

**IN THE COURT OF SPECIAL MOBILE MAGISTRATE PT&E
AT SRINAGAR**

CNR No:	JKSG03-016803-2021
Case No:	136/2021
Date of Institution:	11.05.2021
Date of Judgment:	26.09.2026

In the case of:

1. Sheema Iqbal alias Shabnum D/o Late Ab. Hamid Makhdoomi W/o Iqbal Ahmad Wafai
2. Ateeba Iqbal aged 7 years through mother
3. Hadiqa Iqbal aged 3 years through mother. Both daughters of Iqbal Ahmad Wafai R/o Madiha Colony Bagaati Kanipora, Budgam A/p Iqbal Colony Zainakot HMT Srinagar

...Petitioners

*Through: Adv. Naveed Gul
& Associates*

V e r s u s

1. Iqbal Ahmad Wafai (Husband of complainant 9906720034) S/o Kate Bahu-ul-Din Wafai
2. Mehmooda Jabeen (Mother-in-law of complainant-7889326954) Wd/o Late Bahu-ul-Din Wafai
Both Residents of Madina Colony Bagaati Kanipora, Budgam.

...Respondents

*Through: Adv. Shah Murtaza
& Associates*

In the matter of: Petition under Section 12 of D.V Act.

CORAM: Massarat Jabeen

UID NO. JK00244

JUDGMENT

1. By virtue of the present judgment, I intend to dispose of the petition preferred by the petitioner in terms of section 12 of the Protection of Women from Domestic Violence Act, 2005. The present petition has been filed in terms of Section 12 of Act supra by the petitioner no.1

namely Sheema Iqbal alias Shabnum, for herself and on behalf of minor daughters against respondent no.1 namely Iqbal Ahmad Wafai, her husband, and respondent no.2 namely Mehmooda Jabeen, her mother-in-law.

2. The case presents not merely a dispute between a husband and wife, but requires the court to examine the extent to which the protective mechanism enacted by the Parliament under the provisions of the Act supra, can be invoked by a woman who has admittedly entered into a matrimonial relationship, lived with her husband for a substantial period, given birth to three daughters, thereafter suffered matrimonial discord and is presently living separately without an independent source of income.

3. The court is conscious that proceedings in terms of the Act of supra have to be adjudicated upon the evidence brought on record. At the same time, while determining the nature and extent of relief, the Court cannot lose sight of the social and economic realities which constitute the very foundation for enactment of the legislation.

4. The court has accordingly considered the pleadings, the oral evidence of the witnesses examined by both the sides, the admissions made during cross-examination, the admitted matrimonial history and the statutory object of the Act.

5. The Protection of the Woman from Domestic Violence Act, 2005 is a welfare and protective legislation. Its long title declares that:

“An Act 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.”

6. The statutory scheme accordingly seeks to provide effective protection to woman against violence occurring within the family. The enactment was necessitated by the recognition that the violence within a family is not confined to acts which constitute conventional criminal

offenses. A woman may suffer physical abuse/violence, but she may equally suffer humiliation, threats, deprivation of economic resources, denial of residence, emotional abuse and other forms of conduct which impair her dignity and security.

7. The Hon'ble Supreme Court of India in *Satish Chandra Ahuja Vs. Sineha Abuja*, while considering the background and purpose of the enactment, recognized the significance of the legislation as a milestone in the protection of the women and noticed that the remedies previously available were inadequate to address the entire phenomenon of domestic violence.

8. The Hon'ble Supreme Court of India has further explained, the very purpose of the Protection of the Woman from Protection Act, is to provide a remedy in civil law for protection of women from domestic violence and to prevent the occurrence of domestic violence in society. The proceedings under the act are predominantly civil in nature. The proceedings in the act are purely remedial in nature, meant for the welfare and benefit of the woman suffering from the violence within the family.

9. The expression "domestic violence" employed by Parliament is consequently deliberately wider than physical assault. The legislation recognizes that violence may manifest itself through different forms of conduct, and that the protection of a woman requires, not merely punishment of an offender, but also preservation of her residence, financial security, dignity and physical & emotional well-being.

10. The legislative philosophy is therefore protective or rather than punitive in nature. The act seeks to intervene in the domestics sphere, where the ordinary remedies of a woman may otherwise be inadequate to secure immediate protection.

11. The Court must, therefore, while interpreting and applying the Act, give effect to its beneficial purpose. Such an approach, however, does not mean that allegations are to be accepted without scrutiny. The court

must still determine, upon the material placed before it, whether domestic violence is established and what relief is justified

12. In other words, the beneficial nature of the legislation determines the manner in which its provisions are to be understood, whereas the evidence determines the relief which the court can lawfully grant.

13. The relevant statutory provisions are reproduced hereunder for perusal before coming to any conclusion in the instant case.

“Section 2(a) which gives the definition of an aggrieved person and defines aggrieved person as “any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent.”

14. The words “is, or has been”, are of considerable significance. The statute does not confine protection to a woman who is presently residing with the respondent. Section 2(f) of the Act supra defines domestic relationship. Section 2(f) provides: “domestic relationship means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family. The provision therefore expressly recognizes a relationship which has even existed,

15. Section 2(s) defines “shared household” and includes the household where the aggrieved person lives or at any stage has lived in a domestic relationship. The Hon’ble Supreme Court of India in Satish chandra Ahuja Vs. Sineha Ahuja has emphasized that the expression “shared household” cannot be interpreted merely by reference to proprietary title. This statutory right is concerned with the domestic relationship and the nature of the residence.

16. Section 3 of the Act supra provides, inter alia, that domestic violence includes conduct which: “harms or injuries or endangers the

health, safety, life, limb, or well-being whether mental or physical, of the aggrieved person”

17. It also expressly includes physical abuse, sexual abuse, verbal and emotional abuse and economic abuse. The explanation to section 3 of the Act supra, therefore, makes it abundantly clear that the Parliament intended to cover forms of abuse which may not leave visible physical injuries, but nevertheless impair the dignity, security and well-being of an aggrieved woman.

18. Section 17(1) provides:

“Notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same.”

19. Section 17(2) further protects the aggrieved person from being evicted or excluded from the shared household, except in accordance with the law.

20. The Hon’ble Supreme Court has described the right under section 17 of the Act supra as a significant statutory right and has emphasized that it is not dependent upon the woman establishing ownership in the property.

21. Section 18 empowers the magistrate to pass protection orders restraining the respondent from committing acts of domestic violence, aiding, or abetting such acts, entering certain places, communicating with the aggrieved person in prohibited circumstances, alienating assets and committing other specified acts.

22. Section 19 empowers the magistrate to pass residence related directions, including restraining, dispossession, directing the respondent to secure alternative accommodation or payment of rent in appropriate circumstances.

23. Section 20 provides: “while disposing of an application in terms of Section 1 of Section 12, the magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence.”

24. The provision specifically includes loss of earnings, medical expenses, and loss caused by destruction, damage or removal of property, besides permitting other appropriate monetary relief.

25. Section 21 enables the magistrate to grant temporary custody of a child or children to the aggrieved person and to make appropriate arrangements concerning visitation.

26. Section 22 provides “in addition to other reliefs as may be granted under this Act, the magistrate may, on an application being made by the aggrieved person, pass an order, directing the respondent to pay compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by that respondent.

27. Section 23 empowers the magistrate to grant interim and where circumstance justify, ex party orders as well.

28. Section 25 permits alteration, modification or revocation of an order upon a change of circumstances.

29. The brief facts as projected in the main petition are that as under:

- i. That the Complainant is married to Respondent no.1 in accordance with Muslim Law and out of said wedlock three female issues namely Asheefa Iqbal aged 11 yrs. Ateeba Iqbal aged 7 yrs and Hadiqa Iqbal aged 3 yrs. Elder one putting up with the respondent no.1 and two younger daughters are putting up with the complainant at her parental home with her old aged mother.

- ii. That the complainant is subject to Physical, emotional, verbal, economical and mental abuse being tortured by both the Respondents time and again who being left with her minor daughters at the mercy of God.
- iii. That the complainant has suffered a lot at the hands of the respondents who does not sustain her and continued to torture her as well the minor daughter's economically. Respondent no.1 would always tell the complainant that he is not earning for them and will not maintain them.
- iv. That the complainant no.1 faced atrocities from the respondents from the very beginning. After her marriage the respondent used to beat her and thrash her out of the marital home without any reason.
- v. That at the time of marriage she took all her golden ornaments and other belongings and entrusted the same to the safe custody of the respondents and started living peacefully but after some time the behavior of the respondent no. 1 and his family members started changing who started ignoring her, blaming and putting false allegations on her. They started fighting and abusing her for none of her fault. The reason behind this was that she could not give birth to a male child which resulted into the alleged domestic violence against her. That in the year 2017 in the fifth month of her pregnancy for her third child, she was compelled to abort the same which was opposed by the complainant and ultimately resulted into physical domestic violence by the respondents and the elder sister in law.
- vi. That the complainant was even pressurized to sell of her Stree Dhan (Mehar and other golden ornaments) out of which the matrimonial house was purchased in which they are living right now, however due to continuous harassment and violence, the complainant was dragged out of her own house on different occasions.
- vii. That on 05-01-2017 at her marital home, i.e Madina colony Bagaati Kanipora, Budgam, the complainant along with her minors was thrashed out of her marital home which compelled her to file a complaint u/s 12 of Domestic violence

in the Respondent was directed to pay Rs.10,000/- per month to the complainants besides was given the protection. The matter was pending before the Hon'ble court of Sub Registrar Srinagar for almost three 3 years and later on compromised by the parties on a condition that the Respondent shall not continue any sort of violence with the complainants which he violated within few months only as the reason of his compromise was only to get rid of the case pending before hon'ble court and avoid paying the maintenance which was a huge amount being waived by the complainant later on.

- viii. That the atrocities of the complainant did not end here as it is worth to mention that after compromise, she was set alone with her minor daughters and one room was given to her where she was cooking separately but the brutalities against her never ended and was again attacked on her face on 10-03-2021 at her marital home by the respondent no.1 in which her nose got badly injured and in emergency had to rush to the hospital for her treatment.
- ix. That once again only after ten days i.e, on 20-03-2021 at her marital home was physically assaulted. The complainant was having a health issue and had to visit a doctor to get her tests done for which she requested the respondent no.1 to pay some amount who rebuked her and refused to pay any amount for the same. The Respondent no. 2 entered on spot and started instigating her son against the complainant. Respondent no. 2 verbally assaulted the complainant and told her son, i.e respondent no. 1 to kill the complainant by a knife. The incident took a serious mode and the complainant was beaten ruthlessly by the respondent no. 1.
- x. The Complainant managed to call 181 women helpline where her complaint was registered and her short DIR was recorded, later on the matter reached to the concerned police Station with the help of the women helpline and Mohalla committee members who called the brother of the complainant on spot, accordingly all of them managed to reach to the concerned police station who thereafter visited

on the spot and rushed the complainant to SMHS hospital for medical help and got her MLC done as she was dragged, thrashed and assaulted by the respondents. She received serious head injuries.

