

12-03-2020

Both the parties are represented.

This order arises in the wake of the petition filed by the petitioner/O.P. U/S 24 of the Hindu Marriage Act, 1955 supported by an affidavit in connection with T.S. (D) No. 04/19 for granting maintenance pendente lite and expenses to the proceeding from the date of the filing of the petition.

The salient aspect laid down in the petition by the petitioner/O.P. (hereinafter referred to as petitioner) are that the O.P./petitioner (hereinafter referred to as the O.P.) has filed the present suit being TS (D) No. 04/19 U/S 24 of the Hindu Marriage Act, 1955 praying for a decree of divorce by dissolution of marriage between the petitioner and the O.P. The petitioner has contested the suit by filling W/S.

According to the petitioner, she and her minor son Himraj Saharia was compelled to take shelter at the house of parents since 2016. She passed a very miserable life at the house of her parental home and face a lot of problem due to financial hardship to lead a normal life. She even faced problem to manage travelling expenses to attend the Court to proceed the case against the O.P. The O.P. is a professional driver and possess 15-20 Bighas of cultivable land. The O.P. is a rich man and he earned about 30,000/- to 40,000/- per month. It is, therefore, prayed to pass necessary order directing the O.P. to pay to the petitioner Rs.5000/- per month for her maintenance during the pendency of the proceeding and also to pass necessary order directing the O.P. to pay an amount of Rs.30,000/- as the litigation expenses including the proceeding.

The O.P. has filed a written objection and rebutted the claim of the petitioner. The O.P. has contended that the petitioner after giving birth a male child used to live at her parental home alongwith her child and the O.P. also used to stay with them and

provided all needs and maintenance to them. The petitioner is an arrogant woman and she did not like to adjust with the family members of the O.P. The petitioner always asked the O.P. to live separately from his family and intend to live a high standard living which the O.P. could not bear as he being a daily wage earner. The petitioner asked the O.P. to live with her in her parental home to which the O.P. did not agree and thereby problem started in their conjugal life. The O.P. and his family members visited the house of the petitioner for several times to take back her alongwith the minor child to his house. The O.P. was always ready to lead conjugal life happily alongwith the petitioner. The parents of the O.P. are old and living with him. The O.P. have no landed property and stated that he is a wage earner. Moreover, the O.P. has stated that in DV Case No. 34/17 vide Order and Judgment dated 11-09-2019, learned Court of JMFC, Udalguri has directed the O.P. to pay a monthly maintenance amount of Rs. 9000/-(nine thousand) to the petitioner. Therefore, he is not in a position to grant any interim relief as claimed in the petition.

I have heard argument advanced by the learned counsel for both the sides and also carefully perused the entire materials on record including the petition and the objection thereto.

Learned counsel for the petitioner has argued that even though O.P. is directed to pay maintenance in DV Case by learned Magistrate, the O.P. is liable to pay maintenance to the petitioner under the provision of Section 24 of Hindu Marriage Act, 1955.

In the present case it is admitted position that petitioner is the wife of the O.P and differences cropped up between the petitioner and the O.P. which culminated into filing of the divorce petition by the O.P. The claim of the petitioner that she has no source of income has been remained unchallenged by the O.P. in his written objection submitted in the case.

However, it appears that O.P. is already directed by learned Magistrate in DV Case filed by the petitioner to pay monthly maintenance to the petitioner. Though provision of law does not bar to pay maintenance under Section 24 of Hindu Marriage Act when the petitioner is getting maintenance under the Domestic Violence Act or any other Act relating to grant of maintenance but in such a case when the petitioner is getting maintenance in a separate case, the petitioner must show that the O.P. is capable of paying maintenance more than the maintenance granted to her in the separate case. In the present case the petitioner is already getting monthly maintenance of Rs. 9000/- from the O.P. as directed by learned Magistrate in DV Case filed by the petitioner and there is no evidence on the part of the petitioner to show that O.P. is capable to give her more maintenance than the maintenance he is directed to pay in the DV Case. Hence, this Court is not inclined to grant interim maintenance to the petitioner.

However, in my considered view Rs.15,000/- (Rupees fifteen thousand) only as litigation expenses will subserve the justice in the attending facts and circumstances of the case and in that condition petition is partly allowed accordingly.

On account of what has been stated above, the O.P. is hereby directed to pay Rs. 15,000/- (Rupees fifteen thousand) only as the expenses of litigation.

This Misc case stands disposed of accordingly.

Dictated

(N. Talukdar)