

*IN THE COURT OF SUMITRA KADIAN, JUDICIAL
MAGISTRATE FIRST CLASS (UNIQUE IDENTIFICATION
CODE No. HR0369), GURUGRAM*

[REDACTED]
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*APPLICATION UNDER SECTION 23 OF PROTECTION OF
WOMEN FROM DOMESTIC VIOLENCE ACT, 2005*

Present:- Shri Nitesh, Advocate for applicant
Shri Vishal Tomar, Advocate for respondent


ORDER:

This order shall dispose of an application filed under Section 23 of the Protection of Women from Domestic Violence Act, 2005 by the applicant seeking therein following interim reliefs:

- (i) Respondent be restrained from entering the house No.477, 1st Floor, Sector-38 near Community Centre, Gurugram
- (ii) Respondent be directed to keep paying monthly EMI of aforementioned house.
- (iii) Respondent be directed to pay Rs.50,000/- as per month as interim maintenance.

2. It has been pleaded by the applicant that her marriage was solemnized with the respondent on 12.10.2011 at Kathua, Jammu & Kashmir as per Hindu rituals and ceremonies. Her father gave everything as per his capacity in marriage. After marriage, the applicant and respondent resided together as husband and wife at

Gurugram. Out of this wedlock, they have a daughter named Harshita. In the month of February 2020, the respondent deserted the applicant and left for Kathua. From the very beginning, the behavior of respondent was very rude and indifferent towards the applicant. He physically assaulted her on various occasions. On 26.01.2020, the respondent physically assaulted her. She called police which warned the respondent. On the same very day, the respondent again physically assaulted her. The complainant made a call to Women Cell for help. The police took both of them to police station. The police warned the respondent. The respondent apologized and assured that he would not harass the applicant in future. The respondent wants to divorce her without paying any alimony. The respondent is a bisexual person. The respondent always raised demand of money and pressurized her to ask her father to arrange money. At the time of admission of her daughter in the school, he refused to pay admission fee. The applicant is a teacher for last eight years. The respondent has been taking her all earnings. Till the filing of present application, the respondent has taken Rs.18,60,000/- from the applicant. The respondent is not spending any time with her and her daughter. She has suspicion that respondent is having extra marital affairs with other women also. He is taking sexual medicine and is having related problems. She is residing at the property which was purchased by her and the respondent jointly. The respondent made plan to murder her. The respondent threatened to kill himself



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and to blame her, if she takes legal action against her. With these contentions, she has filed the present application.

3. In reply, the respondent has submitted that parties were in a relationship for more than a five years period before their marriage. As it was a love marriage, there was no question of giving and taking of dowry except for exchange of few customary gifts. The respondent treated the applicant as his princess. From 2011 to 2017, the parties resided in a rented accommodation and he used to pay rent and other charges. At the time of purchase of the house, applicant created an ugly scene and forced him to purchase the property in joint name. She never performed her duty. The applicant is habitual of flashy life style and always forced him to take her to Cyber hub every weekend. In order to fulfill her demands, he used to work overtime at the office. The applicant never showed any love and affection towards his parents. She tried to separate him from his own family. She was having affair before marriage with other boys. In the year 2013, he found the complainant exchanging intimate talks with school teacher Ghyan Shyam. When he questioned her, she created a scene in front of her brother. When he asked her brother to take her to Kathua, she got nervous and started crying. In the year 2018, respondent again caught her exchanging intimate talks with music teacher Jakir. When he questioned her, she told that she wanted to marry him. When he was going to leave her at Kathwa, she again apologized. In the year 2019, he found her chatting with Amitanshu

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Mishra [father of her student]. On 26.01.2020, she called him to vacate the house. When he refused, she called on number 100 and made complaint before police. On 20.03.2020, he requested the applicant to accompany him to their home-town, but she refused. On 21.03.2020, he went to his home town but he could not return due to lock-down. He made efforts to call her, but all in vain. He always brought expensive gifts, watch and expensive liquor for her. His job has been terminated whereas she is working in DVA School, Gurugram and is fetching handsome salary. He has made all the down payments and has been regularly paying the installments of Rs.60,835/- per month from his own earnings. Except the shared household, he has no other house to reside in. Rest of the contentions have been denied and a prayer for the dismissal of application has been made.

