

Misc-213/2020
T.R-296/2020

Smt. Sunanda Sarkar

.....Petitioner

----Vs----

Suman Sarkar and 1 others.

..... O.P/Respondents

Order dated 19-09-22

Today is fixed for order of *interim* maintenance application filed by the petitioner.

Both parties have filed their respective hazira. Both parties have already filed their respective affidavits of assets and liabilities.

Petitioner has prayed under Section 23 of PWDV Act praying for an order of interim maintenance of Rs. 20,000/- per month from Opposite Party no. 1.

Perused the case record and made proper analysis of all relevant materials including the application under Section 12 of PWDV Act, and the report of Protection Officer.

On perusal of such report it appears *prima facie* that domestic violence has been committed against the petitioner/ aggrieved person by OPs.

The case of the petitioner in brief is that on 06.05.2019, the petitioner got married with OP no. 1 according to Hindu rites and customs and on 21-05-2019, they duly registered their marriage. At the time of marriage cash of Rs.2 lakhs, gold ornaments, furnitures and other valuable gift items were given. After marriage, she went to her matrimonial home to lead her conjugal life. It has been alleged that the matrimonial relation between the petitioner and OPs turned sour during stay of the petitioner in her matrimonial home. It has been alleged further that the opposite parties treated the petitioner to physical and mental cruelty. The degree of physical and mental torture upon the petitioner went to an increased degree gradually. At the time of durgapuja father of the petitioner gave cash of Rs.25,000/- for purchasing puja gifts but respondents did not satisfy with that amount and asked him to bring more money from her father's house. Finally, on 21-10-2019 the petitioner was The petitioner compelled to take shelter in her paternal home. Petitioner has

claimed that OP neither maintains her nor does he take any account of her. Accordingly, the petitioners have filed a substantive application under Section 12 of PWDV Act alongwith the prayer under Section 23 of PWDV Act praying for an order of interim maintenance from OP no. 1 for her sustenance.

Perused the affidavit filed by the petitioner, I am satisfied that there is *prima facie* case for passing an order for interim maintenance.

It is no more *res integra* that Magistrate has power to award interim maintenance under PWDV Act for subsistence of the petitioner.

In the original application, it has been claimed by the petitioner that respondent no. 1 works in Indian Railway, Sealdah Division. Now posted at Naihati Railway Station and get salary of more than Rs.60,000/- per month. I am satisfied that there is *prima facie* case for passing an order for interim maintenance.

The O.P.'s case, as reflected from the objection, is that marriage is undisputed, but regarding the income of the opposite party, the opposite party has stated that he gets salary of Rs. 38,340/-per month but respondent no.1 has taken a Bank Loan for their marriage of which EMI is Rs.23,481 per month for which respondent no.1 got Rs.14,859/- per month. It is further stated by the opposite party that the petitioner withdrew herself from the company of the O.P without any cause and petitioner left her matrimonial house at her own will and accord.

The object of granting interim maintenance is to ensure that the dependent wife who is unable to maintain herself is not reduced to destitution or vagrancy.

At this initial stage we are concerned about sustenance of the petitioner so that she is not let beggared and destitute on the scrapheap of the society and thereby driven to a life of vagrancy.

Based on the delineation made above, I am satisfied that there is *prima facie* case for passing an order for interim maintenance.

In **Reema Salkan v. Sumer Singh Salkan (2019) 12 SCC 303** it was held that the factors which would weigh with the Court *inter alia* are the status of the parties; reasonable needs of the wife and dependent children; whether the applicant is educated and professionally qualified; whether the

applicant has any independent source of income; whether the income is sufficient to enable her to maintain the same standard of living as she was accustomed to in her matrimonial home; whether the applicant was employed prior to her marriage; whether she was working during the subsistence of the marriage; whether the wife was required to sacrifice her employment opportunities for nurturing the family, child rearing, and looking after adult members of the family; reasonable costs of litigation for a non-working wife.

In **Chaturbhuji v. Sita Bai (2008) 2 SCC 316** it was held that the financial capacity of the husband, his actual income, reasonable expenses for his own maintenance, and dependent family members whom he is obliged to maintain under the law, liabilities if any, would be required to be taken into consideration, to arrive at the appropriate quantum of maintenance to be paid. The Court must have due regard to the standard of living of the husband, as well as the spiralling inflation rates and high costs of living. The plea of the husband that he does not possess any source of income *ipso facto* does not absolve him of his moral duty to maintain his wife if he is able bodied and has educational qualifications.

In **Manish Jain v. Akanksha Jain (2017) 15 SCC 801** the Court held that the financial position of the parents of the applicant-wife, would not be material while determining the quantum of maintenance. An order of interim maintenance is conditional on the circumstance that the wife or husband who makes a claim has no independent income, sufficient for her or his support. It is no answer to a claim of maintenance that the wife is educated and could support herself. The court must take into consideration the status of the parties and the capacity of the spouse to pay for her or his support. Maintenance is dependent upon factual situations; the Court should mould the claim for maintenance based on various factors brought before it.

In **Rajesh v. Neha and Anr.** it was held that the maintenance amount awarded must be reasonable and realistic, and avoid either of the two extremes i.e. maintenance awarded to the wife should neither be so extravagant which becomes oppressive and unbearable for the respondent, nor should it be so meagre that it drives the wife to penury. The sufficiency of the quantum has to be adjudged so that the wife is able to maintain herself with reasonable comfort.

Bestowing on an anxious consideration of the petitioners and taking wisdom from the authoritative judgments of the Hon'ble Court, in the lights of minimum needs of the petitioner, price index of essential commodities in the

present market in one hand and the income of the OP on the other hand, I am of the opinion that an order of monthly interim maintenance allowance at the rate of Rs. 8,000/- per month for the petitioner will be just and reasonable.

Now this Court has to decide the date from which maintenance is to be awarded. This question is no more *res integra*. In **Rajnish v. Neha and Anr.** it was held that maintenance in all cases will be awarded from the date of filing the application for maintenance.

Hence it is,

ordered

that the petition for interim maintenance is allowed on contest but in part. **The petitioner is awarded with interim monthly maintenance allowance at the rate of Rs. 8,000/- per month for the petitioner from the date of filing the application for interim maintenance.** The OP is hereby directed to pay the interim monthly maintenance allowance of Rs. 8,000/- to petitioner for her maintenance within tenth day of each & every succeeding month of English Calendar Year till disposal of the case. Any amount given as interim maintenance will be adjustable or refundable in accordance with the final order.

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

Fix **08-12-2022** for evidence & payment..

Let a copy of this order be sent to the Women Protection Officer, Nadia, and I.C. of the concerned PS where both parties reside.

Dictated & corrected by me

Judicial Magistrate, 1st Class
2nd Court , Ranaghat, Nadia.

Judicial Magistrate, 1st Class
2nd Court, Ranaghat, Nadia.