

M - 657/2016

Order Dated: 28/09/2018

Today is fixed for passing order in respect of interim maintenance petition filed by the petitioner namely Ashoke Prasad Ray, against the Opposite Party, his son, namely Anjan Kumar Ray claiming interim maintenance of Rs. 12,000/- per month.

The record is taken up for passing order.

The case of the petitioner, in brief, is that the opposite party has neglected and refused to maintain him despite having sufficient means. That the petitioner is unable to survive only with his pension to the tune of Rs. 1099/- p.m. whereas the opposite party is an able bodied person who works at Everett India Pvt Ltd. and also does coaching at a private coaching centre wherefrom he earns Rs. 50,000/- p.m. As such, in order to survive, the petitioner has prayed for an interim maintenance of Rs 12,000/- p.m. from the opposite party.

The opposite party has filed his written objection against the petition under consideration wherein he has denied all the allegations labelled against him by the petitioner, save and except that the petitioner is his father. He has tried to impress that he never neglected or refused to maintain the petitioner. He has also denied his income and has claimed that he earns only Rs. 14185/- p.m. out of which he has to maintain his family members and pay his loan amount. He has also contended that he is suffering from several ailments and that apart the petitioner receives monthly interest to the tune of Rs. 9413/- from Bhatpara Post Office along with his pension of Rs. 1099/-. He has also forwarded that the petitioner is a co-sharer of a property amounting to Rs. 26 lacs and further the petitioner also has fixed deposit of Rs. 1,80,000/-. He has tried to impress that the petitioner has sufficient means to maintain himself. He has also put forward that the petitioner demanded dowry from his wife, at the time of marriage, and that apart it was the petitioner who tortured his wife mentally and physically. He has also contended that the opposite party was himself not willing to reside with the opposite party. To sum up he has emphasized on the rejection of the petition under consideration.

I have gone through the petition, written objection, documents filed and the materials on record. I have also thumbed through the allegations and counter allegation of the parties of this case. 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 petitioner is the father of the opposite party.

Be it mentioned herein that it is settled principal that while disposing the petition for interim maintenance, the court has to only see whether the petitioner is unable to maintain himself/herself or not and what would be the quantum of the maintenance he/she is entitled pending the recording of the evidence. 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/him under section 125 of the Cr P C.

At the time of hearing the Ld. Advocate for the opposite parties submitted that the petitioner has sufficient means to maintain himself and earns sufficient income from his deposits, MIS and pension whereas on the other hand the opposite party earns only Rs. 14000/- p.m. out of which he has look after himself, his family members and make payment of the loan amount. He hence emphasized that on that score alone the payer of the petitioners for interim maintenance should be rejected.

I have considered the contention of the Ld Advocate. Admittedly the petitioner receives only Rs. 1099/- p.m. as pension amount. Now so far as the authenticity/genuineness of the documents filed on behalf of the opposite party is concerned, the same cannot be ascertained at this stage and the same is matter of trial and evidence. Moreover it is pertinent to note that the opposite party not led anything, at this stage, to show that he paid any sum as maintenance to the petitioner during or in between these periods. Moreover the opposite party admittedly works for gain and it is his moral as well as statutory duty to maintain his father. Therefore, at this stage, the contention of the opposite party cannot be accepted to defeat the claim of the petitioner so far as the interim maintenance is concerned.

It was also contended by the Ld. Advocate for the opposite party that the opposite party never neglected and refused to maintain the petitioner and he provided all his needs. He also contended that it was the petitioner who tortured the wife of the opposite party and that apart it was the petitioner who refused to reside with the opposite party. He also contended that the petitioner has been contesting a civil suit since 12 years from which it can be inferred that he has sufficient means to maintain himself. He hence, emphasized that the interim maintenance petition should be rejected as no case is made out u/s 125 CrPc.

I have considered the contention of the Ld Advocate for the opposite party. But the point raised by the Ld Advocate cannot be decided at this stage without recording evidence and the same is a matter of trial and evidence. It has no bearing on the interim application of the petitioner.

Thus, having regard to the facts and the circumstances of this case, the soaring market prices of the commodities and the objective of the legislature in incorporating the provision of interim maintenance allowance I am of the considered opinion that awarding the petitioner an amount Rs. 2,000/- p.m. 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 to the petitioner Rs. 2,000/- pm 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.

To18-04-2019 for evidence.