

**M 393/2023**

16/12/2024

JO Code: WB01270

Today is fixed for Order.

Both parties file hajira.

Record taken up for passing order.

The instant case was filed by Petitioner Kashmira Khatun Bibi against her husband .i.e. OP Selim Sardar u/s 125 Cr.P.C. She has prayed for monthly interim maintenance of Rs 7000/-for herself and Rs. 5000/-each for her two minor daughters till the disposal of the case.

The OP filed detailed WO against the relief sought. Both parties have filed a detailed Affidavit of asset and liabilities.

Careful perusal of the pleadings, Affidavit and submissions made by the Ld. Counsel for the parties makes it clear that there is unanimity between the parties regarding certain points and the same does not need require detailed discussion. The points are as follows: -

1. That the marriage between the Petitioner and OP is not in dispute,
2. The marriage is still subsisting,
3. The Paternity of minor son is not disputed,
4. The minor son live with the Petitioner,
5. The Petitioner and the OP are living separately.
6. There is no maintenance order passed in favor of petitioner under any other statute

The bone of contention between the parties are the reasons which led to the breakdown in the relationship and the parties living separately.

On one hand the Petitioner has alleged mental and physical torture by OP for demand of dowry. Then finally forceful ouster from matrimonial house of petitioner and her child by OP. The Petitioner has alleged continuous denial of maintenance to her and her child.

On the other hand, the OP denied the allegations as noted above. He countered by claiming that the root cause of dispute is behavior of petitioner. It is alleged that Petitioner used to quarrel at all times and acted as per her own whims. It is further alleged that Petitioner left the house as per her own freewill and at present is in adulterous relation with another man. The OP has prayed for rejection of Interim Maintenance Petition.

**DECISION WITH REASONS**

The veracity of claims and counter claims can only be ascertained after the parties have put forth their evidence. It needs to be highlighted that the recording of evidence is yet to commence in the instant case. In this circumstance, the court has to rely on the Affidavit of asset and liabilities filed by the parties.

The point that needs to be decided whether an interim monthly maintenance allowance needs to be given as prayed for to the Petitioner or not.

It is a settled principle of law that a husband and a father has a legal and moral duty to look after his legally married wife and children until proven otherwise. The instant case is not an exception. The object of granting maintenance is to prevent vagrancy and to ensure that the neglected wife and child is not left beggared to even fulfill their basic needs. The Petitioners' include wife and minor son.

Perusal of Affidavit and W/O filed by OP does not reflect any instance wherein he has provided any monetary assistance to his wife and child. In the Affidavit of asset and liabilities the OP has highlighted that he has not provided any maintenance voluntarily to his wife or child. The statement strengthens the contention of Petitioner has OP has shunned his responsibility.

After considering the limited materials in hand, this court is of opinion that the prayer of Interim Maintenance should be allowed.

Now the question arises as to whether the OP has sufficient means to provide maintenance and how much the petitioner is entitled to?

The Petitioner has claimed that the OP works at a Glass factory at Kolkata and also runs a fungus collecting business and earns around Rs. 35,000/- per month. On the other hand, the OP has denied having an income as claimed by Petitioner. He claims to be a day labour having an income of Rs. 4000/- per month.

At this stage, the exact income of the OP cannot be ascertained. But it is clear from pleadings and Affidavits that the OP is physically and mentally fit person.

The Hon'ble Apex Court and our parent High Court has time and again reiterated that if the person is physically and mentally fit, then he is deemed to be having sufficient means to work, earn and provide maintenance.

The OP being a husband and a father cannot run away from his responsibility at this stage. It needs to be noted that Petitioner is not alone. The minor daughters of Parties live with the Petitioner.

After considering materials in hand, I have no hesitation to hold that OP has sufficient means.

Now the question is how much interim maintenance the petitioners are entitled to?

In Rajnesh v. Neha and Anr. it was held that the maintenance amount awarded must be reasonable and realistic, and avoid either of the two extremes i.e., maintenance awarded to the wife should neither be so extravagant which becomes oppressive and unbearable for the respondent, nor should it be so meagre that it drives the wife to penury. The sufficiency of the quantum has to be adjudged so that the wife is able to maintain herself with reasonable comfort.

As already highlighted the OP has not provided any maintenance to his wife and son. In addition the OP has not even offered to make any payment voluntarily.

After considering materials in hand, this court is of opinion that Rs. 3000/- as Interim Maintenance will be apt and proper. The date of effect shall be from the date of filing of the case as mandated by Hon'ble Supreme Court in Rajnesh Vs. Neha.

Hence it is,

ORDERED

1. That the Interim Maintenance filed by the petitioner is allowed on contest, but in part.
2. The OP is directed to make payment of Rs.3000/- ( Three Thousand only ) per month to the Petitioner from date of filing of the case until further order. (Rs. 2000/- for the Petitioner and Rs. 1000/- for her minor son).
3. The Payment shall be made within 10<sup>th</sup> day of each succeeding month of English calender Year.
4. The OP is directed to clear the arrears within 3 months from today.
5. The Interim maintenance paid shall be adjusted in accordance with the Final order of the case.
6. The petitioner shall have a right to put this order for execution if the OP fails to comply the same.
7. Copy to Petitioner at once

Record shows that WO in respect of the main petition is already filed

To 23-05-2025 for Evidence

Sd/-

ACJM, Kakdwip