

M.R. 18 of 2021
CIS No. 20/2021

Order No. 16
23.08.2023

Parties are present with their Ld. Advocates. Today is fixed for passing order in respect of the prayer for interim maintenance filed by the petitioner.

Record is taken up for passing order. Perused the petition, the W/O. thereto, the documents and other materials in the record. Considered.

The petitioner has filed this instant prayer on the ground that she is the legally married wife of the O.P. and their marriage has been solemnized on 10.05.2010. After marriage, she went to her matrimonial home and started to reside with the O.P. as husband and wife. Initially she was happy with the O.P., but after few years, things took an evil turn when the O.P. took up drinking as a habit. He used to stay out for long hours and preferred not to return home even at night. The petitioner protested and she was subjected to torture at her matrimonial home over trivial matters. Thereafter, the petitioner came to know that the O.P. is involved in an extra marital affair with another woman and she has even caught the O.P. red handed. She tried her best to bear with all the pain with the hope of future peace, but her efforts went in sheer vein and the torture upon her increased day by day. She tried to bear all the inhuman tortures in the hope of future peace, but lastly, on 06.12.2019, she was assaulted brutally by the O.P. and was driven out of her matrimonial home. Finding no other alternative, she took shelter at her father's house and since then she has been residing therein. The petitioner has been passing her days in misery at the mercy of her aged parents and she does not have any independent source of income. On the other hand, the O.P. is an able bodied

man having a well established business and he is a contractor by profession and thereby he earns about Rs. 2,00,000 – Rs. 3,00,000/- per month. The O.P., in spite of having sufficient means, has been neglecting and refusing to pay any maintenance to the petitioner and hence she has come up with this instant case as well as this instant prayer praying for an order of interim maintenance to the tune of Rs. 30,000/- per month from the O.P., till the disposal of this case.

The O.P. appeared and contested the petition of the petitioner by filing written objection wherein he has denied all the material averments of the petitioner and has contended, *inter-alia*, that the petitioner has left her matrimonial home on her own will and volition. It is the specific contention of the O.P. that it was the petitioner, who used to stay out of her matrimonial home for days together without informing her whereabouts and if she was asked about where she had been, she would pick up a quarrel. The O.P. has further contended that the petitioner has developed a habit of drinking and consuming alcohol for which he even considered to keep her at a rehabilitation center, but dropped his plan thinking of the family dignity. According to the O.P., all the allegations labeled against him by the petitioner are false and manufactured and the petitioner does not have any right to claim maintenance from him. He does not have any source of income and he is completely dependent upon his parents and therefore, it is not possible for him to pay any maintenance to the petitioner. The petitioner has filed this case as well as this instant petition only with an oblique motive of harassing him and hence he has prayed for rejection of this petition.

Having heard both sides at length and having considered the materials

in the record, what is found that admittedly, the petitioner has been living at her father's house since December, 2019. While considering the prayer for interim maintenance, urgency is the main ingredient to be found in the case of the petitioner. Here in this instant case, as it is found from the facts reiterated hereinabove, she has been residing at her father's house since December, 2019 and the O.P. has never contended that she has any independent source of income. Rather, he has only tried to shed his responsibility by stating that he does not have any source of income.

It is fact that the petitioner has not been able to prove the income of the O.P. by producing any document, but then, she has contended that the O.P. is a contractor and therefore, it can not be expected of her to lay hands on any of his financial documents, particularly when she has been living separately for long.

As it is found from the record that the case was filed in the year 2021 and the prayer for interim maintenance is being heard in the year 2023, therefore, there is no doubt to the fact that the urgency, which is the main factor in considering a prayer for interim maintenance has surpassed the requisite scale.

From the discussions made hereinabove, what is found that the petitioner is the wife of the O.P. and she is residing at her father's house and she does not have any independent source of income and she is unable to maintain herself. On the other hand, what we find is that the O.P. is an able bodied man suffering from no physical and mental infirmity. Therefore, I am not hesitant to hold that he has substantial income.

Therefore, considering all facts and circumstances, I am inclined to

allow the prayer for interim maintenance of the petitioner, and, in my opinion, her prayer for interim monthly maintenance is required to be allowed.

Hence, it is,

ORDERED,

That the prayer of the petitioner for interim relief is allowed in part. The O.P. is directed to pay a sum of Rs. 10,000/- per month to the petitioner for herself from the date of this order.

He is directed to pay such maintenance within the 15th day of the month following the month for which the same will be due, the first of which will be payable on and after 01.09.2023 and will be executable on and after 16.09.2023, failing which the petitioner will be at liberty to pray for execution of this order as per Law.

Fix 26-09-2023 for evidence. Parties are directed to come ready. The petitioner is directed to come ready complying the provision of Or. XVIII, Rule 4 of the C.P. Code.

Typed by me,

sd/-

(RUDRA PRASAD RAY)
Additional Chief Judicial Magistrate,
Kurseong

sd/-

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Additional Chief Judicial Magistrate,
Kurseong