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CrI.R.C.No.460 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CrI.R.C.No.460 of 2022

and

CrI.M.P.No.4784 of 2022

1. Murugan
2. Mallika
3. Devi
4. Anbazhagan

... Petitioners

Vs.

M.Lakshmi

... Respondent

PRAYER : Criminal Revision filed under Section 397 r/w 401 of the code of Criminal Procedure, to set aside the impugned order dated 21.02.2022 in CrI.M.P.No.8336 of 2021 in D.V.C.No.94 of 2019 on the file of the XXIII Metropolitan Magistrate, Saidapet, Chennai.

For Petitioners : Mr.K.Balaji

For Respondent : Mr.Balaji Thirummourthi

O R D E R



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The criminal revision case is filed by the petitioners against the order passed in Crl.M.P.No.8366 of 2021 in D.V.C.No.94 of 2019.

2. The first petitioner is the husband and the petitioners 2 to 4 are the family members of the first petitioner. The respondent is the wife of the first petitioner. The respondent / wife filed D.V.C.No.94 of 2019 seeking for protection under Section 12 of Domestic Violence Act, 2005 (hereinafter referred to as "the Act") and for maintenance under Section 20 of the Act and for custody of the children under Section 21 of the Act and also for compensation under Section 22 of the Act. The said domestic violence case was allowed with directions to the first petitioner / husband to pay an interim maintenance of Rs.15,000/- per month, to pay a sum of Rs.50,000/- as compensation and damages for the injuries sustained by the respondent / wife and also granted visitation rights.

3. Against the said DVC, the petitioners filed Crl.M.P.No.8336 of



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2021 seeking to set aside the exparte order. The said petition was dismissed by the learned XXIII Metropolitan Magistrate, Saidapet, Chennai, against which, the present criminal revision has been filed.

4. The learned counsel for the petitioner challenges the impugned order stating that the Court below ought to have taken into consideration that the minor children are in the custody of the first petitioner and that G.W.O.P.No.5310 of 2019 filed by the first petitioner to appoint him as a guardian for the minor children is pending before the learned VII Additional Family Court, Chennai. He also submitted that due to COVID-19, he was unable to appear before the Court below in DVC proceedings and that the Court below ought to have seen that the petitioners 3 and 4 are no way connected with the alleged domestic violence and the entire family of the first petitioner has been roped in the case by the respondent. He further submitted that, the non-appearance of the petitioners was neither willful nor wanton, but only due to the treatment and the prevailing unavoidable circumstances at the time of proceedings in DVC. Therefore, he submits that



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the Court below ought to have given one more opportunity to the petitioners to represent and put forth their case before the Court below. Hence, he prays that the impugned order is liable to be set aside.

5. The learned counsel for the respondent / wife submits that though several opportunities was given to the petitioners either to appear in person or to engage the counsel, they have neither appeared in person nor filed any written statement before the Court below in order to substantiate their cases and therefore, they cannot now plead no sufficient opportunity was provided to represent their case.

6. I have considered the said submissions made by the learned counsel appearing for both sides and have perused the materials placed before this Court.



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7. The relationship between the parties are not in dispute. The marriage between the first petitioner and the respondent has come under strain and there has been claims and counter claims between them. The DVC proceedings was initiated by the respondent / wife against the first petitioner. Since the first petitioner and others did not appear before the Court below in the DVC proceedings consecutively even after affirming several opportunities, the Court below passed an ex parte order on 23.04.2021, against which, the petitioners filed Crl.M.P.No.8336 of 2021, wherein the Court below has considered the submissions made by the petitioners and came to the conclusion that, the reasons stated by the first petitioner / husband for non-appearance cannot be sustained as the petitioners have been affirmed of all opportunities to appear before the Court below. However, the petitioners failed to appear in person or through counsel. The Court below further stated that D.V.C.No.94 of 2019 was initially taken up for hearing on 24.01.2020 and was finally disposed on 03.12.2020. Even on the last date of hearing on 05.11.2020, the petitioners neither appear in person nor filed any written statement and therefore, the petitioners were set ex parte on



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03.12.2020 and final order was passed on 23.04.2021. The reasons for non-appearance by the petitioners before the Court below during DVC proceedings cannot be sustained as even during the pandemic of COVID-19, the Courts were virtually held and during March 2020, the ban was lifted, the Court was functioning asusual. However, the petitioners did not appear before the Court below even after the lifting of the ban. This shows the inaction on the part of the petitioners, especially by the first petitioner in conducting the proceedings. The petitioners in order to drag on the proceedings without complying the said order, has filed Crl.M.P.No.8336 of 2021 setting aside the exparte order passed in DVC proceedings which is unsustainable. It is also to be noted that G.W.O.P.No.5310 of 2019 is also pending before the Family Court, Chennai. Hence, this Court finds no reasons to interfere with the order passed by the XXIII Metropolitan Magistrate, Saidapet, Chennai, which is impugned herein.

8. Accordingly, this Criminal Revision Case is dismissed. This order will not stand on the first petitioner to join with the respondent and file



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a compromise petition before the Court below. Consequently, connected miscellaneous petition is closed.

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NCC : Yes / No

Index : Yes / No

Speaking Order : Yes / No

vji

To

The learned XXIII Metropolitan Magistrate,
Saidapet, Chennai.



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M.DHANDAPANI, J.

vji

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