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Crl.RC.No.824 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2022

Coram:

THE HONOURABLE **MR. JUSTICE P.VELMURUGAN**

Criminal Revision Case No.824 of 2022

and

Crl.M.P.No.8444 of 2022

1.R.A.Gopi
2.G.Lakshmi

... Petitioners

Vs.

1.J.Deepika
2.G.Selvakumar

... Respondents

Prayer: Criminal Revision filed under Section 397 read with 401 of Criminal Procedure Code, praying to call for the records in C.A.No.30 of 2022 on the file of the learned XVIII Additional City Civil Court at Chennai and set aside the order dated 31.03.2022 confirming the Crl.M.P.No.436 of 2022 in D.V.C.No.76 of 2021 dated 31.01.2022 on the file of the learned XXIII Metropolitan Magistrate, Saidapet, Chennai and set aside the same.

For Petitioners : M.R.Ganesh Kumar

For Respondents : Mr.J.Hemakumar for R1

Notice served on R2 (No appearance)



ORDER

The Criminal Revision Case has been filed seeking to set aside the order in C.A.No.30 of 2022 on the file of the learned XVIII Additional City Civil Court, Chennai dated 31.03.2022 confirming the order in Crl.M.P.No.436 of 2022 in D.V.C.No.76 of 2021 dated 31.01.2022 on the file of the learned XXIII Metropolitan Magistrate, Saidapet, Chennai.

2. The 1st respondent is the wife of the 2nd respondent. The petitioners are the parents of the 2nd respondent and in-laws of the 1st respondent. The 1st respondent had filed a complaint under the Domestic Violence Act before the Protection officer and based on their report, the learned XXIII Metropolitan Magistrate, Saidapet, Chennai, taken cognizance of the case in D.V.C.No.76 of 2021 and during pendency of the same, the 1st respondent also filed a petition in Crl.M.P.No.436 of 2022 for interim relief under Sections 19 read with 23 of Protection of Women from Domestic Violence Act. The learned Magistrate who dealt with the matter, had granted interim relief of shared household right to the 1st respondent herein by order dated 31.01.2022. Challenging the said order, the petitioners/2nd and 3rd respondents therein, filed an appeal before the District and Sessions Judge,



Chennai City Civil Court, in C.A.No.30 of 2022 and the same was made over to the XVIII Additional City Civil Court, Chennai. The learned Sessions Judge after hearing the arguments, dismissed the appeal by order dated 31.03.2022. Aggrieved over the order of dismissal, the in-laws of the 1st respondent, have filed the present revision before this Court.

3. The learned Counsel for the petitioners would submit that the 1st respondent is the daughter-in-law and the 2nd respondent is the son of the petitioners herein. The 1st respondent/daughter-in-law filed a complaint under the Domestic Violence Act before the XXIII Metropolitan Magistrate, Saidapet, Chennai, in D.V.C.No.76 of 2021 and no notice was served on the petitioners. He would submit that the 2nd respondent had filed a divorce petition in HMOP No.3359 of 2021 and in the said proceedings, the 1st respondent had filed a petition in I.A.No.1 of 2021 seeking interim maintenance and in the said application, as a statutory compliance, she also filed declaration of assets and liabilities during the month of January 2022 and in the said documents, the 1st respondent had made a reference about the pendency of the case. Immediately, the petitioners attempted to verify the details about the case. However, since the entry into the Courts were



restricted due to the third wave of pandemic virus, they could not immediately collect any details. However, only by 27.01.2022, they managed to collect the details about the case and were shocked to see that they were set ex-parte on 15.11.2021 and the case was posted on 27.01.2022. On coming to know about the same, immediately the petitioners had filed a memo before the Magistrate and thereafter, the case was posted to 31.01.2022. On 31.01.2022, they had filed a detailed petition to set aside the ex-parte order explaining the contingencies. But the learned Magistrate, without considering the same, returned the petition filed by the petitioner for setting aside the ex- parte order stating that counter has not been filed along with the petition. He would submit that since they did not have any copies of the petition/affidavit/proof filed by the 1st respondent, they only filed the petition along with supporting affidavit to set aside the ex-parte order explaining the situation and the reason for their absence. On the other hand, the trial Court without considering the fact that counter cannot be filed without there being a service of the petition copy, had returned the petition for setting aside the ex-parte order dated 15.11.2021 for want of counter. The trial Court had failed to consider the fact that the Courts were closed on account of the rapid spread of Covid-19/Omicron



virus in the third wave, and proceeded to pass ex-parte order dated 31.01.2022 against the circulars prevalent on the particular period, issued by both the Government as well as by the Hon'ble Supreme Court of India on the particular period. He would submit that the trial Court did not appreciate the statement of affidavits filed by the 1st respondent herein which is self contradictory in nature and the only consideration of the trial Court was that the petitioners abstained them from appearing in Court. Further, the 1st respondent may become shelterless as her house was about to be auctioned shortly. He would further submit that the 1st respondent's parents are well to do and they have got a Marriage Hall, two residential houses and one shop in Koyambedu Market Place. But the 1st respondent suppressed all the facts. Even the father of the 1st respondent as well as the 1st respondent, had admitted the same in the affidavit filed in the Domestic Violence Case, whereas the learned Magistrate without considering the facts and without even giving an opportunity to the petitioners to file their objections, passed the ex-parte order. When the said order was challenged by the petitioners before the Sessions Judge as a statutory appeal, the learned Sessions Judge also failed to appreciate the grounds taken by the petitioners and on the sympathy ground, dismissed the appeal. Hence, the petitioners are before



this Court by way of filing revision. The orders of both the appellate Court and the trial Court are liable to be set aside and the matter may be remitted back to the Magistrate for consideration, after giving opportunity to the petitioners in accordance with law.

