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Cont.P.No.1546 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 13.09.2023

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Cont.P.No.1546 of 2023

B.Lakshmi

... Petitioner

Vs.

D.Balasubramanian

... Respondent

PRAYER: Contempt petition is filed under Section 11 of the Contempt of Courts Act, to punish the respondent herein for contempt of Court of the orders passed by this Court dated 13.10.2022 in CrI.R.C. No.931 of 2022 in which, the order of the trial Court dated 31.08.2021 in DVC No.423 of 2017 and the order dated 20.05.2022 passed in CrI.A.No.150 of 2022 passed by the appellate Court have been merged.

For Petitioner : Mr.R.Thanjan



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ORDER

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This contempt petition has been filed to punish the respondent herein for contempt of Court of the orders passed by this Court dated 13.10.2022 in CrI.R.C. No.931 of 2022 in which, the order of the trial Court dated 31.08.2021 in DVC No.423 of 2017 and the order of the appellate Court dated 20.05.2022 in CrI.A.No.150 of 2022 have been merged.

2. The petitioner had filed a complaint under the Domestic Violence Act in DVC No.432 of 2017 on the file of the Metropolitan Magistrate, Additional Mahila Court, Egmore, Chennai, against her husband/the respondent herein and the sister of the respondent seeking protection order, a separate house, maintenance of Rs.40,000/- and to return the jewels, silver articles and voter ID. The learned Magistrate, after enquiry, by order dated 31.08.2021, dismissed the petition filed against the 2nd respondent and directed the 1st respondent/husband to pay the expenses spent towards the 2nd, 3rd and 4th academic year education of the elder daughter of the petitioner/wife to the tune of Rs.2,10,000/- within a period of two months from the date of the said order. The trial Court had not granted any other relief to the petitioner/wife as she was not eligible for the



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said reliefs and dismissed the petition with respect to all other reliefs. The trial Court had not imposed any cost considering the circumstances of the case.

3. Challenging the order of the Magistrate, the petitioner had filed an appeal before the V Additional Sessions Judge, Chennai, in CrI.A.No.150 of 2021. The learned Sessions Judge, by judgment dated 20.05.2022, allowed the appeal in part in respect of the relief of maintenance and dismissed the appeal in respect of all other reliefs sought for by the petitioner/wife and further directed the 1st respondent/husband to pay a sum of Rs.25,000/- per month towards maintenance for the petitioner/wife from the date of petition. The operative portion the Judgment is as follows;

27. In the result, this Criminal Appeal is partly allowed in respect of the relief of maintenance alone thereby the order passed by the learned Metropolitan Magistrate, Mahila Court, Egmore, Chennai, in D.V.C.No.423 of 2017 dated 31.08.2021 is hereby set aside in respect of that relief alone and this appeal is



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partly dismissed in respect of all other reliefs thereby the order passed by the learned Metropolitan Magistrate in the said order in respect of all other reliefs are hereby confirmed. Consequently, the 1st respondent is directed to pay a sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) per month towards maintenance for the petitioner from the date of petition and the monthly maintenance amount shall be paid to the petitioner on or before 5th day of every succeeding English Calender month and the arrears amount of the maintenance as well as the amount awarded by the learned Metropolitan Magistrate at Rs.2,10,000/- (Rupees Two Lakh and Ten Thousand Only) towards Educational fee shall be paid by the 1st respondent to the petitioner within a period of three months from this date.

4. Aggrieved by the Judgement of the appellate Court, the petitioner filed a revision CrI.RC.No.931 of 2022, pressing for shared



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household in the new house, built by the 1st respondent/husband, in which, this Court, by order dated 13.10.2022, passed the following orders;

11. In this case, the 1st respondent/husband admitted that he has got residence but he has not proved that the petitioner/wife has independent residence and the trial Court as well as the appellate Court also failed to consider the same. The learned counsel for the appellant also pressed only for the shared household and not pressing for the other reliefs.

12. Therefore, the order passed by the appellate Court with respect to the residential right is hereby set aside and the 1st respondent/husband is directed to allot one of the portion of his new house to the petitioner/wife for her accommodation.

5. Now, the petitioner/wife has filed the present contempt petition stating that the respondent/husband has violated the order of this Court passed in CrI.RC.No.931 of 2022, dated 13.10.2022.



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6. Heard the learned counsel for the petitioner and perused the materials available on record.

7. It is settled proposition of law that against an executable order or degree, the parties who have got the executable order or decree, have to file a petition for execution before the Court below and instead of filing of petition for executing the order before the Magistrate, the petitioner has filed this contempt petition before this Court.

8. According to this Court, the contempt petition is not maintainable and the petitioner has got alternative remedy to file execution petition before the Magistrate, for executing the order. The petitioner is at liberty to avail the alternative remedy, in accordance with law.

9. Accordingly, this Contempt Petition is closed.

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