

-: 1 :- *Vikas Sharma v. Monica Parashar*
CA No: 440381/2016

**IN THE COURT OF SHRI HARISH DUDANI
SPECIAL JUDGE, (PC ACT) (CBI)-1
DISTRICT COURTS(SW), DWARKA, NEW DELHI.**

In the matter of :-

CA No. : 440381/2016

Vikas Sharma

S/o Sh. Prem Parkash
R/o : H. No. 1168 DDA Flat Type-2
Gulabi Bagh, Delhi-110007

..... **Appellant**

VERSUS

Smt. Monica Parashar

W/o Sh. Vikas Sharma
D/o Sh. Naresh Parashar
R/o A-62, Shyam Vihar,
Phase-I, Najafgarh,
New Delhi.

..... **Respondent**

CA No.	440381/2016
Date of Institution	29.10.2015
Reserved for orders on	16.09.2016
Judgment announced on	30.09.2016

JUDGMENT

1. This appeal is directed against order dated **28.09.2015** passed by Ld. MM-01/Mahila Court/

South-West/Dwarka Courts/New Delhi whereby the **application** under Section **25 (2)** of the **DV Act** filed by the appellant was **dismissed**. Briefly stated relevant facts for disposal of the appeal are as under :-

2. The appellant has filed the above-noted appeal stating therein that the respondent has filed an application under **Section 12** of the Protection of Women from Domestic Violence Act 2005 (*hereinafter called as "D.V. Act"*) against the appellant, his parents and sisters seeking various reliefs. The notice of the application under Section 12 of D.V. Act was served on respondents and the respondents have filed the written statement and are contesting the same. The appellant and the respondent did not file the detailed affidavit of income till 18.02.2014 and on 18.02.2014 Ld. Trial Court was pleased to pass interim order of maintenance @ Rs. 5,000/- per month for the female twin children of respondent but the appellant feeling aggrieved by the said order filed an appeal bearing CA no.09/14 which was assigned to the Court of Sh. Ashutosh Kumar, the then Ld. ASJ wherein the appellant under pressure of his counsel admitted to comply with order dated 18.02.2014

and the said appeal was disposed of. The appellant and respondent were again directed on 02.05.2014 to file detailed affidavit of their income. Thereafter, respondent filed her detailed affidavit of income on 22.07.2014 and appellant filed his detailed affidavit of income on 03.09.2014 and the case was fixed for arguments on interim maintenance but the Ld. MM was on leave on 03.11.2014, 13.01.2015 and 28.02.2015 and the matter was again fixed for arguments on interim maintenance on 10.04.2015. On **10.04.2015**, Ld. MM decided the application for interim maintenance under **Section 23** of DV Act without hearing the arguments of defendant (appellant herein) and he was directed to pay the interim maintenance of Rs.3000/- per month to the complainant (respondent herein) and Rs. 2000/- each per month for twin female children of complainant (respondent herein). The appellant was also directed to clear arrears of maintenance within three months and earlier order dated 18.02.2014 was vacated in view of this order. The appellant feeling aggrieved from order dated 10.04.2015 filed an application under Section 25 (2) of DV Act for revocation of the order dated 10.04.2015 but the same was dismissed by the impugned order dated 28.09.2015.

3. The appellant has challenged the order dated 28.09.2015 of Ld.M.M. stating that at the time of passing the impugned order, the Ld. Trial Court has not considered that the respondent is B.ED, B.EL.ED and had been working as Guest Teacher at the time of filing application under Section 12 of DV Act, but this fact was not disclosed in the application. It is stated that the Ld.Trial Court also failed to consider that respondent is highly qualified and is capable of doing job as a teacher and the application for interim maintenance was decided by trial court without hearing the arguments of the appellant and as such the order of the Trial Court dated 10.04.2015 is an ex-parte order. The appellant has further pleaded that the trial court has wrongly assessed the income of the appellant as Rs.15000/- per month and has failed to consider the facts as pleaded in the income affidavit of the appellant that he was earning Rs.4500/- per month. It is further stated that the trial court has failed to consider the contents of the affidavit filed by the respondent regarding admission of gainful employment.

