

M-17/2022  
Regd No.-17/2022  
JO Code: WB01068

Order dated: 31.01.2024

Today is fixed for passing order.

The application for interim maintenance is taken up for passing order.

Perused the petition, the WO and other materials on record and documents filed by the parties.

It appears from the record that the petitioner filed her petition claiming maintenance for herself and for her two minor children.

During hearing ld advocate for the opposite party raised strong objection and submitted that the opposite party is not father of the minor children (twine) and the petitioner was taken at the time of her marriage with the OP . The opposite party also challenged the date of marriage as averred by the petitioner in her petition.

Ld advocate for the opposite party has submitted that the presumption u/s. 112 Evidence Act regarding paternity of child is rebuttable and opposite party will prove that he is not father of the children of the petitioner at the time of evidence. It is also submitted by ld advocate that the children were not born within 280 days of the marriage as envisaged in Section 112 of Evidence Act.

In support of his contention the opposite party has filed a copy of marriage card and other documents. It appears from the copy of marriage card that the date of marriage is 26.02.2020 whereas the petitioner has mentioned her date of marriage as 18.02.2019 in her petition. The petitioner has filed some documents including birth certificate of the children. The date of birth of the twine children as appeared from their birth certificate is 18.10.2020.

In this case the marriage in between the petitioner and the OP is admitted but paternity of the children is challenged by the OP.

The OP being the husband of the petitioner is bound to maintain his wife. However as the opposite party has challenged the date of marriage and the paternity of children, I am not inclined to grant any maintenance to minor children of the petitioner at this stage and the same shall be considered after taking of evidence.

Neither party filed any document of the income of the OP. In view of the economic condition of our country, it can be said that a person can earn Rs.9000/- to Rs. 10000/- per month by working as a labour in different private organization or in Govt scheme or even by running small business. Therefore the OP can earn said amount even by working as labour.

Considering the above discussion, I am inclined to allow the petitioner's petition and in view of the present economic condition of our country, if the opposite party be directed to pay Rs.3000/- per month for the petitioner, as interim maintenance, none will be prejudiced.

Hence it is,

**ORDERED**

That the interim maintenance petition of the petitioner is hereby allowed in part.

The petitioner is entitled to get Rs.3000/- per month for the petitioner, as interim maintenance from the opposite party from the date of filing of the case.

The opposite party is directed to pay Rs.3000/- per month for the petitioner as interim maintenance, month by month, within 7<sup>th</sup> day of each succeeding English calender month from this date of filing of the case till disposal of the case. In default, the petitioner is at liberty to realize the same through court.

The interim maintenance of the minor children of the petitioner is rejected at this stage.

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

To 01.04.2024 for evidence.

D/C by me.

Sd/-

Sd/-

ACJM-cum-CJSD, Kakdwip

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