

M.R -267/2022

J/O Code: WB01095

Order dated-17-11-2022

Today is fixed for ex parte hearing

Petitioner files hazira.

OP files W/O along with a petition thereby praying for vacating the order of ex parte hearing.

Ld. Advocate for the OP submitted that on the first day the case was fixed for ex parte hearing as OP could not appear. Ld. Advocate for the OP prays for vacating the order of ex parte hearing.

Considered.

The order of ex parte hearing dated 07/05/2022 is vacated.

Ld. Advocate for the petitioner moves the application for interim maintenance.

Heard the Ld. Advocates of both sides.

The record is taken up for passing order of the petition and consideration of the prayer of petitioner who prays for grant of interim maintenance to the tune of Rs.5,000/- per month for herself and Rs. 5,000/- each per month for her three minor children from the O.P.

Perused the case record.

It appears from the petition that the petitioner is the legally married wife of the O.P. Their marriage was solemnized as per Muslim Shariyat more or less 10 years ago. At the time of marriage petitioner's father provided several gift articles to the OP including cash and gold ornaments as per their demand. After her marriage, petitioner went to her matrimonial to lead her conjugal life with the OP. She gave birth of one daughter, namely, Rina Khatun and two sons, namely Rana Sk and Ariyan Sk. Within few days of her marriage, OP and his family members started demanding money from her and subjected her to physical and mental torture. Petitioner failed to provide the said amount of Rs. 50,000/- as per their demand. Infliction of torture upon petitioner was intensified. The OP and his family members assaulted her mercilessly. They drove petitioner out of her home on 10/02/2022. Since then petitioner took shelter at her paternal home with her minor children. She has no independent source of income whereas OP earns Rs. 25,000/- 30,000/- per month by his occupation as labour and butcher. During her separate stay, OP never provided any maintenance to the petitioner and their minor children.

On the other hand, Ld. Advocate for the OP denied all the material allegations including the quantum of income. The OP stated in his W/O that petitioner earns Rs. 10,000/- to Rs. 12,000/- per month by sewing. OP further stated that he is a labour but earns Rs. 4,500/- to Rs. 5,000/- per month. Opposite Party prays for dismissal of the application for interim maintenance.

The petitioner has presented the instant petition on the ground that O.P does not provide any maintenance to her and to their minor children. OP willfully neglected to provide the same.

At this initial stage, though this Court has no scope to peruse the fact of wilful refusal on the part of the O.P. or to look into his income, but it is well settled that the object of section 125 Code of Criminal Procedure is meant to achieve social purpose. Its object is to prevent vagrancy and destitution. The vital duty has been cast upon the trial court to pass a prompt order in the form of Interim maintenance where situation warrants

so.

Being a husband, O.P is duty bound to maintain his wife who is incapable to maintain herself. It can be presumed, prima facie, that O.P is an able bodied person and he has capacity to maintain his wife and children. It can be presumed prima facie that due to alleged infliction of torture, petitioner left her matrimonial home. OP has not denied his income and his occupation by filing written objection. It could be presumed from the pleading of the petitioner that OP never provided any maintenance to his wife during her stay at her paternal home. In our society no married woman generally left her matrimonial home without any cogent reason. In the instant case petitioner alleged that OP inflicted torture upon her and she was driven out. She made her allegation on affidavit.

In the present circumstances, I am to hold that the petitioner is entitled to get an order of interim maintenance from the date of this order till the disposal of the instant M.R Case.

Hence, it is,

:ORDERED:

The petition for interim maintenance is hereby allowed on contest in part. The petitioner is entitled to get an amount of Rs.2,000/- (two thousand) per month for herself and Rs.1000/- (one thousand) per month for each of her three minor children towards maintenance allowance from the date of this order. Thus, the O.P. is directed to pay Rs.5,000/- per month for the interim maintenance of the petitioner.

The opposite party is directed to make payment of interim maintenance at the tune of Rs.5,000/- per month to the petitioner within the every 8th day of every succeeding English calendar month for which it becomes payable and due and failing which the petitioner will be at liberty to execute the order so passed.

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

To 19/12/2022 for payment and evidence.

D/C by me

Sd/- N. Ghosh
A.C.J.M, 2nd Court
Lalbagh

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