

Misc Case no-137 of 2023
CIS No. 129 of 2023

Order dated: 25-11-2024

Today is fixed for order in respect of interim petition.

Both sides file their respective advocate haziras.

By filing the instant petition dt. 14-09-2023 , the petitioner Mithu Kundu has prayed for an order of interim maintenance allowance to the tune of Rs.10,000/- per month as her interim maintenance on the grounds that:

- a) The petitioner is the legally married wife of the O.P Tapan Kundu and their marriage was solemnized as per Hindu rites and customs on 16th April, 1997.
- b) It is the further case of the petitioner that during her stay at her matrimonial house the petitioner was subjected to torture, both mentally and physically by the O.P/ husband on demand of dowry. Finally on 28-03-2014 the petitioner was driven out from her matrimonial house by the O.P/ husband and since then petitioner herself tries to solve the crisis, but remained unsolved as O.P neither contacted with her nor paid any maintenance to her . The children of the petitioner are major.
- c) On 12-05-2017 the petitioner was compelled to file a case under Section 13 (1)(a) of Hindu Marriage Act before the Ld. Additional District and Sessions Judge, Bishnupur which is still pending.
- d) The petitioner has no source of income of her own and on the other hand the O.P has two pucca dwelling house and also cultivable land and different kinds of business and he earns Rs. 30,000/- per month.

The OP filed W/O against the petition for interim maintenance. The OP admitted the marriage with petitioner and the children but denied other allegations .

The positive case as put forward by the O.P is that the petitioner used to demand valuable articles like ornaments, cosmetics from O.P. and due to non fulfillment of such demand used to quarrel with O.P and his family members and all time remained engaged with her smart phone. She used to threaten the O.P to falsely implicate in criminal case. The petitioner left her matrimonial home voluntarily and the stridhan articles are in her possession. The petitioner has a training of nursing and she used to earn Rs. 10,000/- - Rs. 12,000/- per month by working as manager in Sharbomongola Nursing Home.

O.P is a member of Bankura Jilla Majdur Sangha and is a labour. His daily income is Rs. 200/- and he does not get job everyday.

Findings of the Court

It is worth mentioning that while disposing an application for interim maintenance allowance u/s-125 Cr.P.C the Court has hardly any scope to go through the merit of this case, but to pass necessary order based on the materials apparent on record.

Nothing is on record to show that the petitioner has any permanent source of income to maintain herself nor there is any material that the O.P. has been providing any sort of maintenance to the petitioner/wife.

It is needless to say that the husband of a wife having sufficient means is under a statutory obligation to maintain his wife who is in distress . In this case , the O.P. is an able-bodied man and does not suffer from any deformities. The O.P. has claimed that he is a day labourer but did not file any documents in support of his income which should be within his special knowledge because income of a man is within his special knowledge. However, photo copy of a document has been filed by the O.P to show that he is a member of Bankura Jilla Motor Majdur Sangha.

In any case, the O.P. is liable under the law to maintain his wife.

In the instant case while appreciating the materials apparent on record, I have reason to believe that a prima facie case has been made out in favour of the petitioner/wife for her entitlement as to interim maintenance allowance.

Now having regard to the submission of the Ld. Advocates for both sides coupled with the materials available on the record as well as considering the need and urgency of the petitioner and the condition of the O.P. , this court is of the view that if a sum of Rs. 2,000/- per month to the petitioner/wife be allowed and that would not be prejudicial to either of the parties at this stage.

Accordingly it is,

ORDERED

that the present application for interim maintenance allowance is hereby allowed on contest in part in favour of the Petitioner but considering the circumstances without any cost.

Opposite Party Tapan Kundu is hereby directed to make payment of a sum of Rs. 2000/- (two thousand only) per month for the petitioner Mithu Kundu and to the petitioner towards the interim maintenance allowance from the date of filling interim application i.e., 14-09-2023 till disposal of this case.

Such amount is adjustable with the maintenance, if any, paid by the O.P. to the petitioner under any other statute. The payment must be made within 7th day of each succeeding English Calendar month failing which, the petitioner is at liberty to realize the same through court.

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

Fix 07-01-2025 for evidence and payment.

D/Corrected by

A.C.J.M, Bishnupur

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J.O.Code-WB00973

