

In the court of Judicial Magistrate

Kalna Purba Bardhaman

Present:

Mrs. Najmus Sahar

Judicial Magistrate,

Kalna Purba Bardhaman .

Misc Case No 190 of 2022

CIS No. 199 of 2022

C.N.R No -WBBD1200-2283-2023

Terija Acharya (Chakroborty)

.....Petitioner

-Vs-

Indusekhar Acharya.

.....Opposite Party

Order NO 12 Date : 04.03.2024

The case record is fixed today for passing order.

The petitioner is present today by filing hazirah.

The OP is present by filling hazira through his Learned Advocate.

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. Though the petitioner is staying on the first floor of the house of the petitioner but she is having separate mess.
- The O.P. is an able bodied person 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 03.03.2014. Out of their wedlock one male child namely, Debsena Acharya and two female child namely, Aratrika Acharya and Anushruti Acharya were born. After the solemnization of the marriage the petitioner was taken to her matrimonial house and she started to her conjugal life. The O.P and his family members started inflicting torture upon the petitioner for dowry and also for begetting the female child. The petitioner's family members gave several items including cash, bed, beddings and furniture at the time of marriage as per demand of the O.P and his family members. The relation between the petitioner and the O.P is not cordial and as such she has instituted a case being Nadanghat P.S case no. 275 of 2022 dated 12.07.2022 against the O.P and his family members. The petitioner has no income of her own. She is totally dependent upon her husband.

The petitioner has prayed Rs. 15,000/- per month for herself and Rs. 6,000/- for her daughters and Rs. 4000/- for the fooding and medical expenses of her son as monthly interim maintenance from the Opposite Party.

On the point of income, the petitioner states that OP monthly income is Rs. Rs. 50,000/- to Rs. 60,000/- per month being a deed writer and the O.P is not paying a single penny towards the maintenance of the petitioner and her minor daughters and she is totally dependent upon her husband.

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 petitioner has deserted him. The O.P., inter-alia, has stated that he is presently working as an assistant for his father who happens to be a deed writer but he has no income of his own and he is dependent upon his father who is a deed writer and out of the income of the the father the O.P used to meet the expenses of the petitioner and her children. The petitioner is still residing in the same house in which

the O.P resides. She is leading an adulterous life and has extra marital affairs with some other person. The O.P further states that the petitioner is reluctant to maintain the children and look after them and as such the O.P has get his son admitted in a hostel and he himself pay all the expenses of his son including educational, medical and fooding and lodging expenses. The O.P also states that he used to pay the educational expenses of his daughters also. But presently he is not paying the fees of the daughters but he is providing all the grocery items to the petitioner and her daughters every month. The Ld. Advocate of the O.P further submitted that the petitioner has made a frivolous application as because the petitioner has not discharged her duty as a devoted wife and she remains always busy over phone. She wants to lead a luxurious life and her demand was beyond the financial capacity of the O.P. The petitioner has mercilessly assaulted the O.P and has bite him severely.

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 house wife 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.

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 is not income tax assesses. 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 Section 125

Cr.P.C which is to save needy wife, children and parents of a man from destitution, I am of the opinion that the petitioner is entitled to get interim maintenance.

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 u/s 125 of the Code it is incumbent upon me to come to a prima facie finding about the quantum of the income of the OP.

In this context, in the event of conflicting claims about a husband's income, and the wife leading a adulterous life and the desertion of wife cannot be decided at this moment at the time of deciding the monthly interim maintenance. These issues being the vital issues are left open and shall be decided at the time of final hearing of this case.

In view of the facts stated by the petitioner in respect of Opposite Party's income, mentioned in affidavit of asset and liabilities, keeping in view the facts stated by the petitioner as well as the Opposite Party in respect of the regular expenses, the basic requirement of the petitioner status of the parties and striking a balance between penury and luxury I am of the opinion that OP should be directed to pay interim maintenance allowance at the rate of Rs. 4,000/- (Rupees Four Thousand Only) per month for the petitioner and Rs. 2,500/- (Rupees Two Thousand Five Hundred Only) per month for her each minor daughters. Since the O.P is paying and bearing all the expenses of his son so no interim maintenance is passed in respect of the son. Considering the financial soundness of the OP this court is of the view that the amount is definitely not going to be a hardship upon the OP but would definitely save the petitioner as well as the minor son of the petitioner from destitution and vagrancy.

Hence, it is

ORDERED

that the prayer for interim maintenance made by the petitioner in this case is allowed in part on contest without any order of costs.

The OP is hereby directed to pay interim maintenance allowance to the petitioner at the rate of Rs.4,000/-(Rupees Four Thousand Only) for herself and Rs. 2,500/- (Rupees Two Thousand Five Hundred Only) for maintenance for her each minor daughters namely, totaling Rs.9,000/- (Rupees Nine Thousand Only) per month from date of the filing of this application till the disposal of this case. Such amount is adjustable with the maintenance, if any paid by the OP to the petitioner under any other statute.

He shall pay the amount of maintenance within the 10th day of each succeeding month for which it falls due.

The petition for interim maintenance is thus disposed of without costs.

Fix 18.06.2024 for evidence of P.W.

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

Petitioner is directed to be diligent in proceeding with the case and not to be indolent being complacent with the order of interim maintenance.

Dictated & corrected by me.

Sd/-

Judicial Magistrate

Kalna Purba

Burdwan

J.O. 1355