

COMMON ORDER BELOW EXH.54 & 55 IN CRI. M.A. NO. 59/2016
[Mohini Jagtap vs. Rohit Jagtap & ors.]
CNR No.:-MHPU16-000301-2016

1. The present applications are moved by the respondent to cancel and nullify interim order of maintenance at Exh. 14 which was passed in favour of applicant on 03/12/2016.

2. According to the respondent, the applicant has hidden her income source and obtained interim maintenance order on 03/11/2016. The applicant moved an application at **Exh.14** for interim maintenance. At that time, she was working with EXL Limited, Cyber City, Tower No.1, Magarpatta city, Hadapsar, Pune. In the said application, it was contended that the applicant has no source of income to maintain herself. Thereafter, the applicant has filed her Examination-in-chief affidavit at **Exh.18** wherein again the applicant has reiterated the same statement that she was not working and have no income source and during her cross-examination, she admitted that she joined EXL Limited in the month of August-2016 as a Customer Care Executive and at the beginning she was getting salary of Rs. 8,000/- per month and she left her job in the month of March 2018. Therefore, she has obtained the order of interim maintenance by playing fraud. Hence, he prayed to declare order passed below **Exh.40** as a nullity.

3. The applicant filed say at **Exh.59** and strongly opposed the applications on the ground that the respondent had filed Cri. Revision Application before the Hon'ble Sessions Court, Baramati to challenge interim maintenance order at **Exh.14** which was dismissed by the Hon'ble Court. Further he contended that in the cross-examination of applicant, she admitted

that she is presently not working in the said company since 03/04/2018. Therefore, presently she has no source of income. To granting or rejecting interim maintenance application is not solely depends upon earning capacity of applicant. Hence, she requested to reject the said applications.

Submissions :-

4. The Ld. counsel for the respondent Mr. Bhushan Kulkarni submitted that the Applicant herein had filed the application for interim maintenance, she was working and drawing salary of Rs. 8,000/- per month and still made a false statement before this Hon'ble Court that she does not have any source of income and therefore, is entitled for interim maintenance. That this Hon'ble Court as well, believing on the statement of the Applicant, granted interim maintenance of Rs. 4,000/- per month. That lying on oath to extract favourable orders from this Hon'ble Court is the offence of perjury as contemplated under Section 191 and punishable under Section 195 of the Indian Penal Code. Further he submitted that it is the bounded duty of the court to uphold truth and do justice. Every litigant is expected to state truth before the Court whether it is pleading, affidavit or evidence. A litigant who attempt to pollute the stream of justice or who touches the pure foundation of justice with tainted hands, is not entitled any relief, interim or final.

5. The Ld. Counsel for the respondent relied upon the following Judgments :-

- 1] *A. Shanmugam Vs. Ariya Kshatriya Rajakula Vamsathu Madalaya Nadhavana Paripalanai Sangam, 2012(0) AIR (SC) 2010.*
- 2] *Dalip Singh Vs. State of U.P. and Ors. 2010(2) SCC 114*
- 3] *Fullerton India Vs. A Singh, CS No. 993 of 2017*

4] *Harish Milani, Applicant, Union of India Vs.Mr. Haresh Milani and Anr. Civil Application No. 2939 of 2017*

6. Per contra, the Ld. counsel for the applicant Mr. Vishal Ghavale submitted that even if applicant was gainfully employed at the time of filing of this interim maintenance application then also the application filed by respondent u/s. 44 of Indian Evidence Act is not applicable to the present application. The applicant did not commit fraud for obtaining interim maintenance allowance as claimed by respondent. That the respondent deserted applicant without any reasonable cause from the last three years. Since then she is totally depending on her father for food and shelter. Further he submitted that the Domestic Act is essentially remedial statute and it is settled law that remedial statute needs to be interpreted liberally to promote the benefit object behind it. Therefore, the Court has power to adopt its own procedure as per Section 23 to modify or alter order for the benefit of victim.

7. He relied upon the following Judgments :-

1] *Smt. Asha Anil Deshmukh vs. Anil Mahadeorao Deshmukh & anr. 1996 Cr.L.J. 2751.*

8. From the rival contentions as emerged from the application, say, as well as arguments of both parties, following points arise for the determination of this Court :-

POINTS

FINDINGS

1. Whether the interim order passed can be revoked on the ground that the applicant hide her income source ?

--Yes.

2 What Order?

Applications are partly allowed.

REASONS

AS TO POINT NOS. 1 & 2 :-

9. Before discussing further, I will have to consider brief fact of the proceeding of the case. The present case is instituted by the applicant u/s.12,13,17,18, 20 and 22 of the Protection of Women from Domestic Violence Act, 2005 (Herein after referred as " **D.V. Act** " for brevity) praying for protection order, monetary relief, custody order, residence order, compensation order in which interim application **Exh.14** was filed for interim maintenance on 03/11/2016. In the said interim application, the applicant contended that she has no source of income to maintain herself. Thereafter, the said application was allowed on 03/12/2016 on the ground that " *The applicant has shown prima facie respondent has committed domestic violence against applicant and respondent is having sufficient source of income whereas there is no documentary record in respect of applicant's income* ". Vide order passed below **Exh.14**, this Court directed to respondent to pay interim monetary relief in the form of maintenance of Rs.4,000/- from 03/11/2016.

