

ORDER dated:
18.02.13

Both the parties have filed respective haziras and remained present in the Court.

Today is fixed for passing order in respect of petition dated 23.02.11 filed by the petitioner Lipika Saha seeking interim relief under Section 17,18,19,20,21 and 22 of the Domestic Violence Act(P.W.D.V Act)[hereinafter called the Act].

In the interim petition the petitioner has categorically stated that she is the wife of respondent Tapan Saha and that their marriage took place as per Hindu Rites and Rituals on 18.11.1982. According to her the respondents forced her parents to provide dowries i.e. 25 bharies of gold ornaments, wooden cot, beddings, refrigerator, dressing table, alna, steel almirah, silver, brass and steel utensils the time of marriage. After marriage she went to her matrimonial home at 424/C Sarat Chatterjee Road, Shibpur, Howrah and started living there as husband-wife. Subsequently, she gave birth of two sons. Presently they are major. They are Tapajyoti Saha (26 years) and Subhrojyoti Saha (19 years). According to the petitioner the respondent is a very greedy person and used to demand more cash and other materials from her father. Finally the petitioner was forced to give ₹2,25,000/- to the respondent for purchasing the property at 424 Sarat Chatterjee Road, Shibpur, Howrah. She further disclosed that she was continuously subjected to insult, harassment, physical and mental torture over tiny family matters. The petitioner was even instigated to commit suicide. Finally on and from 19.07.05 the respondent assaulted the petitioner mercilessly and withdrew him from the society of the petitioner.

The petitioner also submits that she was denied from sufficient food clothing and medical expenses. In single sentence it can be stated that the petitioner was neglected by the respondents towards her maintenance. The petitioner categorically stated that she has no means of earning. Alternatively she stated that her husband/respondent is an able bodied person and is working as a Branch Manager of Allahabad Bank and posted at Lelini Sarani, Dunlop More, Balurghat Branch, Uttar Dinajpur and getting salary of ₹80,000/- per month. Accordingly she prayed for ₹25,000/- per month towards interim maintenance.

The respondent contested the application for interim relieves by submitting written objection. The respondents have categorically denied all the material facts as stated by the petitioner in her interim petition. The respondent only admits the fact of marriage with the petitioner and paternity of the children. The respondent has denied the fact of demand any amount towards additional dowries and fact of infliction of torture of any kind either physical or mental. On the other hand, the respondent submits that the petitioner is getting maintenance of ₹3,000/- per month in a proceeding u/s 125 Cr.P.C. which was finally disposed of. The respondent further submits that he is no longer in service and retired from the service. He further submits that the petitioner is residing in the ground floor of the 424/C Sarat Chatterjee Road, Shibpur, Howrah which was purchased by him. The petitioner drove him out from his house. He further stated that he purchased the ground floor of the building from his 3rd elder brother with loan of ₹4,00,000/- from the bank. He further submits that he has documents to that effect. He therefore denied the fact of demanding ₹2,25,000/- from the father of the petitioner. He further stated that in

the year 1998 he was transferred to Midnapore for 2 years and in that period the petitioner developed illicit relationship with one C.P.I.(M) leader Subhasish Banerjee of 398 Sarat Chatterjee Road. He further submits that the petitioner and C.P.I.(M) leader Subhasish Banerjee humiliated, harass him with help of P.S. He submits that the petitioner is living in adultery with aforesaid C.P.I.(M) leader Subhasish Banerjee. He further submits that he filed criminal case against the petitioner and C.P.I.(M) leader Subhasish Banerjee and the case was still pending. He further submits that the petitioner is a working lady and working as translator of books and magazines from Hindi to Bengali. He further stated that he is presently suffering from various ailments. The respondent filed series of photocopies of documents in support of his submission.

Over such allegations the respondents have prayed for rejection of the interim maintenance petition. On perusal of the interim maintenance petition and its written objection it is clear that the petitioner is legally married wife of the respondent.

Protection officer filed her report in the case vide letter no. 31.12.10 where she reported that the petitioner is in need of protection order, residence order and maintenance order.

The other relieves as claimed by the petitioner shall properly be considered after perusal of the evidences. Therefore, this court is not in a position to provide any other relief in the form of interim relief at the stage.

At the time of hearing Id. Advocate for the petitioner admitted the existence of Misc. case no. 375/05.

The petitioner has suppressed the fact of existence of a case under Section 125 Cr.P.C. wherein she got award of ₹3,000/- per month from her husband i.e respondent in Misc

case no. 375/05.

From the above discussion it is clear that the instant petitioner has not come before the court in clean hands. Only the motto of the petitioner is to squeezing more money from the husband in the disguise of 'interim maintenance' by way of various proceeding.

125 Cr.p.C is a 'self-contained code', and it provides provision of enhancement of maintenance under change in the facts and circumstances. It becomes clear upon careful perusal of the petition and its objection that the petitioner has not preferred any revision over the final order in Misc case no. 375/05 if she has felt so aggrieved by that order. Or even she did not take recourse of sec.127 Cr.P.C. for enhancing her maintenance. Naturally, the conduct of the petitioner indicates that she was satisfied with the maintenance order in Misc.Case No. 375/05. It is patient to be mentioned here that an application against the final judgment of Misc.Case No. 375/05 is still pending before Hon'ble High Court for consideration.

The relief in the form of interim maintenance used to allow for the purpose of meting up of the expenses for subsistence of the petitioner and not for any other luxurious purpose. If the petitioner is satisfied with the order in Misc. Case No. 375/05 then further claiming the interim maintenance through this application appears to be luxurious one.

Although this is a beneficial legislation and was enacted for the purpose of providing relieves to the beneficiaries but encouraging the petitioner by allowing her petition may create conflict in judicial order on the same issue by different courts.

It is settled principle of law that the petitioner will not get maintenance for twice in two separate proceedings

from the same person.

The object of the Act is to provide shield to the petitioner and that can not be used as a sword. Here in the petition the petitioner is trying use such shield as a sword. Here in the case the petitioner is trying to squeeze money from the respondent in the disguise of interim maintenance although she is getting considered amount as her maintenance.

In view of the aforesaid discussions this court is of the opinion that petitioner has no such urgency to get an interim relief in form of interim maintenance at this stage. She is capable of being maintained as per order in Misc. Case No. 375/05. In absence of any urgency at this stage, the court is of opinion that the case should be disposed of after full trial. Therefore, the instant petition dated 23.02.11 is liable to be rejected.

Hence, it is

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that the instant petition dated 23.02.11 filed by the petitioner is rejected on contest at this stage.

Fix 22.04.13 for evidence.

Let a copy of the order be sent to the protection officer, Howrah and to the petitioner.

Both the parties are directed to be ready for evidence for speedy disposal of the instant case.

J.M.