



CRP. No. 3759 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10. 2023

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

CRP No. 3759 of 2023
& CMP No. 23398 of 2023

1.Ashish Jain
2.Usha Jain
3.Parasmal Jain

...Petitioners

Vs.

Nikita Jain

....Respondent

PRAYER : This Civil Revision Petition is filed under Artcile 227 of Constitution of India, to set aside the order dated 29.03.2023 of the VIII Metropolitan Magistrate, George Town, Chennai made in CRL. MP. No. 1875 of 2023 in DVC No. 27 of 2021 by allowing the above Civil Revision Petition.

For Petitioners : Mr.Sandeep Shah

For Respondent : Mr.S.Kumaresan



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ORDER

This petition has been filed to set aside the order dated 29.03.2023 passed by the VIII Metropolitan Magistrate, George Town, Chennai in CRL. MP. No. 1875 of 2023 in DVC No. 27 of 2021.

2. Heard both sides.

3. The respondent herein filed DVC proceedings against her husband before the Trial Court and the Trial was begun but the husband was not cooperate for the proceedings. Before DVC the husband filed a petition to set aside the exparte order wherein the petitioner set exparte in that application the Trial Court allowed the application with three conditions one is to pay a cost of Rs.4,000/- and to cross examination of P.W.1 on 20.04.2023 subject to her appearance on such day and to file affidavit of asset and liabilities of second and third respondent on the same day. In respect of payment of cost husband complied with the same and in respect of second condition the petitioner appeared on that day due to absence of magistrate and incharge magistrate adjourned the matter on 21.04.2023, on that day P.w.1/respondent was not present. Thereafter, the matter was



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posted for orders. Immediately they filed the petition in Crl.M.P. No. 5367 of 2023 to set aside the exparte order but the said application was dismissed by the Trial Court stating that revision alone is maintainable. Challenging the said order husband preferred this petition.

4. By way of reply, the learned counsel for the respondent submitted that the petitioner has not cross examine P.W.1 for more than nine months and also sufficient opportunity was given to him and also he was not complied the order of the Court in order to drag on the proceedings. The Trial Judge rightly closed the evidence which needs no interference.

5. On perusal of the records, it reveals that the both the husband and wife are entitle to submit their evidence since this is a matrimonial issue husband not cooperated for the case though the evidence was started. Now, the petitioner had complied with the first condition of the Court on the next day of the order and filed affidavit before the Trial Court which itself shows that he is inclined to proceed with the trial, if opportunity is not given to the petitioner his valuable right to defend the case will be defeated. Hence, the order passed by the Trial Court in CRL. MP No. 1875 of 2023 in DVC No. 27 of 2021 is set aside. Further, the Trial Court is directed to dispose the case as early as possible preferably within a period of three



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months. With regard to arrears of maintenance the revision petitioner is directed to pay arrears of maintenance to the respondent the same within a period of six weeks. With regard to third condition issued by the Court the parents need not be complied with at present.

6. In result, this Civil Revision Petition is disposed of. No Costs. Consequentially, the connected miscellaneous petition is closed.

09.10.2023

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To

The VIII Metropolitan Magistrate, George Town, Chennai.



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T.V.THAMILSELVI,J.
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