

In the Court of Judicial Magistrate (2nd Court)
Diamond Harbour, South 24 Parganas
Present: Sri UTTAM DAS, WBS (WB01219)

CASE NO:--M 354/2022
CIS Mr. Maintenance 355/2022

Sahanara Khatun Bibi vs. Sarowar Laskar

ORDER DATED 04/03/2024

Today the matter has been fixed for hearing of interim maintenance application filed by the petitioner against her husband.

Ld advocate for the both sides are present. Now the record is taken up for hearing.

Heard Learned Advocate for the petitioner and the O.P.

From the pleadings of the parties the following facts are found as admitted facts- 1. parties are married couple; 2. they have one son who is presently two years of old, 3. parties are residing separately. Therefore, there is no need of discussion over this issue.

It is alleged that the OP and his family members used to cause torture upon the petitioner on demand of more cash. Parents of the petitioner intervened the matter on few occasions but in vain. Subsequently OP married gain and when the petitioner raised objection, she was driven out.

The OP has countered the above allegation stating that no torture was caused upon the petitioner. The petitioner left him at her own will. She was not willing to stay with him in further. As such, petitioner left him away.

Heard the both sides.

None of the parties filed any income proof of other but both the parties asserted the handsome income of others.

It is fact that the petitioner has been staying at her parent's house with her minor son. But considering the contents of application filed by her and comparing the same with the WO filed by or on behalf of the OP, it seems to me that without receiving evidence, it can not be ascertained the veracity of the case. Only affidavit is not sufficient enough to believe the case.

From the entire records and contents of the petitions as filed on the part of the petitioner, I don't find any prima facie case for the

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petitioner to allow her interim maintenance.

From the records, the Court does not find any prima facie reason for the petition to stay apart from her husband. The purpose of allowing interim maintenance to survive and to continue with the litigation for achieving final objective concerning her prayer for granting monthly maintenance under Section 125 of the Code of Criminal Procedure.

Considering the manner of prayer as interim measures as well as above discussion, this Court is of the view that she filed this petition casually. Moreover, she failed to convince the Court that she is in distress and without immediate monetary support she would failed to continue with the case.

It is to be recorded here that being father, the OP is duty bound to maintain his minor child as per his financial capacity.

Considering the above, the Court is of the view that petitioner is not entitled to get order of maintenance in the form of interim measures. But petitioner needs financial support to raise their child and it is the father of the child who is duty bound to support his offspring.

As regards determination of the amount this court thinks that in the background of her husband's income as pleaded in the application and considering the basic requirements of the lady, an amount of Rs 2,500/- per month, the lady can do mitigate the necessity to raise her child.

The instant petition disposed off with in reasonable time and no dilatory tactics are seen on the part of the OP to dispose off the petition. As such I am inclined to allow the maintenance from the date of this order.

Hence it is,

ORDERED

that the prayer of the petitioner for interim maintenance is

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hereby allowed in part in respect of their son only against the opposite party on contest and without any cost. The opposite party is directed to pay to the petitioner the amount of Rs 2,500/- per month as interim maintenance allowance from the date of this order for their son only till disposal of the case or attains of majority, whichever is earlier . The opposite party is further directed to pay to the petitioner the ordered amount within 7th day of each succeeding English Calender Month either by hand or by money order or depositing in any bank account in the name of petitioner failing which petitioner shall have liberty to put the order into execution.

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

Fixing 31/08/2024 for PWS.

Dict. & Corrected

JM 2nd Court DDH.

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(JO Code: WB01219)