

C. CASE NO. 348/2023

In the Court of Judicial Magistrate (2nd Court)
Diamond Harbour, South 24 Parganas (WB)
Present: Smt. Priyanka Zimba, WBS
(WB01293)

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Biva Barik

Vs.

Samar Barik & Another

Order dated 17-01-2026:

Today is fixed for filing affidavit of disclosure by the respondent no. 1 and passing order.

Aggrieved person is present and files hazira.

Respondent no. 1 files a petition praying for time.

On perusal of the case record, it appears that the interim application was heard on 01-07-2025 after which the respondent no. 1 was directed to file his affidavit of disclosure but he has neither filed his written objection nor affidavit of disclosure till date. It appears that the respondent no. 1 is only delaying the proceeding of this case and therefore the prayer for time stands rejected.

I have heard the Ld. Counsel for both sides in full on the previous occasion in respect of the interim application u/s 23(2) of the Protection of Women from Domestic Violence Act, 2005.

By filing the instant interim application, the aggrieved person/petitioner has prayed for reliefs u/s 17 & 20 of the Protection of Women from Domestic Violence Act.

The aggrieved person/petitioner prays for residential relief to let her reside at the ancestral house of the respondent and monetary relief at the rate of Rs.30,000/- per month.

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The aggrieved person/petitioner's case in brief is that her marriage was solemnized with the respondent no. 1 Samar Barik as per Hindu rites and customs on 08-10-1990 and the same was registered under the Hindu Law on 26-11-1990. They had love marriage and the respondent no. 1 was unemployed at that time. The family members of the respondent no. 1 did not accept their marriage at first and the father of the petitioner bore their expenses including the expense of higher studies of the respondent no. 1. During their conjugal life, two female children were born named Pallabi Das Barik (present age 29 years) and Prerna Halder Barik (present age 23 years). Both of them are married at present.

It is stated that the respondent no. 1 then started working as primary teacher and at present he is the Head Teacher of Alida F.P school but he has not entered the name of his daughters in his service book. It is the case of the petitioner that the respondent no. 1 is a characterless man and had illicit relation with several women at different times. When the petitioner raised objection, he did not listen. Instead he used to pressurize the petitioner to bring money from her father's house and used to torture her mentally and physically. It is stated that the respondent no. 1 has illicit relation with the respondent no. 2 and he did not leave her even when the petitioner and her daughters asked him to. The respondent started residing in Baruipur with the respondent no. 2 but the petitioner was unaware of the same. The respondent no. 1 has a coaching center and bike show room but the petitioner has not seen it and he started residing there in lieu of his work. When the pandemic started, the respondent no. 1 stopped coming to his house and also stopped giving money to the petitioner. The petitioner

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organized the marriage of her daughter by taking loan of Rs.50,000/- and the respondent no.1 has not paid the same. The petitioner requested the respondent no. 1 to come home but he did not come home. When the petitioner asked him for money, he used to abuse her and also assault her on pathways and the petitioner did not dare to complain before the police station.

The respondent no. 1 did not pay any money for maintenance of the petitioner and on searching, she came across the documents of loan in the name of respondent no. 2 as wife of respondent no. 1 and also came to know that they have been carrying on business of bike showroom together as husband and wife and they are also running the coaching center and earning more than Rs. 40,000/- per month. From all sources, the respondent no. 1 is earning more than one lac per month but he has not been paying any amount to the petitioner and also trying to oust her from his house. Hence the instant case and the interim application.

The respondent no. 1 appeared before this court but did not file his written objection against the interim application.

Ld. Counsel for the respondent no. 1 raised verbal objection submitting that no order can be passed as per the proviso of section 12 of the D.V Act in this case as no domestic incident report has yet been received. Ld. Counsel also referred to section 2(f) of the Act and submitted that the criteria for application has not been fulfilled as there is no domestic relationship between the parties. Ld. Counsel has further submitted that the respondent no. 1 has filed the petition for non-maintainability of the case. Ld. Counsel prays for rejection of the petitioner's application.