4. I have heard the Ld. Counsels for the

parties and perused the record.

5. The appeal arises out of the proceedings under Section 12 of D.V Act filed by the applicant (respondent herein) wherein she had stated that her marriage with R1 (appellant herein) was solemnized on 20.11.2011 as per Hindu Rites and Customs at Delhi and the family of applicant (respondent herein) had given lot of gifts at the time of marriage and there were demands of dowry from the family of appellant and after solemnization of marriage, the applicant (respondent herein) was subjected to cruelty for demand of money. It was further stated that in the month of February 2012, the applicant/respondent herein had conceived pregnancy but the same was lost. It was further stated that during the course of stay at matrimonial home from November 2011 to March 2012, the applicant(respondent herein) was subjected to mental and physical torture by the respondent (appellant herein). In the application u/s 12 of DV Act, the applicant (respondent herein) has prayed for protection orders, residence orders Monetary Relief under Section 20 of D.V Act and Compensation Order.

6. By this appeal, the appellant has

challenged the impugned order dated **28.09.2015** passed by Ld. MM-01, Mahila Court, SW, Dwarka Court, New Delhi whereby the application under **section 25(2)** of the D.V. Act filed by the appellant for revocation of order dated 10.04.2015, was dismissed.

7. Vide order dated **10.04.2015**, Ld. MM-01, Mahila Court has been pleased to order the respondent No.1(appellant herein) to pay interim maintenance in the sum of Rs.3,000/- per month to the complainant(respondent herein) and Rs.2000/- each per month to the complainant for the maintenance of both the children i.e. **totaling** to Rs.**7,000/-** per month and the amount of interim maintenance to the complainant(respondent herein) was to be paid from the date of filing of the application i.e. 04.04.2013 and interim maintenance to the children from the date of birth i.e. 26.09.2013, till final disposal of the main petition or till further orders.
8. The main thrust of the arguments of the Ld. Counsel for the appellant is that the impugned order dated 28.09.2015 has been passed in an arbitrary manner as the court has not considered

the fact that the complainant(respondent herein) is B.Ed, B.El.Ed and has been working as a guest teacher at the time of filing the application under section 12 of D.V. Act and the order dated 10.04.2015 fixing the interim maintenance is an ex parte order as the same was passed without hearing the arguments of the appellant and the income of the appellant has been wrongly assessed as Rs.15,000/- per month. It is further contended on behalf of the appellant that the Ld. trial court has not gone through the contents of the affidavit of income dated 22.7.2014 filed by the complainant(respondent herein) wherein the complainant has stated that the complainant is in gainful employment. Ld. Counsel for the appellant has further contended that D.V. Act does not provide any provision for passing the order of payment of interim maintenance and the application under section 12 of the D.V. Act, filed by the complainant(respondent herein) was not in conformity with the rules and the same was defective in nature.

- 9.** The appeal has been resisted by the respondent contending that this appeal has been directed against the order dated 28.09.2015

whereby an application under section 25(2) of the D.V. Act filed by the appellant was dismissed and section 25(2) of the D.V. Act provides provision for passing of the orders if there is any change in the circumstances requiring modification of any previous order made under this Act however, in the application under section 25(2) of the D.V. Act, the appellant had not stated any change in the circumstances consequent to passing of order dated 10.04.2015 and under the garb of present appeal, the appellant has challenged the order dated 10.04.2015 whereby the interim maintenance was fixed and by way of present appeal, the appellant is not entitled to agitate the order dated 10.04.2015. It has been further contended on behalf of the respondent that there is no force in the contention of the appellant that mere filing the application under section 25(2) D.V. Act will fulfill all the requirements of the said sub-section and moreover, the order dated 10.04.2015 cannot be agitated by way of this appeal and further, there is no force in the contention of the appellant that the D.V. Act does not provide for any provision for passing the order for interim maintenance.

