

In the court of Judicial Magistrate

Kalna Purba Bardhaman

Present:

Mrs. Najmus Sahar

Judicial Magistrate,

Kalna Purba Bardhaman .

Misc Case No 110 of 2019

CIS No. 109 of 2019

C.N.R No -WBBD1200-1834-2019

Soumika Mondal

.....Petitioner

-Vs-

1. Sourav Mondal &

2. Sumita Mondal.

.....Opposite Party

Order NO 42 Date : 18.03.2024

The case record is fixed today for compliance of the order no. 32 & 34 by the petition and hearing of the petition dated 12.04.2023 L/C i/d w/o.

The petitioner is present today by filing hazirah through his Ld. Advocate and has filed a time petition.

The OP is present by filling hazira through his Learned Advocate. The O.P has filed the downloaded copy of the C.R.R 1007 of 2024 passed by the Hon'ble Court. Let it be kept with the record.

Having gone through the same it transpires that there is a direction to dispose of the application u/s 23 of Protection of Women for Domestic Violence Act and thereafter to proceed with the case for evidence fixing one date in every 45 days, so that trial can be concluded within a reasonable period of time. It is also mentioned there no unnecessary adjournment should be granted to either of the parties.

This Court has granted ample opportunity to the petitioner to file the bank statement for 36 months in compliance of the order of the Hon'ble Court but she failed to produce the same for the reason best known to her. The petition filed by the petitioner seeking time has been rejected and the Court will proceed on the materials available before this Court.

After perusing the case record it appears that at the pre-evidence stage, considering the pleadings of the parties and the submissions of their Ld. Advocates at the time of hearing of the interim petition, the following facts are prima facie evident:-

- The petitioner is the legally married wife of the Opposite Party (hereinafter referred to as the "OP).
- The parties are staying separately at present.
- The O.P. is an able bodied person and having landed properties and have sufficient income to maintain the petitioner .
- The said marriage was a negotiated marriage and still subsisting.
- The O.P has failed and neglected to maintain the petitioner .
- The petitioner, in her petition, inter-alia, states that the marriage between her and the Opposite Party was solemnized according to the Hindu rites and customs on 07.08.2015. Since after such marriage petitioner and her husband started leading their conjugal life at matrimonial house of the petitioner. After few days of thier marriage, her husband started inflicting physical and mental violence upon the petitioner and pressurized her to give him money for consuming alcohol. When the petitioner refused, the O.P no. 1 tortured her mentally, abused her verbally and also thrashed her for demand of money. Meanwhile, the petitioner was impregnated by her husband in October 2015. Her husband is a graduate in hotel management and he runs a business of Event Management and therefrom he earns abot Rs. 60,000/- per month and he also receives rent of Rs. 40,000/- from two of his properties. Hence, his gross income is about Rs. 1,00,000/- per month. The petitioner was an employee of a media house during such time in Kolkata. Then she decided to quit her job for her pregnancy. But her husband and his family members pressurized her for money and therefore to meet such greedy demands of the O.P, peti

tioner was forced by them to continue with her job even during her pregnancy period. The petitioner was not allowed by the respondents to visit her paternal house. During her pregnancy period, the O.P put tremendous pressure on her and her family for purchasing them a car, AC and for cash of Rs. 1,00,000/- for the sake of leading conjugal life peacefully, petitioner remained quiet and stated the facts to her father. The petitioner was forced by her husband to purchase a second hand car being model Tata Indigo and a videocon AC in EMIs. A loan of 3.5 lakhs was forcefully burdened upon the petitioner by the O.P. But their greed for money increasing day by day. During the period of petitioner's pregnancy dated 01.01.2016, her husband kicked her on her womb with a view to kill her child. The petitioner therefore, immediately intimated such fact to her parents and her parents went to Parnasee P.S and a G.D.E was lodged in such P.S vide G.D.E n. 83 dated 01.01.2016, the O.P were verbally warned by the officers of the said P.S and O.P promised that they will never inflict any physical or mental torture upon the petitioner in future and with a hope of peace the petitioner again went to her in-laws house in order to lead conjugal life with the O.P no. 1. The petitioner then gave birth to a girl child namely Aradhya Mondal on 05.06.2016 at Ambika Kalna but all the expenses of her delivery were incurred by her father as per the demand of her husband. The petitioner became physically weak to continue with her job due to her post pregnancy illness and therefore finally she resigned from her job. The O.P tortured upon the petitioner for giving birth to a girl child. Not only that they also denied to look after the daughter of the petitioner and bear her expenses. The mother of the petitioner took care of her daughter since after birth of the child and her father incurred all the expenses of the girl child. Being economically helpless, the petitioner again joined a new job at Bhubaneswar for bearing the expenses of her child but she could not meet up with all the expenses of livelihood of her and her daughter and loans which are burdened upon her by the respondents. On 04.12.2018 the husband of the petitioner filed a false Mat Suit being no. 3050/2018 before Ld. Alipore District Judge Court with the intention to squeeze money from the petitioner. The petitioner was told

