

Order Dated: 2/2/2019

Today is fixed for passing order in respect of interim maintenance petition filed by the petitioner namely Lopamudra Dey @ Hazra, against the Opposite Party, her husband, namely Jyotirmoy Dey claiming interim maintenance of Rs. 35,000/- p.m. for herself and Rs. 15,000/- p.m. for her daughter long with litigation cost of Rs. 20,000/-.

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 25.01.2010 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. She gifted the opposite party one daughter from the wedlock. Unfortunately her matrimonial life was not a happy one. Soon after the birth of her daughter, the opposite party and his family members started subjecting the petitioner to diverse forms of mental and physical tortures in furtherance of their demand for more dowry. She was even denied her proper food, medical aid etc., at her matrimonial home. 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 7.05.2017 the opposite party deserted the petitioner and her minor daughter as a result of which the petitioner was compelled to take shelter at her paternal home.

She claims the opposite party has neglected and refused to maintain her despite having sufficient means. She further claims that she has no source of income whereas on the other hand the opposite party is a Doctor by profession who also runs his chamber and looks after a Medical lab wherefrom he earns about Rs. 1,50,000/- p.m. In order to survive, she needs maintenance from the opposite party and as such she has prayed for interim maintenance of Rs 30,000/- p.m. for herself and Rs. 15,000/- 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 he has a daughter from the wedlock. The case of the opposite party in nutshell is that the petitioner is a quarrelsome lady and since the inception of marriage she misbehaved with him and his parents. That the petitioner was unwilling to reside at her matrimonial home with his family members and created disturbances in furtherance of the same. That he was also pressurized to reside as a domesticated son in -law or to arrange for a separate rental accommodation at Katwa for which he had also arranged for a separate rented accommodation. He has also tried to impress that the mother of the petitioner frequently took the petitioner to her paternal home without any reasonable cause. He has further contended that he constructed his own residential house but the petitioner refused to reside at the said house. He has also tried to impress that it was the petitioner and her mother who used to torture, abuse and threaten him with dire consequences. He has further contended that he had provided proper medical aid to the petitioner during her pregnancy and moreover the petitioner and her family members even did not behave properly with his parents at the time of the birth of her daughter. He has also forwarded that the petitioner used to instigate his brother's wife for compelling his brother to reside as a domesticated son in -law and also to reside separate from his parents. He has also tried to impress that he had also made several efforts to restore his conjugal life with the petitioner including a suit u/s 9 H.M Act for restitution of conjugal rights but despite his efforts the petitioner withdrawn herself voluntarily from his society. He has admitted his profession as claimed by the petitioner but he

has denied his income as averred by the petitioner. He has further claimed that the petitioner is an educated lady and she has her own income which is sufficient to maintain herself. 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 and the paternity of the minor daughter of the petitioner are 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, submitted that the petitioner is an educated lady and she earns sufficient income to maintain herself. He further submitted that the income of the opposite party, as claimed by the petitioner, is absurd and false and further the opposite party has to make payment of the loan amount. 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, the petitioner in her petition 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 is working lady and 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 minor 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 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. He has not even disclosed his income in his written objection through the document filed on behalf of the petitioner suggests, prima facie, that he earns healthy income per month. Moreover it is the moral as well as statutory duty of the opposite party to maintain his legally wedded wife. 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 further submitted that all the allegations labelled by the petitioner are false and fabricated and that apart the petitioner had voluntarily withdrawn herself from the society of the opposite party without any cause. He further submitted that the petitioner was never neglected or tortured and that apart it was the petitioner and her family members who had tortured the opposite party in diverse ways. He further submitted that the opposite party had

made all possible efforts to restore his conjugal life with the petitioner including a suit for restitution of conjugal life but it was the petitioner who had refused to lead her conjugal life. He thus emphasized on the rejection of the prayer of the petitioner on the said score alone.

I have considered the submission of the Ld Advocate but so far as the points raised by the Ld Advocate for the opposite party is concerned the same 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, status of the parties 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. 7,000/- p.m. and another Rs. 5,000/- 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 to the petitioner Rs. 7,000/- p.m. and Rs. 5,000/- p.m. for her minor 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 08-08-2019 for evidence.