

referred to as 'DV Act") against respondent Nos.1 to 3 on 20.01.2021. The applicant had claimed relief of accommodation at Flat No.302, Royal Palace or in the alternative to provide accommodation at another premises on rental basis. She also claimed maintenance of Rs.50,000/- for her and 25,000/- each to applicant Nos.2 & 3. Protection was also sought from violence at the instance of respondent and cost of Rs.50,000/-. The applicant preferred application for interim relief. The respondents filed reply dated 08.02.2021. Learned J.M.F.C. partly allowed the application. The respondent No.1 was directed to pay interim maintenance of Rs.2,000/- per month to applicant No.1 and Rs.1,500/- each and to applicant Nos.2 & 3. The respondent No.1 was also restrained from causing any physical or mental harm to applicants. The Court also directed cost of Rs.500/- be paid to applicant No.1. The applicant challenged the said order by preferring an appeal before the Sessions Court. Vide order dated 19.04.2021, the appeal was partly allowed. The respondent No.1 was directed to pay Rs.1,000/- per month to the applicant towards rent. The other reliefs granted by the trial Court were confirmed.

4. The grievance of the applicants is that the maintenance order passed by the Court below is unreasonable. It would not be

possible to survive on low amount of maintenance. The amount of Rs.1,000/- towards accommodation is insufficient. The respondent No.1 is the owner of flat premises situated at Royal Palace. It was a shared household. The applicants and respondent No.1 had stayed in the said premises. The order passed by the Court below challenged by the respondents. The respondent No.1 is having sufficient income. He has tried to suppress his income. Reliance is placed on decision of Supreme Court in the case of **Prabha Tyagi V/s. Kamlesh Devi** delivered in Criminal Appeal No.511 of 2022 dated 12.05.2022 wherein it is observed that, while the object and purpose of the DV Act is to protect a women from domestic violence, the salutary object of Sub-section (1) of Section 17 is to confer a right on every woman in a domestic relationship to have the right to reside in a shared household. Hence, the said provision commences with a non - obstante clause. Another decision relied upon is in the case of **Durga Singh Lodhi V/s. Prembai and Others decided by Madhya Pradesh High Court 1990 CrL.J. 2065**. In the said decision it was observed that that, the person under obligation to pay maintenance should have sufficient means. 'means' also not signify only visible means, like real property in the shape of income, revenue or estate or definite employment. It includes capacity to earn money. In the case of **Manish Jain V/s. Akanksha**

Jain delivered in (Civil) Appeal No.4515 of 2017, dated 30.03.2017, the apex Court has observed that, it has not become a matter of routine that as and when an application for maintenance is filed, the non applicant becomes poor displaying that he is not residing with the family members if they have good business and movable and immovable properties in order to avoid payment of maintenance. Courts cannot under these circumstances close their eyes when tricks are being played in a clever manner. The Court must take into consideration the status of the parties and the capacity of the spouse to pay maintenance and whether the applicant has any independent income sufficient for her or his support.

5. Learned Advocate for the respondent Nos.1 to 3 submitted that, both the Courts have considered the claim of the applicants and passed the impugned order. While granting maintenance the Court is also required to see the financial capacity of the person. The trial Court as well as the Sessions Court has taken into consideration the financial status of the respondent No.1 and granted maintenance to the applicants. The Respondent No.1 has no source of income. He did not challenge the order of maintenance considering the interest of the applicants. The flat

premises referred to by applicant No.1 was purchased by the brother of respondent No.1. The respondents have filed affidavit in reply opposing the reliefs. Learned Advocate further submitted that, the applicant and respondent No.1 had shifted to flat No.302 in Royal Palace. The payment of purchase of flat was made by his brothers. They have claimed whole ownership title and possession of flat. The affidavit in reply mentions that, he helps his father in business and gets nominal salary. He is is not owner of restaurant 'Taj Fast Food'.

6. I have perused the orders passed by the Courts below. The trial Court order directing the respondent No.1 to pay maintenance of Rs.2,000/- to the applicants is wholly unreasonable. The respondent Nos.2 and 3 are aged around 14 years and 10 years. The Courts have granted the maintenance of Rs.1,500/- each to applicant No.2 & 3 per month which is insufficient. It is not possible to survive on maintenance of Rs.2,000/-.

7. The children are residing with applicant No.1. The Sessions Court while deciding the appeal has arrived at finding that the respondent No.1 is owner of the flat in question and directed him to pay Rs.1,000/- towards maintenance.

8. The appellate Court ought to have considered the fact that the applicants are residing with the sister of applicant No.1 for a long period of time. They cannot depend at the mercy of the sister of the applicant No.1. It is not possible to occupy any rental premises by paying Rs.1,000/-. The Respondent No.1 and the applicants were residing in a flat premises, which is in the name of respondent No.1. Taking into consideration, the documents on record and the status of the parties, the impugned orders passed by the Courts below requires modification/enhancement. Hence, I pass the following order :-

ORDER

- (i) Orders dated 22.02.2021 and 19.04.2021 are modified.
- (ii) Respondent No.1 is directed to pay maintenance of Rs. 15,000/- per month to the applicant No.1 and Rs.3,000/- each to the applicant Nos. 2 and 3 per month and Rs.5,000/- per month towards rent for the accommodation to the applicants.
- (iii) Revision Application stands disposed off.

(PRAKASH D. NAIK, J.)