- xi. That the police immediately took an action and booked both the respondents under section 498-A of IPC, 323 of IPC, 506 of IPC under FIR no. 22/2021 dated 20-03-2021 but irrespective of that using their approach were not arrested till date by which the complainant has developed strong apprehensions that after using their power in league with the police concerned they might get the FIR cancelled/withdrawn.
- xii. That after this incident, the complainant was almost unconscious therefore the local persons of the authority and police officials advised her to stay away from her marital home and respondents and move to any safer place where respondent could not reach because the respondents are very cruel and can kill her anytime and the police cannot give her full time protection. Therefore under an emergency situation, without any books, clothes, medicine, the complainant had to leave the marital home along with her two minor daughters who were also attacked by the respondents time and again.
- xiii. That during these years of marriage, the respondents would almost all the time insult the complainant, they would kept on taunting her on everything she do and whenever she ask them the reason for their cruel behaviour Respondent no.1 would start beating her and told her that she is his servant.
- xiv. That the Respondent no.1 would make accusations on the character of the complainant saying that she is bad charactered leaving her distressed. She was not allowed to talk to anybody or even to her brothers and sisters for which she was forcefully taken in writing. The respondents did not even spare the youngest daughter i.e, complainant no. 3. He would humiliate her by calling her through strange names. He would use bad and foul language with her hence committing a verbal assault on her. He never accepted his

youngest daughter saying that the complainant gave her birth against his wills and wishes and kept on taking revenge from her for giving her birth without his consent as he wanted to kill her in her mother's womb.

- xv. That the Respondent no. 2 would verbally and mentally abuse the complainant for not having a male child and would instigate the respondent no. 1 against his wife and force him to go for a 2nd marriage as the complainant could not give birth to a male child, therefore compelling the complainant to go through a mental distress.
- xvi. That the atrocities of the complainant did not end here, both the respondents would insult her and tortured her emotionally. The Respondent no.1 would never give her money for her daily expenses. He was never bothered about the well-being of his family. He would not maintain the complainant or his minor daughters in terms of their daily expenses. The complainant was not allowed to have anything in her pocket. Respondent no.1 would not pay her even a single penny so that she could consult a doctor, whereas it was the brother and mother of the complainant who bore her expenditure and day to day needs. It is apt to mention here that the respondent no.1 is busy in his luxurious life and enjoys his life even without thinking about his wife and children and other side, the respondent no. 2 would enjoy seeing this behavior of her son and praise him.
- xvii. That the complainant faced continuous verbal, physical and economical violence in the shared household as the respondents used to pass degrading and humiliating remarks against her and despite being subject to continuous verbal, physical, emotional and economic abuse, the complainant bore everything in silence, compromised and withdrawn her complaint filed earlier only because she had three minor daughters and moreover she wanted to save her marriage as she is an orphan girl but all in vain.
- xviii. That since marriage, the complainant and her minor children have been suffering through continuous economic abuse by the respondent. He did not provide her basic

amenities of life. Respondent no.1 has been neglecting his legal and moral duty to maintain his wife and children who is a man of substance, a Gazetted Govt. employee working as HDO (Horticulture Development Officer) in the department of Horticulture and having monthly salary as Rs. 1 Lakh. Whatever he earns, he spends on himself. That respondent no.1 has not been providing any money to the complainant to cover her expenses. She is living from hand to mouth.

xix. The respondents would also demand more and more dowry from the complainant and was compelled to sell off her mother's land and get a share from her only to fulfill the evil desires of the respondents.

xx. That the complainant has suffered immense pain and hurt from the respondents. The complainant is mentally, physically, and emotionally drained and unable to carry on any more like this. The complainant has tried to settle peacefully with the respondent but in view of the constant physical, economical and emotional violence, it is no longer possible. The applicant being destitute and without any means to support herself and her minor children has been constrained to file the present complaint before this hon'ble court after getting Domestic Incident report from the concerned Protection Officer.

xxi. That the applicant is without any sustenance and living a life of vagrancy, therefore approached to the concerned authorities of District Legal Aid Services Sgr. for allotment of a lawyer, hence the case being filed through DLSA Sgr.

30. Upon presentation of the instant petition, interim order directing the respondent no.1 to pay Rs. 5,000/- each towards the petitioners were passed vide order dated 11.05.2021 and respondent was directed to provide shelter of two Rooms & Bathroom in the shared household situated at Madiha Colony Bagaati Kanipora, Budgam to the petitioners and was restrained from committing any act of domestic violence upon the petitioner. The interim application came to be decided by virtue of order dated 17.02.2022 whereby ex-parte order dated 11.05.2021 was

modified to the extent that respondent No. 1 was directed to maintenance of Rs. 3500/- each to applicants Sheema Iqbal and Hadiya Iqbal (total 7000/- per month). Further respondent No. 1 was directed to provide accommodation of one room, kitchen and bathroom in the shared household or in alternative shall secure same level of rented accommodation in and around the vicinity where the petitioners presently reside or in and around the vicinity where the respondents reside. Respondents was further restrained from committing any act of domestic violence against the applicants and custody of minor child Hadiya Iqbal was directed not be disturbed. The said order came to be challenged before the Appellate Court of Hon'ble 2nd Additional Sessions Judge Srinagar and vide order dated 15.06.2023, the following directions were passed by the Hon'ble Appellate Court:

"I am of the opinion that no good ground has been raised by the Appellant/Respondent No 1 Iqbal Ahmad Wafaie in his memorandum of appeal which would satisfy this court to set aside the order impugned as prayed by him. On the other hand the appeal filed by the appellant/petitioner Sheema Iqbal holds merit as such the order of minimizing the maintenance amount in favour of petitioner 1 and 3 is set aside and modified to the extent that Respondent shall pay an interim maintenance of Rs 5000/- each to applicants Sheema Iqbal and Hadiya Iqbal (total 10,000/-) per month. The remaining order do not want any interference and is upheld accordingly.

31. The respondents filed their objections to the main petition and the same are reproduced hereinunder:

- I. That the applicant no.1 and non-applicant no.1 hereto above were married to each other in accordance with SHARIAH (ISLAMIC PERSONAL LAW) on 23-02 -2020 and prior to the aforesaid Nikah, there was dispute pending in between the parties, before various courts and are having three daughters namely (a) ASEEFAH IQBAL Aged: 10 YEARS, (b) ADEEBA IQBAL, Aged: 07 Years, &

(c) HADIQA IQBAL, Aged: 04 Years, from their previous marriage. Then because of the dispute in between the parties, the non-applicant no1 herein divorced the lady and thereafter, because of various deliberations and interference of court, the parties entered into fresh Nikah on 23-02-2020.

- II. That the applicant no.1 and non-applicant no. 1 entered into a Settlement Deed before the court of Sub Registrar, Srinagar and as per the said Settlement Deed, the parties started their lives a fresh, after executing the fresh nikah mentioned above. That as per the settlement deed, the applicant no.1 was to look after the family, kids and further was to quit her all objectionable habits viz: Smoking, drugs and other bad habits. Further the applicant no.1 was bound as per settlement deed, to look after her home and stay at her home and further not to quarrel either with the petitioner or the mother of the petitioner but despite the said settlement, the applicant no.1 did not mend her behaviour and continued to commit torture upon the respondents. That as per one of the conditions of the said settlement deed it was agreed by the parties that in case any of the party violate the terms and conditions of the aforesaid settlement deed than in that case the aggrieved party shall be at liberty to separate from the other party.
- III. That despite the said settlement the applicant no.1 continued with her rude behavior and careless attitude and further didn't quit her illegal habits was always quarelling every now and then with the respondents and other family members which included old aged mother of petitioner and their kids.
- IV. That the applicant no.1 had made the lives of the respondents and the kids miserably hell and further have never cared about the welfare of the minors and always have worked about her own selfish desires and never have taken care about the welfare of the minors.

- V. That on 20th March 2021 at about 4:30 pm the applicant no.1's brothers barged into the house of the respondents forcibly and broke out the doors and windows of the house further the applicant no.1 with the help of her brothers jointly and severally manhandled the respondents and the applicant no 1 alongwith her brothers thrashed the respondents physically after locking the respondents in one of the rooms of the house and thereafter the applicant no 1 left the matrimonial abode of the respondent and have taken two younger kids namely Adeeba Iqbal and Hadiqa Iqbal with her forcibly after removing them illegally from the custody of the respondent no 1 with the help of her brothers.
- VI. That with respect of the said acts of the applicant no 1 and her brothers the respondent no.1 have already got direction from the court of Hon'ble Chief judicial Magistrate Sgr upon the concerned Police Station for registration of criminal case.
- VII. That because of the ill attitude and other allied bad habits the respondent no 1 was constrained to dissolve the aforesaid marriage between the applicant no 1 and non-applicant no.1 by virtue of the Divorce (Talak-E-Ahsan) executed by the respondent no 1 against the applicant no.1 on 27th March 2021.that there exists no relationship in between the Applicant no 1 and non applicant no 1as such the Petition in hand is not maintainable.
- VIII. That in fact the attitude of the applicant no.1 towards the respondents and his kiths and kins had always remained hostile, uncertain, uneven and unpredictable and used to quarrel with the respondents on petty things but still the respondent no.1 in order to keep the relationship alive put his every endeavour but of no use.
- IX. That the respondents and his family have been threatened and harassed by the applicant no 1 and her brothers and the respondents are so much harassed that they don't move out of their home alone.

- X. That the applicant no 1 on same grounds as alleged in the instant petition have already filed Petition in terms of Domestic Violence Act before the court of Hon'ble Sub-Registrar Sgr and same was disposed in the light of compromise dated 16/02/2020. Copy is annexed herewith. That as per the said compromise the Applicant no.1 was to behave as a prudent muslim wife and further was bound to quit all objectionable habits viz smoking etc but she didn't complied with the directions of compromise and now has filed the instant Petition which is not maintainable in the present form.
- XI. That the Applicant no 1 has already filed several complaints with The Director Horticulture who happens to be the Senior officer of the non-applicant no 1 and in that complaint the applicant no 1 is admitting the factum of Divorce and the applicant no 1 is claiming the benefits which she is entitled after divorce.
- XII. That the respondent no. 2 is an old ailing lady more than 75 years old bed ridden as she is suffering from various ailments viz Diabetes, Cardiac Problems and other allied ailments as such how can a lady suffering from certain things cause domestic violence upon the applicants.
- XIII. That the applicant has already filed Domestic violence Petition against the non-applicant in the year 2017, the said Domestic violence petition has been disposed off by virtue of compromise and on the same grounds the instant petition has been framed which is not maintainable.
- XIV. That despite the disposal of Domestic Violence Petition before the court Of Sub-Registrar Sgr, the counsel for the applicant filed another petition under Domestic Violence Act which is sheerly abuse of process of court and is professional mis-conduct on behalf of the counsel appearing for the applicant.
- XV. That the applicant has played fraud upon the court and has secured the exparte order from this court which is highly contemptuous. That it is bounden duty of the

party as well as counsel appearing for said party to submit about the disposal of case of similar nature before any court but in the present case the applicant as well as her counsel has deliberately concealed the said fact from the court and filed the Domestic Violence petition of same nature in order to fraudulently secure order from court.

XVI. That now on the same facts the applicant have filed another petition under Domestic Violence Act before this court which is clearly abuse of the process of law.

XVII. That the present petition is not maintainable in the present form as no violence has been committed by the respondents upon the applicants rendering the petition in hand liable to be rejected.

XVIII. That because of the ill attitude and other allied bad habits the respondent no 1 was constrained to dissolve the aforesaid marriage between the applicant no 1 and non-applicant no.1 by virtue of the Divorce (Talak-E-Ahsan) executed by the respondent no 1 against the applicant no.1 on 27th March 2021 and as such there exists no relationship in between the Applicant no 1 and non applicant no 1 as such the Petition in hand is not maintainable and is liable to be dismissed.

XIX. That the applicant no 1 has not submitted affidavit with her petition in accordance with the judgement passed by the Apex court titled Rajnesh VS Neha which is mandatory as per said judgement as such on this count alone the application filed by the applicant no 1 is liable to be dismissed.

