

Order no. 7

Order dt. 3.8.2026

Both sides are present.

The record is taken up for hearing of interim maintenance petition filed by the petitioner.

Heard argument of both sides. The record is taken up for passing order.

This is a case under Section 144 BNSS. The petitioner, Mousumi Hazra, has filed an application seeking interim maintenance from husband, Sukanta Hazra for herself and their minor child.

1. The case of the petitioner, in brief, is that her marriage with the opposite party was solemnized on the 10th of Falgun, 2011, according to Hindu rites and customs. She alleges that at the time of the marriage, her parents gave dowry comprising Rs. 25,000/- in cash, gold ornaments weighing about 4 tolas, furniture, a showcase, a television, bicycles, utensils, and other household articles, fulfilling the demands of the opposite party and his family. Following the marriage, she went to live with the opposite party at her matrimonial home, and out of the wedlock, a male child named Aditya Hazra was born on 03/02/2014. The petitioner claims that since the marriage, the opposite party and his family members inflicted physical and mental torture upon her for further unlawful demands of money and articles. Specifically, she alleges that while they were living at Topsia, Kolkata, the opposite party would consume liquor, assault and abuse her upon returning home, and even attempted to kill her on several occasions. Unable to bear this cruel treatment, she asserts that she left her matrimonial home with her minor son about two years ago (specifically on 20/11/2023) and has since been residing at her parental home in Vill- Khapur, P.S.- Monteswar. She claims she has no independent income, whereas the opposite party a healthy, able-bodied person employed as a salesman in Thor Marble Company at Topsia, Kolkata earns not less than Rs. 30,000/- per month but has neglected to maintain them. Consequently, she claims a interim monthly maintenance for herself and for her minor son.
2. The case of the opposite party, as stated in his written objection, is a categorical denial of all allegations regarding dowry demands, physical and mental torture, alcoholism, and the incident of driving the petitioner out. While admitting the marriage, he contends that the petition is not maintainable. The opposite party alleges that three months after the marriage, the petitioner started creating disturbances to go to her paternal home, starved herself, subjected him to physical and mental torture, and disrespected his parents. He claims the petitioner refuses to live with him because he is poor and instead pressures him to live as a Ghar jamai (resident son-in-law) at her paternal house. He asserts that the petitioner voluntarily left the matrimonial home with their child on 20/11/2023, and despite his repeated attempts to bring them back, she and her family insulted and turned him away. The opposite party further alleges that the petitioner used

to abuse and physically assault his ailing parents, threatening false cruelty cases if he protested, and that since 2020, she has been involved in an illicit relationship with a man named Arabinda Hazra, threatening to kill the opposite party when he discovered it. Regarding finances, the opposite party refutes the petitioner's claims, stating he is an extremely poor daily labourer loading and unloading marble stones, earning approximately Rs. 10,000/- per month, with no landed property and ailing, dependent parents. He claims he is financially incapable of paying the demanded Rs. 18,000/- per month. Conversely, he alleges the petitioner is an educated woman earning Rs. 8,000/- per month from tailoring and receives Rs. 3,000/- monthly from the West Bengal Government's Annapurna scheme. Expressing his willingness to continue the conjugal life, he prays for the dismissal of the petition.

Decision with reasons: -

3. Section 144 BNSS is a beneficial provision enacted with the object of preventing vagrancy and destitution among dependents who are unable to maintain themselves. It empowers the Magistrate to order a person having sufficient means to provide maintenance to his wife and legitimate or illegitimate minor child, who is unable to maintain himself/herself. The provision specifically enables the Court to grant interim maintenance during the pendency of the proceedings to ensure speedy relief and prevent hardship to the applicants. It is a settled proposition of law that the purpose of interim maintenance is to provide immediate support to the wife and child in distress, without delving into a detailed inquiry at this stage, which is reserved for the final hearing.
4. The entitlement to maintenance under this section is not absolute but is subject to the conditions that: (i) the person from whom maintenance is claimed has sufficient means; (ii) he neglects or refuses to maintain the claimant; and (iii) the claimant is unable to maintain himself/herself. In cases involving a wife, even if the wife has some earning capacity, maintenance can be granted if her income is insufficient to sustain a dignified life commensurate with the standard of living enjoyed during the matrimonial cohabitation. For a minor child, the father's liability is primary and absolute, irrespective of the mother's income or conduct, as the child's welfare is paramount.
5. On a prima facie consideration of the materials on record, it appears that the petitioner and the opposite party were married on the 10th of Falgun, 2011 according to Hindu rites and customs, and out of the said wedlock one minor son, Aditya Hazra, was born on 03/02/2014. The marital relationship between the parties and the paternity of the minor child are admitted by the opposite party. The petitioner has alleged that she was subjected to physical and mental cruelty and was compelled to leave the matrimonial home on 20/11/2023 along with the minor son. It is further alleged that despite having sufficient means, the opposite party has failed and neglected to maintain the petitioner and the minor child. These averments, at this prima facie stage, disclose a case warranting consideration of interim relief pending final adjudication.