4. I have heard the learned counsel for both the parties and have perused the case file very carefully.

5. It is an admitted fact that applicant is legally wedded wife of respondent. It is also an admitted fact that presently, the applicant and her daughter have been residing in the shared household and respondent is residing somewhere else. Both the parties have levelled allegations of cruelty against each other. However, all these issues can only be decided in the main petition after adducing of evidence by both the parties. Now, the court shall



discuss the reliefs claimed by the applicant in the light of the pleadings of both the parties:

(i) **Restrain Order:** According to applicant, the respondent planned to murder her and he threatened to kill her. In support of her allegations, she has placed on file what's app chat of respondent wherein respondent discussed with his friend to kill the applicant. No doubt, the said material shall be proved during trial by adducing evidence. However, aforementioned material prima-facie supports the version of the applicant. She has also placed on file application filed before the police regarding threat of respondent and his friend. On the other side, the respondent has denied the allegations of applicant and has pleaded that he has no other house to reside in Gurugram and he is owner of the shared household. As per the version of the respondent, the applicant created scene and due to this reason, he purchased house in joint name. He has admitted that an incident took place on 26.01.2020, but according to him, on that day, the applicant asked her to vacate the house and when he refused, she made a call to police. It is an admitted fact that shared household is joint property of the applicant and respondent. As the respondent is also co-owner of the shared household, he has also right to reside in the same. If respondent is not allowed to reside in the shared household, then it would cast financial burden on the respondent. Therefore, the court has to balance the right of the respondent to reside in the house [of which he is co-owner] and right to life of the

applicant and his daughter and their right to reside in shared household peacefully and with safety. It is duty of the court to ensure the safety of the applicant who is an aggrieved person. Therefore, respondent is permitted to reside in shared household subject to following conditions:

- (i) That the respondent shall not commit any act of physical violence against the applicant and her daughter.
- (ii) Before entering the shared household, the respondent shall execute personal bond in the sum of Rs.50,000/- with two sureties giving therein undertaking that he shall not commit any act of physical violence [including verbal violence by way of abuse etc.] against the applicant and her daughter in future.

As the applicant has produced material which support her allegations, Protection Officer is directed to visit the shared household of the applicant every fortnight in order to inquire about the compliance of aforementioned direction by the respondent and to submit her report in the court.

(iii) **Direction for payment of EMI of shared household:**

The applicant has sought direction for the respondent to pay the EMI of the shared household. However, the necessary details like amount of EMI, how many installments have been paid and how many are outstanding, who has been paying EMI earlier and who made the down payment of shared household have not been disclosed. In the absence of all these details, this court does not consider it appropriate

to pass any order on the aspect of payment of EMI of the shared household.

(iv) **Interim Maintenance:** The applicant has claimed interim maintenance of Rs.50,000/- per month. It is an admitted fact that the applicant is a teacher by profession. Both the parties have filed their respective income and expenditure affidavits. The applicant has disclosed her income and expenditure as Rs.35,000/- and Rs.40,000/- respectively. According to applicant, the respondent is earning Rs.2,00,000/- per month. On the contrary, the respondent has contended that he is unemployed as he has been terminated w.e.f 30.09.2020 by his employer. However, he has not disclosed about the salary given by his employer before the termination of his services. However, he has mentioned that he has been residing on rent and has been paying Rs.16,000/- as rent. There is no specific denial by the respondent that before his termination from services, he was not getting Rs.2,00,000/- per month. Even in the termination letter, it has not been mentioned that he has been terminated due to any discrepancy/shortcoming in his performance. The respondent has also contended that he used to give expensive gifts to applicant. Therefore, in view of these facts, this court is of the considered opinion that with sincere efforts, respondent can find job of same level in reasonable period of time. As applicant is earning salary which is sufficient for her maintenance, she is not entitled to maintenance from respondent.

As far as maintenance and expenditure for upbringing of daughter of applicant and respondent is concerned, this court is of view that it is the prime responsibility of father to maintain his children. But in the present case, as applicant is an earning woman, she can share this responsibility well. Sharing of responsibility of maintenance of child does not absolve the liability of respondent to maintain her daughter. So, considering all the facts, income and status of both the parties, the respondent is directed to pay Rs. 15,000/- per month to the applicant for maintenance of their daughter from the date of this order. The application stands disposed of. Nothing observed herein shall have bearing on the merits of the case.

Pronounced in open Court:

Dated:-04.11.2020

(Sumitra Kadian)

Judicial Magistrate Ist Class,

UID Code No.:HR0369

Gurugram

Note: Each page of this order has been checked and signed by me

(Sumitra Kadian)

Judicial Magistrate Ist Class,

UID Code No. HR 0369

Gurugram.

Typed By: Parmila