

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT SRINAGAR**  
(Through Virtual Mode)

Pronounced on: 01.12.2023

**Case:** CM(M) No. 263/2023,  
CM No. 6211/2023,  
Caveat No. 2302/2023

Mahroz Akhter Aged 38 Years ... Appellant(s)  
W/o Dr Azmat Gouhar Khan  
R/o Sector 4 Shamasabad  
At present Doctors Quarters GMC  
Baramulla, Kashmir

Through: Mr. Asif Ahmad Bhat, Advocate

**Vs**

1. Dr Azmat Gouhar ...Respondent(s)  
S/o Mohammad Yusuf Gouhar Khan  
2. Arif Gouhar Khan  
S/o Mohammad Yusuf Gouhar Khan  
3. Mst Ameena Gouhar  
W/o Mohammad Yusuf Gouhar Khan  
(Residents of Sector 4 Shamsabad  
Bemina A/P Doctors Quarter GMC  
Baramulla

Through: Mr. M. A. Beigh, Advocate

**CORAM:**

**HON'BLE MR JUSTICE PUNEET GUPTA, JUDGE**

**J U D G M E N T**

**01.12.2023**

1. The petitioner through the medium of present petition filed under Article 227 of the Constitution of India seeks setting aside of the order passed by the Court of 1<sup>st</sup> Additional Sessions Judge, Baramulla whereby the directions passed by the learned trial Court in an application filed

under Section 12 of Protection of Women from Domestic Violence Act, 2003 (hereinafter referred to as “Act”) have been modified on the ground that same is not as per law; the appellate court has not taken care of the provisions of the Act and have passed the directions impugned in the petition.

2. The respondents have appeared through counsel and contested the petition in hand. The trial Court vide order dated 24.06.2023 directed the respondent herein to pay monthly interim monetary relief to the extent of 25 percent of his gross salary excluding deduction of amount of NPS/GPF/Income Tax. Further the respondent No. 01 has been directed to pay interim lump sum monetary compensation in favour of the petitioner herein to the tune of Rs 3.00 lacs and respondent No. 02 herein to pay lump sum compensation in favour of the petitioner to the tune of Rs. 2.00 lacs. The court further passed certain other directions so that the petitioner herein is not harassed by the respondents. The court passed another significant direction to the effect that the respondent No. 01 (husband) is to provide accommodation to the petitioner. In the light of the said observation, the respondents were directed to provide and permit the petitioner to live in the private house accommodation of the respondent No. 01. The respondents in the application aggrieved by the said order of the trial Court preferred appeal which was decided by the Court of Additional Sessions Judge, Baramulla vide order dated 13.09.2023. The appellate court modified the order regarding the accommodation passed by the trial Court and directed that the appellant

No. 01 shall provide alternative accommodation to the respondent commensurate with the standard of accommodation which the respondent is at present enjoying or in the alternative the respondent can arrange accommodation of rent which shall be paid by the appellant - husband. The court also directed the trial Court to ascertain the monthly income of the respondent and thereafter pass appropriate orders regarding the monthly maintenance to be granted to the petitioner herein. The court set aside the interim compensation granted by the trial Court and held that the same can be granted only after the trial of the application. The court also held that otherwise there is no proof to grant such compensation at this stage.

**3.** The argument of learned counsel for the appellant is that the appellate court has not taken care of the provisions of the Act and passed orders which are not in accordance with the judgments passed by the Hon'ble Supreme Court from time to time. The order regarding the accommodation to be provided to the appellant as passed by the appellate court is without any valid reason and so is the interim compensation which has been set aside. There was no reason for the appellate court to even modify the interim maintenance granted to the tune of 25 percent of the salary as the salary was specific in nature requiring no interference from the appellate court.

**4.** Learned counsel appearing for the respondents on the other hand has argued that the respondent is ready to provide accommodation to the appellant and bear the rent for the same. The appellant is otherwise not

entitled to any of the properties to claim shared household with the respondents. Further the compensation granted in favour of the appellant to the tune of Rs 5.00 lacs. by the trial Court was without any justification more so when there was not even a prima facie evidence to record such finding.

5. The petitioner herein wife of respondent No. 01 has moved the application for grant of reliefs as mentioned in the complaint in terms of the provisions of the Act. The petitioner is entitled to certain privileges/maintenance at this point of time cannot be disputed in view of what has been submitted in the application filed by her. Both the courts below have also granted relief to the petitioner though the petitioner is not fully satisfied with what has been directed by the appellate court while disposing of the appeal filed by the respondents herein. The relation between the petitioner and the respondent No. 01 are not cordial and the petitioner has been held to be victim of domestic violence by both the courts below. The court of course does not intend to hold otherwise so far as this aspect of the matter is concerned. The petitioner is entitled to certain relief cannot be disputed in terms of the provisions of the Act. The trial Court has granted relief in the form of maintenance to the petitioner as it has directed that the petitioner shall be entitled to 25 percent of the gross salary of the respondent No. 01 after deduction, as made in the order. The appellate court while dwelling on this aspect has held that the maintenance is to be quantified and not in percentages and therefore directed the trial court to ascertain the monthly income of the

