

M. Case No 676 of 2023
Smt. Madhusree Das (Mallick) Vs. Sri. Pratyush Prasanna Das

Order dated. 28.10.2024

Today is fixed for passing order.

Both the parties files hazira.

Record is taken up for passing order with regard to the interim maintenance petition filed by the petitioner.

The petitioner's case in a nut shell is that the petitioner is the legally married wife of the OP and her marriage was registered on 11.05.2019 and subsequently the social marriage was held on 29.05.2019. The marriage between the parties was duly consummated and out of the said wedlock one female child namely Manaswita Das on 02.04.2022 who is in the custody of the petitioner. It is submitted that the petitioner was subjected to mental and physical torture by the OP and his family members without any reason. The petitioner was compelled to leave her matrimonial house during her advance stage of pregnancy as the OP and his parents refuse to take any responsibility of the petitioner and her child. The petitioner went to her parental house and on 2.4.22 the petitioner gave birth to her child. After her discharge the OP and his parents did not take any responsibility and the OP being a railway officer never provided any basic need to the petitioner and her child. On and from 25.6.22 the OP has not been providing any maintenance to the petitioner. The petitioner is working and she earns Rs.35,000/- per month as such she has prayed for interim maintenance only for her daughter. The OP is working at Indian Railways at Kanchrapara Railway Workshop as a Junior Section Engineer wherefrom he earns Rs.1,30,000/- per month. OP also earns Rs.10,000/- per month as interest from his fixed deposits. Petitioner has prayed for Rs.20,000/- per month as maintenance allowance for her minor daughter.

OP filed his show cause/ WO and denied all the allegation made by the petitioner. He admitted the marriage with the petitioner. It is submitted that OP resides at Chittaranjan for his office work. At the time of pregnancy a Mat suit for Restitution of conjugal life being no.329/20 which was pending before the Asansol Court and the said case withdrawn by the OP when the petitioner promised to never repeat her faults. OP also stated that all the medical expenses was borne by the OP and he always took all the responsibility of the petitioner and her minor child. In the Mat Suit no.596/23 petitioner stated that OP has paid all the medical expenses when the petitioner was admitted at a private nursing home. OP stated that petitioner earns more than Rs.67,500/- per month. It is also submitted that on 18.1.22 the OP was transferred from CLW Chittaranjan and the petitioner gave birth to the minor child on 2.4.22 as such he has challenged the paternity of the child. Thus, OP prays for rejection of the interim maintenance petition.

Petitioner has mentioned in her affidavit of asset and liabilities dt.22.8.23 that she earns Rs.35,000/- per month as Assistant Teacher, Government of West Bengal. She has filed the copy of the marriage certificate and the birth certificate of her child. On the other hand, the OP filed his affidavit of assets and liabilities and stated that he earns Rs.80,000/- per month as JE/DRG/ELELT-ER/IR at Indian Railways.

Having heard the submission of the Ld. Advocate for both the parties and after going through the materials on the record, it is found from the written objection as well as the interim maintenance petition that it is an admitted fact that the petitioner being his wife is living separately with her minor child which makes a prima facie case for grant of interim maintenance at this stage so that the upbringing of the child is not hampered. OP has challenged the paternity of the minor daughter. However, it is a matter of trial and the same cannot be decided at this stage. OP is an able bodied person and he is not suffering from any kind of disease or illness and he is capable enough to earn. He has admitted that he earns Rs.80,000/- per month. The allegations and counter allegations of the parties towards each other can not be decided at this stage without taking evidence.

It is pertinent to mention the observation of Hon'ble Supreme Court of India, in **Rajesh Vs. Neha** (2021) 2 SCC 324 where the Hon'ble Court was pleased to observe in its page 39 that

“VI. The directions in view of the Foregoing discussion as contained in Part B I to V of this Judgement we deemed it appropriate to pass the following directions in exercise of our powers under Article 142 of Constitution of India:

(d) Date from which maintenance to be awarded We make it clear that maintenance in all cases will be awarded from the date of filing application for maintenance.

Keeping in mind all the aforesaid discussion and the observation of the Hon’ble Supreme Court and in order to ensure the social justice keeping in mind the status and income of the OP his liability, I am of the view that an interim maintenance of Rs.8000/- per month to be paid for the maintenance of the minor child of the petitioner.

Hence, it is,

ORDERED

that the petition filed by the petitioner praying for interim maintenance is thus allowed on contest.

The OP is hereby directed to pay interim maintenance of **Rs.8000/- per month to the minor daughter of the petitioner** within the 10th day of every month as interim maintenance allowance, failing which the petitioner will be at liberty to put the order in execution. This order is effective from the date filing. The arrear amount is to be paid by the OP within a period of **24 months in equal installments.**

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

To 08.5.25 for evidence

Typed, Printed & Corrected by me,

**(Pratigya Pradhan)
J.M, 3rd Court, Barrackpore.**

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