10. The complainant(respondent herein) had

filed the application under section 12 of the Protection of Women from Domestic Violence Act, 2005 read with sections 18, 19, 20 & 22 of the D.V. Act before the Ld. trial court against her husband- Vikas Sharma, Respondent No.1(appellant herein), her mother-in-law Smt. Sumitra(respondent No.2), her father-in-law Shri Prem Parkash (respondent No. 3), her sister-in-law Ms. Preeti (respondent No. 4) praying for protection orders, residence orders and monetary relief under section 20 and compensation order. Notice of the application under section 12 read with sections 18, 19, 20, 21 & 22 of the D. V. Act was issued to the respondents and on 09.05.2013 the respondents appeared in person alongwith Shri Hansraj Advocate. Thereafter, the respondents filed written statement on 04.10.2013. On 10.04.2015, respondent No.3, who is father of respondent No.1, was present in person before the Ld. MM-01, Mahila Court and the Ld. trial court was pleased to observe that the case was pending for interim arguments since long time and respondent No.1(appellant herein) did not appear despite repeated calls since morning and the Ld. trial court, on the basis of affidavit of income of complainant (respondent herein) and respondent No.1 (appellant herein) proceeded to pass the order of interim

maintenance and thereafter, the matter was fixed for CE for 15.07.2015.

11. The plea of the appellant is that order dated 10.04.2015 is an ex parte order and no opportunity was given to the respondent No.1(appellant herein) to submit his arguments. It is to be noted that after service of notice of application under section 12 of D. V. Act, the respondent No.1(appellant herein) had been getting due opportunities for appearing before the Ld. Trial court alongwith his counsel. As per order dated 28.02.2015, respondent No.1 (appellant herein) was present alongwith his counsel before the trial court when the matter was ordered to be listed for arguments on interim maintenance on 10.04.2015. The matter was listed for arguments on interim maintenance on 10.04.2015 and on 10.04.2015, respondent No.3, who is father of the respondent No.1(appellant herein) was present and other respondents were not present and respondent No.1 & his counsel did not prefer to appear before the court despite repeated calls, as is evident from the order dated 10.04.2015 of Ld. MM-01, Mahila Court and in the circumstances, Ld. MM was constrained to proceed with the matter and to pass the orders

for fixing the interim maintenance. Proceedings of the trial court show that the appellant was well aware that the matter is to be argued on interim maintenance on 10.04.2015 but he intentionally did not appear before trial court to make submissions.

12. It is to be noted that this appeal is not directed against the order dated **10.04.2015** whereby the order for fixing of interim maintenance was passed. In case, the respondent No.1(appellant herein) was aggrieved by the order dated 10.04.2015 then nothing prevented him from agitating the same by filing an appropriate appeal within the period of limitation, as prescribed, for challenging the said order but respondent No.1(appellant herein) did not prefer to adopt the said course and after the period of limitation for filing appeal against the order dated 10.04.2015 had lapsed, the respondent No.1(appellant herein) is trying to agitate the same by way of present appeal, which is against the order dated 28.09.2015. By way of this appeal, the appellant has tried to achieve modification of order dated 10.04.2015 by which interim maintenance was fixed, by raising various arguments regarding employment of the complainant (respondent

herein), etc. By way of filing the present appeal, the respondent No.1(appellant herein) has tried to indirectly achieve the modification of order 10.04.2015 which he could have got by challenging the said order by having re-course to appropriate legal remedies.

13. The present appeal is not directed against the order dated 10.04.2015 hence, it is not open for the appellant to plead that order dated 10.04.2015 was an ex-parte order. However, there is **no force** in this contention also of the appellant that order dated **10.04.2015 is an ex-parte** order because the respondent No.1 (appellant herein) was getting due opportunities of appearing before the trial court alongwith his counsel and on 10.04.2015 the appellant himself did not prefer to appear before the court. Moreover, all the respondents in the trial court were being represented by the same counsel and respondent No. 3 was present before the court in order to take care of interest of the respondent No.1(appellant herein). The order dated 10.04.2015 cannot be said an ex-parte order as the appellant was well aware about the date of hearing of 10.04.2015 and he was duly represented by respondent No.3 (father of the respondent

No.1/appellant) and appellant has nowhere pleaded that he was prevented by any sufficient cause from appearing before the trial court. Moreover, if plea of the appellant that order dated 10.04.2015 is an ex-parte order, is accepted then the same will create an atmosphere of uncertainty as then the parties would avoid to appear on the dates when applications for interim maintenance are fixed for arguments knowing well that this order will be treated as ex parte order and after passing of the order on the said application, they will subsequently challenge the said order, pleading the same to be an ex-parte order.

