

04.10.2023

I am looking after the work of Ms. Deepali Srivastava, ld. Link MM, being first link.

Present: Mother of petitioner in person.
Sh. Lakshay Manchanda, Ld. counsel for R1.
(Summoning qua R3 declined vide order dated 07.03.2022).

1. Vide this order, interim application u/sec. 23, Protection of Women from Domestic Violence Act, 2005 (hereinafter "DV ACT") moved by the petitioner shall be decided. Vide present application r/w the petition, petitioner has sought numerous interim reliefs. However, during the course of arguments, counsel for petitioner submitted that at this interim stage, petitioner is only pressing for the grant of interim maintenance @ Rs. 2,00,000/- per month. As such, grant of aforesaid reliefs to the petitioner shall be decided vide the present application.

2. As per the present application r/w the petition, case of the petitioner is that she got married to R-1 on 14.04.2018 as per Hindu rites and ceremonies. The parents of the petitioner had spent around Rs. 40 lacs in the said marriage and had also given all the costly dowry articles and cash amount as per the demands of the respondents. After the marriage, respondents subjected the petitioner to domestic violence and verbal, physical, economic and mental torture on account of dowry demands. R-1 used to pressurize the petitioner to ask her father to give her share in her

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parental property and many times used to give her merciless beatings. The petitioner gave birth to a male child namely Arjan on 26.03.2020 but R-1 and his family started raising doubt about the paternity of the child and caused torture to the petitioner even during her stay in the hospital. When the torture caused by the respondents became intolerable, the parents of the petitioner accompanied her to her parental home on 29.04.2020 and since then, the petitioner is residing with her parents. After the desertion from R-1, petitioner tried to get a job and succeeded and started working at a salary of Rs.20,000/- per month for about two months, but due to the care and upbringing of the minor child, she had to leave her job and at present, is completely dependent upon her parents.

3. On the other hand, R-1 is a man of means and is a working as as Senior First Officer/Pilot in Air India Ltd. and is earning Rs. 4 lacs per month. He is also the owner of more than four properties and is having income from the said properties. Apart from that, he is also getting interest from various FDs. He has deliberately neglected to maintain the petitioner as well as the minor son.

4. R-1 filed the W.S to the application u/sec. 12 DV Act and reply to the interim application filed by the petitioner u/s 23(2) DV Act. Vide aforesaid Replies, R-1 admitted his marriage with the petitioner and the paternity of the child. R-1 has denied all allegations of cruelty and harassment raised by the petitioner. R-1

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has further averred that the petitioner is highly educated woman with a masters degree in food and nutrition and has many clients all over India and even outside. She is living separately from him without any rhyme and reason and has willfully refused to join his company. Petitioner is still working from home giving private consultations to her clients and hence, she is not entitled for any kind of maintenance.

5. Arguments on behalf of the both the parties heard at length. Record perused. Income affidavit of both parties are on record.

6. In the present case, marriage between petitioner and R-1 and the paternity of the minor child is admitted. Even the sharing of domestic relationship between the parties in a shared household is admitted. As regards the allegations of domestic violence, the same has been vehemently denied by R-1. However, at this preliminary stage, a mini trial cannot be conducted in respect of the allegations of domestic violence. Considering that in the DIR filed by the Protection Officer and also in the petition, the petitioner has alleged infliction of physical, emotional, mental and economic abuse, *prima facie* it appears that there was infliction of domestic violence and therefore, the petitioner is entitled to claim interim maintenance from R-1.

The criteria for deciding the quantum of maintenance has been

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III Criteria for determining quantum of maintenance:

(i) the objective of granting interim/permanent alimony is to ensure that the dependant spouse is not reduced to destitution or vagrancy on account of the failure of the marriage, and not as a punishment to the other spouse. There is no straitjacket formula for fixing the quantum of maintenance to be awarded. The factors which would weigh with the Court *inter alia* are the status of the parties; reasonable needs of the wife and dependent children; whether the Applicant is educated and professionally qualified; whether the Applicant has any independent source of income; whether the income is sufficient to enable her to maintain the same standard of living as she was accustomed to in her matrimonial home; whether the Applicant was employed prior to her marriage; whether she was working during the subsistence of the marriage; whether the wife was required to sacrifice her employment opportunities for nurturing the family, child rearing, and looking after adult members of the family; reasonable costs of litigation for a non-working wife.

7. As per the petition and income affidavit of petitioner, the petitioner is a Post Graduate and is residing in her parental home since the date of her separation from R-1 i.e. 29.05.2020. She

has further stated that her monthly expenses are Rs. 1,10,000/- including the expenses of minor child Arjan. She has further stated that ad-interim maintenance of Rs. 30,000/- per month has been awarded in favour of the minor child u/s 125 Cr.P.C, however, R-1 has not complied with the said order. She has further stated that the minor child is suffering from developmental delay and hyper activity and is totally dependent upon her. She has further stated that she is unemployed.

8. On the other hand, R-1 in his income affidavit has stated that the petitioner has a Masters Degree in food and nutrition and has a certified diabetes educator certification from Medanta Hospital, Gurugram. He has further stated that she is a self practitioner in food and nutrition and her estimated income is Rs.46,703/- per month from the last salary slip obtained. He has further stated that her earnings are cash based and Paytm/UP/Googlepay based. He has further stated that she has an FDR of Rs. 3 lacs with Autorenew and shares in TATA Steel.

