

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.12966 OF 2019

DIPALI SHAM KOLI LEKURWALE
VERSUS
SHAM ARJUN KOLI LEKURWALE

...

Advocate for the Petitioner : Shri Vibhute Vinod M.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 17th October, 2019

Per Court:

1 The petitioner/ wife is aggrieved by the order dated 03.09.2019 passed by the learned Family Court, Osmanabad by which, maintenance has been refused in Application No.A-9/2019 on the ground that the petitioner is already granted Rs.15,000/- in the proceeding under the Protection of Women from Domestic Violence Act, 2005. The husband of the petitioner draws a salary of about Rs.40,000/- per month and his net salary is about Rs.28,704/-.

2 The learned advocate for the petitioner has strenuously canvassed the eight grounds formulated in the memo of the petition. He submits that the wife is granted Rs.7000/- per month, she is also granted Rs.5000/- per month to take care of the elder son and Rs.3000/- to take care of the younger son. In all, she receives Rs.15,000/- per month in

comparison to the net salary of the husband being Rs.28704/-. It is further canvassed that there is no bar for granting maintenance in any number of proceedings filed by the wife. The husband is in arrears. He further adds that the proceeding under the Protection of Women from Domestic Violence Act, 2005 was filed in 2018 and the divorce proceeding was filed in 2019.

3 The Honourable Supreme Court has laid down the law in ***Kalyan Dey Chowdhury vs. Rita Dey Chowdhury Nee Nandy, (2017) 14 SCC 200***, that the dignity of the wife should be maintained by directing appropriate payment of maintenance amount. The 25% amount of the earnings of the husband should be granted as maintenance.

4 In the instant case, though the petitioner/ wife strenuously submits that the respondent/ husband, who is a teacher in the Nagar Panchayat school, has his own business, there was no material placed before the Family Court to indicate that he is independently operating any business.

5 Considering that the gross salary of the husband is said to be about Rs.40,000/- per month and the net salary is about Rs.28,704/-, it is apparent that the petitioner/ wife has been granted more than 35% of his salary by the learned Family Court in the DV case, which is more than the amount prescribed by the Honourable Supreme Court.

6 When this matter was being heard and this Court expressed

the above view, the petitioner was given an option as to whether, she wishes to withdraw this petition. The learned advocate for the petitioner sought a passover and later on submitted, on instructions, that the petitioner prays for an order on the merits of the matter.

7 In view of the above, this Writ Petition is dismissed.

kps

(RAVINDRA V. GHUGE, J.)