

Misc Case No. 76 of 2022
CNR No. WBHW12-001062-2022
J.O Code - WB 00953

Order dt. 23.09.2024

The record is fixed today for passing order.

Contesting parties file separate haziras.

The record is accordingly taken up for passing order in respect of petition u/s 23 of the P.W.D.V..

The case of the aggrieved person / petitioner is such that she got married to respondent no. 1 on 02.03.2008 in accordance with Muslim rites and customs. In her marriage at the desire of respondent no. 1, her parents gave nuptial gifts like Rs. 50,000/- in cash, gold ornaments, one cycle etc. After her marriage she went to her material home at vill. Chengail, P.S. Uluberia, Dist. Howrah along with all her nuptial gifts. Her marriage with respondent no. 1 was duly consummated and a female child namely, Samia Parvin and a male child namely, Tajimuddin Gore were born in the wedlock. Entire expense of pregnancy and child birth of these children were borne by the parents of the petitioner. Since the time of her marriage, the respondents misbehaved with her. The misbehavior was later on turned into mental and physical abuse over demand of dowry to the tune of Rs. 1 lakh. Attempted reconciliation by her parents did not improve the situation. On 10.01.2021, at about 09:00 hrs. the respondents took signature of the petitioner a few Rs. 10 blank stamp paper and some normal blank papers. Subsequently on 11.02.2021 at about 10:00 hrs. the respondents again started pressurizing her to bring Rs. 1 lakh from her parents as more dowry. When she refused to pay any heed to such illegal demands, respondent no. 1 brutally assaulted the petitioner while abusing her in filthy languages and respondent no. 3 tried to strangulate her. Out of sheer fear of her life, she started screaming, hearing which her neighbour came to her rescue and took her and their minor children to her paternal house for their safety, wherein she is spending her days in great misery along with their minor children due to poor financial condition of her father. Since that date the respondent has neglected to maintain her and their minor children though he is an able-bodied person earning Rs. 1,50,000/- per month from his retail business of grocery and stationary items. Hence, the instant petition for interim monetary relief to the tune of Rs.15,000/- per month for herself and Rs.10,000/- per month for each of their minor children, totaling at Rs. 35,000/- per month.

Respondent by filing written objection denied and controverted all the allegations leveled by the petitioner and made out a positive case that since their marriage, petitioner often used to ridicule respondent no. 1 and categorically expressed her felling that she did not consider / accept him as her husband. In fact on 11.01.2021 in the absence of respondent no. 1, petitioner voluntarily left her matrimonial home with their children and all her stridhan articles without informing anybody and started residing at her paternal house. She also made false acquisition against him to her parents and when this respondent visited petitioner paternal home to bring them back, she and her parents forcibly took his signature on some blank papers and also told him that they would arranged the marriage of petitioner

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elsewhere after obtaining Talaq from him. Thereafter, a notice was received by this respondent whereby the petitioner sought Talaq-e-Tawfiz. The said notice was accepted by this respondent and the Tawfiznama was communicated to the petitioner through concerned Advocate. He categorically denied that he earns Rs. 1.50 lakh per month and asserted that he earns Rs. 7,000-8,000/- per month by running a small pan shop attached to his dwelling house. He also alleged that petitioner has a handsome earning and is a skilled Jori worker. He finally prayed for outright rejection of this application on the ground that petitioner voluntarily left material home and also as she voluntarily executed a Talaq-e-Tawfiz against respondent no.1 apart from the fact that petitioner has already been granted interim maintenance to the tune of Rs. 3,000/- per month in a separate Misc case filed by her u/s 125 of the Code of Criminal Procedure being Misc case no. 231/21 pending before Ld. J.M. 1st Court, Uluberia, Howrah.

I have heard Ld. Lawyers appearing for the contesting parties at length. I have also perused the materials on record including the affidavit of assets & liabilities filed by the contesting parties as well as the D.I.R. which is on record. The DIR prima facie corroborate the factum of torture as alleged by the petitioner. Therefore, even if the petitioner is residing separately from her husband/respondent voluntarily, a prima facie case for awarding interim monetary relief does exist in her favour. Moreover, the contesting claims made as to execution of Talaq-e-Tawfiz can only be appreciated properly after evidence on the point is led by the contesting parties. Mere execution of Talaq-e-Tawfiz cannot be a ground for rejection of the claim of petitioner as the same is disputed by the petitioner and that the provision of the P.W.D.V Act enables the Court to provide relief to a person who is or has been in a domestic relationship with the respondent. Having so observed, however, the quantum of such relief cannot be to the tune of petitioner's claim as her affidavit of assets, liabilities and expenditure so far as it relates to the income of the other spouse is not supported by any document and the counter affidavit filed by respondent No.1 contains a contradictory averment as to his income which can only be conclusively ascertained on the touchstone of evidence. At this initial stage of the proceeding, this Court has no materials before it to at least have a prima facie idea as to the income of the respondent. The plethora of judicial pronouncement relied upon by the Ld. Lawyer for the respondents in support of his contention are not considered for the purpose of this hearing as copy of the firisti containing description of such citations have not been supplied to Ld. Lawyer for the petitioner.

In such facts and circumstances, in a case where there is no material on record denying the factum of marriage or paternity of the children, it is the bounden duty of respondent no. 1 to maintain them. Accordingly, I am inclined to pass an order of interim monetary relief subject to rationalization in view of the reason specifically stated in the foregoing paragraph.

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Hence, it is

ORDERED

that the application u/s 23 of the Protection of Women from Domestic Violence Act preferred by the petitioner praying for interim monetary relief is considered and allowed in part on contest.

The respondent is directed to pay the petitioner Rs.4000/- per month as interim monetary relief for herself and Rs.2000/- per month for each of the minor children from the date of filing of the instant Misc Case till further orders. Such payment shall be made within the 10th day of every succeeding English Calendar Month failing which the petitioner shall be at liberty to take appropriate recourse as per law.

Let a copy of this order be provided free of costs to both the sides as well as the Protection Officer, Howrah.

To 20.12.2024 for evidence.

D/c by me

A.C.J.M. Uluberia

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