

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), BISHNUPUR
DISTRICT - BANKURA

Present : Sri Tanumoy Karmakar (J.O. Code: WB01209)

J.Misc. Case no. 02 of 2026

(In connection with T.S. no. 142/2025)

CIS No. 02 of 2026

CNR No.WBBK07-000061-2026

Priyanka Pal (Nandi)

.....Petitioner/Complainant

Vs.

1) Santanu Nandi

2) Ramkrishna Nandi

3) Sasthi Nandi

4) Santu Nandi

5) Sumana Batal

.....Respondents.

Contd. Order no.01 dated 20-04-2026

Ld. Counsel on behalf of the aggrieved person/complainant/petitioner (herein after referred as petitioner) proposed to move the application filed under Section 23 of the Protection of Women from Domestic Violence Act (hereinafter referred as D.V. Act).

The petitioner is present.

Argument heard from Ld. Counsel for the petitioner.

Now, the case record is taken up for passing necessary order.

FACTS OF THE CASE

The case of petitioner in nutshell is that, the petitioner/complainant and respondent no.1 are legally wedded, wife and husband. The marriage between the parties was solemnized on 18-04-2017 and subsequently one child was born out of the said wedlock. There are certain unfortunate circumstances whereby the respondent no.1 and his family members have played fraud with the petitioner, which has compelled the petitioner to knock on the doors of this Court about the fraud played upon her and her family members. In this context, it is pertinent to mention here that one Title Suit bearing no.42 of 2026 was also filed by the petitioner and the instant application under the D.V. Act has been filed in connection of that civil suit. It has been further alleged that since after few days of marriage, the petitioner has been suffering physical and mental abuse, pain, helplessness, unhappiness, and anger on account of respondent no.1 and his family by contending that

the child is not the legitimate child of the respondent no.1. Eventually, being unable to bear the trauma and agony, the complainant fearing for her life, being destitute without any money has been constrained to file the present complaint.

Petitioner again alleged that initially everything was fine but just after passing of few days of the marriage, the respondent no.1 started fighting and taunting the complainant over very minor issues with this thing that marriage was not done as per their desire and started pressurizing and threatening the complainant to accept the her extra-marital affairs. Accordingly, finding no other alternative, petitioner left her matrimonial house on 07-01-2024 and started to live in a rented house, because the door of her parental house was shut.

Now, the legal question is whether in the present fact and circumstances of this case without trial can this court grant interim monthly maintenance to petitioner. Another legal question is harvesting in the mind of this Court whether Civil Court has any jurisdiction to try such kind of cases or not. In this context, Section 26 of the D.V. Act comes into play and it clearly lays down that *“any relief available under Section 18, 19, 20, 21 & 22 may also be sought in any legal proceeding before a Civil Court, Family Court or a Criminal Court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act...”* In this context, it is also pertinent to mention here that the petitioner has already filed one civil case bearing Title Suit no. 42 of 2026 and after filing the said civil case, the instant application was filed and numbered as Judicial Miscellaneous case.

In this regards there is a judgment of Hon’ble Supreme Court in **Rajnish Vs Neha, reported in (2021)2 SCC 324**. the Hon’ble Apex Court has been pleased to pass following directions :-

Final Directions In view of the foregoing discussion as contained in Part B – I to V of this judgment, we deem it appropriate to pass the following directions in exercise of our powers under Article 142 of the Constitution of India :

(a) Issue of overlapping jurisdiction:-

To overcome the issue of overlapping jurisdiction, and avoid conflicting orders being passed in different proceedings, it has become necessary to issue directions in this regard, so that there is uniformity in the practice followed by the Family Courts/District Courts/Magistrate Courts /Civil Court throughout the country. We direct that:

(i) where successive claims for maintenance are made by a party under different statutes, the Court would consider an adjustment or set off, of the amount awarded in the previous proceeding/s, while determining whether any further amount is to be awarded in the subsequent proceeding;

(ii) it is made mandatory for the applicant to disclose the previous proceeding and the orders passed therein, in the subsequent proceeding;

(iii) if the order passed in the previous proceeding/s requires any modification or variation, it would be required to be done in the same proceeding.

