

**IN THE COURT OF MS. POOJA TALWAR METROPOLITAN MAGISTRATE  
(MAHILA COURT – SOUTH EAST DISTRICT)  
SAKET COURTS COMPLEX. NEW DELHI**

CC NO 352/3

In the matter of: -

DAMAN REET KAUR..... COMPLAI NANT

VS.

INDERMEET SINGH JUNEJA..... RESPONDENT

DATE OF ORDER – 18.11.2010

ORDER ON INTERIM MAINTENANCE U/S 23 OF D. V. ACT

1. I shall dispose of an application filed for interim maintenance under Section 23 Protection of Women under Domestic Violence Act, (henceforth referred to as the D. V. Act).
2. The complainant has alleged that she has been subjected to various forms of domestic violence by her husband, the respondent. It has been argued that the respondent is working with Pitney Bosc Software Company in Sector — 63, Noida and drawing an annual salary of Rs. 20 lacs per annum. Besides this, it is also argued that he is running a profitable business of computer software in a partnership along with his friend. Id counsel for the complainant has prayed that the complainant is facing extreme hardship as the parties are habitual of enjoying a lavish life style, and therefore, suitable maintenance may be granted for food, clothing, residence apart from other basic necessities in accordance with the standard of living of the parties such as decent education of the child, clothes and toiletries of the child, her vaccination, maid servant and her expenses, car petrol and maintenance charges, mobile bills, electricity, water expenses and suitable Life Insurance Policies etc.
3. To support their averments both the parties have placed their salary slips on record. The complainant has also placed his ITRs for the last two years where his income is depicted to be approximately Rs. 14 lacs per annum.
4. In reply, Id counsel for the respondent has vehemently denied that any form of Domestic Violence has been ever committed upon the complainant. As regards the income, it has been denied that he is earning Rs. 20 lacs per annum and admitted that his monthly income is Rs. 85,000/- per month and also submitted that the complainant is presently working with Metlife and getting more than Rs. 50,000/- per month income and therefore, she is not entitled to get any maintenance as she is earning sufficiently to sustain herself.

5. The present application has been filed under Section 23 of the Domestic Violence Act for grant of maintenance. It would be essential to mention here that earlier application under Section 23 was filed along with main petition in which monetary relief was not claimed where as in the present application which is again filed under the same Section in which the monetary relief has been claimed. It has been objected to by the respondent in the reply to the application that the same does not lie and the application should have been filed under Section 25 (2) of D. V. Act. Without going into the technicalities, the application may be read as an application under the relevant provisions of the D. V. Act.

6. I have heard the submission advanced by counsels for both the parties. It has been stated by the counsel for the complainant that the complainant has all along been very fair and honest in her complaint by submitting that she was working and had means to sustain herself. She has not filed application for grant of interim maintenance for herself as she was earning sufficiently to maintain herself and take care of her daily needs but today the situation has changed and she is jobless and totally dependent on the mercy of her old and ailing parents.

7. The present application has been strongly opposed by the counsel for the respondent with a catena of judgments showing that having a capacity to work and choosing not to work is no ground for grant of maintenance, as, admittedly the complainant is well educated lady who has been earning approximately Rs. 50,000/- per month from her last job. If she has chosen not to work out of her own sweet will she cannot be permitted to take advantage of her own deed. In one of the judgments filed by the respondent it is well-established maxim of Anglo Saxon jurisprudence that 'no person can be allowed to incapacitate himself'. The gist of all the judgments filed by the respondent is that when the complainant is an able bodied person having capacity to earn and has actually been earning in the past is not entitled to receive any maintenance. When she could sustain herself by earning handsome salary in the past she would be able to get a job if she earnestly tries to search one.

8. As regards the maintenance of the child, the respondent has conceded that he is ready and willing to bear the expenditure of the child by accepting the fact that he is equally liable to maintain his child as her mother is.

9. Pursuant to what has been stated by both the counsels for the parties, I am of the view that although the complainant has been working in the past but the situation today is that she is not earning and that she has no money to sustain herself but then it cannot be denied that she is in a capacity to work and with earnest effort she shall be able to search a suitable job for herself.

10. As far as the maintenance of the child is concerned, since she is not the petitioner in the present complaint I would not be able to pass any orders as regards the maintenance for the daughter of the parties. Since the respondent has conceded to the fact that he is ready to maintain the child, he can do so voluntarily of his own accord.

11. As far as the maintenance of the complainant is concerned I am not inclined to pass

any orders for maintenance.

12. Accordingly, the present application is disposed of.

Announced in the open Court on 18.11.2010