

M. Case No.- 20 of 2020

J.O -WB01372

Order dated. 16.05.2024

Today is fixed for interim hearing.

Both sides filed hazira files hazira.

WO and deceleration of assets on affidavit is filed on earlier occasion behalf of the OP. Let it be kept with the record.

Now the record is taken up for hearing.

Learned Counsel appearing on behalf of the petitioner submitted that the petitioner is the father of the OP. After birth of his child i.e., OP he borne a lot of expenses for his education. At present OP earns rupees 30000 per month from various sources. Whenever petitioner went to the OP and asked for maintenance in order to bear the expenses of medical treatment, OP denied and misbehaved with him. The petitioner has no income of his own. Now petitioner is residing passing his days in great hardship. As he has no source of income, he is praying for interim maintenance for himself comprising of Rs. 5,000 per month.

In reply, Learned Defence Counsel submitted that O.P. is a day labour and earns Rs. 2,000/- to Rs. 3,000/- per month. His mother resides along with him. On the other hand, petitioner along with his another wife and son is residing separately. He has landed property and earns Rs. 30,000/- to 40,000/-. Therefore, Ld. Advocate prays refusal of the petition.

Heard.

Considered.

The intention of the legislature in regard to interim maintenance was that it was to be allowed in a case of extreme urgency and where prima facie it is observed that the petitioner is under hardship. In the instant scenario it is clear that:

- 1) relation of the petitioner with O.P is not denied;
- 2) O.P is an able bodied man;
- 3) the petitioner is living separately;
- 4) the O.P has not paid any money as maintenance to the petitioner.

Foundation of an order under Section 125 of the Code of Criminal Procedure, 1973 is the neglect or refusal of the opposite party to maintain his wife, child or parents. "Refuge" means a failure to maintain or denial of the obligation to maintain after demand. "Neglect" on the other hand, means a default or omission to maintain, in the absence of a demand. Neglect or refusal may be implied from the conduct of a party and need not be a formal refusal.

It is observed by the **Hon'ble High Court of Calcutta** that the term '**means**' which not only signifies only visible means such as real property or definite employment. If a man is healthy and able bodied he must be held to be possessed of sufficient means no matter whether he is a professional beggar or a minor or a monk. Once a person has capacity of earn he cannot refuse or neglect to maintain his wife, child or parent.

[Dasarathi vs Anuradha 1988 CrLJ 64(Cal) & Durga vs Prembai 1990 Cr LJ 2065; 1990 Jab LJ 307].

On hearing the submission of both sides and perusing the materials on record, it is found that petitioner is in possession of landed property as seen from the copy of LRROR filed by the O.P. which implied petitioner has sufficient means to maintain himself and accordingly no question of maintenance arise. Therefore prima facie petitioner is unable to satisfy the Court regarding the urgency of maintenance.

Hence it is

ORDERED

that the prayer of the petitioner is refused at this stage.

To 16.08.2024 for evidence.

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

D/C

J.M, Kakdwip.