

Misc. Case 182/2022
Regd. No.-191/2022

Order No.10

Dated : 11.10.2023

Today the record is fixed up for passing order in respect of the prayer for interim maintenance.

Both parties filed Hazira.

Heard.

The factual scenario of the petitioner's case is such that her marriage was solemnized with the opposite party on 23.11.2010 in accordance with Hindu rites and customs. At the time of marriage the OP was given cash of Rs.10,000/-, 3 bhories of gold ornaments, furnitures and other valuable articles by the father of the petitioner. After marriage, she went to her matrimonial house and resided with the opposite party as husband and wife and one female child namely, **Nayana Roy** was born out of their wedlock. The petitioner alleged that, she was subjected to physical and mental abuses due to demand of money. The petitioner brought cash of Rs.2,00,000/- from her paternal house, but the OP misused the said money by playing gambling. Again she was pressurized for more money. These tortures and torments aggravated day by day. Even the OP and his family members tried to kill her by pouring kerosene on her person and by pressing pillow on her face. Lastly, on 12.10.2021 at about 12.00 am the OP and his family members assaulted and drove her out from her matrimonial home along with her daughter. Accordingly, finding no other alternative the petitioner had to take shelter at her paternal home. She lodged a complaint u/S.498A of IPC against her husband and other in-law members. She further made out a case that, the opposite party has a business of saree and a business of gambling board and also has 4-5 bighas of cultivated land; and from all these sources he earns of Rs. 35,000/- a month. As such petitioner claims Rs. 10,000/- for herself and Rs. 7,000/- for her daughter per month from the OP.

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 him, he got married with the petitioner according to Hindu Rites and Customs. It is not denied that out of their wed lock one female child namely, Nayana Roy

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was born. It is alleged that the petitioner is an arbitrary woman and used to misbehave with the OP and his parents. Having been protested the petitioner used filthy languages upon the OP and pressurized him to reside in her parent's house as domesticated son-in-law. But the OP refused the same. Lastly, on 12.10.2021 she along with her daughter left her matrimonial home on her own. The opposite party claimed that he is a day labour and earns Rs. 5,000/- a month. It is further alleged that the petitioner works as attendant where from she earns Rs.10,000/- in a 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 a daughter who 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 on 23.11.2010 in accordance with Hindu rites and customs and one female child was born out of their wedlock then the desolate living of the petitioner at the mercy of her parents is not at all natural. When the petitioner is living separately with her child then there must be some cause 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. 5,000/- 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 a labour 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. Though the OP alleged that the petitioner earns Rs. 10,000/- as an attendant but he failed to prove the same furnishing any documents. 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 entitled to get an interim maintenance till

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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 minor daughter to pull their livelihood.

Consequently, the claim partly succeeds.

Hence, ORDERED

that the interim prayer U/Sec. 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 **Sumita Roy** and Rs. **2,000/-** (Two Thousand) per month in favour of her **daughter** namely, **Nayana Roy** as monthly maintenance.

This order be effective from the date of filing of this application **i.e. 03.11.2022.**

Opposite party has a liberty to pay the arrear amount of maintenance by **three (3)** monthly installments. But, such arrear amount must be paid by the opposite party within **January, 2024**. Opposite Party is further directed to pay the aforesaid monthly maintenance to the petitioners by the 10th day of every succeeding English calendar 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 **13.02.2024** for Evidence.

Dictated and corrected by

SD/ Jamshed Shaikh
Judicial Magistrate
2nd Court, Kalna

SD/ Jamshed Shaikh
Judicial Magistrate,
2nd Court, Kalna
(JO Code WB 01389)