

Order No.10, dated 06.03.2026.

Today is fixed for passing order of the Misc Case.

Parties files hajira.

Record is taken up for passing order.

Submitting this instant petition under Section 36 of the Special Marriage Act, 1954 (hereinafter simply referred to as the Act), the petitioner of this miscellaneous case has prayed for a direction upon the respondent to pay her sum of Rs.50,000/- *per mensem* for herself.

Petitioner has specified therein that she got married with the opposite party on 18.10.2020, before the Marriage Registrar, as per the provision of Special Marriage Act. Later on the social marriage ceremony of the parties was also held. After marriage, the petitioner started to reside at her matrimonial home situated at 1/B, SK Sarbadhikary Lane, P.S. Beliaghata, Kolkata-10. It is the categorical allegation of the petitioner that at her matrimonial home, she found that the Opposite Party/husband and his family members always found fault in the petitioner and abused her on trivial issues. The petitioner has further stated that the respondent got married with the petitioner after knowing the fact that she is a divorcee with a daughter and their marriage was an outcome of a love affair. The petitioner was also at the receiving end of the taunts about the gifts which are presented to her at the time of her marriage. The Opposite Party and his parents always demanded money from the petitioner and asked her to hand over her salary to them, as the petitioner was a working lady. The petitioner always tried to fulfill the demand of the respondent/husband and her family members, but they were never satisfied with the petitioner and demanded more money from her. Moreover, the respondent never gave the petitioner any furthing but humiliated her. Even the petitioner was subjected both physical and mental torture by the respondent and his family members. On October, 2023, the petitioner came to know about an extra marital affair of the respondent. Thereafter, the respondent put pressure upon the petitioner for divorce and threatened her with dire consequences, in case of refusal. On 15.11.2023 at night the respondent tried to kill her by pressing pillow on her face and also physically assaulted her. On 16.11.2023, the petitioner was thrown out of her matrimonial home in a single apparel. Finding no other alternative, she was compelled to take shelter at her parental home. On 27.01.2024, the petitioner has lodged complaint against the respondent and her in laws out of which a criminal case was initiated U/Sec.498A/406/323/506/34 of IPC. She also filed a case under PWDV Act. According to the contention of the petitioner, the

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respondent has sufficient means and his monthly income is Rs.1,50,000/- per month. He has no other liability. On the other hand, the petitioner is a non teaching staff at La Martiniere for Girls, her monthly salary is of Rs.30,000/- per month. She has to look after her aged and ailing parents with meagre income. Also the petitioner has to take care of her daughter, born in her first marriage, who is staying at Dehradun for educational purpose. Hence, this instant petition.

The opposite party/husband by filing Written Objection has denied all the contentions as put forth by the petitioner/wife, save and except their marriage. It is the categorical contention of the opposite party/husband that the petitioner/wife refused to do household work and made his life miserable. On the contrary, the respondent tried to meet up all the demands of the petitioner and that the petitioner left her matrimonial house out of her own accord. Moreover, the petitioner being an employee of La Martiniere for Girls gets her salary of Rs.40,000/- per month and that the respondent/husband is working in a private company and is getting a nominal salary for his employment. Also, the father of the respondent is 85 years old and suffers from serious illness and the respondent has spent a quite lot of money towards the education and daily expenses of the child of the petitioner born in the wedlock of her first marriage. Thus, the opposite party/husband has prayed for dismissal of this instant Misc. Case.

Heard Ld. Advocate on behalf of the petitioner/wife.

Also perused the statements of Assets and Liabilities as filed by both the parties to this case along with the documents.

It appears from the perusal of the Income Tax Return of the respondent/husband that he earns Rs.5 lacs per annum and admittedly the petitioner gets a salary of Rs.33,000/- approximately per month.

At the very outset, it is pertinent to point out that while considering a claim for interim maintenance the Court has to keep in mind the status of the parties and the income and property of both the applicant and non applicant. It is also needless to mention that it is important to ensure that the maintenance awarded to the applicant is sufficient to enable the applicant to live in some degree of comfort as in the matrimonial home, but it should not be exorbitant. Also provisions for food, clothing, shelter, medical attendance and treatment of the applicant should be borne in mind (**Manish Jain Vs. Akanksha Jain AIR 2017 SC 1640**).

The Court must take into consideration the status of the parties and the capacity of the spouse to pay maintenance and whether the applicant has any

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independent sufficient income for her support (**Sh. Bharat Hedge Vs. Smt. Saroj Hedge**).

In **Rajathi Vs. C. Ganeshan, 1999 (6) SCC 326**, it was observed by Hon'ble Apex Court that the statement of the wife that she is unable to maintain herself would be sufficient and it would be for the husband to prove the contradictory to the said claim.

Coming to the case in hand, it is well settled legal proposition that once a person has a capacity to earn, he cannot refuse or neglect to maintain the petitioner/wife, as the opposite party/husband has admitted that he is an able bodied person and has some income of his own.

In light of the settled legal position I am of the considered opinion that the petitioner is entitled to get alimony pendente lite and expenses of the proceedings from the opposite party/husband, as from the materials on record, I find that the petitioner withdrew herself from the society of the opposite party. Simultaneously, I would hasten to add that at this stage it is not possible to comment about the conduct of the parties during their conjugal life together, which is a matter of full fledged trial. But it is apparent that in the circumstances the petitioner might have a reasons to live separately from the respondent.

So far as the quantum alimony pendente lite is considered, I am of the considered opinion in view of the respective assertions of the parties as made in affidavit of assets and liabilities Rs.10,000/- per mensem would be sufficient as maintenance pendente lite, as admittedly the petitioner is employed in a reputed school of Kolkata.

Hence, it is,

ORDERED

That the instant application under Section 36 of Special Marriage Act being Misc Case No.12 of 2024 is hereby allowed on its merits, without any order as to costs.

The O.P is directed to pay a sum of *Rs.10,000/- per mensem* for the petitioner as maintenance alimony *pendete lite* from the date of filing of the Misc Case till disposal of the Mat Suit No.34/2024 towards maintenance of the petitioner/wife.

The maintenance amount of each month shall be paid by the O.P to the petitioner within the 10th day of each succeeding month as per English calendar.

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The arrear amount of maintenance pendente lite shall have to be liquidated in twenty four (12) equal monthly installments along with the current maintenance, the first of which is to be paid on or before 10.04.2026.

In case of default, the petitioner shall be at liberty to realise the said amount in accordance to law.

Be it stated here that the sum of monthly maintenance pendente lite as awarded herein before shall be adjusted with any sum of maintenance payable by respondent, as has been awarded in favour of the petitioner by any other forum.

D/C by me,

ADJ, FTC-II, Sealdah.

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