

Mat Suit 125/15

07 04.06.16

The record is taken up for passing necessary order in c/w the petition u/s 24 of Hindu Marriage Act filed by the wife Joly Debnath @ Nath against the husband Hironmoy Nath. The matter was heard on 12.05.16.

The case of the wife is that her marriage with Hironmoy Nath was solemnized on 25.04.12 as per Hindu rites and ceremonies and that out of such wedlock one daughter was born who is presently three years of age. However, the husband and his relatives used to inflict physical and mental torture upon her and lastly on 29.04.13 they drove her out of the house and that since then the husband has not given her and her minor daughter any maintenance. It is stated that the husband has his wholesale and retail cloth business having his personal shop at Nabadwip Railgate and used to earn Rs.20,000/- per month. Thus the wife has prayed for Rs.5000/- per month for herself and Rs.3000/- per month for her minor daughter as alimony and Rs.10000/- as litigation cost from the husband.

The husband has contested the petition u/s 24 H.M. Act filed by the wife. In written objection the husband stated that he is handicapped Neuro patient and unable to intercourse due to physical condition and has no capacity to talk normally and move easily without helping hand and he has no source of income. He denied the allegation of torture upon her wife. He stated that the Ld. J.M., Nabadwip has passed an order of maintenance of Rs.700/- for the wife and Rs.500/- for the minor daughter per month against which he is willing to file motion. He prays for dismissal of the petition of the wife u/s 24 H.M. Act.

Having heard the Ld. Advocates for both the parties and on going through the materials on record, it appears that the marriage between the parties is admitted and that the wife gave birth a female child. The husband has filed the instant suit against the wife praying for divorce. But to defend the petition u/s 24 of the H.M. Act, the husband's main contention is that he has no capacity to maintain his wife as he is handicapped Neuro patient. The husband has filed so many medical documents but no certificate issued by any medical board regarding his disability has been filed by the husband in the instant case. The medical certificates filed by the husband are not sufficient enough to prove that he is incapable of any income and that he has no capacity to maintain his wife. The medical documents submitted by the husband go to show that he was ailing since 2004. So, it is true that in the year 2012, when he married the petitioner/wife he was also in such ailing condition and that he had taken the opportunity to marry the petitioner/wife in such condition. It has been established prima facie that the wife has no independent source of income. The husband has denied his income but stated that the shop room has been running by his brother on railway land and against few income. The facts and circumstances of the case disclosed that the husband has his independent source of income.

Considering the factors like ability of the husband, needs of the wife and child as well as the social status, age and education of the child, I am inclined to hold that the wife and the child should get alimony and the litigation cost.

Thus, the prayer stands allowed. The husband is directed to pay Rs.800/- per month to the wife and Rs.700/- to the minor daughter per month as alimony from the date of this order. The husband is also directed to pay Rs.5000/- to the wife as litigation cost.

The petition u/s 24 H.M Act is thus disposed of on contest.

Dictated and corrected by me

ADJ, Nabadwip, Nadia

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