14. Another contention of the appellant is that the application under section 12 D.V. Act and supporting affidavit of the same are not as per the rules.

15. In exercise of powers conferred under **section 37 of D. V. Act**, the Central Government has been pleased to frame the Protection of Women from Domestic Violences Rules, 2006 (hereinafter referred to as D. V. Rules, 2006). **Section 37(1)** of the D. V. Act provides that the Central Government may make rules for carrying out the provisions of

this Act. **Section 37(2)(h)** of the D.V. Act provides the form in which an application under sub-section (1) of section 12 seeking reliefs under this Act may be made and the particulars which such application shall contain under sub section(3) of that section. **Form II** of the Protection of Women from Domestic Violence Rules, 2006 provides the form for application to the Magistrate under section 12 of the D. V. Act.

16. **Section 37(2)(l)** of the D.V. Act provides the Form in which an affidavit may be filed by the aggrieved person under sub-section (2) of Section 23. **Form III** of the Protection of Women from Domestic Violence Rules, 2006 provides the form for affidavit under **section 23(2)** of the D. V. Act.

17. As per trial court record, the Respondent No.1(appellant herein) had appeared before the trial court in response to notice of application under section 12 of DV Act on 09.05.2013 and the complainant(respondent herein) had filed an application under section 23 of D. V. Act for passing of orders for interim maintenance on 15.07.2013. The application dated 15.07.2013 under section 23 D. V. Act was filed by the complainant (responded

herein) for passing orders for interim maintenance after due appearance of the respondent No.1 (appellant herein). Notice of the said application under section 23 of the D. V. Act was duly served on the respondent No.1(appellant herein) and respondent No.1 (appellant herein) filed reply to the said application under section 23 of the D. V. Act on 03.09.2014 i.e. before passing orders on the said application and in the circumstances, it cannot be said that any ex-parte order, as provided by section 23 (2) of the D. V. Act, was passed on the application under section 23 of the D. V. Act dated 15.07.2013.

18. It is to be noted that rules are framed to further the purpose and intent of the Act. The preamble of the D. V. Act provides that it is an Act to provide for more effective protection of the rights of women guaranteed under the Constitution who are victim of violence of any kind occurring within the family and for matters connected therewith or incidental thereto.

19. A perusal of **Form II** of the D. V. Rules, 2006, which is the format for Application under section 12 D. V. Act and **Form III**, which is the

format of Affidavit under section 23(2) of the D.V. Act, shows that the same provide for furnishing details of the information required for passing appropriate orders under section 18, 19, 20, 21, 22 & 23 and the details of previous litigations.

20. In *Sangram Singh v. Election Tribunal, Kotah, AIR 1955 SC 425*, it has been held:

It is procedure, something designed to facilitate justice and further its ends: not a penal enactment for punishment and penalties; not a thing designed to trip people up."

21. In *Salem Advocate Bar Association, Tamil Nadu v. Union of India, AIR 2005 Supreme Court 3353*, Hon'ble Supreme Court was pleased to hold:

21
..... *The rules of procedure are made to advance the cause of justice and not to defeat it. Construction of the rule or procedure which promotes justice and prevents miscarriage has to be preferred. The rules or procedure are hand-maid of justice and not its mistress. In the present context, the strict interpretation would defeat justice.*

22. As per aforesaid decision of Hon'ble Supreme Court in *Salem Advocate Bar Association, Tamil Nadu v. Union of India (supra)*, the rules of procedure are hand-maid of justice and are meant for advancement of course of justice and not to deny relief to the parties on mere technicalities. As per trial court record, the complainant(respondent herein) has filed her income affidavit which contains all necessary information as required by the formats appended to the Domestic Violence Rules, 2006 and the said affidavit has been furnished as per format approved by Hon'ble High Court of Delhi in the case of **Puneet Kaur v. Inderjeet Sahni 2011 (183) DLT 403**. In *Puneet Kaur v. Inderjeet Sahni(supra)*, Hon'ble High Court of Delhi has been pleased to give consideration to all the circumstances and the facts which are required to be disclosed on affidavit for arriving at just conclusion on the application for interim maintenance. Hence, in these circumstances also it is not open for appellant to plead that format of affidavit of the D.V. Act has not been followed.

