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CRP No.3219 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2024

CORAM:

THE HONOURABLE Mr. JUSTICE V.LAKSHMI NARAYANAN

CRP No.3219 of 2024 and CMP No.17191 of 2024

1.Dr.B.Fazil
2.A.Basha
3.Mrs.Nasreen Basha
4.R.M.Rizwan
5.Shababa Rizwan
6.Rafik

... Petitioners

Vs

J.Reshma Banu

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to call for the records relating to the proceedings in D.V.C No.9 of 2023 on the file of Metropolitan Magistrate Additional Mahila Court, Egmore, Chennai and quash the DVC No.9 of 2023.

For Petitioners : Mr.S.Madhar Khan

For Respondent : Mr.B.Dilli Babu
For Mr.K.Yuvaraj



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ORDER

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This Civil Revision Petition seeks to strike off DVC No.9 of 2023 on the file of Metropolitan Magistrate cum Additional Mahila Court, Egmore, Chennai.

2. The 1st civil revision petitioner is the husband, the petitioners 2 and 3 are father-in-law and mother-in-law and the 4th petitioner is the brother-in-law, 5th petitioner is the wife of 4th petitioner and the 6th petitioner is the father-in-law of 5th petitioner (father of the 4th petitioner). Pleading that the parties have already agreed and entered into a Mubarat on 27.12.2022, on the basis of which, a suit in O.S.No.26 of 2022 was presented on the file of III Additional Family Court, Chennai, this Civil Revision Petition has been presented.

3. According to Mr.S.Madhar Khan, since the parties have already settled the matter by way of Mubarat, filing of a Domestic Violence Case is an abuse of process of Court.



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4. Mr.B.Dilli Babu representing the sole respondent pleads that the Mubarat dated 27.12.2022 had not been voluntarily entered into by the sole respondent. He argues that the wife never agreed to dissolve the marriage dated 10.03.2019 by agreement. He pleads that wife has initiated proceedings before the Family Court in M.C.No.30 of 2023, claiming maintenance.

5. I have carefully considered the submissions made on either side and perused the materials available on record.

6. Whether the Mubarat dated 27.12.2022 is true or genuine is the subject matter of the suit in O.S.No.26 of 2022. Unless and until a declaration is granted by the Family Court stating that Mubarat is genuine and is binding on the parties, the relationship between the first petitioner and the sole respondent has to be treated as that of man and wife. If that be the situation, the domestic violence petition cannot be struck off as abuse of process. It is only if the Mubarat is found to be true and genuine, then, all matters having been settled in terms of the agreement entered into between the parties, is the wife barred from initiating proceedings invoking



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Domestic Violence Act 43 of 2005. As long as no decree has been passed, as pointed out above, the relationship continues. If the relationship continues, the wife is entitled to move an application under Section 12 of Domestic Violence Act.

7. Leaving it open to the parties to contest the proceedings on merits, I am not inclined to quash the proceedings in DVC No.9 of 2023.

8. At this stage, Mr.S.Madhar Khan points out that the petitioners 2 and 3 are aged and petitioners 4 to 6 are in-laws of the sole respondent and therefore, their appearance may be dispensed with.

9. Mr.B.Dilli Babu states that petitioners 4 to 6 have already been dropped from the array of the parties by the learned Metropolitan Magistrate and therefore, the question of appearance before the Court, at this stage, will not arise.

10. Taking into consideration the age of the 2nd petitioner and the relationship between the 3rd petitioner and the sole respondent, I am inclined



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to dispense with the appearance of the petitioners 2 and 3 before the Metropolitan Magistrate cum Additional Mahila Court, Egmore, Chennai.

This benefit will not enure in favour of the first petitioner. The petitioners 2 and 3 will be represented by a counsel on all the hearing dates. They shall appear when their presence is essential or when it is so directed by the learned Metropolitan Magistrate.

11. With the above observation, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/No
Speaking order/Non-speaking order
sr

To
Metropolitan Magistrate cum Additional Mahila Court, Egmore, Chennai



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V.LAKSHMINARAYANAN,J.,

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