XX. That the contents of para no 1 are admitted, it is pertinent to mention here that the applicant no.1 have forcibly removed the younger two daughters from the custody of non-applicant no.1 and for seeking back the custody of said kids the non-applicant no. 1 have already filed petition for custody which is pending before the family court, further the applicant no 1 tried to take elder daughter forcibly with her but the said child didn't accompanied her mother and chosed to stay with her

father because of the ill attitude and behaviour and bad habits of the applicant no 1 and further it is pertinent to mention here that marriage has already come to end by virtue of Talaqnama dated 27/03/2021 and there exists no relationship in between the applicant no 1 and non-applicant no 1, the said fact has been admitted by the applicant no 1 in the complaint filed by her before the Director Horticulture Deptt.

- XXI. That the contents of para no. 2 are denied it is the respondents and the kids who have been suffering at the hands of the applicant no.1, the applicant no 1 have never behaved as a prudent muslim wife nor have behaved as a responsible mother and just to satisfy her ego have ruined the lives of the respondents and the kids. The applicants no 2 and 3 are not attending their online classes just because of the irresponsible behaviour of the applicant no 1 and despite the requests of the non-applicant no 1 the applicant no 1 is not allowing the kids to attend online classes. The respondent no 1 is regularly paying the school fees of the kids.
- XXII. That the contents of para no 3 are denied vehemently she may be put to strict proof. The non-applicant no 1 has always behaved as a responsible father and is regularly depositing the school fees of his kids. It is the applicant no. 1 who has been torturing the kids to satisfy her ego with the non-applicant no 1,
- XXIII. That the contents of para no 4 are vehemently denied, it was thge non-applicants who have been suffering the atrocities and mental torture committed upon them by the applicant no 1 and her brothers.
- XXIV. That the contents of para no 5 are vehemently denied, the non-applicant have been taking utmost care of his kids and for seeking the custody of kids back, the non-applicant no.1 have filed petition for custody so that the future of the kids could be secured.
- XXV. That the contents of para no 6 are vehemently denied. The applicant no 1 on 20th March 2021 left the house of

the non-applicants and forcibly took the applicants no 2 and 3 with her and at the time of leaving the house of the non-applicants the applicant no 1 and her brothers committed several offences against the respondents for the act of which the non-applicant no 1 have already approached the court of law.

XXVI. That the contents of para no 7 are admitted to the extent that the applicant no 1 filed case before the court of Hon'ble Sub Registrar sgr but it was later on compromised and it was the applicant no 1 who violated the conditions of the said compromise constraining the non-applicant no 1 to execute the Talak Nama Dated 27th March 2021.

XXVII. That the contents of para no 8 are vehemently denied.

XXVIII. That the contents of para no 9 are vehemently denied it is pertinent to mention here that on 20th March 2021 at about 4:30 pm the applicant no.1's brothers barged into the house of the respondents forcibly and broke out the doors and windows of the house further the applicant no.1 with the help of her brothers jointly and severally manhandled the respondents and the applicant no 1 alongwith her brothers thrashed the respondents physically after locking the respondents in one of the rooms of the house and thereafter the applicant no 1 left the matrimonial abode of the respondent and have taken two younger kids namely Adeeba Iqbal and Hadiqa Iqbal with her forcibly after removing them illegally from the custody of the respondent no 1 with the help of her brothers. That the respondent no. 2 being an old ailing lady being bed ridden will hardly commit any sort of violence upon the applicants.

XXIX. That the contents of para no 10 are denied for want of knowledge it is pertinent to mention here that DIR have been prepared on 27th March 2021 whereas the applicant no 1 is claiming that she called 181 on 20th March, now can that DIR be relied upon.

XXX. That the applicant no 1 was booked by the police concerned on the basis of false and frivolous case filed by the applicant no.1 and further after investigation the police come to conclusion that the non-applicant no 2 is not involved in any offence.

XXXI. That the contents of para no 12 are denied it is pertinent to mention here that applicant no 1 left the matrimonial abode of the respondent and have taken two younger kids namely Adeeba Iqbal and Hadiqa Iqbal with her forcibly after removing them illegally from the custody of the respondent no 1 with the help of her brothers. Further certain articles of the applicant no 1 are lying in the house of the non-applicant no 1 and the applicant no 1 may be directed to remove the same from the house of the non-applicant no1.

XXXII. That the contents of para no's 13 to 17 are vehemently denied, it was the non-applicant no 1 who was always tolerating the ill behaviour of the applicant no 1 in order to save his family and kids future but all in vain.

XXXIII. That the contents of para no 18 are denied it is pertinent to mention here that the non-applicant no 1 has been maintaining his kids to his utmost capacity such as paying the school fees regularly and maintaining the kids in a quiet appreciable manner, the kids are suffering only because of the Irresponsible behaviour of the applicant no 1. The non-applicant no 1 is not a gazetted employee as alleged in the petition further the net salary drawn by the non-applicant no 1 is Rs 50300/-out of which the non-applicant no 1 is paying: School fees Rs 10000/- per month; Home loan Rs 10000/- per month; Car loan Rs 10000/- per month; And further the non-applicant no 1 has to look after his ailing mother as such the contentio raised by the applicant no 1 that the salary of the non-applicant no 1 is Rs 1 lakh per month is baseless and false.

XXXIV. That the contents of para no 19 and 20 are vehemently denied.

XXXV. That the contents of para no 21 are denied

32. After completion of pleadings, the parties were directed to lead evidence in the case.

33. Evidence of the petitioner:

I. **“I Mohammad Iqbal Maqdoomi S/o Late Abdul Hamid Maqdoomi R/o Iqbal Colony, Zainakote, HMT, Srinagar**, do hereby solemnly declare and affirm on oath as under. That the deponent is brother of the complainant and well worsed with the facts and circumstances of the case. That the complainant was married to respondent no.1 in accordance with Muslim Law in the year 2010, and out of the said wedlock three Female issues namely Aseefa Iqbal (Aged 12 Years), Adeeba Iqbal (Aged 08 Years) and Hadiqa Iqbal (Aged 05 Years) are begotten. That from the very inception of marriage the complainant was subject to physical, emotional, economical, verbal and mental abuse at the hands of respondents who tortured the deponent on petty issues and faced more and more atrocities after the birth of the youngest daughter namely Hadiqa Iqbal and both of them were abused and assaulted for none of their faults as the youngest daughter was never liked by the respondents being a female child. That the respondent no. 1 took away all the golden ornaments and other belongings of the complainant and invested the same on his residential house which was purchased in the year 2011, wherein both respondents are living ie Baghat-e-Kanipora, Budgam Kashmir. That the complainant was also being tortured for not bringing more and more dowry and was also defamed for not giving a birth to a male child and in the year 2017, the complainant was compelled to abort her child which was agitated by the complainant which ultimately resulted in physical assault by the respondents. That on 05/01/2017, the complainant was thrashed out from her matrimonial home and thereafter was not allowed to enter the matrimonial home which

compelled the complainant to file complaint u/S 12 of D.V Act. Same was later compromised in 2020, however, in March, 2021, the situation worsened and the complainant was again physically assaulted by the respondents and was about to be killed by them. That on 20/03/2022, the complainant was drastically assaulted and compelled to leave the place (Baghat-e- Kanipora, matrimonial home by the respondents who assaulted the deponent and thrashed her mercilessly leaving her injured on head and with the help of local members of society and members of 181 women help line, an FIR bearing no. 22/2021 U/S 498 A, 323, 506 of IPC was lodged against both the respondents and the complainant was took to hospital for MLC. And the deponent was accompanying the complainant. That the complainant filed the domestic violence complaint before this Hon'ble court and this Hon'ble court directed the respondent no.1 to pay maintenance and provide accommodation either in matrimonial home or any feasible place to which the respondent failed. That the respondent is not providing the money for the rental accommodation for the complainant and her minor daughter. That the respondent no. 1 is a gazette officer and working as a Govt. employee in Horticulture Department as HDO earning in lacs Per month and the respondent no. 2 is also a pensioner therefore, the respondent no. 1 is not having any liability other than his daughters and complainant and that the complainant and her minor daughters are wholly and solely dependent on respondent no.1 as the complainant is not having any source of income of her own from anywhere therefore, incurring almost an amount of Rs. 40,000/- per month on food, education, shelter, clothing, medicine and other daily expenses. That the respondent no.1 is neither admitting the youngest daughter in the school whose educational career is at stake nor is taking her responsibility willingly but has left the complainant and minor daughter at the

mercy of God who are living in a rental accommodation at Zainakote HMT Srinagar without any sustenance. That the respondents are continuously committing domestic violence in the shape of economical violence, verbal violence and emotional violence towards the complainant and minor daughters and has already committed physical assaults on different occasions towards the deponent and minors to which the complainant has already filed the MLC report and other prescriptions, Photographs etc. That since the marriage, the complainant constantly moved from her parental house to her matrimonial house as the respondents all the time threw her out of the matrimonial house mercilessly. That the complainant has suffered immense pain and hurt from the respondents as the complainant is mentally, physically, economically and emotionally drained and unable to carry on any more like this therefore, approached this Hon'ble court for justice. That the respondents has committed physical, emotional, verbal as well as economical violence towards the deponent and her minor daughters which compelled her to approach this Hon'ble court seeking reliefs under Section 19,20, 21 & 22 for residence, maintenance , custody and compensation to the tune of Rs.40,00,000/- for the torture caused by the acts of the respondents.

During cross-examination, the witness deposed that I am the brother of the petitioner. I have appeared in Court previously as well. I have not made any statement before this Hon'ble Court till date. The petitioner has been residing at her parental home since approximately the year 2021. The petitioner was married to Respondent No. 1 in the year 2010. Three children were born out of the said wedlock, all of whom are alive. Two daughters are residing with Respondent No. 1, while one daughter is residing with the petitioner. Prior to the institution of the present case, another case was pending, which was

subsequently withdrawn. At that time, the Nikah between the parties was solemnized afresh. I do not remember the date on which the second Nikah was solemnized. After the second Nikah, the petitioner resided in the house of Respondent No. 1 for two or three months. Thereafter, one day, the neighbours of Respondent No. 1 telephoned us, whereupon both of us brothers went to the house of the respondent. Respondent No. 1 had beaten the petitioner. Thereafter, we took our sister to the Police Station, and from there the police officials took the petitioner to the hospital. It is correct that the life of the petitioner is in danger at the house of Respondent No. 1. His mother is residing in the house of Respondent No. 1, who is a cancer patient. I have no knowledge of the salary of Respondent No. 1. The petitioner is not doing any work. The monthly expenses of the petitioner and her daughter amount to approximately Rs. 20,000–25,000. Respondent No. 1 himself bears the expenses of the two daughters, as both of them are residing with him. The petitioner should be granted maintenance in the present case so that she may survive. She is willing to reside with Respondent No. 1 in future. No further questions.