4. The learned counsel for the 1st respondent would submit that though at the time of marriage, the 1st respondent had Marriage Hall and Houses, due to the over demand of dowry and other marriage expenses, the parents of the 1st respondent were constrained to borrow huge amount from Bank and subsequently, they could not repay the same and hence they sold the Marriage hall and one of the residential houses and since the Bank filed a suit for recovery of money and attached the another house, in order to avoid further loss, they entered into an agreement with 3rd party for selling the house with the permission of the Bank and as per the agreement, they have to hand over the house to the purchaser. Therefore, after selling and handing over the house, the petitioner would not be in a position to have any shelter. Therefore, the petitioner filed a petition before the trial Court for interim relief and both the trial Court as well as the Appellate Court, considering the need of the 1st respondent, passed appropriate orders. He would further



submit that though sufficient opportunities were given and the petitioners also entered appearance, they failed to file petition in a proper manner and also failed to file counter and that they were protracting the case. Therefore, the learned Magistrate on finding that even after giving opportunity, the petitioners were not co-operating to proceed with the petition filed by the 1st respondent and further, the petition was only for interim relief of shared household and hence, the magistrate rightly passed the ex-parte order. Therefore, considering the case of the 1st respondent, the Magistrate passed the order. Even though it is an ex-parte order, the appellate Court also considered the materials and dismissed the appeal filed by the petitioners. Therefore, there is no perversity in the order of the Courts below.

5. Heard the learned counsel for the petitioner and the learned counsel for the respondent and also perused the materials on record.

6. Admittedly, the 2nd respondent is husband of the 1st respondent and their marriage was solemnized on 10.03.2016 at the outskirts of Chennai. The petitioners are father-in-law and mother-in-law of the 1st respondent and parents of the 2nd respondent. Admittedly, there is a dispute between the



parties and matrimonial O.P. is also pending. According to the 1st respondent, her husband and in-laws caused domestic violence and therefore, she filed a complaint and subsequently, the same was taken on file by the learned XXIII Metropolitan Magistrate, Saidapet, Chennai, in D.V.C.No.76 of 2021 and during pendency of the same, the 1st respondent also filed a petition in Crl.M.P.No.436 of 2022 under Sections 19 read with 23 of Protection of Women from Domestic Violence Act for interim relief of shared household, since, she lost all her parental properties and her individual house was also going to be auctioned shortly and after the sale of the house, she would be in the street without any shelter. Though sufficient opportunities were given, the petitioners did not respond and therefore, the learned Magistrate passed the ex-parte order.

7. The contention of the petitioners is that they were not aware of the proceeding and notice was not served on them in respect of the Domestic Violence Case and when they come to know about the pendency of the case, due to the pandemic restrictions and since they are senior citizens, their entries were restricted and therefore, they could not directly approach the Court. Subsequently they were manage to know about the proceeding and



got the copy and only filed a petition to set aside the ex-parte order since without the copy of the complaint and other details of the petition filed by the 1st respondent, they could not file detailed counter in the petition to set aside the ex-parte order. But the Magistrate without considering the same, passed ex-parte order.

8. Admittedly, the 1st respondent and her husband/2nd respondent are residing separately. Whether the accused caused domestic violence or not; that can be decided only in the main case. In the impugned order it is stated that since the 1st respondent is not having any shelter, she is entitled for shared household and as a husband, the 2nd respondent and the petitioners/in-laws are liable to provide shared household to the 1st respondent. Therefore, whatever the defence, the 2nd respondent and the petitioners can make out their case in the main domestic violence case. Since it is only an order of interim relief, both the Courts below have passed the orders after considering the facts and circumstances of the case and need of the 1st respondent.

8. The scope of revision is very limited. Since it is an interlocutory



order, this Court as a revisional Court would not interfere with it unless there is perversity. This Court does not find any perversity, illegality or infirmity in the orders passed by the Courts below. Therefore, the revision is liable to be dismissed. However, since the main Domestic Violence Case is pending before the Magistrate, the petitioners are at liberty to take their defence in the main Domestic Violence Case.

9. Accordingly, this Criminal Revision Case is dismissed. Consequently, connected Miscellaneous Petition is closed.

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P.VELMURUGAN,J.

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To

1. The XVIII Additional City Civil Court,
Chennai

2. The XXIII Metropolitan Magistrate,
Saidapet, Chennai

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