

Misc Case No.437 of 2021

Order dated: 07.06.2024

Today is fixed for order.

So the record is taken up for passing order.

Both parties file hazira.

Now the record is taken up for passing order in respect to the petition filed by the petitioner praying for interim maintenance.

1. The factual matrix of the aggrieved person's case is to the effect that she got married with respondent No.1 on 31.07.2018 under the provision of Special Marriage Act and thereafter her marriage also got socially solemnized on 02.12.2018. After marriage the aggrieved person went to her matrimonial home and began her conjugal life and subsequently, she blessed with daughter out of her period of wedlock. It is the further case of the aggrieved person that after her marriage she was forced to leave her job and her husband also used to pick up quarrel without any reason and she was also made to do all the domestic work and she was even not provided with proper food and cloth. It is also the further case of the aggrieved person that since after her marriage she was subjected to physical and mental cruelty by her husband and in-laws and due to such physical torture she also sustained physical injuries for which she also got treated at hospital. The aggrieved person also tried her best to settle the dispute amicably but her all efforts came to naught. Thereafter, on 18.03.2021 the respondent No.1 assaulted her mercilessly and drove her out from her matrimonial home with her minor daughter and since then she has been staying at her relatives' home. It is the specific case of the aggrieved person that she has no personal source of income whereas the respondent No.1 owns one G+5 building having more than 22 tenants, also owns a G+4 building, one iron and metal grill welding and manufacturing unit and the respondent No.1 also works at M/S B.K. Products and respondent No.1 has not given a single penny to the aggrieved person for their livelihood.

2. The respondents appeared in the case and has been contesting the case by filing written objections and he in his written objection inter alia stated that the aggrieved person has been staying at her matrimonial home till date and she even drove all the respondents from her matrimonial home

till date and the aggrieved person also has personal source of income for her livelihood. It is also stated that the respondent No.1 is a day labourer and earns Rs.1,200/- per month.

3. In this case respondents admitted the petitioner as his legally married wife and he is the biological father of the minor daughter of the aggrieved person so this point requires no further discussion.

4. At the very outset, Ld. Advocate for the aggrieved person submits before this Court that the respondents subjected the petitioner with physical and mental cruelty and subsequently, she was driven out from her matrimonial home with her minor daughter and at present she is living at her relatives' home and the respondent No.1 did not pay a single penny since she has been driven out. On the other hand, Ld. Advocate for the respondents vehemently raised objection and submits before this Court that at present the aggrieved person is staying at her matrimonial home after kicking out the respondents therefrom and it is also affirmed by the Hon'ble High Court in W.P.A No.2490 of 2024. Now, on careful scrutiny of the record I find that the aggrieved person in this case earlier filed an application for restoration of the electric connection in connection with Consumer ID 5000568750 in the name of Kunal Dey being respondent No.1 herein. So, it is quite clear that the aggrieved person has been staying at her matrimonial home till date. Now, the question which falls for discussion before this Court is that whether the aggrieved person is entitled to get relief as prayed for when she has been staying at her matrimonial home. In course of hearing Ld. Advocate for the respondents submits that the aggrieved person has personal source of income but there is no document on record which shows that the aggrieved person has independent source of income for their livelihood. So, at this juncture, the respondent No.1 is duty bound to maintain the aggrieved person and her minor daughter but at the same time the Court shall keep it mind at the time of fixing the quantum of maintenance.

Now, coming to the earning of the respondent No.1. In this case the respondent No.1 a graduate but in spite of that he claimed himself to be a day labour. Surprisingly, enough the respondent No.1 did not file his last three years bank account statements to establish his income. So, the Court would not believe that the respondent No.1 is a day labourer and earns Rs.1,200/- per month. In course of hearing Ld. Advocate also filed series of complaints lodged against the aggrieved person but these allegations require factual appreciation and cannot be decided at this stage.

In view of the discussion made hereinabove, I am of the view that the aggrieved person is entitled to get relief as prayed for.

5) Hence, I proceed to pass the following Order:

Ordered

that the prayer of the aggrieved person for interim monetary allowance under Section 12 read with Section 18, 19, 20, 22 and 23 of the P.W.D.V. Act, and the same considered and allowed on contest.

The respondent No.1 is hereby directed to pay interim monetary allowance to the tune of Rs.**2,000/-** per month for the aggrieved person and **Rs.4,000/-** per month for the minor daughter of the aggrieved person from the date of filing of this case and he is further directed to pay the monthly monetary allowance by 10th day of each succeeding English calendar month.

It is however, made clear that nothing of the observations made in this order shall have any effect on the trial and the trial shall be held independently.

That the petition is hereby disposed of.

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

To 02-09-2024 for evidence.

D/C

Judicial Magistrate,

4th Court, Howrah

(In-charge)