23. Although, the present appeal is directed against the impugned order dated 28.09.2015

whereby the application under section 25(2) of the D. V. Act of the respondent No.1 (appellant herein) was dismissed by the Ld. Trial Court but appellant also pleaded that Domestic Violence Act does not contemplate payment of any amount by way of interim maintenance.

24. Section 20(1)(d) of the D.V. Act provides that the Magistrate may direct the respondent to pay monetary relief for maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force. **Section 20(2)** of the D.V. Act provides that the monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed. **Section 20 (3)** of the D. V. Act provides that the Magistrate shall have the power to order an appropriate lump sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require. **Section 23(1)** of the D.V. Act provides that in any proceeding under this Act the Magistrate may pass

such interim orders as he deems just and proper.

25. In the circumstances, it is not open for the appellant to plead that under the provisions of the D. V. Act, Magistrate is not empowered to pass orders for interim maintenance.

26. The other grievance of the appellant is that Ld. MM-01, Mahila Court has dismissed the application under section 25(2) of the D. V. Act in an arbitrary manner vide order dated 28.09.2015. The contention of the Ld. Counsel for the respondent is that for passing an order on the application under section 25(2) of the D. V. Act, the appellant has to satisfy that there has been a change in the circumstances which requires modification of the previous order but in the application under section 25(2) of the D. V. Act filed by the respondent No.1(appellant herein), it was nowhere pleaded that there has been a change in the circumstances after passing of the previous order.

27. Ld. counsel for the appellant has contended that even filing of application under section 25(2) of the D.V. Act, amounts to change in the circumstances and has relied on a decision in

case of **Alexander Sambath Abner v. Miron Lada & Ors.** 2010(2) JCC 1113 (Madras High Court), wherein it was held that :

"22.Therefore, an exparte order passed under Section 23(2) could be altered, modified or revoked by the same Court on an application from the aggrieved person under Section 25(2) of the said Act."

28. **Section 25(2)** of the D. V. Act reads as:

"25. Duration and alteration of orders.-

(2) if the Magistrate, on receipt of an application from the aggrieved person or the respondent, is satisfied that there is a change in the circumstances requiring alteration, modification or revocation of any order made under this Act, he may, for reasons to be recorded in writing pass such order, as he may deem appropriate."

29. In **Alexander Sambath Abner v. Miron Lada & Ors. (Supra)**, it was held :

"23. It is true that this Act is for the benefit of women, at the same time, it should not be causing trouble or injustice to men. The learned Magistrate must have been careful while granting exparte order under Section 23 of the Act. Only after the Magistrate

satisfying himself with great care and caution must pass ex parte interim orders only to the extent necessary".

30. It has been held in the aforesaid discussion that the order dated 10.04.2015 is not an ex-parte order. Hence, it cannot be said that the order dated 10.04.2015 could have been altered by the same court merely on an application under section 25(2) of the D. V. Act in terms of decision in *Alexander Sambath Abner v. Miron Lada & Ors.* (supra).

31. In para 21 of ***Alexander Sambath Abner v. Miron Lada & Ors.(Supra)***, the decision in *Sulochana v. Kuttappan and Others* 2007 (3) JCC 2076 has been referred wherein it was held :

"23.....
.....At the same time for invoking provision under Section 25(2), there must be a change in the circumstances after the order being passed."