- II. **Sheema Iqbal w/o Iqbal Ahmad Wafai D/o Late Abdul Hamid Maqdoomi R/o Madeena Colony Baghat-e-Kanipora, Budgam, Kashmir at present Zainakote, HMT, Srinagar, (Rental Accommodation):** That the deponent is married to respondent no.1 in accordance with Muslim Law in the year 2010, and out of the said wedlock three Female issues namely Aseefa Iqbal (Aged 12 Years), Adeeba Iqbal (Aged 08 Years) and Hadiqa Iqbal (Aged 05 Years) are begotten. That from the very inception of marriage the respondent 2 was not happy with the married life of the deponent and the respondent no.1 thus, was time and again making the life of the deponent difficult and very complicated. 03. That the deponent was subject to physical, emotional, economical, verbal and

mental abuse at the hands of respondents who tortured the deponent on every small thing. That the deponent faced more atrocities after the birth of the youngest daughter namely Hadiqa Iqbal and both of them were abused and assaulted for none of their faults as the youngest daughter was never liked by the respondents being a female child. That the respondent no. 1 took away all the golden ornaments 2 and other belongings of the deponent and converted the same in to his own use by investing the same in the residential house wherein both respondents are living i.e Baghat-e- Kanipora, Budgam Kashmir. That the deponent was also being tortured for not bringing more and more dowry and was also defamed for not giving a birth to a male child and in the year 2017, the deponent was compelled to abort her child which was agitated by the deponent which ultimately resulted in physical assault by the respondents and elder sister in law towards the deponent. That on 05/01/2017, the deponent was thrashed out from her matrimonial home and thereafter was not allowed to enter matrimonial home which compelled the deponent to file complaint u/S 12 of D.V Act. Same was later compromised in 2020, however, in March, 2021, the situation worsened and the deponent was again physically assaulted by the respondents and was about to be killed by them. That the deponent was compelled to leave the place (Baghat-e-Kanipora, matrimonial home by the respondents who assaulted the deponent and thrashed her mercilessly leaving her injured on head and with the help of local members of society and members of 181 women help line, an FIR bearing no. 22/2021 U/S 498 A, 323, 506 of IPC was lodged against both the respondents. That the deponent filed the domestic violence complaint before this Hon'ble court and this Hon'ble court directed the respondent no.1 to pay maintenance and provide accommodation either in matrimonial home or any feasible place to which the respondent failed and is under

contempt. That the respondent is neither paying the regular maintenance towards the deponent and her minor daughter nor is paying for the rental accommodation therefore execution is also pending before this Hon'ble court. That the respondent no. 1 is a gazette officer and working as a Govt. employee in Horticulture Department as HDO earning around of RS. 1,00,000/- Per month and the respondent no. 2 is a pensioner taking more than amount of Rs. 16,000/- per month therefore, the respondent no. 1 is not having any liability other than his daughters and deponent and that the deponent and her minor daughters are wholly and solely dependent on respondent no.1 as the deponent is not having any source of income of her own from anywhere therefore incurring an amount of Rs. 40,000/- per month on food, education, shelter, clothing, medicine and other daily expenses. That the respondent no.1 is neither admitting the youngest daughter in the school whose educational career is at stake nor is taking her responsibility willingly but has left the deponent and minor daughter at the mercy of God who are living in a rental accommodation at Zainakote HMT Srinagar without any sustenance. That the respondents are continuously committing domestic violence in the shape of economical violence, verbal violence and emotional violence towards the deponent and minor daughters and has already committed physical assaults on different occasions towards the deponent and minors to which the deponent has already filed the MLC report and other prescriptions, Photographs etc. That since the marriage, the deponent constantly moved from her parental house to her matrimonial house as the respondents all the time threw her out of the matrimonial house mercilessly which compelled the deponent to take help from the elders of her society to solve her matrimonial issue only with an intention that the respondents will change their behavior towards the deponent but all in vain. Therefore,

approached to this Hon'ble for justice. That the deponent has suffered immense pain and hurt from the respondents as the deponent is mentally, physically, economically and emotionally drained and unable to carry on any more like this. That deponent has always tried to settle the issue peacefully with the respondents but all in vain. That the respondents has committed physical, emotional, verbal as well as economical violence towards the deponent and her minor daughters which compelled her to approach this Hon'ble court seeking reliefs under Section 19,20, 21 & 22 for residence, maintenance, custody and compensation to the tune of Rs. 40,00,000/- for the torture caused by the acts of the respondents.

During cross-examination, the witness deposed that

It is stated that I have filed only one case against Respondent No. 1. I have also filed one case before the Family Court. Besides this, I have filed a case in the appeal before the 2nd Additional District Judge. The present case was filed against Respondent No. 1 in a D.V. case in the year 2017. The said case was decided after three years. Since I did not smoke cigarettes, I had not imposed any such condition. I never used to smoke cigarettes. However, when the third daughter was born, I stopped smoking cigarettes at the instance of Respondent No. 1. One of the conditions of the compromise was that I would not go to my parental home, except that I could occasionally visit my mother. I used to stay at my parental home for a maximum of three or four days. Only once, due to snowfall, I stayed at my parental home for fifteen days. I have three daughters. One daughter is residing with me and two daughters are residing with Respondent No. 1. Respondent No. 1 took away the child from me in the presence of the Learned Judge. The two daughters who are residing with Respondent No. 1 are studying at DPS. One daughter is studying in the 6th class and the other in the 2nd class. Respondent No. 1

looks after the said two daughters. As per the statement of Respondent No. 1, the case was filed against me. I have solemnized Nikah with Respondent No. 1 twice. This means that a divorce had taken place earlier. The said divorce took place in the year 2017. In February 2020, I solemnized the second Nikah with Respondent No. 1. Thereafter, I continued to reside with Respondent No. 1 in my matrimonial home till March 2021. Respondent No. 1 forcibly turned me out of my house after assaulting me. A respectable person of the locality came to take me out, but I refused to go. Respondent No. 1 was in his office at that time. Thereafter, the respectable person of the locality telephoned my neighbours and called them, stating that your sister would die here, so take her away. I first went to the hospital along with my neighbours, from where I thereafter went to the Police Station. Thereafter, an FIR was registered against the respondents. I am not doing any job at present. I have no income. I am dependent only upon maintenance. Whatever property there is in our family is owned by my mother. Since my mother is still alive, I have not received any share from my parental home. I have again gone to the office of Respondent No. 1. I went to the office of Respondent No. 1 to lodge a complaint. After the second Nikah, Respondent No. 1 has not given me any divorce. It is incorrect that I did not demand any compensation from Respondent No. 1 in lieu of accepting divorce. I am not ready for divorce. I am safe in the house of Respondent No. 1. If Respondent No. 1 gives an undertaking in Court, I got the third daughter admitted in DPS. I borrowed money for getting her admission. I was not willing to hand over the third daughter to Respondent No. 1. Although Respondent No. 1 is not ready to resettle me, I am ready to reside in my own house with my children. Retired Judge Syed Iqbal is my relative. I have been residing at my parental home since March 2021. At present, I am residing in a rented house. I do not remember the name

of the landlord at present, although the rent receipt is available at home. The rented room is situated one or two kilometres away from my parental home. I pay the rent of the room by borrowing money from my neighbours. I pay a monthly rent of Rs. 10,000. I can produce the rent receipt before this Hon'ble Court on the next date. The CDPO had submitted her report in the case. Respondent No. 1 has utilized my property in the construction of his house. I had taken the said property to my mother-in-law and sold it. The entire property belonging to my in-laws and my parental family was sold, because the entire said property belonged to me.

III. Nasir Ajaz Kund, son of Ghulam Qadir Kund, resident of Rawalpura, occupation: Engineer, age: 54 years.

During examination-in-Chief by the Learned Counsel for the Petitioner, the witness deposed that I know both the parties. The petitioner is my maternal cousin. I state that the parties were married on 26 May 2010. Their first child was born in 2011, the second child in 2013, and the third child was born in 2017, who is alive. The third daughter is presently in the custody and care of the petitioner. Since 2017, Petitioner No. 1 has been residing at her parental home. The husband of Petitioner No. 1 did not intend to have any more daughters and, therefore, even before the birth of the third daughter in 2017, he had expressed that the pregnancy should be terminated before the child was born. However, the petitioner refused to do so. After the birth of the daughter, she was forcibly sent to her parental home along with the child, and since then she has been residing at her parental home. I and other relatives made efforts to reconcile the husband and wife, but Respondent No. 1 refused. With regard to the residential house, the petitioner had sold her property and helped Respondent No. 1 in constructing the house. Despite this, the petitioner was forcibly turned out of the house. In the year 2020, Respondent No. 1 assaulted the

petitioner, in respect of which an FIR was also registered. The petitioner sustained injuries. The petitioners are supported from time to time by their other relatives, with which they manage their livelihood. The parents of the petitioner have passed away and she has no support left.

During cross-examination, the witness deposed that I have appeared before the Court as a witness for the petitioner. The present case pertains to a D.V. case which has been filed by the petitioner. The petitioner and Respondent No. 1 solemnized Nikah again. I have no knowledge as to whether the petitioner had filed any D.V. case prior to the present case or not. After the second Nikah, the petitioner remained with Respondent No. 1 for approximately one week. I have no knowledge as to why the quarrel took place. Respondent No. 1 did not assault the petitioner in my presence. However, when the petitioner came to her parental home in an injured condition, she told us about the quarrel. Whether Respondent No. 1 again divorced the petitioner or not, I have no knowledge. What has been mentioned in the complaint, I have no knowledge thereof, except that whatever I have stated is what I know. I have no knowledge as to what has been recorded in the file. Respondent No. 1 does not continuously provide maintenance; he provides it from time to time. The petitioner is presently residing at her parental home. She also resided in a rented accommodation for some time. There are three daughters born out of the wedlock between the parties—one is residing with the petitioner and two are residing with Respondent No. 1. The school fee of the daughter who is residing with the petitioner has not been paid for the last one year. The petitioner has not yet received any share in her parental property.

**IV. I Nasir Ahmad kawoosa S/o Ghulam Qadir Kawoosa
R/o Rawalpura, Srinagar, do hereby solemnly declare**

and affirm on oath as under- That the deponent is paternal brother of the complainant and well worsened with the facts and circumstances of the case. That the complainant was married to respondent no.1 in accordance with Muslim Law in the year 2010, and out of the said wedlock three Female issues namely Aseefa Iqbal (Aged 12 Years), Adeeba Iqbal (Aged 08 Years) and Hadiqa Iqbal (Aged 05 Years) are begotten. That from the very inception of marriage the complainant was subject to physical, emotional, economical, verbal and mental abuse at the hands of respondents who tortured the deponent on petty issues. That the complainant faced more and more atrocities after the birth of the youngest daughter namely Hadiqa Iqbal and both of them were abused and assaulted for none of their faults as the youngest daughter was never liked by the respondents being a female child. That the respondent no. 1 took away all the golden ornaments and other belongings of the complainant and invested the same on his residential house which was purchased in the year 2011, wherein both respondents are living Le Baghat-e- Kanipora, Budgam Kashmir. That the complainant was also being tortured for not bringing more and more dowry and was also defamed for not giving a birth to a male child and in the year 2017, the complainant was compelled to abort her child which was agitated by the complainant which ultimately resulted in physical assault by the respondents. That on 05/01/2017, the complainant was thrashed out from her matrimonial home and thereafter was not allowed to enter the matrimonial home which compelled the complainant to file complaint u/S 12 of D.V Act. Same was later compromised in 2020, however, in March, 2021, the situation worsened and the complainant was again physically assaulted by the respondents and was about to be killed by them. That on 20/03/2022, the complainant was drastically assaulted and compelled to leave the place (Baghat-e- Kanipora,

matrimonial home by the respondents who assaulted the deponent and thrashed her mercilessly leaving her injured on head and an FIR was also lodged in this regard against the respondent. That the complainant filed the domestic violence complaint before this Hon'ble court and this Hon'ble court directed the respondent no.1 to pay maintenance and provide accommodation either in matrimonial home or any feasible place to which the respondent failed. That the respondent is not providing the money for the rental accommodation for the complainant and her minor daughter. That the respondent no. 1 is a gazette officer and working as a Govt. employee in Horticulture Department as HDO earning in lacs Per month and the respondent no. 2 is also a pensioner therefore, the respondent no. 1 is not having any liability other than his daughters and complainant and that the complainant and her minor daughters are wholly and solely dependent on respondent no.1 as the complainant is not having any source of income of her own from anywhere therefore incurring almost an amount of Rs. 40,000/- per month on food, education, shelter, clothing, medicine and other daily expenses. That the respondent no.1 is neither admitting the youngest daughter in the school whose educational career is at stake nor is taking her responsibility willingly but has left the complainant and minor daughter at the mercy of God who are living in a rental accommodation at Zainakote HMT Srinagar without any sustenance. That the respondents are continuously committing domestic violence in the shape of economical violence, verbal violence and emotional violence towards the complainant and minor daughters and has already committed physical assaults on different occasions towards the deponent and minors to which the complainant has already filed the MLC report and other prescriptions, Photographs etc. That since the marriage, the complainant constantly moved from her parental house

to her matrimonial house as the respondents all the time threw her out of the matrimonial house mercilessly. That the complainant has suffered immense pain and hurt from the respondents as the complainant is mentally, physically, economically and emotionally drained and unable to carry on any more like this therefore, approached this Hon'ble court for Justice. 16. That complainant has always tried to settle the issue peacefully with the respondents but all in vain. That the respondents has committed physical, emotional, verbal as well as economical violence towards the deponent and her minor daughters which compelled her to approach this Hon'ble court seeking reliefs under Section 19,20, 21 & 22 for residence, maintenance, custody and compensation to the tune of Rs. 40,00,000/- for the torture caused by the acts of the respondents.

