

Misc 378 of 2023

Order dated 23.02.2024 :

Today is fixed or order.

So, the record is taken up for passing order.

1) It is the case of the petitioner that she got married with respondent no 1 on 26.02.2016 as per Hindu rites and Customs and at the time of marriage sufficient dowry was given to the respondents as per their demands and after marriage the aggrieved person went to her matrimonial home and began her conjugal life and subsequently she was blessed with one son on 19.08.2018 out of her period of wedlock. It is the further case of the petitioner that since after her marriage the other respondents used to instigate the respondent No 1 to quarrel with her and they also demanded further dowry from the father of the aggrieved person and when such demand was not fulfilled then the respondents subjected her to physical and mental cruelty. And she was also not provided with proper food and got. It is also the further case of the aggrieved person that during her pregnancy a respondents never taken care of her livelihood. Moreover, the respondent No1 developed an illicit relation with one Shruti Jaiswal. Thereafter on 07.03.2023 the respondents demanded ₹ 50,000 from the aggrieved person and when such demand was not fulfilled then she was assaulted by them physically and was driven out from her matrimonial home and having no other alternative she took shelter at her parental home. It is the specific case of the aggrieved person that the respondent no 1 is the supervisor of Golden Refrigeration company wherefrom he earns ₹ 25,000 per month and the respondent No 1 in spite of having that the sufficient income did not take care the livelihood of the aggrieved person and her minor son.

2) The respondents in this case appeared by filing vakalatnama and filed written objection on their behalf and they stated in their written objection inter alia that the aggrieved person left her matrimonial home out of her free will and the respondent No 1 tried to bring her to her matrimonial home but all-time she refused the proposal of respondent No 1. It is also stated by respondent no 1 that the aggrieved person lodged a criminal case against him and so he lost his job and at present he does not have any earning.

3) Heard, considered.

4) At the very outset, Ld advocate for respondents submits before this Court, during the course of argument, that the aggrieved person has left her matrimonial home out of her free will and the respondent No 1 attempted to bring her back to his society but she refused to do so but this issues are matter of evidence and cannot be decided at this stage. It is also argued by the Ld advocate for the respondents that the respondent No 1 is, at present, unemployed and have no earning at all but, in course of hearing, the last three years bank account statements of respondent No1 has not been filed. At this juncture, it is pertinent to note that it is a trite law that if the husband is an able bodied person then he is bound to maintain his wife and children. In the case on hand, the respondent No 1 is a able bodied person and there is no document on record which shows that a respondent No 1 is physically incapable or he is suffering from any disease. So the respondent No 1 being can able bodied person is duty bound to maintain the aggrieved person and her son. In this case the respondent No 1 has intentionally mentioned in his affidavit of assets and liabilities that his earning is 'Nil' without any proof and so it is quite clear that the respondent No 1 has suppressed his income not only to defeat the claim of the aggrieved person but also to misguide the Court.

5) It has been contented by Ld advocate for the aggrieved person that his minor son has been suffering from Nephrotic Syndrome and so he has to undergo continuous treatment for his disease. On the other hand, the respondent No 1 also admitted such health condition of his son and her son is student of Kg II of Xavier's model Secondary School and the respondent no 1 does not provide neither medical nor educational expenses of her minor son. At this juncture, it would not be out of place to mention that in this case there is no document on record which shows that the aggrieved person has personal source of income and so, in such circumstances the respondent No 1 has to provide monetary allowances not only for the livelihood of aggrieved person and his son but also he has to provide the medical as well as the educational expenses of the minor son of the aggrieved person.

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

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

8) Now, coming to quantum of interim monetary allowances. Having regard to the facts and circumstances of the present case and the health condition of the minor son of the aggrieved person the quantum of interim monetary allowances has been fixed in the following manner:

Expenses for the livelihood of the aggrieved person :	₹ 3000/- per month
Expenses for the livelihood of the minor son of aggrieved person	₹ 2500/- per month
Medical expenses of the minor son of aggrieved person	₹ 2500/- per month
Educational expenses of the minor son of aggrieved person	₹ 1500/- per month

Total Rs 9,500/- per month

9) 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 Sections 18/19/20/22/23 of the Protection of Women from Domestic Violence Act, and the same considered and allowed on contest.

The Respondent is hereby directed to pay interim monetary allowance to the tune of Rs.3,000/- per month for the Aggrieved Person and Rs.6,500/- per month for her minor son 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 15-05-2024 for evidence.

D/C

Judicial Magistrate,
2nd Court, Howrah.