

Order No:13

Dated: 06.04.2026

Today is fixed for passing necessary order regarding interim maintenance petition filed by the petitioner.

The petitioner and OP are represented through their Ld Advocate

Heard the Ld. Advocate for both parties on last occasion .

Now the record is taken up for passing order u/s 144(1) of BNSS.

Perused the case record and the materials available therein.

Petitioner no 1 and OP had been married on 22.11.2006. and they have one minor son born out of their holy wedlock. They were leading happy married life for several years.

Now the allegation is OP deserted the petitioners without providing any financial support for last nine years and during the subsistence of first marriage he remarried with Sarala Lepcha and a child born out of their said wedlock.

Petitioner No. 1 lost her job due to transfer to Tenzingang, Arunachal Pradesh and could not relocate due to single parenting responsibilities. She somehow managed to look after herself and her child but presently struggling financially after leaving her job whereas OP did not bother to provide a single farthing to them inspite of stable salary of Rs. 60,000/- per month. He neither bothered to show any emotional support or concern for his son's welfare and well being, neither bothered about the emotional damage done to her son. She further stated that she has been struggling to establish job stability and the growing standard of son's education and daily necessities. She lastly submitted that she has been compelled to knock the door of this court as she is unable to maintain herself and her son as presently, she does not have any source of income. She has claimed interim maintenance of Rs. 10,000/- per month for herself and Rs. 20,000/- per month to her minor son from the date of filing of the petition.

OP by filing written objection denied all the material allegation labelled against him and stated that the petitioner left his company without any rhyme and reason and she is not allowing him to meet his minor son. She being adamant and egoistic in nature has willfully and deliberately deprived him to meet with his minor son. He tried his level best to bring them back but she was reluctant and adamant to lead a separate life. He further stated that he voluntarily extended financial assistance for the welfare of his minor son but she did not accept due to her adamant nature. He has a responsibility to look after his ailing mother and his gross salary is Rs. 58,920/- per month and his net- take home salary is Rs. 39,975/-pm after deductions. He lastly

submitted that she is not entitled to get any maintenance for herself as she being well qualified and financially independent to maintain herself and the minor child.

During the hearing Ld. Advocate for the petitioner submitted that admittedly petitioner is a qualified lady and used to work till the month of April 2024 but she left the job due to transfer to Arunachal Pradesh for the sake of her child education and single parenting responsibilities. He also submitted that OP has no responsibility of his mother as she is a pension holder and has own source of income to look after herself. He also banked on the admission made by OP that OP did not provide single penny even for the maintenance of his minor son and the entire responsibility of parenting is borne by the petitioner herself as she now unable to maintain themselves financially after losing her job she knocked the door of this Ld. Court for the maintenance prayed for.

On the other hand Ld. Advocate for the OP heavily relied on the higher qualification of the petitioner and her income generated from her job. He submitted that she cannot sit idle inspite of her higher qualification to be burden on her husband to claim maintenance. Therefore, she is not entitled to get the maintenance for herself and he also submitted that as she herself refused to accept the extended financial assistance provided by the OP for the sake of his minor son so her entire prayer is entitled to be rejected at this stage.

Now this court travels through the affidavits of assets, income and expenditure of both the parties. While going through the same it appears that the petitioner has mentioned that her elder sister is bearing the expenditure of her child education and the total monthly educational expenditure of her child is Rs. 11,000/- per month. She has been staying along with her minor son at rented accommodation at a monthly rate of Rs. 7500/-.

While going through the affidavit filed by the OP this court finds that he has mentioned the date of separation is 16.10.2016 as well as he has not paid voluntarily or willingly for the maintenance of the petitioner. He has mentioned the qualification of his wife as M.Sc (IT) employed at Central School for Tibetan as well as admitted that the educational expenditure of children is borne by her mother.

Therefore, from the factual aspects it is transpired that the petitioner No. 1 has the capacity to earn being a qualified wife but there is difference between capacity to earn and actual earning. OP failed to bring a single scrap of paper showing she has been earning presently.

The ground mentioned by the petitioner for leaving her job is for the sake of her minor son of growing him by taking responsibility of single parenting which is itself a full fledge job for any single parent.

She came before the court due to financial stringency sustained by her after losing her job in the month of April 2024 it means she came before this court to claim

maintenance for herself and her child after one year. Admittedly there is no endeavour on the part of the OP reflecting he has had any care or emotional attachment at least towards his son during this period to know how his education expenditure be taken care of.

OP failed to place any ground to refuse like living in adultery, living separately with sufficient cause or by mutual consent, whereas she has made serious allegation of second marriage by OP inspite of subsisting of first marriage. The crux of the maintenance case is the allegation of neglect by the OP to the petitioner. Here by making mere statement of extending hand for financial help for the sake of his child would not suffice at this stage as there are allegation and counter allegation against each other and those issues require to be determined after laying down the evidence from both side which is not attainable at this stage, therefore both petitioners are entitled for claiming maintenance from OP at this stage.

This court is of considered opinion that a qualified wife cannot be denied interim maintenance relief solely on the basis of her education if she is currently unemployed and lacks sufficient independent income by showing the reasonable cause. There is no evidence to suggest that she voluntarily left her job without any rhymes and reason. She had resigned / left upon relocating to Arunachal Pradesh which would be burdensome on her due to responsibility of single parenting. Further OP himself admitted that he has not paid a single penny to both petitioners even after separation of nine years.

Further this court is of considered opinion that refusal to grant maintenance to the petitioner No 1 despite her earning capacity would be premature and unwarranted especially considering the legislative intention behind the enactment of Sec. 144 of BNSS as it provides immediate relief to the petitioner till the final maintenance petition will be decided.

Now this court needs to determine the income of the OP and the quantum of the maintenance to be ordered.

Admittedly OP is a Government employee and getting Rs. 60,000/- approx per month gross salary. His plea of shouldering the financial responsibility of ailing mother would not stand as she herself is a pension holder.

Further it is settled position of law that the neglected and deserted petitioners must be maintained as per status of the OP. Hence, having regard to the object of the legislation, the little information about the status of the parties as could be obtained from the pleadings, affidavits filed by the petitioner and OP, need of the petitioner and her child for a modest living and the inflationary trend of market, I find that an interim award of Rs.5,000/- for the petitioner per month and Rs 10,000/- pm for her minor son until further order would be reasonable.

Hence, it is

ordered

that the interim maintenance petition filed by the petitioner/ wife against the OP/ husband is allowed on contest.

The petitioner no 1 do get an interim maintenance of Rs. 5,000/- per month for herself and Rs 10,000/- pm for her minor son(petitioner no 2) from the date of filing of petition till the disposal of this case but no order as to cost of litigation.

The OP/ husband is directed to pay the said allowance being Rs.15,000/- (Rs Fifteen thousand only) per month to the petitioner according to English calendar by the 10th of each succeeding month.

Arrears maintenance amount will be paid by OP in four equal installments each month to the petitioner No.1 otherwise she will be at liberty to take proper step for its realization.

A copy of this order be given to the petitioner free of cost.

Fix 15.05.2026 for evidence.

D/C by me

Chief Judicial Magistrate
Darjeeling

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Darjeeling