

**Misc case- 137/2024
R- 137/2024**

Order No. 11 dated 31.07.2025

Today is fixed for hearing in respect to the interim maintenance application filed by the petitioner.

Parties are present in court today by filing hazira.

I have heard the Ld. Advocate of both sides.

Perused the petition filed by the petitioner praying for interim maintenance allowance. No written objection is filed by the respondent against the interim application.

The case of the petitioner in a nutshell is that she was married to the respondent about fourteen years ago as per Muslim rites and customs. Due to the wedlock the petitioner gave birth to two male children. The petitioner alleged that the respondent had illicit relationship with one lady named Akila Bibi. From then onwards, the petitioner was inflicted to mental and physical torture by the respondent. On 05.01.2024 at about 5:00 p.m the petitioner was assaulted and driven out from the house with her son. The petitioner is living at her father's house in misery and starvation. Thus, the petitioner has prayed for Rs. 15,000/- per month from the respondent as her monthly interim maintenance allowance.

Having heard the submissions of the Ld advocates of the parties and after going through the materials on the record, it is found that the respondent has admitted the petitioner as his wife. It has also not been denied by the respondent that the petitioner is presently residing separately from him. Both the contesting parties have made several allegations and counter allegations against each other. But such allegations can only be relied upon proper proof of the same at the trial stage upon appreciation of evidence. So at this juncture it will not be proper to reach to a certain conclusion with regard to the allegations made. It is pertinent to mention herein, that petitioner has prayed for interim maintenance @ Rs.15,000/- per month. Further, the respondent states that he is a day labour. The affidavit of assets and liabilities show a detailed format of all the possible sources of income of the parties, however the affidavit of assets and liabilities filed by the parties are not properly filled. In this situation it is difficult to determine the true income of the respondent from the affidavit of assets filed by the parties. At this stage after perusing the affidavit of disclosure of assets and liabilities filed by the petitioner it transpires that no other cases of overlapping jurisdiction are pending between the parties.

It is evident from the statements of the respondent that he is a man with able body. The petitioner has stated that she has no income. No document has been filed by the respondent to establish that the petitioner has an independent source of income. I deem it pertinent to mention here that mere survival should not be equated with sustenance. An estranged wife ought to live a life with the same level of comfort and standard which she enjoyed at her matrimonial home. She is entitled to lead a life in the similar manner as she would have lived in the house of her husband.

Therefore, it is the legal duty of the respondent to work as per his capability to earn his livelihood to maintain his wife and child. Furthermore, at this stage of case it is not possible to adjudicate as to whether the respondent owns the property mentioned in the application and earns sufficient money or whether the petitioner had left her matrimonial home without any cogent reason or not. Thus ,I have no hesitation to hold at this stage that the respondent has sufficient means/income to maintain his wife and child. So, the respondent is bound by the law to maintain them. I am of the considered view that as the relationship between the parties is admitted, for the survival of the petitioner and her child pending final adjudication of this case she should get interim maintenance allowance from the respondent at the rate

of Rs.4,000/- per month from the date of this order. Considering the facts as stated in the disclosure of affidavit of assets and liabilities filed by the parties, the order will take effect from this day.

Hence ,

ORDERED

that the petition filed by the petitioner praying for interim maintenance is hereby allowed in on contest in part.

That the respondent is hereby directed to pay to the petitioner and her child Rs.4,000/- per month as their interim maintenance allowance from the date of this order within the tenth day of every month as the interim maintenance allowance, failing which the petitioner will be at liberty to put the order in execution.

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

To **30.08.2025** for evidence of the petitioner.

Typed and printed by me,

**J.M 2nd Court,
Dinhata, Cooch Behar
(J.O Code- WB 1265)**