

Order Dated: 15.03.2019

Today is fixed for passing order in respect of interim maintenance petition filed by the petitioner namely Amrita Saha, against the Opposite Party, her husband, namely Bijon Saha claiming interim maintenance of Rs. 40,000/- p.m. for herself and Rs. 20,000/- p.m. for her minor daughter along with litigation cost of Rs. 50,000/-.

The record is taken up for passing order.

The case of the petitioner, in nutshell, is that she is the legally married wife of the opposite party. That, her marriage with the opposite party was solemnized on 20.01.2016 in tune with Hindu rites and customs. Subsequent to her marriage, the petitioner went to her matrimonial home along with all her stridhan articles and started leading her conjugal life with the opposite party. They adapted one daughter named Adrija Das on 12.07.2016. Unfortunately her matrimonial life was not a happy one. Soon after marriage, the opposite party started subjecting the petitioner to diverse forms of mental and physical tortures in furtherance of his demand for more dowry. However with a hope that everything would be set at right with time, she tolerated all the tortures meted upon her and continued her conjugal life but tortures upon her intensified day after day. Ultimately on 26.06.2017 the petitioner was forced out of her matrimonial home along with her daughter as a result of which she was compelled to take shelter at her paternal home.

She claims the opposite party has neglected and refused to maintain her and her daughter despite having sufficient means. She further claims that she has no source of income whereas on the other hand the opposite party is a businessman who conducts business on export and wholesale of water treatment components and earns Rs. 15,00,000/- p.m. In order to survive, she needs maintenance from the opposite party and as such she has prayed for interim maintenance of Rs 40,000/- p.m. for herself and Rs. 20,000/- p.m. for her minor daughter.

The opposite party has filed his written objection wherein he has denied the entire allegations labelled against him by the petitioner save and except that the petitioner is his legally wedded wife and they have adapted one daughter. The opposite party has tried to impress that the allegations labelled by the petitioner are false and fabricated. He has forwarded that the petitioner is divorcee and he was pressurized and threatened in order to adapt a daughter born from her previous marriage. He has also contended that the petitioner is an ill tempered and an arrogant lady and it was the petitioner who always threatened him with dire consequences. He has highlighted that the petitioner had left her matrimonial home voluntarily without any cause. He has also tried to impress that the petitioner was never neglected or tortured the petitioner. He has also denied his income as claimed by the petitioner and has claimed that he earns only Rs. 15,000 to

20,000/- p.m. He has also furthered that the petitioner is an educated lady and earns Rs. 10,000 to 12,000/- p.m. by imparting private tuition. To sum up, he has thus emphasized on rejection of the prayer of the petition.

I have gone through the petition, the objection, documents filed and the materials on record. I have also considered the submissions of the Ld Advocates for both the sides. The present case being at its primary stage I refrain myself from delving into the merits of the instant case.

From the pleadings and submission of the parties, it is crystal clear that the marriage between the parties is not in dispute in the present case. It is also true from the factual aspects of this case that the parties of this case are living apart. At this stage no evidence is forthcoming, though the petitioner has alleged that she was subjected to tortures and neglected by the opposite party. At this stage the court is required to keep in mind the fact that before deciding the factual discord, some financial support is required to be given to the petitioner so that the petitioner could see the finale of the application filed by her under section 125 of the Cr P C.

The Ld. Advocate for the opposite party, at the time of hearing, challenged the paternity of the daughter of the petitioner and submitted that the opposite party was pressurized and forced to sign on adaption papers. He also submitted that the petitioner is an educated lady and she earns sufficient income to maintain herself and her daughter. He further submitted that the income of the opposite party, as claimed by the petitioner, is absurd and false. He hence, emphasized that on that score alone the payer of the petitioner for interim maintenance should be rejected.

At this stage this Court intends to note that there is no evidence at the disposal of the Court to ascertain any fact finally. What has to be done at this stage is to take tentative decision based on counter affidavits of the parties. Now coming back to the case in hand, admittedly the parties have adapted the daughter of the petitioner. Though, the Ld Advocate for the opposite party pointed out that the opposite party was pressurized and forced to sign on the adaption papers however nothing has been brought on the part of the opposite party to suggest that the opposite party has/had taken any steps before the appropriate authority challenging the said adaption. As such, at this stage, such stance of opposite party is devoid of any merit.

Now coming back the other point raised by the Ld Advocate, the petitioner in her petitioner under consideration, supported by affidavit, has claimed that she has no source of income. On the other hand, though the opposite party has contended that the petitioner earns sufficient income, however no documents have been filed on behalf of the opposite party to substantiate his claim, prima facie, at this stage. Further so far as the earning of the petitioner as alleged by the opposite party is concerned, the petitioner cannot be disentitled to get maintenance only on the oral submission of the opposite party. It must be remembered that any attempt made by the estranged wife

to keep her body and soul together cannot be taken as defense by the husband that the wife is not entitled to get maintenance. Even if, for the sake of argument it is presumed that the petitioner is earning something, she must have done so for survival of herself and her daughter, in absence of any financial support from the opposite party who has not laid anything to show that he paid any sum as maintenance to the petitioner or her daughter during or in between these periods. Therefore, the contention of the opposite party cannot be accepted to defeat the claim of the petitioner so far as the interim maintenance is concerned. On the other hand the opposite party admittedly works for gain and appears to be an able bodied person. Moreover it is the moral as well as statutory duty of the opposite party to maintain his legally wedded wife and his daughter. As such, at this stage I find no merit in the contention of the Ld Advocate for the opposite party.

The Ld Advocate for the opposite party, at the time of hearing, further submitted that the that all the allegations labelled by the petitioner is false and fabricated and that apart the petitioner or her daughter was never neglected. He further contended that the petitioner had left her matrimonial home voluntarily without any cause and it was the petitioner who always threatened the opposite party with dire consequences. He thus emphasized on the rejection of the prayer of the petitioner.

I have considered the points raised by the Ld Advocate for the opposite party but the points raised by the Ld Advocate cannot be decided at this stage without recording evidence and the same are matter of trial and evidence. It has no bearing on the interim application of the petitioner. As such at this stage, I find no merit in the contention of the Ld Advocate for the opposite party.

Thus, having regard to the facts and the circumstances of this case, the soaring market prices of commodities, documents filed and the objective of the legislature in incorporating the provision of interim maintenance allowance I am of the considered opinion that awarding the petitioner Rs. 7000/- and Rs. 5000/- p.m. for her minor daughter till the final disposal of the present case shall sub-serve the purpose of justice.

Hence, it is

ORDERED

that the instant interim maintenance petition is allowed on contest but in part. The opposite party is hereby directed to pay Rs. 7000/- p.m. to the petitioner and Rs. 5000/- p.m. to her daughter within 20th of every succeeding English calendar month commencing from the date of this order till the final disposal of the present case without any order as to costs. On failure of the opposite party to make the aforesaid payment/s the petitioner shall be at liberty to set the law into motion for its recovery. Let a copy of this order be given to the petitioner free of cost.

To 10-09-2019 for evidence.