(b) Payment of Interim Maintenance:-

The Affidavit of Disclosure of Assets and Liabilities annexed as Enclosures I, II and III of this judgment, as may be applicable, shall be filed by both parties in all maintenance proceedings, including pending proceedings before the concerned Family Court / District Court / Magistrates Court, as the case may be, throughout the country.

(c) Criteria for determining the quantum of maintenance:-

For determining the quantum of maintenance payable to an applicant, the Court shall take into account the criteria enumerated in Part B – III of the judgment. 56 The aforesaid factors are however not exhaustive, and the concerned Court may exercise its discretion to consider any other factor/s which may be necessary or of relevance in the facts and circumstances of a case.

(d) Date from which maintenance is to be awarded:-

We make it clear that maintenance in all cases will be awarded from the date of filing the application for maintenance, as held in Part B – IV above.

(e) Enforcement / Execution of orders of maintenance:-

For enforcement / execution of orders of maintenance, it is directed that an order or decree of maintenance may be enforced under Section 28A of the Hindu Marriage Act, 1956; Section 20(6) of the D.V. Act; and Section 128 of Cr.P.C., as may be applicable. The order of maintenance may be enforced as a money decree of a civil court as per the provisions of the CPC, more particularly Sections 51, 55, 58, 60 r.w. Order XXI.

At this stage it is pertinent to refer the some relevant provision of section 23 of D.V. Act,

Section 23: Power to grant interim and ex-parte orders.—

- (1) In any proceeding before him under this Act, the Magistrate may pass such interim order as he deems just and proper.
- (2) If the Magistrate is satisfied that an application *prima facie* discloses that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he may grant an ex parte order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under section 18, section 19, section 20, section 21 or, as the case may be, section 22 against the respondent.

Bare perusal of Section 23 of the D.V. Act reveals that the same is in two parts.

In the first part of the section i.e. under sub-section 1 to Section 23, D.V. Act Magistrate has discretion to pass an interim order in any proceeding as he deems fit and proper.

Again in the second part of the section i.e. under sub-section 2 to Section 23 D.V. Act, Magistrate has power to pass an ex parte order on the basis of an affidavit filed by the petitioner.

It is obvious that under second part i.e. sub- section 2 to Section 23 D.V. Act,

whenever Magistrate passes an ex parte order on the basis of an affidavit, Magistrate is bound to record his satisfaction that the application moved by the petitioner *prima facie* discloses that the respondents are committing or have committed an act of domestic violence or that there is a likelihood that respondent may commit an act of domestic violence. If Court is satisfied so, Magistrate may pass an ex-parte order in favour of the aggrieved person. However, such satisfaction is not required to be recorded when the ex-parte order is not passed.

Indisputably, in the instant case, this court is to pass order under section 23(1) of D.V. Act, and not under section 23(2) D.V. Act.

Further Section 23 provides that the Magistrate may grant an ex parte order, including an order under Section 20 for monetary relief. The Magistrate must be satisfied that the application filed by the aggrieved woman discloses that the respondent is committing, or has committed an act of domestic violence, or that there is a likelihood that the respondent may commit an act of domestic violence. In such a case, the Magistrate is empowered to pass an ex parte order on the basis of the affidavit of the aggrieved woman.

Be that as it may, this court makes it clear that in this case, the factum of marriage is not in dispute. So it goes without saying that the petitioner and the respondent have been in domestic relationship as defined in section 2(f) of D.V. Act. It is also admitted position that after marriage the petitioner and the respondent used to reside in a dwelling house of the respondent which comes within definition of shared household as envisaged in section 2 (s) of D.V. Act.

