

MR. CASE NO. 136 OF 2023 (CIS)
JO CODE : WB 01317

Order Dated: 19-10-2024

Today is fixed for passing order.

Petitioner is present and OP filed hazira through lawyer.

Heard both the parties on a previous occasion.

Perused the case records and considered.

Now the record is taken up for passing order.

According to the wife, she has been married to the OP 07 years ago as per Muslim rites and customs. At the time of their marriage, her parents gave sufficient gifts but the OP was not happy with those and within few days of her marriage she has been subjected to mental and physical cruelty for demand of dowry of Rs. 50,000/- and the torture increased after non fulfillment of such demand and the petitioner was compelled to leave her matrimonial home but on 05-10-2023 the OP called her and asked her to meet him to resolve their dispute but upon meeting, he assaulted her with wooden stick and another weapon causing injury to her against which she filed Chopra PS case No. 725/2023.

According to the petitioner, the OP never maintained her although he is an able bodied person and earns Rs. 55,000/- to Rs. 60,000/- pm seasonal business having 8 to 10 bighas of landed property and also being a mason.

Accordingly, the petitioner has prayed for an interim maintenance of Rs. 15,000/- per month.

The OP appeared in this case and filed any WS and WO and denied all the allegations of the petitioner but admitted his marriage. However, he also added that the petitioner has bad manners and has quarrelsome nature and the siblings and parents of OP are dependent upon him. He also alleged that the petitioner neglected his aged parents and she left for her parental house without any permission and pressurizes the OP to live separately from his parents and when he refused, she left voluntarily on 10-04-2023.

It has also been claimed that he earns Rs. 300/- to Rs. 400/- per day.

None of the parties filed any documents in support of their contention.

During hearing Ld. Advocate for the OP argued that he is a day labour and illiterate, while the petitioner is Madhyamik pass and he also claimed that the petitioner works as tea leaf worker. He also argued that the petitioner never filed any medical document regarding her alleged assault.

Ld. Advocate for the petitioner argued that the petitioner was assaulted by OP on the pretext of amicable settlement.

The contentious issue whether the petitioner has left herself, her matrimonial home or whether she has been put to pressure to leave the same are the questions which cannot be decided without going through the evidence in this case. But it is also true that she failed to produce any medical document in support of her claim that she was assaulted. However, it is an admitted fact that the petitioner is living separately and the facts remains as to who will look after the interests of the petitioner at this threshold stage of litigation. Now, although, no document could be submitted by the petitioner regarding the income of the OP, but since there is no material to deny that the OP is an able bodied person, he must look after the interests of the petitioner till the discord involved in this case is decided. Moreover, the OP also failed to produce any document that the petitioner works as tea leaf labour. Not only that there is no averment in the WS or WO of the OP about the work of the petitioner, as argued during hearing. Therefore, if it is discovered at the end of trial that the wife is unreasonably reluctant to resume cohabitation with the opposite party her maintenance endeavour would be thrown out but this possibility, in my opinion, cannot absolve the husband from discharging his legal obligation to maintain his wife.

In the facts and circumstances of the present case an interim order of maintenance will not work to the prejudice of the husband even if the principal application is ultimately found to be worthy of rejection and I say this because the amount that would be paid as interim maintenance would have had to be spent by the husband in any event if his wife was residing with him. At this stage without taking evidence on that behalf, it would not be possible to determine whether the wife had left the matrimonial home on her own volition or not.

It requires no elaboration that the wife is entitled to get maintenance from the OP. The OP had taken upon himself the pious, social and legal obligation to maintain the petitioner. He cannot now escape from this responsibility by imposing any story or truth. Therefore, without any document from any of the parties, I would not hesitate to allow as interim monthly maintenance of a sum of **Rs. 3000/-** to the petitioner.

The instant application thus succeeds and to this extent.

Hence, it is

ORDERED

that the application for interim maintenance is allowed in part, **on contest**, but without any order as to costs.

The opposite party is directed to pay to the petitioner, with effect from the date of institution of this case, monthly interim maintenance at the rate of **Rs. 3000/-** (Three thousand only) per mensem and to keep on paying this amount month by month within 10th day of each succeeding English calendar month until final disposal of this case.

The cumulative amount of the arrear of maintenance must be paid by the OP in four equal installments within next four months along with the regular payment of interim maintenance.

Payments are to be made by the opposite party within the tenth day of each succeeding English calendar month failing which the petitioners would be at liberty to execute the order through the court.

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

To **21-12-2024** for contested evidence.

JM, Islampur.