

Maintenance Case No. 478 of 2019

Order dt. 01-06-2022

Today is fixed for passing order.

Both the parties are present

Heard the submission of both the parties in respect of interim maintenance.

Perused the petition for Interim maintenance as well as the petition for the main mis case u/s 125 Cr.P.C, the written objection, and other materials on record.

The case of the petitioner in gist is that the marriage between the petitioner namely, Nilima Mondal and the O.P namely, Bibhisn Mondal was solemnized twelve years ago as per Hindu rites and customs. The parents of the petitioner have given furniture, utensils, gold jeweleries, other valuable items to the O.P as per their demand. Thereafter she went to her matrimonial home to lead a conjugal life. The petitioner submits that three children, ie, two daughters and one son have born in this wedlock. It is submitted that from the very beginning the petitioner was subjected to torture physically and mentally by the the O.P and his family members. The OP/husband is a drunkard and used to waste money for liquor and some women of bad reputation. It is alleged that deprived her of sufficient food in her matrimonial home and, they even threatened the petitioner that he would marry again and would receive huge dowry. However, the petitioner tried to adjust with all odds amicably in her matrimonial home with the hope of good days in future. It is submitted that two female children were born in this wedlock. It is submitted that since after the birth of their daughters the situation get worse. It is stated that the OP and his family members demanded further dowry from the father of the petitioner, but when she expressed the inability of her poor father to meet their demands, she was brutally assaulted by the OP, and lastly on 07/10/2019 they drove her out from her matrimonial home along with the children The petitioner took shelter in her paternal home. It is stated that the petitioner has no source of income and she along with her children have been spending her days in great hardship at mercy of her father; whereas the OP is an able man and he used to earns more than Rs.40000/- approximately per month from his business of labour supply to ctractors at Kolkata. That apart he owns immovable properties. The petitioner submits that the OP has sufficient means to maintain his wife and children, but he neglects and fails to provide them necessary maintenance. Hence, this case and the petitioner prays for Rs. 10,000/- for herself and the children as interim maintenance for her livelihood pending litigation.

The O.P files written objection in the main mis case denying interalia all the material allegations of the petitioner. It is submitted that the instant petition for interim maintenance is false, frivolous and fictitious. The OP admits his marriage with the petitioner and birth of three children in the wedlock; but it is denied that the parents of the petitioner gave any valuable articles as dowry at the time of their marriage as stated in the petition, or that, the

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O.P and his family members have inflicted any torture upon the petitioner after their marriage, or that, he has a habit of consuming liquor, or that, he used to waste money for liquor and other women. The OP submits that the petitioner/wife is an ambitious and arrogant woman and she used to quarrel with the OP and his family members on trivial issues. It is further contended that the petitioner insisted the OP to live in her paternal home as 'ghar jamai' but when he could not agree the petitioner started hot altercation and went to her paternal home. It is denied that on 07/10/2019 the OP and his family members brutally assaulted the petitioner and drove her out from her matrimonial home along with the children. On the contrary, the OP submits that she wilfully left her matrimonial home on 20/10/2014 with all her belongings as well as the children. It is further submitted that on several occasions the OP insisted and requested the petitioner to come to her matrimonial home but she refused to do so. The OP also submits that he is still willing to lead a conjugal life with the petitioner and the children, but the petitioner has left her matrimonial home wilfully without just cause, so she is not entitled to maintenance from the OP/husband. It is denied by the OP that he earns more than Rs.40000/- per month from his business of labour supply to contractors, or that he owns immovable property. xxx . It is averred that the OP earns only Rs.5000/- to Rs.6000/- per month from his occupation as day labourer, and that he is a BPL card holder. The OP submits that he has to contribute towards his parents and other family members from this meagre amount. But the financial status of the family of the petitioner is sound and she herself earns Rs.2000/- to 2500/- per month from animal breeding and sewing. The OP submits that the petitioner is capable to maintain herself and the children, and she has left her matrimonial home without just cause. Therefore, on the grounds as stated above the petitioner is not entitled to any claim, interim or otherwise as raised in the instant petition and the OP prays for rejection of the petition.

Admittedly the petitioner is the legally married wife of the OP and two children have been born in this wedlock. Hence it is prima facie found that the petitioner as a legally married wife is entitled to interim maintenance. It is further stated in the instant petition that the petitioner has no independent income source and she is dependent upon her father for the livelihood of herself. Under section 125(1)(i) CrPC there is provision for interim reliefs for the claimants of maintenance if it appears that they are in need of immediate relief for her livelihood or to bear the expenses of the proceeding.

In this case my considered view is that whether or not the petitioner wilfully left the OP is a matter of evidence, but admittedly the petitioner is wife of the OP and they have two children in this wedlock. Therefore the OP has obligation to maintain the petitioner and their children for running their livelihood. However, there is no material on record in support of

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income of the OP to the tune of Rs.40,000/- or the assets allegedly owned by the OP. Hence considering the status of the OP and also the existing market value of basic necessities I think that granting an amount of Rs.3,000/- per month for the petitioner and Rs.1,000/- each per month for the three children would be fit and proper as interim relief pending the present litigation, and neither of the parties would be prejudiced thereby.

Hence, it is,

Ordered

**that the petition for interim maintenance is hereby allowed. The O.P shall pay total Rs.6,000/- per month (Rs.3,000/- for the petitioner and Rs.1,000/- each for the three children) towards interim maintenance to the petitioner within the 7<sup>th</sup> day of each month till disposal of the present misc. Case with effect from the date of passing this order.**

**In the event of default on the part of the O.P in payment of the said maintenance, the petitioner is given liberty to put the order into execution in accordance with law.**

Let a copy of this order be given to the petitioner free of cost, if applied for.

For 07-09-2022 for evidence.

*D/C by me.*

*ACJM, Basirhat.*

*Addl. Chief Judicial Magistrate,  
Basirhat*