9. As per the income affidavit of the parties, the date of marriage is 14.04.2018 and the date of separation is 29.05.2020 and 29.04.2020. As per the petition filed by the petitioner u/s 12 D.V. Act, she has categorically stated that after her separation, she worked for about 2 months and earned about Rs.20,000/- per month, however, after that, she had to leave her job in order to provide care for her minor son Arjan.

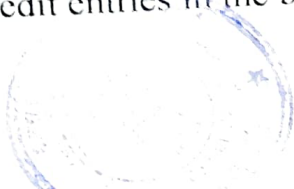
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10. In order to show the working status of the petitioner, R-1 has relied upon the copy of agreement dated 17.06.2018 executed between Healthifyme Wellness Pvt. Ltd. and the petitioner as per which, petitioner has been appointed as a Consultant in the said company at a monthly fee of Rs.25,600/-. R-1 has further relied upon some documents wherein petitioner has given nutritional advice to her clients.

11. On perusal of the above mentioned documents, some of which pertains to the year 2019, although, it is seen that the documents are neither signed, nor admitted by the petitioner upon queries put to her during the course of arguments, however, considering that it is an admitted fact that petitioner is a nutritionist by profession and has also worked prior to the filing of this case, the court is of the opinion that considering her educational qualification and her work experience, the fact that she is not working at present appears to be quite unconceivable. Although she has stated that she has a minor child and due to his upbringing, she is unable to work, however, the court is of the opinion that these days online consultations are also available and petitioner can easily earn by giving online consultations with respect to the food and nutrition considering her educational qualification.

12. Petitioner has also filed her bank statement on record. On perusal of the said bank statement, it is seen that there are some credit entries in the bank account of the petitioner during the year

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2020-2022 of different amounts. The same has not been explained by the petitioner upon query.

13. In view of the discussion held above, the court is of the opinion that income of the petitioner is not less than Rs. 25,000/- per month.

14. Now, the court shall assess the income of R-1.

15. Petitioner in her income affidavit has stated that R-1 is a well trained commercial pilot and at present, is working in Air India as pilot and is earning Rs. 4 lacs per month. He is also the owner of four properties valued in Crores and getting income from those properties. Furthermore, he is also having income from his share trading business, interest income from FDs and has also opened a Demat account in the name of petitioner and has used it for his own benefit.

16. To the contrary, R-1 in his income affidavit has stated that he is 12th class passed and joined the Airlines Pilot licence training after selection. He has further stated that he is residing in the parental house owned by his mother. He has further stated that he is complying the order passed by Ld. Family Court on 21.10.2021 whereby he was directed to pay an ad-interim maintenance of Rs.30,000/- per month for the petitioner and the minor child. He has further stated that his net monthly salary is Rs.1,44,625/- and his salary varies depending upon the number of hours and flights allotted to him. He has further stated that he

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has taken a loan as mentioned in his income affidavit and is paying the EMIs on the said loan.

17. The bank statements, Salary slips and ITRs filed on behalf of R1 have also been perused. As per the salary slip of R1 for the month of May 2022, June 2022 and July 2022, his total salary is stated to be Rs. 1,52,631/- and the deductions are stated to be Rs. 50,397/-.

18. As per the ITRs of R1 for the financial year 2019-20, 2021-22, 2022-23 his total income is mentioned as Rs. 32,17,606/-, Rs. 22,39,100/- and Rs. 26,78,660/- which comes out to be Rs. 2,26,000/- approx per month on an average. However, this is the gross income of R1 as per his ITR on which he is also paying income tax.

19. On the basis of material available on record, the average monthly income of R1 is assessed as Rs. 1.5 lakhs.

20. R-1 in his income affidavit has stated that his mother is dependent upon him. After considering the submissions of the parties and the perusal of the record, this court is of the opinion that payment of maintenance amount of Rs. 15,000/- per month towards the interim maintenance of petitioner and Rs. 35,000/- per month towards to the interim maintenance of the minor son Arjan Singh will meet the interest of justice. Accordingly, R-1 is directed to pay sum of Rs. 15,000/- per month towards the interim maintenance of petitioner and Rs. 35,000/- per month

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towards to the interim maintenance of the minor son Arjan Singh from the filing of this case till its disposal. The money, if any, received by the petitioner from the R-1 towards maintenance of herself granted by any Hon'ble Court, shall be adjusted. The maintenance amount be paid on or before the 10th of each month. Arrears shall be cleared within a time of six months from today. Petitioner is directed to provide bank account details to R-1 so that maintenance amount may be deposited in the said account directly, on or before 10th day of each calendar month.

21. At this stage, no other relief is pressed for. The application U/s. 23 of the DV Act is disposed off accordingly.

22. Nothing contained herein above shall be considered as an expression on the merits of the case.

Put up for PE on **06.02.2024**.

Petitioner is directed to lead her evidence by filing list of witnesses along with affidavit by way of evidence of the witnesses and by supplying advance copy to the opposite party.

Copy of order be given dasti to both the parties.

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Kanika Jain

MM (Mahila Court-01)

North-West, Rohini/Delhi/04.10.2023

(North-West, Rohini/Delhi/04.10.2023)
Rohini Courts, Delhi