- by her husband and his mother to give them a sum of Rs. 5,00,000/- or purchase a flat in the name of the O.P no. 1 and in return they will withdraw such false case. The petitioner requested them to withdraw such false case but they told her that whenever she or her parents will give them Rs. 5,00,000/- they will withdraw such suit. Although, her husband in the meantime led conjugal life with her in her matrimonial house and in her rented house at Bhubaneswar and she also attended the marriage ceremony of her brother-in-law from 18.02.2019 to 22.02.2019 even after filing of such Mat Suit. Finally on 15.06.2019 the petitioner along with her parents went to her matrimonial house and asked the O.P about such illegal and immoral behavior of her husband and requested them to lead peaceful conjugal life with her. The O.Ps assured her parents that they will come at Kalna and bring her and her child back to her matrimonial house. So as per their words petitioner and her parents returned back at her parental house but on subsequent day i.e on 16.06.2019 the O.P and his family members came at the paternal house of the petitioner and started abusing her and her parents with filthy words and when she raised objection then in front of her parent, they started to assault her and also threatened her with dire consequences and her mother-in-law demanded that her father have to buy a flat at Kolkata otherwise they will never bring her back to their house. She also stated that by hook or crook she will dissolve the marriage of the petitioner with her son and will arrange flat from the second marriage of her son. The parents of the petitioner and neighbour rescued her from their clutch. Since after that the petitioner is living at her paternal house with her girl child and tried her level best to resume her conjugal life with the O.P no. 1 but in vain. Hence, the petitioner filing this case.

The petitioner has prayed Rs. 15,000/- per month for herself and Rs. 15,000/- for her daughter as monthly interim maintenance from the Opposite Party.

On the point of income, the petitioner states that OP monthly income is Rs.1,00,000/- per month and the O.P is not paying a single penny towards

the maintenance of the petitioner and her minor daughter since the date of driven out and she is totally dependent upon her parents.

On the other hand, the O.P. filed written objection against the interim maintenance petition denying and disputing material allegation raised by the petitioner. The O.P. also states that the O.P. acquainted with the petitioner through a matrimonial website namely 'simply marry.com' where in her profile she mentioned herself as single and thereafter gradually a friendly and intimate relationship built up between them and thereafter the marriage was solemnized between them on 07.08.2015 at 4/57, Chanditala Lane, near Agragami club, Mlanha Cinema and after seven days from the date of the solemnization of the marriage the cruelty of the petitioner was started to the O.P. and his family members. From the very beginning of their matrimonial life the petitioner showed her resentment to stay with the parents and brother of the O.P. and created huge pressure upon the O.P. for arrange a separate accommodation for them but being a responsible family man when the O.P. informed the petitioner about his duty towards his family members and his inability to arrange for separate accommodation, the petitioner got furious and started abusing and behaving extremely rude with the O.P. and his family members and the petitioner was so adamant and revengeful towards the O.P. due to non-fulfillment of her demand that she even did not show the courtesy to attend the funeral of her father-in-law. Thereafter, within six months of the said marriage the petitioner demanded of Rs. 15,00,000/- to buy a new flat for herself but when the O.P. informed her that he cannot afford to pay such a huge amount the petitioner became furious and started ill-treating the O.P. and his family in such a rude manner which was beyond the level of toleration. Thereafter the O.P. humbly stated that the petitioner used to each and every petty matter between the husband and wife to her parents and it is pertinent to mention here that her father is an ex-Military Service Man and her sister is a practicing Advocate and both of them threatened the O.P. The father of Kishor Kumar Das used to abuse him in filthy languages and used to threaten to kill him and the sister-in-law of O.P. used to threaten to implicate him in a false criminal cases. He also admitted that one female child was born out of the said wedlock. He also stated that the petitioner being a journalist was working in Delhi with one Amit Kanojia and subsequently they got married and their marriage was dissolved. The said fact never disclosed