respondent husband and thereafter pass appropriate orders. The trial court has held the applicant entitled to 25% of the gross salary after making deductions as mentioned in the order. There is nothing on record to substantiate the salary which is being earned on monthly basis by the respondent-husband. It is only after the salary amount is made known to the court that it can pass a direction for specific amount which is payable by the respondent-husband. The court cannot pass in air the direction that the wife shall be entitled to 25% of the gross salary without knowing the actual salary of the husband. The trial court is required to have the income of the husband of the applicant-wife and then pass the order of maintenance as deemed fit in the light of the salary or other income of the husband.

**6.** The important question which arises for consideration is whether the petitioner herein is entitled to reside in the so called shared accommodation of the respondents at this juncture. The perusal of the complaint placed on record reveals that the petitioner herein has only stated of her being residing in the accommodation of the husband provided to him by the Government at Baramulla where he was posted. The court does not find any averment in the petition except for stating that the petitioner be not thrown out of the Doctors Quarter at GMC Baramulla. She has not asked for or asserted her right to shared accommodation with the other respondents who are her in-laws. Otherwise there appears to be no evidence on record in any form to show that the wife could claim her right in the shared accommodation with the

respondents and particularly respondent Nos. 2 & 3. The respondent being a Government employee and being provided with accommodation by the Government, the appellate court has not faulted in directing the respondent No. 01 to provide accommodation to the appellant on rent or that the petitioner can arrange the same of her own and the rent of the same is to be borne by her husband. During the course of argument, learned counsel for the respondents has fairly submitted that the respondent No. 01 is ready to provide residential accommodation to the petitioner on rent which will be paid by him. While maintaining the order of the appellate court regarding the residential accommodation, the court also directs that in case the respondent-husband is to provide reasonable accommodation to the petitioner the same shall be in a secured and safe place and will also be liable to pay the rent for the accommodation.

**7.** Learned counsel for the petitioner has referred to a decision reported as 2022 8 SCC 90 to support his contention that the petitioner has every right to stay in the residential accommodation where the respondents are residing. What has been held in this authority cannot be disputed. However, the application of the same depends on the facts and circumstances of the case. At the cost of repetition, the petitioner has not mentioned in the petition that she is entitled to shared accommodation with her inlaws. In fact, there is no averment to that effect in the petition.

**8.** The trial Court has awarded compensation in favour of the petitioner from the respondents to the tune of Rs. 5.00 lacs and out of that amount Rs. 3.00 lacs. is required to be paid by the husband and the rest

by the brother-in-law of the petitioner. Counsel for the petitioner submits that there was no reason for the appellate court to set aside the finding of the compensation granted by the trial Court. The counsel for the respondents however submits that the trial Court has rightly dismissed the claim of the petitioner as the same cannot be granted in favour of the petitioner at this stage.

**9.** There is no doubt that the Act has been framed with a reason to provide immediate relief and succor to the aggrieved party and is entitled to interim relief which the court may consider in the facts and circumstances of the case however it does not mean that the petitioner is entitled to windfall in the proceedings and to be paid the maintenance or compensation without exercising judicial discretion. What prompted the trial Court to grant this relief to the petitioner cannot be gauged from the petition. Only for the reason that the respondents herein are the husband and in laws of the petitioner does not entitle the petitioner to have the compensation from them unless there is some evidence on record which may persuade the court to grant the same in favour of the petitioner herein. The petitioner is entitled to any compensation in terms of the provisions of the Act is to be determined by the trial Court as and when some evidence is placed on record. The court is of the considered view that the order of the trial Court granting compensation to the petitioner herein to the tune of Rs.5 lacs and could not be sustained and has been rightly set aside by the appellate court. The beneficial legislation does not envisage providing of windfall to the aggrieved.

**10.** In the light of the discussion made above, the Court holds that the petitioner is entitled to interim maintenance from the respondent-husband. However, the trial Court is required to have the requisite information regarding the salary of the respondent No.1 before passing the reasonable amount of interim maintenance in favour of the petitioner-applicant. The respondent No.1 shall provide accommodation to the petitioner at a secured and safe place and pay the monthly rent of the same or the petitioner-wife can arrange reasonable accommodation for herself and the rent shall be payable by the respondent No.1 herein. The respondents shall not be liable to pay compensation at this stage unless some evidence entitling the petitioner for the same is brought on record.

**11.** Accordingly, the petition is disposed of in terms of aforesaid.

**(PUNEET GUPTA)**  
**JUDGE**

**Jammu**  
**01.12.2023**  
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