(not cross-examined)

- V. Mohammad Younis Maqdoomi S/o Late Abdul Hamid Maqdoomi R/o Iqbal Colony, Zainakote, HMT, Srinagar**, do hereby solemnly declare and affirm on oath as under: That the deponent is brother of the complainant and well versed with the facts and circumstances of the case. That the complainant was married to respondent no.1 in accordance with Muslim Law in the year 2010, and out of the said wedlock three Female issues namely Aseefa Iqbal (Aged 12 Years), Adeeba Iqbal (Aged 08 Years) and Hadiqa Iqbal (Aged 05 Years) are begotten. That from the very inception of marriage the complainant was subject to physical, emotional, economical, verbal and mental abuse at the hands of respondents who tortured the deponent on petty issues. That the complainant faced more and more atrocities after the birth of the youngest daughter namely Hadiqa Iqbal and both of them were abused and assaulted for none of their faults as the youngest

daughter was never liked by the respondents being a female child. That the respondent no. 1 took away all the golden ornaments and other belongings of the complainant and invested the same on his residential house which was purchased in the year 2011, wherein both respondents are living i.e Baghat-e- Kanipora, Budgam Kashmir. That the complainant was also being tortured for not bringing more and more dowry and was also defamed for not giving a birth to a male child and in the year 2017, the complainant was compelled to abort her child which was agitated by the complainant which ultimately resulted in physical assault by the respondents. That on 05/01/2017, the complainant was thrashed out from her matrimonial home and thereafter was not allowed to enter the matrimonial home which compelled the complainant to file complaint u/S 12 of D.V Act. Same was later compromised in 2020, however, in March, 2021, the situation worsened and the complainant was again physically assaulted by the respondents and was about to be killed by them. That on 20/03/2022, the complainant was drastically assaulted and compelled to leave the place (Baghat-e- Kanipora, matrimonial home by the respondents who assaulted the deponent and thrashed her mercilessly leaving her injured on head and with the help of local members of society and members of 181 women help line, an FIR bearing no. 22/2021 U/S 498 A, 323, 506 of IPC was lodged against both the respondents and the complainant was took to hospital for MLC. And the deponent was accompanying the complainant. That the complainant filed the domestic violence complaint before this Hon'ble court and this Hon'ble court directed the respondent no.1 to pay maintenance and provide accommodation either in matrimonial home or any feasible place to which the respondent failed. That the respondent is not providing the money for the rental accommodation for the complainant and her minor daughter. That the

respondent no. 1 is a gazette officer and working as a Govt. employee in Horticulture Department as HDO earning in lacs Per month and the respondent no. 2 is also a pensioner therefore, the respondent no. 1 is not having any liability other than his daughters and complainant and that the complainant and her minor daughters are wholly and solely dependent on respondent no.1 as the complainant is not having any source of income of her own from anywhere therefore incurring almost an amount of Rs. 40,000/- per month on food, education, shelter, clothing, medicine and other daily expenses. That the respondent no.1 is neither admitting the youngest daughter in the school whose educational career is at stake nor is taking her responsibility willingly but has left the complainant and minor daughter at the mercy of God who are living in a rental accommodation at Zainakote HMT Srinagar without any sustenance. That the respondents are continuously committing domestic violence in the shape of economical violence, verbal violence and emotional violence towards the complainant and minor daughters and has already committed physical assaults on different occasions towards the deponent and minors to which the complainant has already filed the MLC report and other prescriptions, Photographs etc. That since the marriage, the complainant constantly moved from her parental house to her matrimonial house as the respondents all the time threw her out of the matrimonial house mercilessly 15. That the complainant has suffered immense pain and hurt from the respondents as the complainant is mentally, physically, economically and emotionally drained and unable to carry on any more like this therefore, approached this Hon'ble court for Justice. That complainant has always tried to settle the issue peacefully with the respondents but all in vain. That the respondents has committed physical, emotional, verbal as well as economical violence towards the deponent and

her minor daughters which compelled her to approach this Hon'ble court seeking reliefs under Section 19,20, 21 & 22 for residence, maintenance, custody and compensation to the tune of Rs. 40,00,000/- for the torture caused by the acts of the respondents.

(not cross-examined)

34. Evidence of the respondent:

- I. **IRSHAD-UL-ISLAM KHANDI AGED: 48 YEARS, S/O LATE GHULAM MOHAMMAD KHANDI RIO SHOPIAN KMR OFFICE COLLEAGUE OF THE NON-APPLICANT No.01, OCCUPATION: GOVT. EMPLOYEE:** That the deponent herein is the OFFICE COLLEAGUE of the non-applicant No.01, as such, is aware of the facts and circumstances of the case. That the applicant is the ex-wife of the non-applicant No.01 as the marriage in between the applicant and non-applicant No.01 stands dissolved by virtue of divorce dated 27-03-2021. That the applicant and non-applicant No.01 have three female kids, out of which two kids are residing with the applicant and one kid is riding with the non-applicant No.01. That from the day one of the marriage, the applicant and her family were not comfortable with the non-applicant No.01 and from the day first of marriage, the applicant along with her family members used to quarrel with the non-applicant No.01 and were always assassinating the character or the non-applicant No.01. That prior to residing at B.K Pora, the non-applicants were residing at Chanapora, Srinagar, the applicant along with other family used to level allegations against the non-applicants and were raising such aspersions against the characters of the non-applicants, which defamed the non-applicants in the neighbourhood at Chanapora, Srinagar as the applicant and her family were approaching every neighbour jointly and severally at

Chanapora, Srinagar and were raising false and scandalous allegations against the non-applicants which badly affected the respect and honour of the non-applicants in this said society at Chanapora, Srinagar. That the non-applicants thereafter had to shift their residence from Chanapora, Srinagar to B.K Pora, because of the defamation committed by the applicant and her family in the locality Chanapora, Srinagar. The applicant and her family, jointly and severally, told the neighbours at Chanapora, Srinagar that the non-applicant No.01 is mad person, not good character. Further, the applicant and her family had said ill about non-applicant No.02 i.e. mother of the non-applicant No.01 as they have told the neighbours at Chanapora, Srinagar that the non-applicant No.02, being a greedy lady, is demanding dowry from them. Further told that the non-applicant No.02 is a bad lady and the words uttered by all the applicant and her family in front of the neighbours at Chanapora, Srinagar injured the reputation of the non-applicants and same lowered the non-applicants in the estimation of the community which deterred the neighbours at Chanapora, Srinagar in associating and dealing with the non-applicants. That thereafter, the applicant and non-applicant No.01 started again living together at B.K. Pora, but here also the applicant behaved in a similar way. It is pertinent to mention here that the applicant is a drug addict and always remains intoxicated under the influence of drugs and has never been able to take care either of herself or her family comprising of applicant and kids. That despite numerous requests on the part of the applicant, for abandoning drugs, the applicant remains adamant in taking drugs and further the applicant and her family repeated the same process of defaming the non-applicants before the inhabitants of locality where the non-applicants started living at B.K Pora. That the applicant and her family approached numerous neighbours at B.K Pora and assassinated the characters

of the non-applicants by raising bald and vague allegations against the character of the non-applicants. That the applicant and her family jointly and severally are causing defamation of the non-applicants and are using such words which are having tendency to lower and adversely affect the person's reputation as the words used by the applicant and her family before the neighbours of the non-applicants have exposed the non-applicants to hatred and ridicule and have caused non-applicants to be shunned in the estimation of the right-thinking members of this society. that the omissions and commissions of the applicant and her family had affected the credit and reputation of the non-applicants badly and further the applicant and her family in all have approached the neighbours of the non-applicants at B.K Pora and have used such words which have brought the non-applicants into ridicule and contempt and have injured reputation and respect of the non-applicants. That the applicant approached the relatives of the non-applicants and have used such words against the character and reputation of the non-applicants, which tends to be shunned in the estimation of right-thinking people and further the words of the applicant and her family members have created such affect over the minds of the said relatives that the said relatives are not now in talking terms with the non-applicants as they think that the non-applicants are of bad character. That the applicant approached the officers of the non-applicant No.01 where the applicant raised scandalous allegations against the character of the non-applicant No.01 and same has badly affected the image and reputation of the non-applicant No.01 before his officers and because of the said defamatory statements of the applicant, the officers of non-applicant No.01 are thinking bad about the non-applicant No.01 and have further deterred the officers of the non-applicant No.01 in associating and dealing with the non-applicant No.01. The applicant has

filed complaint before the Director, Horticulture Department against the non-applicant No.01, copy of complaint is annexed herewith.

During cross-examination, the witness deposed that I am an office colleague of Respondent No. 1. I am a close friend of Respondent No. 1, and we also have good relations outside the office. I have never had any quarrel with the petitioner or with the members of her family. With regard to the matters mentioned in my affidavit, I have personal knowledge thereof. However, I have no personal knowledge regarding any quarrel between the petitioner and Respondent No. 1. It is incorrect that I am giving evidence in favour of Respondent No. 1 because he is my friend and office colleague. It is correct that the petitioner is a drug addict. I have no personal knowledge that the petitioner is a drug addict; however, Respondent No. 1 told me about the same. I had personally tried to settle the dispute between the petitioner and Respondent No. 1. I reside at a distance of 25 kilometres from the house of Respondent No. 1. No neighbor informed me about any such matter or defamed the petitioner. However, the petitioner used to defame Respondent No. 1 before the officials. The dispute between the parties started in the year 2017. The petitioner got an FIR registered against Respondent No. 1. From this, it is evident that the petitioner used to defame Respondent No. 1. I was not present at the spot in connection with the alleged Domestic Violence. Respondent No. 1 did not take any action against the petitioner before the police. However, he filed a case against the petitioner before the Court regarding divorce. I have no personal or eye-witness knowledge regarding any of these matters; whatever I know is based on what I heard from Respondent No. 1. I have spoken to both the parties and to the petitioner several times regarding settlement of the dispute. Whatever I have stated in my affidavit is true and

correct. The petitioner also came to our office. She also submitted a written complaint to the Commissioner/Secretary and continued to defame Respondent No. 1. If the petitioner is not a drug addict, as I have stated in my affidavit, then my affidavit is incorrect. If the Court directs me to appear and give evidence again, I will certainly appear.

