

MC Case No. 139 of 2022

Order Dated 20-03-2023

As specified in the previous order, today is fixed for passing order regarding interim maintenance petition.

Petitioner is present. OP is also present.

I have already heard the Ld. Advocates of both sides at length.

Case record is taken up for passing order.

Perused the petition praying for interim maintenance allowance and the written objection of the OP against the same.

From the submission of the parties it is preliminary found :-

- Marriage of the Petitioner with the OP is an admitted fact.
- Paternity of the child of the petitioner is an admitted fact.
- The petitioner does not reside with the OP at present.
- The OP is not giving any maintenance to the petitioners at present.

It is also evident that while deciding the question of payment of interim maintenance to a wife where relationship is admitted, this court is only expected to form a prima facie opinion as to the legality and validity of the petitioner's claim. If the contention of the opposite party as manifested in the W/O that the petitioner has willfully deserted the opposite party; has to be accepted then it is only after the entire evidence is led that an order for interim maintenance can be passed. That would defeat the very purpose of providing for payment of interim maintenance in Section 125 and hence the argument is required to be discarded at this stage.

At this stage another piquant question raised by the the opposite party needs to be addressed. The opposite party in his W/O submitted that the opposite party has a very little income and with that it is practically impossible for him to maintain the petitioners. The law on this score has been clinched by now by the the pronouncement of the Hon'ble High Court in **Saili Halder vs Debaprasad Halder And other reported in 2005 (3) CHN 87** the Hon'ble High Court has observed that projecting the alibi that the opposite party has a very meager income cannot exonerate the opposite party from his responsibility of maintaining his wife. It is axiomatic that the opposite party is an able bodied person.

Also whether or not the petitioner had left her matrimonial home voluntarily or was forced out by the O.P. is a matter of evidence which cannot be gone into at this stage because the proceeding is at its threshold. In absence of strong prima facie evidence to the contrary on this point, it can be said that the petitioner being the legally wedded wife is entitled to some interim maintenance for herself and her minor child.

Now the question germane for consideration is what should be the amount of maintenance. In presence of a strong prima facie case to go to trial and considering all the facets of this case, and in view of the present social scenario as well as the status of both the parties and taking into note all other facets of this case, I am of the opinion that the petitioner/wife is entitled to get interim maintenance from the O.P./husband to the tune of Rs.2000/- per month for herself and Rs. 1500/- per month for her minor child, in total Rs.

3500/- per month. I think that such amount shall be enough for the petitioner to sustain herself and her minor child for the time being till final order.

Hence, it is,

ORDERED

That the petitioner's application for interim maintenance succeeds on contest in part. The O.P is hereby directed to pay Rs.2000/- per month for herself and Rs. 1500/- per month for her minor child, in total Rs. 3500/- per month to the petitioner as interim maintenance for herself and her minor child from the date of filing this case till the final disposal of this case.

Such amount has to be paid within the 10th day of each succeeding months for which it becomes due.

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

To 20-06-2023 for evidence of Petitioner.

D/C by me;

*Judicial Magistrate, 2nd Court
Uluberia, Howrah*