

M C– 304/2022

Order dated :-
16.12.2023

Today is fixed for interim order and evidence.

Both the sides are present by filing hajira.

The petitioner is examined as PW-1 in part and her cross-examination is deferred as per the prayer of OP.

Heard the Ld. Advocates for both sides in full. Perused the materials on record including the affidavit of disclosure of assets.

Now, the record is taken up for passing of interim order.

The contention of the Petitioner no.-3 representing the petitioner Nos. 1 and 2 is that she is the legally married wife of O.P. and she has filed a petition u/s 125 Cr.P.C claiming maintenance for herself and her two children on the ground that they are staying on the mercy of her parents and the O.P is not paying any maintenance towards herself and her children. The specific contention is that their marriage was solemnized on 11.02.2001 as per Muslim rites and customs. After marriage, the petitioner went to her matrimonial home. They spent their conjugal life and in between their wedlock one female child and two male child saw the light on the earth. She came to learn that OP has illicit relation with his two sisters-in-law (boudi). On protest, he used to inflict torture upon her. He also kept her at her parental home without any reason for long time. When she returned back, again she was subjected to physical torture. The petitioner no. 3 tolerated every sort of acts with the dreams of peaceful life. On refusal of bringing money from her parents she was subjected to torture. Even after lapse of long period, the OP neither enquired about them nor paid any maintenance for themselves. She has no source of income and they are moving their lives in starving in a rented house after demise of her parents. She has to maintain her two children. No single farthing has been provided them by the O.P. She has no income at all. On the other hand, the O.P is an able bodied person and is a auto driver and imparts tuition and has landed property and he earns Rs.40,000/- per month. The O.P having sufficient source of income has intentionally refused and neglected to maintain the petitioner and her children. On contrary, the petitioner being purely a housewife having no income is unable to maintain herself and her children. On the ground, the petitioner needs at least Rs.5,000/- per month for herself and Rs.4,000/- for her each child per month for maintenance to meet the day to day expenses in the days of high market price.

By submitting W/O, the O.P. has stated that this case is not maintainable either in law or fact. The petitioner has no cause of action. The allegation has been made falsely and frivolously against the O.P. with an intention to harass the O.P. The petitioner left her matrimonial house on her own accord despite several requests by the OP not to leave his house. It is contended by the OP that many efforts of reconciliation had been failed. The O.P has no income and the quantum of income as stated by the petitioner is false. He fails to doing work due to his ailment and age. He has denied all allegations as raised by the petitioner no. 3. on the other hand, the petitioner has huge valuable property and she earns Rs.10,000/- to 12,000/- per month from her job in Flifkart.

Heard, considered, perused the materials relied upon both sides including the documents.

Though the O.P has denied all the allegations of the petitioner no. 3 but the marriage and the paternity of the children are admitted. It is also not disputed at this stage that the petitioner with her two children has been residing at rented house.

But, there is no single documents regarding income of O.P. except affidavit of assets and liabilities filed by both parties.

Considering the submission of both sides and materials available on record, it appears to me that certainly there is a reason for this rift between the parties.

Whether the petitioner was subjected to cruelty on demand of dowry, neglected or has left the matrimonial house voluntarily cannot be decided at this stage in the absence of evidence. There are other allegations and counter allegations as well which at this stage in the absence of any evidence cannot be taken into for discussion and consideration. The OP has not denied the marriage and paternity of children, so the first and foremost criteria for awarding maintenance is fulfilled.

Contd...P/2

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The petitioner submitted that she does not even have any income and whereas the OP is an able bodied person having monthly income of Rs.40,000/- from his profession. As such, she has claimed interim maintenance totaling of Rs.5,000/- per month for herself and Rs. 4,000/- each for her children. The OP has denied the earnings as mentioned by petitioner.

At this stage, without delving deep into the allegations and counter allegations, I am of the opinion that it is the incumbent upon the OP to maintain his wife and children. The OP once admits the marriage and paternity, he cannot escape his liability, save and except as provided in the provision which is yet to be proved. There is nothing on record to help me ascertain the source of income of the OP except the submissions made by both the parties. The interim maintenance is granted with a view to save the life of the persons claimed during the pendency of the proceeding.

Considering the need of the hour, the present socio-economic condition and applying the rule of prudence, with a view to keep the life alive of the petitioner and her children during the pendency of the final disposal of the main application, I am granting a minimum amount of interim maintenance to the petitioner and her children which would be justified for both the parties considering the notional income of an able bodied person in present day. This Court thinks that the notional income of a person is Rs. 15,000/- per month.

Hence, it is

ORDERED

that the interim application is allowed in part on contest without any order as to costs. The OP is directed to pay Rs.2,000/- each per month to the petitioner and her two children from the date of filing of this case as interim maintenance payable within 10th day of each succeeding month for which it falls due till the disposal of this case. The OP is directed to clear the arrear maintenance within three months from this day.

In default, the petitioners have liberty to put the order in execution to realize the amount as per law.

Thus, the interim application is hereby disposed off.

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

Fix 23.04.24 for cross of PW-1.

D/C by me

J.M. 2nd Court Uluberia

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