

**IN THE COURT OF THE METROPOLITAN MAGISTRATE  
(62<sup>nd</sup> COURT) DADAR, MUMBAI**

**C. C. No. : 6200100/DV/2018**

(CNR NO.: MHMM15-004597-2018)

**Sajida Begum Abdul Hakim**

...Applicant

V/s.

**Abdul Hakim Abdul Haq & ors.**

...Respondents

**ORDER BELOW EXH. NO. 13 A**

1. The applicant requested for interim order in the form of medical expenses as per Section 20 vide Section 23 of the Protection of Women From the Domestic Violence Act. (for the short "the Act")

2. Her contention, as it emerges from her applications, in short is as under;

She is married to respondent No. 1 on 17/05/2004. After marriage she had been to her marital house for cohabitation. There respondent No. 1 and his family members made her life miserable. They harassed her for one or other reason. Her parents were compelled to pay Rs. 2 lakh as dowry even after marriage. She has contended that due to harassment at the hands of respondents, she not only suffering mentally but also physically. Due to failure of kidneys, she requires dialysis at regular interval. But, she had no source of income. On the contrary, respondent No. 1 is engaged in scrap business. He earns in lakh of rupees per month, but he has not made any provision for her maintenance. She is compelled to reside her parents house. So, she

requested to allow her application and pass necessary order.

3. Respondent No. 1 resisted this application vide his reply dtd. 14/12/2021 (Exh. 13 B). He has denied all adverse allegations. As per his contention, he has never ill-treated the applicant. It is contended, since after divorce it is not his obligation to provide maintenance or to pay medical expenses as prayed by the applicant. He also contended that applicant can earn of her own. It was divorce by mutual consent and she has filed this application only to harass him. He also contended that his family members are dependent on him. He requested to reject this application.

4. The points for determination along with reasoned findings thereon are as under;

	<u>POINTS</u>	<u>FINDINGS</u>
1)	Whether the applicant prima facie proves, the respondents subjected her to the domestic violence?	Yes.
2)	Is the applicant entitled to get the relief, as sought?	Yes.

REASONS

5. Heard arguments of both sides at sufficient length and also gone through the written notes of the arguments filed by Ld. Advocate for the applicant. In the light of arguments record is thoroughly perused.

**Point No. 1**

6. It is settled position that in order to be entitled to any relief under the D. V. Act, applicant has to prima facie show that respondents have subjected her to domestic violence as contemplated under the D.V. Act. In this context applicant in her main application (Exh. 1) has elaborated in detail how she was harassed by respondent No. 1 and his family members. Some instances like compelling her to bring amount from her parents, negligence towards her health while she was pregnant and ultimately that negligence caused miscarriage of her pregnancy. All these instances are mentioned in her application. Her main application is filed on solemn affirmation.

7. Respondent has contended that applicant was not ready to reside with him and finally after negotiations they have decided to obtain divorce by mutual consent. Accordingly, on 01/11/2017 applicant had taken divorce in presence of witnesses. As per his contention, since after divorce it is not his obligation to make provision for maintenance and for medical expenses.

8. The main objection raised by the respondent is about the divorce. It is important to note that at this moment there is no document to support the contention of respondent that applicant has obtained divorce from him. Whatever he has contended about divorce appears vague statement. In para 27 of his written statement (Exh. 8) he has contended that father of applicant has taken away original *Khula deed* and its draft was with him but it is misplaced. This vague statement

without any document cannot be considered.

9. On one hand applicant has contended about subsistence of marriage and on other hand respondent No. 1 has contended about divorce. There is mere vague statement. It is not supported with the document. Therefore, at this initial stage it cannot be relied upon. From the contention of applicant about ill treatment at the hands of respondents, prima facie it appears that she was subjected to domestic violence. Therefore, point no. 1 is answer into affirmative.

**Point no. 2**

10. Applicant has requested for grant of Rs. 50,000/- towards medical expenses. It is contended that due to failure of her kidneys she requires dialysis at regular interval. She has produced various documents such as medical reports and prescriptions. She has also contended that she has no source of income. Presently she is residing at the mercy of her father. On the other hand, respondent is engaged in scrap business and earning Rs. 1 lakh per month. Therefore, she requested to allow present application.