32. I find **no force** in the contention of the appellant that merely filing of application under section 25 (2) of the D. V. Act would amount to a

change in the circumstances. The phrase “change in circumstances” would require that the circumstances on the basis of which any previous order was passed under this Act have undergone alteration, modification or have ceased to exist and warrant interference of the court. Hence, the contention of the appellant that merely filing an application under section 25(2) of the D. V. Act would amount to change in circumstances cannot be accepted. Moreover, if such arguments of the appellant is accepted then parties will take advantage of such interpretation and would intentionally stay away from court on a day when any order is to be passed so that after passing of the order, they would file the application under section 25(2) of the D. V. Act and would plead that mere filing of an application under section 25(2) of the D.V. Act is a change in the circumstances thereby warranting passing of orders under section 25(2) of the D. V. Act.

33. A perusal of the application under section 25(2) of the D. V. Act filed by the appellant before the trial court shows that in the said application, the appellant has nowhere mentioned that consequent to the passing of the order by which interim

maintenance has been fixed, there has been any change in the circumstances which warranted filing the application under section 25(2) of the D. V. Act for modification of the previous order dated 10.04.2015.

34. Another plea which has been raised by the appellant is that vide impugned order dated 28.09.2015 the defence of the appellant was struck off and on that account the appellant will be prejudiced and will not be able to effectively participate in the proceedings to prove his defence. In the order dated 28.09.2015, Ld. MM-01 Mahila Court has been pleased to observe that the said court had directed the respondent No.1 to clear all the arrears of maintenance by 03.09.2014 and it was further made clear that in the event of default, his defence would be struck off and a cost of Rs.1000/- was also imposed and over one year has lapsed since that day and arrears & cost of Rs.1000/- remained unpaid and the trial court proceeded to pass order thereby striking off the defence of the respondent.

35. In ***Rajeev Preenja v. Sarika & Ors., 159 (2009) DLT 616***, Hon'ble High Court has been

pleased to hold:

4. *On the first date of hearing of Crl. M. C. No. 1859 of 2008 on 28th May, 2008 this court had directed that "the petitioner shall continue to pay interim maintenance as awarded by the trial Court" during the pendency of this petition. However, despite two adjournments since then, the Petitioner has not complied with this direction. As a result despite, succeeding in her petition for interim maintenance before the learned MM and in the revision petition by the husband before the learned ASJ, Respondents 1 and 2 date have till date not received any amount whatsoever from the Petitioner. Further, till date there has never been a stay of the order of the learned MM. The reason offered for non-compliance is the petitioner's financial incapacity. This is the same ground urged before and rejected by the learned ASJ. Also, it is not as if the petitioner has made payment of a portion of the amount due to Respondents 1 and 2 and is willing to pay the balance in a reasonable time. It is a blunt refusal to make any payment whatsoever, even to the minor son. This conduct of the petitioner in making no attempt whatsoever to comply with this Court's direction is unacceptable and should disentitle the petitioner to relief. Nevertheless learned Counsel for the Petitioner has been heard at*

length on the merits of the case as well.

15. *The other phenomenon that requires to be discouraged is that a mere filing of a revision petition by a husband against an order granting interim maintenance to the wife and/or child is construed as an implied stay of that order. As a result the wife has to wait for an even longer period for the implementation of the order in her favour. The method that should be deployed to overcome this hurdle is for the revisional Court to insist that the husband's revision petition will not be entertained till such time the husband against whom the order of interim maintenance has been passed, deposits the entire arrears of interim maintenance up to date in terms of the said order of the learned MM in the Court of the learned ASJ. Otherwise the husband will be able to indefinitely postpone the implementation of the orders of interim maintenance by driving the wife from one Court to another without her receiving any payment whatsoever. This only compounds the agony of the wife and serves to defeat the interest of justice. This situation ought not to be allowed to continue if justice in the real sense should be done to an Indian wife who is in dire straits and unable to survive with her child for want of*

economic means of subsistence. Given the huge pendency of work in the Courts of the learned MM, an application under Section 125, Cr.PC is unable to be disposed of within a year. Even an order of interim maintenance is able to be passed only after a year.