- II. **IQBAL AHMAD WAFAI, AGED: 45 YEARS S/O BAHADUR-DIN WAFAI R/O MADINA COLONY, BUCHPORA, SRINAGAR - GOVT. EMPLOYEE:** That the applicant is the ex-wife of the non-applicant No.01/ deponent as the marriage in between the applicant and non-applicant No.01/deponent stands dissolved by virtue of divorce dated 27-03-2021. That the applicant and non-applicant No.01/ deponent have three female kids, out of which two kids are residing with the applicant and one kid is riding with the non-applicant No.01/ deponent. That from the day one of the marriage, the applicant and her family were not comfortable with the non-applicant No.01/ deponent and from the day first of marriage, the applicant along with her family members used to quarrel with the non-applicant No.01/ deponent and were always assassinating the character or the non-applicant No.01/ deponent. That prior to residing at B.K Pora, the non-applicants were residing at Chanapora, Srinagar, the applicant along with other family used to level allegations against the non-applicants and were raising such aspersions against the characters of the non-applicants, which defamed the non-applicants in the neighbourhood at Chanapora, Srinagar as the applicant and her family were approaching every neighbour jointly and severally at Chanapora, Srinagar and were raising false and scandalous allegations against the non-applicants which badly affected the respect and honour of the non-applicants in this said society at Chanapora, Srinagar. That the non-applicants thereafter had to shift their

residence from Chanapora, Srinagar to B.K Pora, because of the defamation committed by the applicant and her family in the locality at Chanapora, Srinagar, the applicant and her family, jointly and severally, told the neighbours at Chanapora, Srinagar that the non-applicant No.01/ deponent is mad person, not of good character. Further, the applicant and her family had said ill about non-applicant No.02 ie mother of the non-applicant No.01 / deponent as they have told the neighbours at Chanapora, Srinagar that the non-applicant No.02, being a greedy lady, is demanding dowry from them. Further told that the non-applicant No.02 is a bad lady and the words uttered by all the applicant and her family in front of the neighbours at Chanapora, Srinagar injured the reputation of the non-applicants and same lowered the non-applicants in the estimation of the community which deterred the neighbours at Chanapora, Srinagar in associating and dealing with the non-applicants. That thereafter, the applicant and non-applicant No.01/ deponent started again living together at B.K. Pora, but here also the applicant behaved in a similar way. It is pertinent to mention here that the applicant is a drug addict and always remains intoxicated under the influence of drugs and has never been able to take care either of herself or her family comprising of applicant and kids. That despite numerous requests on the part of the applicant, for abandoning drugs, the applicant remains adamant in taking drugs and further the applicant and her family repeated the same process of defaming the non-applicants before the inhabitants of locality where the non-applicants started living at B.K Pora. That the applicant and her family approached numerous neighbours at B.K Pora and assassinated the characters of the non-applicants by raising bald and vague allegations against the character of the non-applicants. That the applicant and her family jointly and severally are causing defamation of the non-applicants

and are using such words which are having tendency to lower and adversely affect the person's reputation as the words used by the applicant and her family before the neighbours of the non-applicants have exposed the non-applicants to hatred and ridicule and have caused non-applicants to be shunned in the estimation of the right-thinking members of this society. That the omissions and commissions of the applicant and her family had affected the credit and reputation of the non-applicants badly and further the applicant and her family in all have approached the neighbours of the non-applicants at B.K Pora and have used such words which have bring the non-applicants into ridicule and contempt and have injured reputation and respect of the non-applicants. That the applicant approached the relatives of the non-applicants and have used such words against the character and reputation of the non-applicants, which tends to be shunned in the estimation of right-thinking people and further the words of the applicant and her family members have created such affect over the minds of the said relatives that the said relatives are not now in talking terms with the non-applicants as they think that the non-applicants are of bad character. That the applicant approached the officers of the non-applicant No.01/deponent where the applicant raised scandalous allegations against the character of the non-applicant No.01/ deponent and same has badly affected the image and reputation of the non-applicant No.01/ deponent before his officers and because of the said defamatory statements of the applicant, the officers of non-applicant No.01/ deponent are thinking bad about the non-applicant No.01/ deponent and have further deterred the officers of the non-applicant No.01/deponent in associating and dealing with the non-applicant No.01/ deponent. The applicant has filed complaint before the Director, Horticulture Department against the non-

applicant No.01/deponent, copy of complaint is annexed herewith.

(not cross-examined)

- III. **SHEIKH NAZIR AHMAD, AGED: 52 YEARS, SIO LATE HABIBULAH R/O MADINA COLONY, B.K PORA NEIGHBOUR OF THE NON-APPLICANTS, OCCUPATION: PRIVATE JOB:** That the deponent herein is the NEIGHBOUR of the non-applicants, as such, is aware of the facts and circumstances of the case. That the applicant is the ex-wife of the non-applicant No.01 as the marriage in between the applicant and non-applicant No.01 stands dissolved by virtue of divorce dated 27-03-2021. That the applicant and non-applicant No.01 have three female kids, out of which two kids are residing with the applicant and one kid is riding with the non-applicant No.01. That from the day one of the marriage, the applicant and her family were not comfortable with the non-applicant No.01 and from the day first of marriage, the applicant along with her family members used to quarrel with the non-applicant No.01 and were always assassinating the character of the non-applicant No.01. That prior to residing at B.K Pora, the non-applicants were residing at Chanapora, Srinagar, the applicant along with other family used to level allegations against the non-applicants and were raising such aspersions against the characters of the non-applicants, which defamed the non-applicants in the neighbourhood at Chanapora, Srinagar as the applicant and her family were approaching every neighbour jointly and severally at Chanapora, Srinagar and were raising false and scandalous allegations against the non-applicants which badly affected the respect and honour of the non-applicants in this said society at Chanapora, Srinagar. That the non-applicants thereafter had to shift their residence from Chanapora, Srinagar to B.K Pora, because of the defamation committed by the applicant and her

family in the locality at Chanapora, Srinagar, the applicant and her family, jointly and severally, told the neighbours at Chanapora, Srinagar that the non-applicant No.01 is mad person, not of good character. Further, the applicant and her family had said ill about non-applicant No.02 i.e. mother of the non-applicant No.01 as they have told the neighbours at Chanapora, Srinagar that the non-applicant No.02, being a greedy lady, is demanding dowry from them. Further told that the non-applicant No.02 is a bad lady and the words uttered by all the applicant and her family in front of the neighbours at Chanapora, Srinagar injured the reputation of the non-applicants and same lowered the non-applicants in the estimation of the community which deterred the neighbours at Chanapora, Srinagar in associating and dealing with the non-applicants. That thereafter, the applicant and non-applicant No.01 started again living together at B.K. Pora, but here also the applicant behaved in a similar way. It is pertinent to mention here that the applicant is a drug addict and always remains intoxicated under the influence of drugs and has never been able to take care either of herself or her family comprising of applicant and kids. That despite numerous requests on the part of the applicant, for abandoning drugs, the applicant remains adamant in taking drugs and further the applicant and her family repeated the same process of defaming the non-applicants before the inhabitants of locality where the non-applicants started living at B.K Pora. That the applicant and her family approached numerous neighbours at B.K Pora and assassinated the characters of the non-applicants by raising bald and vague allegations against the character of the non-applicants. That the applicant and her family jointly and severally are causing defamation of the non-applicants and are using such words which are having tendency to lower and adversely affect the person's reputation as the words

used by the applicant and her family before the neighbours of the non-applicants have exposed the non-applicants to hatred and ridicule and have caused non-applicants to be shunned in the estimation of the right-thinking members of this society. That the omissions and commissions of the applicant and her family had affected the credit and reputation of the non-applicants badly and further the applicant and her family in all have approached the neighbours of the non-applicants at B.K Pora and have used such words which have bring the non-applicants into ridicule and contempt and have injured reputation and respect of the non-applicants. That the applicant approached the relatives of the non-applicants and have used such words against the character and reputation of the non-applicants, which tends to be shunned in the estimation of right-thinking people and further the words of the applicant and her family members have created such affect over the minds of the said relatives that the said relatives are not now in talking terms with the non-applicants as they think that the non-applicants are of bad character. That the applicant approached the officers of the non-applicant No.01 where the applicant raised scandalous allegations against the character of the non-applicant No.01 and same has badly affected the image and reputation of the non-applicant No.01 before his officers and because of the said defamatory statements of the applicant, the officers of non-applicant No.01 are thinking bad about the non-applicant No.01 and have further deterred the officers of the non-applicant No.01 in associating and dealing with the non-applicant No.01. The applicant has filed complaint before the Director, Horticulture Department against the non-applicant No.01, copy of complaint is annexed herewith.

During cross-examination, the witness deposed that I am a neighbour of Respondent No. 1. In the year 2014, I came to reside at B.K. Pora. Respondent No. 1 was

residing at Chanapora. In the year 2014, I saw Respondent No. 1 residing there. Thereafter, in the year 2014, I came to reside at B.K. Pora. Prior to that, I was residing at Znapora Kadal. I know Respondent No. 1 only from B.K. Pora. I did not know him prior to that. I am a neighbour of Respondent No. 1. I know the petitioner. It is correct that the petitioner was the wife of Respondent No. 1. Respondent No. 1 did not solemnize Nikah with anyone else apart from the petitioner. Respondent No. 1 has three children. Two daughters are residing with Respondent No. 1 and one daughter is residing with the petitioner. The parties got divorced on 27.03.2021. The divorce did not take place in my presence; however, I heard about it from Respondent No. 1. I do not know whether the petitioner accepted the divorce deed or not. However, Respondent No. 1 sent the divorce deed to the petitioner. There used to be quarrels between the parties. There used to be considerable noise and commotion between them, due to which the entire locality felt embarrassed. The whole neighbourhood came to know about it. I have heard that Respondent No. 1 previously resided at Chanapora. I do not know what used to happen between the parties at Chanapora. However, Respondent No. 1 had stated that he shifted from Chanapora to B.K. Pora because of the quarrels between the petitioner and Respondent No. 1. I do not know in whose name the house of Respondent No. 1 at B.K. Pora stands. It is correct that the petitioner had greatly humiliated Respondent No. 1. The petitioner used to quarrel frequently. Respondent No. 1 used to, and continues to, take very good care of his household and bring up his children properly. I do not know whether Respondent No. 1 did anything wrong or improper against the petitioner. No further questions.