In case of **Martin Burn Ltd. v. R.N. Banerjee reported in 1958) SCR 514, 530]** where the Hon'ble Apex Court observed as under:

“..... A prima-facie case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the same were believed. While determining whether a prima-facie case had been made out the relevant consideration is whether on the evidence led it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence.”

At this stage without examining the parties this court cannot decide whether the petitioner voluntarily left her matrimonial house or she was compelled to leave her matrimonial house. More so, from the pleadings and documents so filed by the petitioner it is *prima facie* clear that the petitioner has been subjected to mental, physical and economic violence as defined in section 3 of D.V. Act especially when the paternity of the child has been denied by the respondent no.1 and the respondent no.1 has refused to bear the duties as a father and husband of the child and the petitioner respectively. It is also apparent from the pleadings that the child was born after matrimonial knot between the petitioner and respondent no.1. It cannot be taken into consideration that the respondent no.1 used to live in a separate accommodation without the petitioner after the marriage and the child was

born during that period. In this juncture it is also apposite to mention here that respondent no.1 is a school teacher and used to live with the petitioner since marriage. So, prima facie there is no doubt regarding the paternity of the child who born out of the wedlock between the petitioner and respondent no.1.

Now, the next legal point is the quantum of interim maintenance. In doing so, this court has to decide income of the respondent and the petitioner. In this context, it is also pertinent to mention here that petitioner already filed one affidavit declaring her assets and liabilities which clearly reflects that petitioner earns a little for her livelihood because she is a jobless woman and she also living in a rented house along with her child because the door of her parental house was not open to her.

In this context, it is apt here to refer the case of **Chitra Sengupta v. Dhruba Jyoti Sengupta AIR 1988 Cal 98 : (1987) 1 CHN 450 at page 102 the Hon'ble Division Bench of Calcutta High Court** observed "

"but that apart, monthly income of a husband may not very often be within the knowledge of the wife, particularly in a case like this where the relation is considerably strained and the spouses are living apart for a considerably long period". The Hon'ble Division Bench also observed that onus under Section 106 of the Evidence Act would be on the husband to disclose the same and if he fails to do so without any good reasons, the Court would be entitled to presume against him and to accept the allegations of the wife as to the amount of income derived from such reasonable sources as would be available to her.."

It is settled principles of law that mere wife is working did not *ipso facto* disentitled her from claiming maintenance. However, in the instant case from the affidavit in respect of Assets and Liabilities it *prima facie* appears that petitioner has a little bit income to live her life not in a satisfactory manner when child is living with the petitioner.

In my view, this quantum of the interim maintenance allowance is neither penurious nor luxurious.

Considering the social status of the parties and the income of the petitioner and the physical condition of the respondent no.1, I am inclined to allow maintenance in favour of the petitioner and for the child at this juncture.

Be it necessary to mention here that *prima facie* it appears that petitioner used to reside in a rented accommodation. So, I find that prayer of alternative accommodation can be allowed at this stage in favour of the petitioner.

Hence,

it is

ORDERED

that the petition filed by the petitioner is hereby allowed as ad interim manner.

Accordingly, respondent no.1 is directed to pay a monthly allowance of Rs.10,000/-

per month to the petitioner and Rs. 10,000/- per month from the minor child from the date of this order. Respondent no.1 is further directed to pay Rs.8,000/- per month for accommodation of the petitioner on production of the original rent bill.

Such amount is adjustable with maintenance if any paid by the respondent no.1 under any other statute.

The payment must be made within 7th day of each succeeding English Calender month.

In case of default, the petitioner may proceed as per law.

Let a copy of this order be supplied to the petitioner free of cost and to the Protection Officer, Bankura for taking necessary action.

Fix **30-04-2026** for call for report from Protection Officer, Bankura and SR & AD.

Petitioner is directed to file requisites at once.

Update CIS.

Dictated & Corrected by me.

Sd/-
Civil Judge (Sr. Divn.), Bishnupur

Sd/-
Civil Judge (Sr. Divn.), Bishnupur
(District-Bankura)
(J.O. Code-WB01209)