

Order date 12-12-2023

Both parties file Hazira.

Today is fixed for order of the interim-maintenance filed by Minu Shaw against her husband Biswanath Shaw for grant of monthly interim- maintenance allowance Rs. 40,000/- per month for herself and Rs. 30,000/- p.m. for her minor daughter.

Seen the petition for interim-maintenance which is supported by an affidavit. Also seen the W/O against the interim application as well as the main application supported by an Affidavit, as submitted by the Opposite Party. Affidavit of Assets filed by both the parties.

It is the case of the petitioner that petitioner is the legally married wife of the OP and their marriage was solemnized on 02-06-20004 as per Islamic rites and customs. At the time of marriage cash of Rs. 10,000/, various utensils, furniture like almirah, palank etc. and gold ornaments were presented she went to her matrimonial home and resided together as husband and wife. It is the case of the petitioner that after marriage the OP took the petitioner no. 1 to his house at vill. Khantore where the parents-in-law and the OP used to live in a joint mess. Initially, the OP and the petitioner used to live peacefully as husband and wife but after the the OP started tortured and ill-behaved with the petitioner and also demand and pressurized her to bring sum of Rs. 50,000/- from her mother and when the petitioner expressed the inability to do the same, the torture increased upon her day by day both physically and mentally. During passing passes of time the petitioner gave birth one mail and one female child, The OP increased inhuman activities and tortured towards the petitioner even he did not provide her adequate food and clothes and also treated her as main servant. In spite of that the petitioner tolerated all the torture for the future like of her children and under these compelling circumstances the petitioner have been leading the conjugal like with the OP. The petitioner states that in early occasions the OP driven out the petitioner by physical assault from his house and at least 5 times were made Salish in presence of the local people. Lastly, on 23-02-2023 the OP taking all the stridhan articles and driven out the petitioner after physical assault for his house along with female child. Having no other alternative, the petitioner lodged a complaint to Domjur P.S. being no. 1373 dt. 23-02-2023 against the OP.

The O/P despite being an able bodied person and a businessman and he has two store house at Begri, and is a buyer of iron scraps from different hawkers and he is a stored the said iron scraps in the said store house where from he earns Rs. 2,00,000/- p.m.

The petitioner has no source of income to maintain herself and also her minor child and on the other hand the mother of the petitioner is poor person and as such the petitioner are completely burden upon her at this stage.

The O/P in his written objection filed against the interim maintenance application has denied all the allegations save and except that that the petitioner is his legally wedded wife. The O/P has denied the income as projected by the petitioner and has stated that he is a a hawker of buying iron, tin scrap and old new paper, books & khata by cycling and earns more or less Rs. 8,000 /- p.m. and thus prays for dismissal of the instant application.

The present case being at its primary stage I refrain myself from delving into the merits. However, from the pleadings and submission of the parties it is crystal clear that the marriage between the parties and their child are not in dispute.

The Section 125 of Cr. P.C. casts a duty upon the husband to maintain his wife and children. It is not only a social but a statutory duty too and the word 'refuse' and 'neglects'

includes the willful omission as well as the unintentional omission to perform duty. Thus, at this stage, for the sustenance of the petitioner / wife and her son, some provision should be made so that they can see the finality of the proceeding initiated by them.

At this initial stage, I find the case leans in favour of the petitioner.

Thus in absence of evidence and authentic documents, the authenticity of the claims, allegations and counter allegations as reflected from the pleading of the petitioner and submissions of both the parties, cannot be evaluated for proper adjudication. But having considered the above facts and circumstances, the condition of the petitioner their social status, condition of the society in which they live, current hikes in the prices commodities in and urgency of the means of sustenance of herself vis-a-vis income of the O/P, I am of the considered opinion that an award of Rs. 2,000/- each p/m pm for herself and her minor daughter is not excessive but proper amount of maintenance allowance, in the present case.

At this hard times when the prices of the essential commodities are sky rocketing, it is the solemn duty of the the O/P to see that the bare minimal requirements of the petitioner is fulfilled.

This Court finds it just to allow the prayer for ad-interim maintenance.

Hence, it is,

ORDERED

that the instant interim maintenance petition is allowed on contest but in part. The O/p is hereby directed to pay to the petitioner Rs. 2,000/- each p/m for herself and her minor daughter within 7th of every succeeding English calendar month commencing from the date of filing of the application till the final disposal of the present case. On failure of the O/p to make the aforesaid payment/s the petitioner shall be at liberty to set the law into motion for its recovery. The other relief as prayed for by the petitioner is rejected at this stage.

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

To 20-02-2024 for evidence from the side of the petitioner.

D/c by me

A.C.J.M. Uluberia

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