

Misc. Case 26 of 2025

Order No.09

Dated 11.03.2026

PO has been transferred. Ld. ACJM is in charge.

Today is fixed for hearing.

Both parties files hazirah.

Heard in full.

Now the record is taken up for passing order in respect of the prayer for interim maintenance.

The factual scenario of the petitioner's case is such that she married the opposite party (O.P.) on 24.08.2001 as per Hindu Rites and Customs. At the time of marriage the father of the petitioner gave cash of Rs.70,000/-, 5 bhories of gold ornaments and other valuable articles. Out of their wedlock the petitioner gave birth to two sons named Nilkanta Pyke(18 years) and Nishikanta Pyke(14 years). After few years of her marriage, the OP and his family members started to inflict mental and physical torture upon the petitioner due to demand of Rs.50,000/- and motor-cycle. Having been protested by the petitioner, the tortures and torments were aggravated day by day. On 07.11.2022 at about 10.30 pm the O.P. in drunken condition, started abusing and physically assaulted and drove her out of the matrimonial home. Thereafter the petitioner lodged a criminal case against the OP and in-law members. Since then, the petitioner has been living at her paternal house with her son.

The petitioner claims that she has no independent income and is unable to maintain herself and her minor son, while the O.P. has a tractor, 8 kathas of landed property; from these sources his earning is approximately Rs. 30,000-40,000 per month. Consequently, the petitioner has sought maintenance of Rs. 10,000 per month for herself and Rs. 5,000 per month for her minor son from the O.P.

Canvassing such case, the petitioner prayed for interim maintenance from the Court. On the other hand, the opposite party by way of written objection denied and refuted the material allegations leveled against him. According to the opposite party, the petitioner is an arbitrary, quarrelsome woman. The OP came to know that the petitioner had developed an illicit relation with one 'Gurudeb' and used to live in together. The OP also stated that his elder son namely

Nilkanta Pyke works in Bombay and earns Rs. 10,000-15,000. The opposite party claimed that he is a driver and earns Rs.6,000/- a month. He also claimed that the petitioner works in a puffed-rice mill wherefrom he earns Rs.9,000 - 10000 per month.

Ventilating such case, the opposite party prayed for dismissal of the prayer for interim application.

I also peruse the Affidavits of Asset and Liabilities filed by both the parties.

At the outset, it can be said that marriage between the parties is admitted. It is also admitted that they have two sons, younger one stays with his mother. There is no dispute that the petitioner is residing at her parental house for whatever cause. As the marriage was solemnized and two male children were born out of their wedlock then the desolate living of the petitioner at the mercy of her parental in-mates is not at all natural. When the petitioner is living separately with her son then there must be some caused which necessitates enquiry at the time of trial. In other words, it can be said that the petitioner has some prima facie case to go for trial.

It is the case of the opposite party that he earns Rs.6,000/- a month. This means that even in absence of document it can be said that the opposite party has an income to earn his livelihood. Although no document of income came from the stable of either parties except information mentioned in the Affidavit of Asset and Liabilities but, if I presume that the opposite party works as labour of a shoe-shop then the monthly income of the opposite party as stated by him is not at all convincing to this Court. Nowadays an ordinary day labour earns Rs. 350/- to Rs. 400/- a day as wage then the OP should earn such amount in normal parlance. When the opposite party has admitted the factum of marriage and prima facie failed to establish that the petitioner has sufficient means to maintain herself then it can be safely said that the petitioner is a entitled to an interim maintenance till disposal of the case. Even if the income of the opposite party is equivalent to that of a simple day labour then also such income should not be less than Rs. 11,000/- to Rs. 12,000/- a month. If that is the position then the petitioner should get at least Rs. 3,000/- a month as interim

maintenance for herself and Rs. 2,000/- for her younger son to pull their livelihood.

Consequently, the claim partly succeeds.

Hence, ORDERED

that the interim prayer U/Sec. 144 BNSS corresponding to 125, Cr.P.C is allowed on contest.

*The O.P. is directed to pay Rs. **3,000/-** (Three Thousand) per month in favour of the Petitioner namely, **Shikharani Pyke** and Rs.**2,000/-** (Two Thousand) per month in favour of her son namely, **Nishikanta Pyke** as monthly maintenance.*

*This order be effective from the date of filing of this application **i.e. 07.02.2025.***

Opposite party has a liberty to pay the arrear amount of maintenance by four (4) monthly installments. But, such arrear amount must be paid by the opposite party within July, 2026. Opposite Party is further directed to pay the aforesaid monthly maintenance to the petitioners by the 10th day of every succeeding English calender month. In failure of which the petitioner will be at liberty to execute order by the process of law.

Let a Photostat copy of this order be supplied to the petitioner free of costs.

*To **15.06.2026** for Evidence.*

D/C

J.M.2nd Court, I/C Kalna

(Suparna Roy III)
Judicial Magistrate, 2nd Court I/C
Kalna, Purba Bardhaman
JO Code-WB01118