

In the Court of Judicial Magistrate (2nd Court)
Diamond Harbour, South 24 Parganas
Present: Sri UTTAM DAS, WBSJ (WB1219)
CASE NO- C 429/2018

Order Dated:- 21/09/2022

Today the date is fixed for hearing of interim maintenance petition.

Ld. Advocate for the both sides are present.

The petition is taken up for hearing.

By filling this petition, Ld. Advocate for the complainant submits that the complainant is legally married wife of respondent no-1. Out of their marriage the complainant gave birth two daughters namely Hasiba Molla now aged about 7 years and Hasida Molla now aged about 5 years. During her stay with the respondent no-1, all the family members of him including respondent no-1, used to cause mental and physical torture on various pretext. She was asked to bring cash Rs 20000/- from her father and when she expressed her inability to meet their demand, they accelerated the degree of torture. The respondent no-1 did not respect the complainant. Lastly on 23.04.2018, she was driven out with her two minor daughters. Since then complainant is residing at the sole mercy of her father with her two children.

Since driven out, the respondent no-1 did not take any initiative to provide any maintenance towards complainant. The respondent is goldsmith and he has shop. He owns 12/13 bighas landed property. He earns ₹1,50,000/- per month, on the other hand the complainant has no source of income to maintain themselves. As such she prays for an order for interim maintenance allowance for herself and her two daughters cumulatively Rs 16,000/- per month.

On the other hand, Ld. Advocate for the respondent stated that the complainant is a quarrelsome lady, she did not give respect towards her husband as well as her other family members. The complainant had left her matrimonial house at her own will. She used to create pressure upon the respondent no-1 to be domestic son in law. She was very reluctant towards their conjugal life. The complainant has sufficient means to maintain themselves. On the other hand, the respondent has no sufficient means to maintain her wife separately. The respondent No.1 is a daily labourer and he earns Rs 5000-6000/- per month. Ld. Advocate prayed for rejection of the petition.

Heard the Ld. Advocate of the both sides.

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Perused the case record. Neither party failed any documents to support the income of each others. . On perusal it prima facie reveals that admittedly the complainant is legally married wife of respondent and she is residing at her paternal house along with her children. Respondent failed to produce any documents to show that the complainant is a working lady and she is able to maintain herself from her own earnings. The respondent has admitted that he earns Rs 5000/- to 6000/- per month. No document is filed on the part of petitioner to show the income of respondent No.1. Without holding trial, at this stage it is hard to hold that whether the complainant has intentionally left her matrimonial house or that respondent is deliberately neglecting her maintenance. And the complainant is the victim of domestic violence.

Considering the above, I am of the view that as the the complainant is living at her parental house along with her daughters away from her husband and she was not provided any maintenance from her husband and whereas no prove is shown from the side of respondents regarding the fact that he had tried to return her wife or to negotiate their problem, the prayer of interim maintenance allowance should be allowed.

Now so far quantum of interim maintenance allowance is concerned, such allowance should be fixed considering the status, and needs of the complainant and also regard being had to the status of the opposite party. In my view allowance should not be such an amount which would be penurious to opposite party and luxurious to complainant.

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 with a minor child, an amount of Rs.1,000/- per month for the complainant and ₹750/- each per month for her two minor daughters, is sufficient for the complainant who can do mitigate the necessity of her attempt to survive and to continue with the litigation for achieving final objective concerning her prayer for granting monthly maintenance under Section 12 of the P.W.D.V Act.

Hence it is,

ORDERED

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that the prayer of the complainant for interim maintenance is hereby allowed against the respondent No.1 on contest and without any cost. The respondent no1 namely Hafijulla Molla, is directed to pay to the complainant an amount of Rs 2,500/- cumulatively per month (Rs. 1,000/- per month for the complainant and ₹750/- each per month for her two minor daughters) as interim measures from the date of this order within 07th day of each succeeding English Calendar Month.

Fixing 16/01/2023 for evidence (PWs).

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

Dict. & Corrected

JM 2nd Court DDH.

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