of his residence, the respondent could not give any substantiated response. On the one hand he admitted that a house property was purchased in Mumbai but stated that the same was in his father's name. He also stated that he was himself residing on rent but did not have any documents in support.



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12. Heard. Perused.

13. Perusal of the record shows that the complainant has concealed very pertinent information regarding her employment and till date has not disclosed since when she has been employed at her current office. Moreover, her account at Standard Charter Bank, though clearly operating at least since January, 2021 was not disclosed in her income affidavit verified on 26.10.2021. The respondent has also not clearly substantiated his alleged rental expense and was unable to show any ongoing medical expenses worth note.

14. The interim relief U/s 23 PWDV Act is an urgent ameliorative relief granted to the complainant to provide immediate assistance to her. For grant of such relief, the complainant needs to establish a *prima facie* case in her favour and also disclose all the material particulars required of her. As noted above, the complainant has established the former but failed on the second requirement.

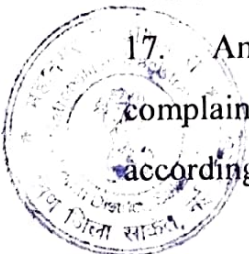
15. In ***Arunima Barua Vs. Union of India (2007) 6 SCC 120*** Supreme Court, the Hon'ble Supreme Court has held that it is trite that a person evoking discretionary jurisdiction of the court cannot be allowed to approach it with a pair of dirty hands. Also in ***Prestige Light Ltd. Vs. State Bank of India (2007) 8 SCC 449***, the Hon'ble Supreme Court has held that if the applicant does not disclose full facts or is suppressing relevant materials or is otherwise guilty of misleading the court, the court may dismiss the action without adjudicating the matter.



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16. In the present matter, the complainant has not fully or fairly disclosed her employment history, current source of income as well as one bank account held by her and has not come to the court with clean hands. Considering the ratio of judgments as cited above and the facts and circumstances as discussed above, the balance of convenience does not lie with the complainant and it is not seen appropriate to grant any interim relief to the complainant for herself at this stage. However, the minor daughter Palakshi was born out of the wedlock of the complainant and respondent and is admittedly the responsibility of both parents which is being borne alone by the complainant at present. As per the last salary on record of both parties as declared in their salary slips as well as the stated expenses of the child, it is seen fit at this stage to grant a sum of Rs. 7,000/- towards the interim maintenance of minor child with effect from filing of this application till the disposal of the case subject to an annual increase of 10 percent, from today's date, to account for the growing needs of the child. The said amount of Rs. 7,000/- is to be deposited into the bank account of the complainant on a monthly basis on or before every 7th day of the English calendar month failing which the default would be viewed in light of the judgment of the Hon'ble High Court of Delhi in ***Gaurav Sondhi Vs Diya Sondhi., 120 DLT (2005) 426.*** Arrears be cleared within six months from today.

17. Any amount paid by respondent towards maintenance to the complainant or minor daughter in other legal proceedings shall be adjusted accordingly.



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18. No other interim relief has been claimed by the complainant during the course of arguments.

19. Accordingly, the application is disposed off. Nothing contained herein shall be construed as an expression on the merits of the case.

20. Put up for CE on **29.08.2023**. List of witnesses be filed by both the parties on or before the next date of hearing. Affidavits of the witnesses be also filed on or before the next date of hearing with advance copy to the other party.

21. Copy of this order be given dasti to both the parties as per mandate of the Act.



-solr
(SUKRITI SINGH)
MM-04 Mahila Court/SD/18.07.2023

महानगर दण्डाधिकारी-04
Metropolitan Magistrate-04
दण्डाधिकारी, ग्वालियर जिला
(Mahila Court) Gwalior District
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