11. Respondent has not only denied his earning @ 1,00,000/- per month but also denied his obligation. He contended that he collects scrap and hardly manage to earn for his livelihood. He also contended that his family members are dependent on him. As per his contention since applicant has obtained divorce it is not his obligation to make provision for her maintenance and medical expenses as claimed.

12. Ld. advocate for respondent argued that after divorce it is not the obligation of respondent to provide medical expenses. In this context he relied on judgment of Hon'ble High court in the case of **Sirajuddin Bagwan V/s Khatija Bagwan reported 1996 (3) BOM CR 756**. In this judgment it has been mentioned that the order of maintenance obtained by the wife can be valid and can be executed, but, however its execution cannot be indefinitely but only till the date of divorce.

13. In the light of ratio laid down in above said judgment when we consider the facts of present case it would notice that factum of divorce has yet not been proved in the case at hands. There is just vague contention which is not supported with document. At this juncture on this vague contention we cannot come to conclusion that applicant has obtained divorce that too when she herself has denied that fact.

14. For the sake of moment, it is assumed that there was such divorce even in that case also it is for the husband to make provision for the maintenance of divorce wife beyond the *iddat* period. But no such contention is there. In this context judgment of Hon'ble Apex Court in the case of **Daniel Latifi and Anr. v/s Union of India Writ Petition (Civil) 868/1986** can be referred here, in which it has been held that,

*1) a Muslim husband is liable to make reasonable and fair provision for the future of the divorced wife which obviously includes her maintenance as well. Such a reasonable and fair provision extending beyond the iddat period must be made by the husband within the iddat period in terms of Section 3 (1) (a) of the Divorce Act.*

*2) Liability of Muslim husband to his divorced wife arising under Section 3 (1) (a) of the Divorce Act to pay maintenance is not confined to iddat period.*

**15.** Further, in the case of **Shabana Bano V/s Imran Khan (2010) 1 SCC 666** Hon'ble Apex Court pleased to hold that,

*Even if a Muslim woman has been divorced, she would be entitled to claim maintenance from her husband under Section 125 of the Cr.P.C after the expiry of period of iddat as long as she does not remarry.*

**16.** From ratio laid down in above said judgment it can be said that even divorced wife is entitled to maintenance. It is true that present proceeding is not under Section 125 of the Cr.P.C but that ratio can be applied to present case since Section 20 of the D.V. Act relates to monetary relief including maintenance under Section 125 of the Cr.P.C.

**17.** Coming back to the contentions of parties. Documents produced by the applicant goes to show that applicant requires continuous medical treatment and it is not contention of respondent that she has source of earning. Till this date no maintenance has been granted to the applicant. It is part of record that she has withdrawn her interim application seeking maintenance. In such circumstances considering contention of both parties and admitted fact about business of respondent and medical documents of applicant, it would be just and proper to direct the respondent to pay Rs. 50,000/- towards medical expenses. Therefore, point No. 2 is answered accordingly and in the

result following order is passed;

**ORDER**

- (1) The application Exh. No. 13A is allowed.
- (2) Respondent No. 1 do pay an amount of Rs. 50,000/- (Rs. Fifty Thousand) to the applicant as medical expenses vide Section 20 of the D.V. Act.
- (3) Copy of the order be supplied to both parties free of cost.

Date: 18/10/2022.

(Suhas P. Bhosale)  
Metropolitan Magistrate,  
62<sup>nd</sup> Court, Dadar, Mumbai.

**CERTIFICATE**

I affirm that the contents of this P.D.F. file Order are same, word to word, as per original Order.

Name of the Stenographer : S. V. Pednekar

Court : 62<sup>nd</sup> Metropolitan Magistrate, Dadar, Mumbai

Date : 18/10/2022

Order signed by the  
presiding officer on : 18/10/2022

Order uploaded on : 21/10/2022