

**In the Court of the Additional Chief Judicial Magistrate, 2nd Court,
Raghunathpur, Purulia**

Present – Sri. Gautam Kumar Nag,
Additional Chief Judicial Magistrate,
2nd Court, Raghunathpur,
Purulia.

Case no:- Misc case 46/24

CIS no: 48/2024

JO Code: WB01033

Order dt:- 28/10/24

Petitioner is present and filed hazira.

O.P. filed Ld. Lawyers hazira along with a fresh affidavit of asset and liabilities.

Today is fixed for hearing of interim application and submission of affidavit of asset and liabilities in respect of part-1, Sl. Nos. 10 and 11.

Hd. Ld. Lawyers for both sides.

The Ld. Lawyer for the petitioner pointed out that this court passed an order in respect of Sl. Nos. 10 and 11 but the Ld. Lawyer for the O.P filed fresh affidavit of asset and liabilities. In reply the Ld. Lawyer for the O.P submitted that the O.P has filed fresh affidavit in view of paragraph no. 2 of the declaration.

It appears no fresh petition to accept this affidavit of asset and liabilities had been filed by the O.P and hence this court will only consider part-1, Sl. Nos. 10 and 11 of the affidavit of asset and liabilities filed by the O.P today.

Now the case record is taken up for hearing of the interim maintenance.

Hd. Ld. Lawyers for both sides in full.

The case record is now taken up for passing necessary order.

The Ld. Lawyer for the petitioner who at the time of argument submitted that the petitioner is the legally married wife of the O.P. but the husband of the petitioner used to torture upon the petitioner and and now the petitioner is residing separately and the petitioner has got no source of income and hence the petitioner has prayed for interim

maintenance at the tune of ₹12,000/- per month for herself and at the tune of ₹10,000/- per month for her daughter.

The Ld. Lawyer for the O.P. submitted that all the allegations as stated by the petitioner are false and the petitioner left her matrimonial home voluntarily and the O.P. is paying money using online mode and hence prayed before this court for rejection of the interim maintenance petition.

Both parties had filed affidavit of assets/liabilities as per mandate of the Hon'ble Apex Court in *Rajnesh vs Neha AIR online 2020 SC 915*.

Perused the case record and on perusal this court finds that the factum of marriage between the petitioner and the O.P. is not denied. Now during the hearing of the interim maintenance petition the petitioner had not filed any scrap of papers to show the actual income of the O.P. On the other hand the O.P. has filed pay slip for the month of September 2024. It appears from the salary slip that the gross pay is ₹61,649/- in the month of September 2024 and net pay as ₹26,767/-. Even though O.P. has filed transaction history of online mode but it is not clear that it was paid to the petitioner as the name of the petitioner had not been mentioned. Thus, if for sake it is considered that in online mode money had been paid to the petitioner but it is not sufficient for someone to maintain as it shows that the highest transaction is ₹1,200/- which had been transferred. The most important thing is that the O.P. cannot discharge his liability to maintain his wife even the O.P. is sick. The O.P. has not denied that the petitioner is not his wife.

This being an application for interim maintenance, the only point which requires determination at this stage is that whether the petitioner has made out a prima facie case for getting maintenance for herself. Thus, the court has to satisfy itself regarding the existence of a prima facie case for making such an order. Where such a prima facie case has been made out, interim maintenance cannot be denied unless it is barred by any other provision.

Without going into the merits/demerits of the case put forward by respective parties it must be however stated that petitioner and O.P. both appear to be married and ordinary rule of prudence indicates that a

married woman would not leave her husband's home unless there are pressurizing circumstances for her to do so and it is the duty of the husband to provide her maintenance and if he does not do so it can be said that he has refused or neglected to maintain the wife.

Perused the affidavit of assets/liabilities as filed by the parties. The O.P. is under a social, moral and legal obligation to look after his legally married wife and to maintain her wife and he is prima facie not doing so. The O.P. had not stated anything about the income of the petitioner. Thus it can be said that the petitioner has been able to make out a prima facie case to get interim maintenance from her husband for herself and her daughter.

So, this court finds that the petitioner is eligible to get interim maintenance from the O.P. but the question is what should be the quantum thereof?. It is settled law that quantum of maintenance awarded should be such that it enables the intended recipients to live a decent but not necessarily luxurious life and at the same time isn't unduly penurious to the O.P. and also this is a prayer for interim maintenance that is being dealt with here where the actual income of the parties is yet to be ascertained.

Our Apex Court in *Chaturbhuj vs Sita Bai (2008) 2 SCC 316* has stated that the object of maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy by compelling those who can provide support to those who are unable to support themselves and who have a moral claim to support. The O.P can take loan from any financial institute but the O.P cannot forget to maintain his wife and daughter. Even though from the pay slip it appears the net pay is ₹26,767/- but the O.P has to pay maintenance to his wife and daughter when the gross pay shows as ₹61,649/-.

Considering the facts and circumstances of the case this court is of the opinion that it is a fit case to allow interim maintenance to the petitioner and considering the current market value this court will allow interim maintenance at the tune of ₹15,000/- per month for the petitioner and her daughter.

Hence it is

ORDERED

That the petition for interim maintenance is considered and allowed on contest.

The O.P. is directed to pay ₹10,000/- per month to the petitioner and further sum of ₹5,000/- per month to the daughter of the petitioner in total ₹15,000/- per month to the petitioner as interim maintenance from the date of filing of this case.

The O.P. is further directed to pay the said amount of ₹15,000/- per month to the petitioner as interim maintenance within 1st week of each of the succeeding month.

As this case is ready for trial so both sides are directed not to take any unnecessary adjournments.

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

To 04/1/25 for evidence.

S/d

Sri. Gautam Kumar Nag,
Additional Chief Judicial Magistrate,
2nd Court, Raghunathpur,
Purulia.