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I have perused the petition as well as the documents filed by the parties along with the affidavit of assets and liabilities filed by the petitioner.

As per s. 23(1) of the Act *in any proceeding, before him under this Act, the Magistrate may pass such interim order as he deems just and proper.*

Ld. Counsel for the respondent no. 1 has submitted that no order can be passed without the domestic incident report but herein the application is with regard to interim reliefs prayed under section 23(1) of the Act and not the main application u/s 12 of the Act. The petitioner/ aggrieved person has also filed the interim application on affidavit and therefore I find no legal embargo in passing of interim order. Moreover, the domestic incident report is already received in this case.

Moving on to the point of domestic relation, Ld. Counsel for the O.P submitted that since the parties are residing separately there is no domestic relation between them. It may be mentioned herein that the O.P has not filed his written objection in this case till date. Further from the submission made before this Court at the time of hearing, it is evident that the marriage between the parties is an admitted fact. Now, the petitioner has also mentioned in her main application as well as the interim application that the O.P had taken her in his residence where they started residing and the petitioner is residing at present. As such, the petitioner and the OP having lived together and they both being related by marriage, I do not find the submission as put forth by the Ld. Counsel for the O.P sustainable.

The respondent no. 1 appeared in this case on 13-03-2025 but till date he has neither filed his written objection to the main petition as well as the interim application. The respondent no. 1

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was also directed to file his affidavit of disclosure but he has failed to do the same though opportunity was already granted to him. As such, I find that the respondent is only taking steps to drag the proceeding for no valid reason.

The domestic incident report as received from the protection officer as well as the main application and interim application of the aggrieved person u/s 12 of the Protection of Women from Domestic Violence Act *prima facie* reveals allegations which might attract mental torture and thus section 3 of the D.V Act, if proved. As such, I find there is urgency to pass interim order in favour of the petitioner.

Coming to the point of quantum of monetary relief, the aggrieved person has prayed for Rs. 35,000/- per month as monetary relief. The aggrieved person has stated that the respondent is a head teacher and earns more than Rs. 40,000/- per month. The Ld. Counsel for the respondent no.1 has admitted the respondent no. 1 being head teacher but it is stated that he only gets Rs. 22,000/- per month after payment of his loan installment. As such, considering such admission and in absence of the affidavit of disclosure by the respondent no. 1, I am inclined to accept the unchallenged version of the aggrieved person. Moreover, an idea of capacity of the earning of the respondent can very well be made from the fact that he is getting Rs. 22,000/- in hand after deduction of loan amount.

As such, in the light of the above discussions and considering the earnings, capacity of the respondent, the status of the parties, the basic requirements as well as number of dependents, I find that an amount of Rs. 6,000/- per month will be reasonable as monetary relief for the aggrieved person. The amount will neither be penurious nor excessive but will help the

aggrieved person lead a decent life until the final adjudication of the case.

Hence, it is,

ORDERED

That the application u/s 23(2) of Protection of Women from Domestic Violence Act, 2005 praying for interim order is considered and **allowed** on contest without any order as to costs.

The aggrieved person shall have **right to reside** in the shared household over which she resided with the respondent no. 1 after marriage and prior to filing of this case. The respondent is directed not to dispossess the aggrieved person except in accordance with law.

The respondent no. 1 is directed to pay **Rs. 6,000/- per month** to the aggrieved person as interim monetary relief from the date of filing this case until the disposal of this case. He is further directed to pay the **arrear amount of Rs. 1,62,000/- (October, 2023 to December 2025) in eighteen (18) equal installments of Rs. 9,000/-** each along with regular monthly payment starting **from March, 2026**.

Respondent no. 1 is further directed to pay the monthly monetary relief within 10th day of each succeeding month according to English calendar.

Let a copy of this order be given to the aggrieved person free of cost.

Fix **11-03-2026** for hearing of the **maintainability petition**, written objection, if any in the meantime.

D/C

S/d-

Judicial Magistrate,
2nd Court, DDH