16. *It is accordingly directed that when a revision petition is filed by husband in the court of learned ASJ against an order of interim maintenance passed by a learned MM in favour of the wife, the said revision petition will not be entertained by the learned ASJ till the entire amount of interim maintenance due under the order of the learned MM upto the date of filing of the revision petition is first deposited in the court of learned ASJ. The respondent wife and child, if any, should be permitted by the learned ASJ to withdraw the whole or part of the said sum, upon such terms and conditions as may be determined by the learned ASJ.*

36. The **Statement of objects & reasons** as appended with the Protection of Women from Domestic Violence Act, 2005 reads as under:

Domestic violence is undoubtedly a human rights issue and serious deterrent to development. The Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action (1995) have acknowledged this. The

United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) in its General Recommendation No. XII (1989) has recommended that State parties should act to protect women against violence of any kind especially that occurring within the family.

2. The phenomenon of domestic violence is widely prevalent but has remained largely invisible in the public domain. Presently, where a woman is subjected to cruelty by her husband or his relatives, it is an offence under section 498A of the Indian Penal Code. The civil law does not however address this phenomenon in its entirety.

3. It is, therefore, proposed to enact a law keeping in view the rights guaranteed under articles 14, 15 and 21 of the Constitution to provide for a remedy under the civil law which is intended to protect the woman from being victims of domestic violence and to prevent the occurrence of domestic violence in the society.

37. The statement of objects and reasons and the preamble of The Protection of Women from Domestic Violence Act, 2005 clearly lay down that this legislation has been enacted for women who are subjected to Domestic Violence and to **ameliorate**

their condition.

38. In *Navneet Arora Vs. Surender Kaur and Ors. (Supra)* it has been held :

“54. *There can be no quarrel that Protection of Women from Domestic Violence Act, 2005 is a social-welfare legislation enacted for the benefit and amelioration of women.*

55. *In the decision of the Supreme Court reported as 1981 0 APEXSOFT(S.C.) 199=(1982) 1 SCC 159 **Chinnamarkathian alias Muthu Gounder Vs. Ayyavoo alias Periana Counder**, it was observed that it is a well-settled canon of construction that in construing the provisions of such enactments, the Court should adopt that construction with advances, fulfills and furthers the object the Act rather than the one which would defeat the same and render the protection illusory.*

56. *Thus, it would be clearly impermissible to impose artifices and restrict the amplitude of protection made available to women under the said Act.”*

39. As per directions as contained in *Rajeev Preenja v. Sarika & Ors(supra)*, a person who fails to comply with the orders of the payment of interim maintenance is not entitled to any relief.

40. The impugned order dated 28.9.2015 of Ld. MM-01, Mahila Court (SW), clearly shows that Ld.MM-01 was constrained to pass the order thereby for **stricking off the defence** of the respondent no.1(appellant herein) as the responded No.1 (appellant herein) has **failed to comply** with the order of payment of interim maintenance amount for over a period of one year. The conduct of appellant in not complying with the orders of payment of interim maintenance is in violation of intent and purpose of the Protection of Women from Domestic Violence Act, 2005, which has been enacted as social welfare measure to ameliorate the conditions of women, who are subjected to domestic violence. However, in the substantial interest of justice, *the part of the **impugned order dated 28.9.2015** of Ld.MM-01, Mahila Court thereby **stricking off the defence** of Respondent No.1(appellant herein) is **recalled** subject to **payment of entire arrears of interim maintenance** by the appellant on or before **31.10.2016** before the trial court.* It is made clear that in case, the respondent No1(appellant herein) **fails to clear the arrears** of interim maintenance on or before 31.10.2016, the *impugned order*

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dated 28.09.2015 of Ld. MM-01, Mahila Court, thereby, striking off the defence of the respondent No.1(appellant herein) shall remain in force and the trial court shall dispose of the application under section 12 of the D.V. Act in accordance with law.

41. The appeal stands disposed of accordingly. TCR be sent back along with copy of this judgment.

Appeal file be consigned to **Record Room**.

*Announced in the open Court
today on 30.09.2016*

(HARISH DUDANI)
Special Judge(PC Act) CBI
Dwarka Courts, New Delhi