

Misc Case no-29 of 2024

CIS No. 27 of 2024

Order dated: 02-12-2024

Today is fixed for order in respect of interim petition.

Parties file their respective Advocates haziras.

Heard both sides already on 27-09-2024.

Perused the record carefully.

Considered.

By filing the instant petition dt. 13-03-2024, the petitioner Papiya Kesh Mondal has prayed for an order of interim maintenance allowance to the tune of Rs.12,000/- per month as her interim maintenance and Rs. 8,000/- per month for the minor son on the grounds that:

- a) The petitioner is the legally married wife of the O.P Bapan Mondal and their marriage was solemnized as per Hindu rites and customs on 25-11-2017 with sufficient marriage presents.
- 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 and the torture enhanced after the birth of son of the petitioner namely, Sohan Mondal. Finally on 05-05-2023 the petitioner was driven out from her matrimonial house by the O.P/ husband alongwith her son 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 or to her child.
- c) The petitioner has no source of income of her own and on the other hand the O.P earns Rs. 40,000/- per month by working as Supervisor in Jamsedpur Construction PVT Ltd and further earns Rs. 10,000/- from Submersible Mini and also earns Rs. 10,000/- from the cultivable land, total Rs. 60,000/- per month.

The OP filed show cause petition against the original maintenance petition and adopted the same as written objection against the petition for interim maintenance. The OP admitted the marriage with petitioner and the child but denied other allegations .

The positive case as put forward by the O.P is that the O.P has no landed property or any active submersible pump. O.P earns Rs. 5000/- to Rs. 6000/- per month by selling plastic articles in footpath. However, O.P admitted that previously he used to work as labour in Jamsedpur construction company and

used to earn Rs. 8000/- - Rs. 9000/- per month. O.P has no capacity to provide separate maintenance to the petitioner and the child but he is ready to lead conjugal life with the petitioner. It is the further case of the O.P that petitioner earns Rs. 11,000/- per month by working in Panchayat and as well as by giving private tuition. It is further alleged that petitioner has illicit relationship with one Sovan Mondal of Shyamsundarpur Village and for that reason she has filed divorce case against the O.P.

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 and her son also nor there is any material that the O.P. has been providing any sort of maintenance to the petitioner/wife or the child.

There is also nothing on record as regards the alleged illicit relationship of the petitioner which is subject matter of trial and cannot be decided at this stage.

It is needless to say that the husband of a wife and a father of a child having sufficient means is under a statutory obligation to maintain his wife and child who are 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 earns Rs. 5000 to Rs 6000/- per month 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. Though there is no direct evidence to show that O.P has a Mini Submersible Pump but from the photo copies of the electric bill in the name of the O.P it prima facie appears that the connected load of electric connection in the name of O.P is 4.38 KVA and there is reflection of Subsidy from West Bengal Government. This is indicative of the fact that O.P might have a submersible mini pump, as claimed by the petitioner. Therefore his income is presumed to be more than what he has claimed in the written show cause.

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

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 and child for their 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. 3,000/- per month to the petitioner/wife be allowed and Rs. 2000/- per month for the minor son, 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 Bapan Mondal is hereby directed to make payment of a sum of Rs. 3000/- (three thousand only) per month for the petitioner Papiya Kesh Mondal and Rs. 2000/- per month for her minor son Sohan Mondal, to the petitioner towards the interim maintenance allowance from the date of filling interim application i.e., 13.03.2024 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 28-01-2024 for evidence and payment.

D/Corrected by

A.C.J.M, Bishnupur

*A.C.J.M, Bishnupur
J.O.Code-WB00973*