IV. **I, SAMEER AHMAD THOKUR, AGED: 34 YEARS, S/O MOHAMMAD SIDIQ THOKUR RIO MADINA COLONY,**

B.K PORA - NEIGHBOUR OF THE NON-APPLICANTS,

OCCUPATION: PRIVATE JOB: That the deponent herein is the NEIGHBOUR of the non-applicants, as such, is aware of the facts and circumstances of the case. That the applicant is the ex-wife of the non-applicant No.01 as the marriage in between the applicant and non-applicant No.01 stands dissolved by virtue of divorce dated 27-03-2021. That the applicant and non-applicant No.01 have three female kids, out of which two kids are residing with the applicant and one kid is riding with the non-applicant No.01. That from the day one of the marriage, the applicant and her family were not comfortable with the non-applicant No.01 and from the day first of marriage, the applicant along with her family members used to quarrel with the non-applicant No.01 and were always assassinating the character of the non-applicant No.01. That prior to residing at B.K Pora, the non-applicants were residing at Chanapora, Srinagar, the applicant along with other family used to level allegations against the non-applicants and were raising such aspersions against the characters of the non-applicants, which defamed the non-applicants in the neighbourhood at Chanapora, Srinagar as the applicant and her family were were approaching every neighbour jointly and severally at Chanapora, Srinagar and were raising false and scandalous allegations against the non-applicants which badly affected the respect and honour of the non-applicants in this said society at Chanapora, Srinagar. That the non-applicants thereafter had to shift their residence from Chanapora, Srinagar to B.K Pora, because of the defamation committed by the applicant and her family in the locality at Chanapora, Srinagar, the applicant and her family, jointly and severally, told the neighbours at Chanapora, Srinagar that the non-applicant No.01 is mad person, not of good character. Further, the applicant and her family had said ill about non-applicant No.02 i.e. mother of the non-applicant

No.01 as they have told the neighbours at Chanapora, Srinagar that the non-applicant No.02, being a greedy lady, is demanding dowry from them. Further told that the non-applicant No.02 is a bad lady and the words uttered by all the applicant and her family in front of the neighbours at Chanapora, Srinagar injured the reputation of the non-applicants and same lowered the non-applicants in the estimation of the community which deterred the neighbours at Chanapora, Srinagar in associating and dealing with the non-applicants. That thereafter, the applicant and non-applicant No.01 started again living together at B.K. Pora, but here also the applicant behaved in a similar way. It is pertinent to mention here that the applicant is a drug addict and always remains intoxicated under the influence of drugs and has never been able to take care either of herself or her family comprising of applicant and kids. That despite numerous requests on the part of the applicant, for abandoning drugs, the applicant remains adamant in taking drugs and further the applicant and her family repeated the same process of defaming the non-applicants before the inhabitants of locality where the non-applicants started living at B.K Pora. That the applicant and her family approached numerous neighbours at B.K Pora and assassinated the characters of the non-applicants by raising bald and vague allegations against the character of the non-applicants. That the applicant and her family jointly and severally are causing defamation of the non-applicants and are using such words which are having tendency to lower and adversely affect the person's reputation as the words used by the applicant and her family before the neighbours of the non-applicants have exposed the non-applicants to hatred and ridicule and have caused non-applicants to be shunned in the estimation of the right-thinking members of this society. That the omissions and commissions of the applicant and her family had affected

the credit and reputation of the non-applicants badly and further the applicant and her family in all have approached the neighbours of the non-applicants at B.K Pora and have used such words which have bring the non-applicants into ridicule and contempt and have injured reputation and respect of the non-applicants. That the applicant approached the relatives of the non-applicants and have used such words against the character and reputation of the non-applicants, which tends to be shunned in the estimation of right-thinking people and further the words of the applicant and her family members have created such affect over the minds of the said relatives that the said relatives are not now in talking terms with the non-applicants as they think that the non-applicants are of bad character. That the applicant approached the officers of the non-applicant No.01 where the applicant raised scandalous allegations against the character of the non-applicant No.01 and same has badly affected the image and reputation of the non-applicant No.01 before his officers and because of the said defamatory statements of the applicant, the officers of non-applicant No.01 are thinking bad about the non-applicant No.01 and have further deterred the officers of the non-applicant No.01 in associating and dealing with the non-applicant No.01. The applicant has filed complaint before the Director, Horticulture Department against the non-applicant No.01, copy of complaint is annexed herewith.

During cross-examination, the witness deposed that Respondent No. 1 is my neighbour, i.e., my next-door neighbour. Respondent No. 1 was previously residing at Chanapora. Respondent No. 1 is a Government employee in the Department of Horticulture. I am a private employee in an FMCG company. It is correct that the petitioner is the ex-wife of Respondent No. 1, because the petitioner and Respondent No. 1 have been divorced in accordance with Sharia. The divorce took place in March

2021. I was not present at the time of the divorce. Respondent No. 1 told me that he had divorced the petitioner. Whatever formalities were required for the divorce were completed by Respondent No. 1, as stated by the witness. They must have been completed. The petitioner and Respondent No. 1 have three children. Two children have been residing with Respondent No. 1 since approximately the year 2021. There used to be frequent quarrels between the petitioner and Respondent No. 1. The neighbours had made several attempts to reconcile them. The entire locality used to remain disturbed. I was also present there on such occasions. The quarrels used to take place at B.K. Pora. I cannot say anything about what happened at Chanapora. The quarrels were regarding property, share and money, and also regarding the upbringing of the children. The petitioner was always at fault. Due to the quarrels, Respondent No. 1 suffered considerable humiliation. The people of the locality do not look upon Respondent No. 1 favourably. It is correct that an officer should examine what is right and what is wrong, and can rectify a wrong. It is incorrect that Respondent No. 1 used to torture the petitioner. To the best of my knowledge, no domestic violence took place. I cannot say whether the FIR registered against Respondent No. 1 by the petitioner was on account of domestic violence.

35. Appreciation of evidence of petitioner: The PW No.1, Mohammad Iqbal Maqdoomi, brother of the petitioner, has supported the matrimonial history and principal allegations of the petitioner. His testimony covers the marriage, birth of three daughters, alleged ill treatment, dowry related allegations, pressure concerning the male child, the 2017-episode, reconciliation, March 2021 incident.

36. During cross-examination, the witness acknowledged that the that Petitioner No.1 had been residing at the parental home since approximately 2021 and that two daughters, were with respondent no. 1

while one daughter was with the petitioner no.1. He further acknowledged that respondent No.1 was bearing the expenses of the two daughters residing with him. He did not claim personal knowledge of the exact salary of respondent No.1. The court finds PW No. 1 is his close relative and his evidence has therefore to be assessed with appropriate caution; however, a relationship by itself is not a ground for rejection of testimony.

37. PW No. 2 is the petitioner herself and is the principal witness regarding the domestic relationship. She has deposed regarding the matrimonial relationship, their three daughters, harassment, alleged dowry-related harassment, pressure for a male child, the 2017 episode, the earlier compromise, the second Nikah, and the subsequent March 2021 incident. She has stated that she has no source of independent income.

38. During cross-examination, she admitted the two Nikahs and the first divorce. She also admitted that she lived with Respondent No. 1 after the second Nikah until March 2021. Her evidence further discloses that she is presently living separately and paying rent at the rented accommodation. Her testimony regarding her economic circumstances has not been effectively rebutted by the respondents through documentary evidence demonstrating that she has an independent income.

39. PW No.3 Nasir Aijaz Kund, maternal cousin of the petitioner, supports the material aspects of the matrimonial history. He admitted in cross-examination that he had not personally witnessed the alleged assault and had heard about it from Petitioner No. 1, whose evidence concerning the actual assault is therefore not direct eyewitness evidence. It nevertheless has relevance when considered with the surrounding circumstances and the contemporaneous conduct of the parties.

40. PW No.4 and 5: Nasir Ahmad Kawoosa & Mohammad Yousuf Maqdoomi, supported the petitioner's version through their affidavits. The record reflects that PW-4 was not cross-examined.

41. Appreciation of Evidence of respondent: RW-1, Irshad Ul Islam, supported Respondent No. 1, but admitted that he did not have any personal knowledge of the alleged domestic violence and that portions of his evidence were based upon the information given to him by Respondent No. 1.

42. RW-2, Iqbal Ahmed Wafai, reiterated his defence regarding matrimonial discord, conduct attributed to Petitioner No. 1, and alleged Talaq.

43. RW-3, Sheikh Nazir Ahmed, stated generally regarding quarrels and separation, but admitted that he was not present at the alleged divorce and had heard it from Respondent No. 1, so he had no personal knowledge of the Talaq.

44. RW No.4 Sameer Ahmad Thokar, similarly admitted that he was not present at the alleged divorce and that his knowledge regarding the same was delivered from respondent no.1. The evidence of RW-3 and RW-4, consequently does not constitute direct evidence establishing the alleged Talaq.

45. Standard of Proof: The proceedings in terms of the Section 22 of the Act of the Act supra are predominantly civil and protective in nature. The court therefore has to assess the factual controversy on the standard of preponderance of probabilities. The court is nevertheless required to scrutinize the evidence carefully.

46. A beneficial statute does not mean that every allegation is automatically proved. The court has to separate those allegations which are established from those which remain insufficiently corroborated.

47. In the present case, the broad matrimonial history is substantially admitted. The marriage, three daughters, first matrimonial dispute, earlier proceedings, compromise, second Niqah and subsequent cohabitation are not matters seriously in dispute.

48. These admitted circumstances provide important corroboration to the petitioner's evidence concerning the existence of a domestic relationship between the parties. One circumstance which cannot be ignored by a court exercising protective jurisdiction in terms of the provisions of the Domestic Violence Act is the actual social and economic position of the aggrieved woman.

49. The petitioner No.1 entered into the matrimonial relationship with the respondent no.1 in the 2010. The relationship resulted in the birth of three daughters.

50. Whatever may be the disputes between the parties, the fact remains that petitioner No.1 has spent a substantial and formative part of her adult life in the matrimonial relationship with the respondent, and has discharged the responsibilities associated with the marriage and the motherhood.

51. She is presently living separately. Her evidence is that she has no independent source of income. She has also stated that she is not prepared to remarry. This court considers that the said circumstances deserve to be noticed, not because the woman is legally required to remarry or because her decision not to remarry creates any special legal entitlement, but because the court, while assessing economic security, residence and the quantum of monetary relief, is entitled to take into account the actual circumstances in which the aggrieved woman finds herself.

52. A woman who has spent years together in a matrimonial relationship, has given birth to and raised three daughters, has no independent source of income and is presently living separately, cannot be expected to secure her future merely by being told to start life afresh without adequate financial and residential security.

53. The law does not impose upon an aggrieved woman a duty to remarry in order to mitigate her economic circumstances but her decision not to remarry is a matter of personal autonomy and dignity. The court cannot compel, expect or presume that she should enter into

matrimonial relationship merely because the first matrimonial relationship has broken down.

54. At the same time, this observation is not intended to create an absolute or perpetual right to maintenance independent of statutory requirements. Monetary relief must remain governed by the provisions of the Act, the evidence regarding income and needs, and the circumstances of the parties.

55. The significance of the circumstances is that the court must adopt a realistic and pragmatic approach while determining the relief necessary to prevent the aggrieved woman from being reduced to economic vulnerability as a consequence of domestic violence. The provisions of the Domestic Violence Act expressly recognize economic abuse as domestic violence and expressly provides for monetary relief.

56. The concept of protection under the Act, therefore, cannot be reduced to a direction to merely restraining physical assault. Financial insecurity can itself perpetuate vulnerability. A woman without independent income, who has been separated from the matrimonial household and is responsible for the care of a minor child, may remain exposed to continuing dependence unless reasonable monetary and residential protection is secured. The Hon'ble Supreme Court of India has emphasized the importance of financial security and security of residence in the context of the provisions of the Domestic Violence Act.

57. The court therefore considers that the petitioner's lack of independent income is a relevant circumstance in determining monetary relief. The respondents rely upon the previous DV proceedings and the compromise. However, the parties thereafter admittedly entered into a second Nikah on 23 of February, 2020, and resumed their matrimonial relationship. The second matrimonial relationship cannot be treated as legally irrelevant.

58. Section 2(a) protects a woman who "is, or has been" in a domestic relationships, while Section 2(f) expressly covers persons who "have, at any point of time, lived together in a shared household."

