

IN THE COURT OF ADDL. CHIEF JUDICIAL MAGISTRATE, HALDIA

Misc 204/2021(CIS 204/2021)

Smt. Bharati Das V/s. Jagatjyoti Das & 01 Anr.

U/SEC. 125 OF CR.P.C

Present: Sri. Girijananda Jana, ACJM, Haldia.

Order dt. 05.09.2022..

Both parties have filed their respective hazira.

One application under Order 6 Rule 17 of CPC has been filed praying for amendment of the written objection filed earlier by the OP.

Copy served.

Ld. Advocate on behalf of the Ops submits that some facts which were incorporated in the written objection are required to be amended so that the actual picture of the case can be brought before the court.

On the contrary Ld. Advocate on behalf of the petitioner raised vehement objection stated the fact that there is no scope of amendment at this stage.

Heard both sides.

I do not find the prayer for amendment under Order 6 Rule 17 of CPC is actually entertainable before the Criminal Court. Though it is claimed that the case is quasi civil in nature but considering the interpretation in this regard it is clear that the proceeding u/sec. 125 of Cr.P.C is not guided by Code of Civil Procedure and the prayer for amendment under Order 6 Rule 17 CPC can be entertained.

In view of the above, the prayer for amendment is considered and rejected without any costs.

Now coming to the hearing of the interim maintenance filed on behalf of the petitioner, I heard both sides at length. Prior to come to the discussion regarding entitlement of the petitioners claimed that I think a brief fact of the case should be alienated hereinunder. The petitioner case is that the petitioner being the mater of the Opposite Parties filed this case for herself and her ailing husband for their maintenance. The petitioner states that she and her husband have three sons and one daughter. Her husband is about 80 years old and she is about 66 years old. The old couple has invested their a large portion of life to bringing up their children. The Ops and other two children were brought up. The OP no. 1 by undue influence transferred 10 decimals of land from his father in his favour. The petitioner and her husband are presently residing at a house built up a Govt. property. The OP no. 2 is now planing to drive out the petitioners from that house also. Non of the Ops are being a farthing towards their maintenance. The petitioner and her husband has no source of income to maintain themselves. The OP no. 1 is an employee of Exide Company and has earning of Rs. 70000/- per month. OP no. 2 has a garment business and has earning of Rs. 30000/- per month. The petitioner is praying for herself maintenance of Rs. 15000/- and Rs. 15000/- per month for her husband. She is also praying for litigation cost of Rs. 25000/-.

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On the contrary Ops filed their written objection and denied the material claims and allegations as made by the petitioners. The Ops in their written objection mentioned the petitioner mother is a stubborn, jealous, quarrelsome lady. They stated that the petitioner never took any responsibility and care of her husband. The petitioner has filed this case against these Ops with the instigation of her youngest son, daughter-in-law and her daughter. The Ops state further that when their father fallen ill the OP no. 1 took all responsibility of his treatment. They state further that OP no. 1 has purchased a piece of land from his father. In the year 2016 the OP no. 1 was driven out by the petitioner with the instigation of his sister. This case has been brought against these Ops in order to harass them. The OP no. 1 states that he is an employee of the Exide Company and he earns Rs. 12000/15000 per month. OP no. 2 has garment business and earns Rs. 4000/5000 per month.

Ld. Advocate on behalf of the Ops submit to add certain facts that the son-in-law of the petitioner, daughter and youngest son Jagadish Das are residing at the house of the Ops and with their instigation this case has been brought. It is stated further that OP no. 2 is presently working as supervisor under municipality of the ward office and earns Rs. 6000/- per month. There is claimed that youngest son of the petitioner Jagadish Das is an employee of Haldia Dock Complex and he has one TOTO fro which he earns Rs. 25000/- per month. The wife of the youngest son of the petitioner is an ICDS worker and earns Rs., 8000/- per month. The OP prays for dismissal of the interim maintenance filed by the petitioners.

Hearing both sides, perusing the case record and going through the petition and written objection thereof, I find that there are certain facts which are undisputive. The OP and the petitioner and her husband are residing separately. The petitioner and her husband has no source of income to maintain themselves. The husband of the petitioner is suffering from several oldage ailments and they need to incur expenses for that. The petitioner has three sons and all are employed and have their income. There are certain disputes regarding landed property and residential house and its possession. Unfortunately all the competent sons are fighting themselves for the properties and their parents but they are not ready to consider that the parents are the valuable give to them and they can get blessings from the for their bright future. The petitioner is oldage lady and mother of the Ops. The statement made against a mother in the written objection is somehow difficult to swallow even though their could have been some substance in its. The earning of Ops as well as earning of youngest son has every responsibility to maintain them and take their responsibility severally and equally as per their income.

Considering all such facts, without going into the other aspects has tried to portrait by the Ops, I think the Ops along with youngest son of the petitioner are required to take responsibility to maintain their parents.

In my opinion three sons should pay atleast Rs. 2500/- per month to each of their parents for their maintenance.

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Accordingly the Ops have responsibility to make payment of Rs. 5000/- each to their each parents towards maintenance. The prayer for litigation costs will be considered after conclusion of trial.

Hence it is,

ORDERED

that the prayer made by the petitioner for interim maintenance is considered and allowed on contest without costs.

The Ops are directed to pay interim maintenance to the tune of Rs. 5000/- each per month to their each parents, in total of Rs. 10000/- till the disposal of this case with effect from the order of this court.

The Ops are directed to make payment of Rs. 10000/- per month to the petitioner within seven days of each succeeding English Calender Month, in default the petitioner shall have liberty to execute the order as per law.

The application for interim maintenance is thus **disposed** of on contest.

Let a free copy of this order be handed over to the petitioner.

To 21.11.2022 for evidence.

(Girijananda Jana)

A.C.J.M Haldia.

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