to the O.P and he came to know about the same subsequently when the petitioner was carrying. Subsequently the petitioner got a job of sub-editor in Odisha and shifted there and for the sake of the child and the petitioner the O.P also accompanied her. The O.P has to leave his old aged widowed mother and stayed at Bhubaneswar with the petitioner. The O.P on his birthday I.e 26.12.2017 came to his mother seeking her blessings and stayed sometime with her. In the first week of January, 2018 the O.P communicated to the petitioner that he is coming but the petitioner asked him not to come to lead the conjugal life as she wanted to lead an independent life and she started neglecting him. The O.P also states that the petitioner is having illicit relationship with her boss Mr. Srimoy Kar and she may be carrying his baby out of their affairs and all these facts were confessed by her in a telephonic communication with the O.P. The petitioner was constantly torturing him both mentally and physically and under compelling circumstances he lodged a case vide Mat Suit 3050 of 2018 for dissolution of marriage at Alipore. He also denies his income and states that he is dependent upon his widow mother's pension. It is also stated by him that the petitioner is a working lady and she is quite independent and capable of earning and was drawing a salary of Rs. 45,000/- in Odisha. The O.P thus prays for rejection of the order.

Both parties have filed Affidavit of Asset and Declaration.

Ld. Advocate appearing for the petitioner has submitted that the petitioner is entitled to get an order of interim maintenance as petitioner is a wife of the O.P and dependent upon her husband.

Ld. Advocate appearing for the O.P. has submitted that the petitioner left her matrimonial home as per her own wish. So, she is not entitled to get any maintenance. She has willfully deserted the O.P. and residing separately and as such she is not entitled to maintenance. The O.P further submits that he is paying monthly maintenance of Rs. 15,000/- in another Misc case u/s 125 of Cr. P.C vide Misc Case No. 107 of 2019.

Both Parties have filed their respective affidavit of Asset and liabilities and on perusal of the same it transpires that the O.P. has admitted the marriage and the child.

The petitioner has mentioned that she has no income and she has lost her job. While O.P has sufficient income and no contribution is being made by the O.P. for her maintenance.

With the above findings, relying on the affidavit filed by the petitioner and keeping in mind the very object of the enactment of Protection of Woman for Domestic Violence Act which is to save needy wife, children and parents of a man from destitution. It is also settled that sub section 3 of Section 26 of the D.V Act enjoying upon aggrieved person to inform the Magistrate if she has obtained any relief u/s 18, 19, 20, 21 & 22 in any other legal proceedings filed by her whether before a Civil Court, Family Court , Criminal Court. The object being that while granting relief under the D.V Act the Magistrate shall take into account and consider if any similar relief has been obtained by the aggrieved person or not. Even though proceedings under D.V Act may be an independent proceeding the Magistrate cannot ignore the maintenance already awarded in any other proceedings while determining whether over or above the maintenance already awarded, any further amount was required to be granted or not.

Now this is to be decided what would be the amount of the interim maintenance allowance that it can be said to be just and proper. While deciding the instant interim petition under D.V Act it is incumbent upon upon the Court to grant or adjustment or set off if any order is passed. The petitioner is getting a maintenance of Rs. 15,000/- per month for herself and her child in Misc Case 107 of 2019. This Court on several occasions asked to the parties to the lis to submit the bank statement for 36 months bank statement and income tax related papers. The petitioner has been granted several opportunity starting from the date of 04.02.2023 till today and the petitioner has sort the time on one pretext or other. But no bank statement as directed by the Ld. Court has been submitted while the O.P has submitted the bank statement at a subsequent stage. There is no justification on the part of the petitioner regarding non production of the I.T related papers and bank statement of 36

months while she has submitted the statement for a few months. It is also not place before this Court that what prevented the petitioner to produce those documents. In view of the non-compliance of the Court's order in as much as to file the affidavit of assets and liabilities in strict sense this Court does not find any justification to grant any interim monetary maintenance at this stage in this case. The petitioner is getting maintenance in Misc Case 107 of 2019 at the tune of Rs. 15,000/- for herself and her daughter and the same is quite sufficient. The other reliefs are left open and requires the full trial so all these reliefs will be decided after the trial.

Hence, it is

ORDERED

that the prayer for interim maintenance made by the petitioner in this case is refused at this stage on contest.

Fix 25.04.2024 for evidence of P.W.

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

Dictated & corrected by me.

Sd/-

Judicial Magistrate

Kalna Purba

Burdwan

J.O. 1355