59. In *Prabha Tyagi v. Kamlesh Devi*, 2022 8 SCC 90, the Hon'ble Supreme Court of India has emphasized that the expression "domestic relationship" must be understood broadly and can encompass a past domestic relationship. Therefore, the previous compromise cannot operate as an absolute bar to an application concerning subsequent acts alleged to have occurred after the parties resumed matrimonial cohabitation.

60. The respondent no.1 relies upon an alleged Talaq-e Ahsan on 27th March, 2021. However, RW-3 and RW-4 were not present at the alleged divorce. Their evidence regarding the same is derived from respondent No. 1. The court therefore does not consider their evidence sufficient to establish the alleged Talaq as an independently witnessed fact.

61. More importantly, even assuming that the matrimonial relationship subsequently came to an end, the statutory protection available in respect of acts allegedly committed during the domestic relationship cannot retrospectively disappear.

62. The words "is, or has been" occurring in Section 2(a) and "have at any point of time lived together" occurring in Section 2(f) have deliberately been employed by the Parliament in the Act. The Hon'ble Supreme Court of India in *Prabha Tyagi* case has explained that the statutory scheme extends to a past domestic relationship as well.

63. Consequently, the alleged Talaq cannot by itself defeat the petitioner's claim in respect of the acts which occurred during the subsistence of the domestic relationship.

64. Findings on Domestic Violence: Upon a careful application of the evidence, the court finds that petitioner No. 1 has established on the standard of preponderance of probabilities that she was subjected to domestic violence, principally at the hands of respondent No. 1.

65. The court does not hold every allegation contained in the petition to have been proved in its entirety. In particular, certain allegations concerning incidents of earlier matrimonial period and pregnancy-

related episode lack sufficient independent corroboration to permit the court to record a categorical finding on every detail.

66. However, the core evidence concerning the matrimonial relationship, subsequent cohabitation, matrimonial discord, separation, and the March 2021 incident, read with the surrounding circumstances, is sufficient for the purpose of the protective jurisdiction of this court.

67. The evidence against respondent No. 2 is substantially weaker. There is insufficient direct evidence to impose monetary liability upon her. Nevertheless, a preventive protection direction is justified so that no further act of domestic violence is committed, aided or abetted or facilitated by respondent No. 2.

68. Right of Residence: Section 17 creates a statutory right of residence in a shared household. In *Satish Chandra Ahuja v. Sneha Ahuja*, the Hon'ble Supreme Court of India explained that the concept of shared household cannot be determined merely on the basis of ownership or title. The statutory right is connected with the domestic relationship and the nature of the residence.

69. The court must therefore consider petitioner's residential security. Since the petitioner No. 1 is presently living separately and states that she is paying rentals, the court considers it appropriate to secure accommodation through monetary direction rather than disturb the present arrangement in a manner which may create future matrimonial conflict.

70. Monetary Relief: Section 20 expressly empowers the Magistrate to grant monetary relief to meet expenses incurred and losses suffered by the aggrieved person and the child as a result of domestic violence. In *Rajnesh v. Neha*, the Hon'ble Supreme Court of India has emphasized the need for a realistic assessment of the financial circumstances of the parties and appropriate financial disclosure while determining maintenance.

71. The object is to ensure a fair and workable order rather than an arbitrary amount. In the present case, petitioner No. 1 has stated that

she has no independent source of income. The fact has also been corroborated by the witnesses of the petitioner. The respondent has not been able to shake the witnesses of the petitioner to that extent as well.

72. The respondent has disclosed net salary of approximately Rs. 50,000/- per month and has referred to school fees, home loan, car loan and needs of his mother. However, despite repeated opportunities, respondent No. 1 was directed to submit his salary slips before the court. The respondent No. 1, being the Drawing and Disbursing Officer himself, did not provide the pay slips before the court. At the same time, the respondent's voluntarily incurred financial liabilities cannot completely displace the statutory obligations towards an aggrieved wife and the child.

73. The court has also considered the fact that petitioner No. 1 is not presently employed, has no independent source of income, has three daughters from the matrimonial relationship and is presently living separately. The court is therefore required to determine relief which is realistic rather than merely symbolic.

74. Having regard to the entire material, a sum of Rs. 15,000/- per month as monetary relief towards the petitioner no.1 is considered reasonable. Since, respondent No. 1 is admittedly bearing the expenses of two daughters residing with him, the monetary order shall be subject to adjustment so as to prevent duplication of relief for the same period. As such, Rs. 20,000/- towards the minor child residing presently with the petitioner is found expeditious in the given circumstances of the case, inclusive of medical and educational expenses.

75. Accommodation/rent: Petitioner No. 1 has deposed that she is paying rent of approximately Rs. 10,000/- per month. In the facts of the present case, accommodation is not a matter of luxury, but of basic security and dignity. A woman who has been separated from the matrimonial household, has no independent source of income and is caring for a minor child cannot reasonably be expected to secure accommodation without financial assistance.

76. The respondent No. 1 shall therefore bear reasonable rent of Rs. 10,000/- month towards petitioner No. 1 and adjustment of any overlapping residence or maintenance component granted by another competent court.

77. Compensation: Section 22 specifically recognizes mental torture and emotional distress as compensable consequences of domestic violence.

78. The court finds that the petitioner suffered emotional distress arising out of the established matrimonial circumstances. However, the claim of Rs. 40.00 lakh is not supported by the evidence demonstrating damages of that magnitude.

79. Compensation must bear a reasonable relationship to the conduct established circumstances, and the record. The court accordingly considers Rs. 20.00/- lacs as reasonable compensation in terms of Section 22 against respondent No. 1.

80. Custody of Minor Child: Section 21 empowers the Magistrate to make temporary custody arrangements. The record indicates that one daughter is with petitioner No. 1 and two daughters are with respondent No. 1.

81. The court does not consider it appropriate to disturb the existing arrangement by passing a final custody direction in the present proceedings without a comprehensive assessment of the welfare of each child. The welfare of the children shall remain paramount.

82. Any competent Learned Family Court or any other competent forum dealing with custody, guardianship or visitation shall remain free to pass appropriate orders in accordance with law.

83. The court is conscious that the matrimonial relationship between the parties has broken down and the parties have a history of disputes, reconciliation and subsequent separation. The court is equally conscious that the complainant has not merely been a party to a matrimonial

contract in the abstract. She has lived in the matrimonial relationship for years together and has given birth to three daughters. The matrimonial relationship has therefore involved substantial emotional, domestic and familial commitments.

84. The court cannot ignore the present position of petitioner No. 1. She is living separately, she states that she has no independent income, and she has expressed that she is not prepared to remarry. There is no principle of law under which a woman who has suffered the breakdown of her matrimonial relationship must necessarily remarry in order to secure her livelihood. The choice whether or not to remarry belongs to the woman herself. The court cannot impose upon her a social obligation to enter into a matrimonial relationship as a condition for her economic stability and security.

85. The appropriate legal response is not to encourage dependence upon another marriage, but to enforce the rights which the existing law confers upon her under the DV Act.

86. The provisions of the Domestic Violence Act seek precisely to address circumstances in which a woman may otherwise be rendered vulnerable within or after a domestic relationship. The court, while remaining faithful to the evidence and statutory limitations, must therefore ensure that the relief granted is meaningful and capable of securing dignity, accommodation and reasonable financial support.

87. The Hon'ble Supreme Court's jurisprudence makes it clear that the provisions of the Domestic Violence Act are to be understood as protective legislation and that its provisions concerning domestic relationship and residence are not to be interpreted narrowly so as to defeat its objects.

88. The Hon'ble Supreme Court of India in Prabha Tyagi case recognizes the relevance of past domestic relationship, while Satish Chandra Ahuja explains the significance of residence and the shared household.

89. The court therefore holds that the petitioner has established domestic violence against respondent No. 1 to the extent necessary for statutory relief. The evidence against respondent No. 2 is insufficient for monetary liability, but warrants a limited preventive direction.

90. In view of the foregoing discussion, the petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005 is partly allowed.

91. Accordingly:

- I. **The respondent No. 1, Iqbal Ahmad Wafai, shall not commit any act of domestic violence against petitioner No. 1, and shall not threaten, harass, intimidate or otherwise interfere with her peaceful life.**
- II. **The respondent No. 2, Mahmooda Jabeen, shall not commit, aid, abet or facilitate any act of domestic violence against petitioner No. 1.**
- III. **The respondent No. 1 shall pay Rs. 15,000/- per month as monetary relief to petitioner No. 1, inclusive of reasonable support attributable to the minor child residing with her, in the shape of Rs. 20,000/- towards the minor child residing with the petitioner no.1, as monthly maintenance and educational expenses and medical.**
- IV. **The respondent No. 1 shall bear reasonable rent of Rs. 10,000/- per month towards accommodation actually occupied by petitioner No. 1, and adjustment against any overlapping accommodation or rent component granted by any other competent court.**
- V. **The respondent No. 1 shall pay Rs. 20,00,000/- (Rupees Twenty lakh) as compensation in terms of Section 22 of the Act to petitioner No. 1 for the**

mental torture and emotional distress established on the record.

- VI. **No final custody order is passed in respect of the minor daughters. The existing arrangement shall remain subject to orders of the competent Worthy Family Court or any other competent forum, and the paramount consideration of the welfare of the children.**

92. The monetary directions shall operate from the date of this judgment, subject to adjustment of amounts paid or payable under any overlapping order for the same period. The parties shall remain at liberty to seek alteration or modification of the orders in accordance with Section 25 of the Act in the event of any material change in circumstances.

93. Before parting, it is observed that the object of the Domestic Violence Act is not to perpetuate matrimonial discord, but to ensure that a woman who has been subjected to domestic violence is not left without protection, residence or reasonable financial security merely because the domestic relationship has broken down.

94. The court has accordingly moulded the relief in the present case, keeping in view the evidence, the statutory scheme, the welfare of the minor child, the financial circumstances of the parties and the need to preserve the dignity and security of petitioner No. 1.

95. Since the report submitted by the Implementing Agency concerned regarding implementation of the shared accommodation has been submitted before the court and the report has been prepared on the instance of respondent No. 1, and respondent No. 1 has not allowed petitioner No. 1 to reside in the shared accommodation on the ground that he has already married and is putting up with the second wife in the shared accommodation and did not allow her to enter the shared accommodation. To that extent, the report was submitted by the concerned agency. A copy of this judgment, together with the relevant implementing agency's report and other relevant material concerning the

alleged second marriage of respondent no.1, shall be forwarded to Commissioner Secretary Horticulture Department, Government of Jammu and Kashmir for examination under the applicable service conduct rules. The competent authority shall specifically examine whether the respondent no.1, being a government employee and having a wife living, contracted another marriage without obtaining the prior permission contemplated by Rule 22 of the Jammu and Kashmir Government Employees (Conduct Rules), 1971.

96. The competent authority shall, after examining the relevant records and affording respondent no.1 due opportunity, determine whether any breach of the applicable service conduct rules is made out. If the competent authority finds sufficient grounds, appropriate departmental proceedings may be initiated against the respondent no.1 in accordance with law.

97. This Court makes it clear that the forwarding of the record and the direction for the departmental examination shall not be construed as a final finding of the service misconduct against the respondent no.1. The competent authority shall independently determine the matter in accordance with the applicable service rules.

98. The present judgment shall not be construed as a final adjudication upon the validity of the alleged second marriage and the personal law, which issue, if raised, shall be determined by the competent forum.

99. *The present petition accordingly stands disposed of. Be consigned to records under rules.*

**Announced:
26.09.2026.**

Massarat
Jabeen

Digitally signed by
Massarat Jabeen

**(MASSARAT JABEEN)
SPL. MOBILE MAGISTRATE/PT&E
AT SRINAGAR**