10. Later on, the applicant filed her Examination-in-chief affidavit on 17/01/2017 at **Exh.18**. Thereafter, the applicant was cross-examined by the respondent and during her cross-examination she admitted that she joined EXL Limited in the month of August-2016 as a Customer Care Executive and at the beginning she was getting salary of Rs. 8,000/- per month and she left her job in the month of March 2018. She also admitted that as per agreement at **Exh.50**, the company agreed to pay the salary of Rs. 1,15,000/- per year to her.

11. Thereafter, the present application moved by the respondent to declare nullify interim order or cancel interim order of maintenance on the ground that the applicant has hidden income source and obtain order by playing fraud.

12. Now the question is before me that as to Whether the interim order passed can be revoked on the ground that the applicant hide her income source ?

13. No doubt, the Domestic Violence Act is essentially remedial statute. The Act was enacted to provide for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto. This is a special law focused on victims and giving them relief from domestic violence. The Magistrate can order many different measures under this law in order to ensure women protection and well-being e.g- a protection order, monetary relief, custody order, residence order, a compensation order.

14. The Section 23 of the D.V. Act empowers the Magistrate to grant an interim and ex parte orders in any proceeding under the Act, especially proceeding relating to Section 18 to 22 of the Act. However, before passing such interim order, the Magistrate on the basis of some material before him either on the basis of the affidavit filed or on the basis of the averments made in the applications supported by an affidavit will have to first come to the conclusion that from the facts stated in her application, there is prima facie evidence of domestic violence having been committed on the aggrieved person.

Without coming to this finding, no order whether an interim order or a final order can be passed.

15. Plainly reading section 23, it appears that, this section does not speak that if the aggrieved person was gainfully employed that would not dis-entitle her from claiming interim maintenance. Employment of the aggrieved person can not become bar to claim interim maintenance. Therefore, even employed person can also entitled relief of interim maintenance. I am of the view that the object of considering income source of both parties is only to determine quantum of maintenance amount. As per sec.23 (2) of the Act, in order to obtain interim relief, an application prima facie discloses that the respondent is committing or has committing an act of domestic violence or that there is likelihood may commit an act of domestic violence is sufficient.

16. On perused of evidence of applicant at Exh. 18, it appears that the applicant has hidden the truth that she was working in a company and getting salary. As already stated that even employed aggrieved person can claim maintenance under this Act unlike u/s. 125 of the Cr. P. C but at the same time the law imposed heavy duty on the parties to state truth before the court. The law is not permitted to any one to obtain any kind of relief by playing fraud. In the present matter the applicant would be entitled interim relief if she pleaded that she was working and getting salary but she dishonestly intentionally hide her income source in order to get more maintenance amount. Therefore, it prima facie appears that the plaintiff has obtained interim maintenance order by playing fraud. It is well settled that the law cant protect wrongdoer who come with tainted hands.

17. I have gone through the case laws submitted on behalf respondent. In case of *A. Shanmugam Vs. Ariya Kshatriya Rajakula Vamsathu Madalaya Nadhavana Paripalanai Sangam, 2012(0) AIR (SC) 2010*, the Hon'ble Supreme Court held that pleading should be truthful and frivolous pleadings, false and irrelevant pleas and documents suppression of facts etc. Cost of the Court heavily in terms of time and public money besides unnecessary keeping the needy waiting for justice. In case of *Dalip Singh Vs. State of U.P. and Ors. (2009)*, the Hon'ble Supreme Court observed that a litigant who attempts to pollute the stream of justice or who touches the pure foundation of justice with tainted hands is not entitled to any relief, interim or final.

18. In the present matter, the applicant has hidden income source while claiming interim relief. Therefore, it appears that the applicant has obtained interim relief by playing fraud. Hence, order of interim application needs to be revoked. I find substance in the submission made by the Ld. counsel for the respondent that every litigant is expected to state truth before the Court whether it is pleading, affidavit or evidence and a litigant who attempt to pollute the stream of justice or who touches the pure foundation of justice with tainted hands, is not entitled any relief, interim or final. The Section 25(2) of the Act empowered to Magistrate to alter, modify or revoke of any order made under this Act, if any change in circumstances shown by parties. The respondent has brought on record income source of applicant which is relevant for granting interim relief. It is also brought on record the applicant has hidden her income source while claiming interim relief. Hence, interim order at Exh. 14 needs to be revoked. However, merely because the interim relief at Exh. 14 revoke, this shall not come in the way of the applicant filling a fresh application seeking for any interim relief on new ground.

19. In view of the above discussion I answer to the point No. 1 in the affirmative and in answer to point No.2, I pass following order :-

ORDER

1. The applications at **Exh. 54 and 55** are partly allowed.
2. The order passed below **Exh.14** is hereby revoked vide Sec. 25 of the Domestic Violence Act.
3. Recovery warrant stands cancelled.
4. If any maintenance amount paid by the respondent to the applicant be refunded to the respondent within two months from this order.

sd/-

(S. P. Lankeshwar)
Judicial Magistrate First Class,
Baramati.

Date:- 21/08/2018

I affirms that the contents of this P.D.F. file order are same word for word as per original order.

Name of Clerk : D.D. Bhise, Clerk

Court Name : S. P. Lankeshwar, Judicial Magistrate First Class,
Baramati.

Date : 21/08/2018

Order signed by
presiding officer on :21/08/2018

Order uploaded on : 31/08/2018