6. The opposite party has denied the allegations of cruelty and has contended that the petitioner voluntarily left the matrimonial home without sufficient cause and is involved in an illicit relationship. He has also expressed his willingness to resume conjugal life. These are disputed questions of fact requiring evidence and cross examination. Such issues, including the allegation of adultery and the justification for the petitioner residing separately, cannot be conclusively determined at the stage of deciding an application for interim maintenance and shall be considered during the final hearing upon appreciation of the evidence adduced by the parties.
7. The exact income of the opposite party is seriously disputed. While the petitioner has claimed that the opposite party earns about ₹30,000/- per month as a salesman, the opposite party has asserted that he is merely a daily labourer earning approximately ₹10,000/- per month. The determination of his actual income shall necessarily depend upon the evidence to be adduced during the trial. However, even if the income pleaded by the opposite party is provisionally taken into consideration for the present purpose, it cannot be ignored that he is an able-bodied person having a statutory obligation to maintain his wife and minor child. An able-bodied husband cannot avoid his legal responsibility to maintain his dependants merely by asserting a low income.
8. The opposite party has further alleged that the petitioner earns approximately ₹8,000/- per month from tailoring and also receives benefits under a Government welfare scheme. These assertions are disputed and there is presently no reliable material before this Court to conclusively establish such income. Whether the petitioner has sufficient independent means to maintain herself is also a matter requiring evidence. At this interim stage, such disputed assertions cannot be accepted so as to deny the petitioner interim maintenance.
9. The minor child is admittedly residing with the petitioner. The obligation of a father to maintain his legitimate minor child is a statutory obligation and remains paramount. The welfare, education, nutrition, medical care and other basic necessities of the minor child cannot await the conclusion of the trial.
10. Interim maintenance is intended to provide immediate financial assistance during the pendency of the proceeding so that the claimant is not reduced to destitution or undue hardship. Having regard to the prevailing cost of living, the basic requirements relating to food, clothing, shelter, medical treatment, transportation and other incidental expenses of the petitioner, as well as the educational and day to day needs of the minor child, some reasonable provision is required to be made until the rights of the parties are finally adjudicated.
11. At the stage of deciding an application for interim maintenance, the Court is not expected to undertake a detailed inquiry into the rival claims regarding income or finally determine disputed questions of fact. The object is to strike a fair balance between the immediate needs of the claimants and the prima facie financial capacity of the person liable to maintain them, without prejudicing the rights of either party at the final hearing.

12. Considering the admitted marital relationship, the admitted paternity of the minor child, the fact that the petitioner and the minor child are residing separately from the opposite party, the disputed nature of the rival claims regarding income, the prima facie material available on record and the immediate needs of the petitioner and the minor child, this Court is of the view that an award of interim maintenance of ₹3,000/- per month to the petitioner and ₹1,000/- per month to the minor child, aggregating ₹4,000/- per month, would be just and reasonable at this stage, subject to the final adjudication of the proceeding on the basis of the evidence to be led by the parties.

Hence, it is

ORDERED

that the interim maintenance application filed by the petitioner is hereby allowed on contest.

The opposite party is ordered to pay the interim maintenance at the aforesaid rates i.e. Rs. 3,000/- per month for the petitioner and Rs. 1,000/- per month for the minor child, total Rs. 4,000/- per month from the date of filing of the application.

The payment shall be made by the 10th of each succeeding month directly to the petitioner, failing which coercive steps may be initiated as per law.

Let the matter be referred to the Mediation. BC II is directed to send referral order.

Fix 19.11.2026 for evidence/order.

T/C by me.

Sd/-

JM, Kalna
WB01370