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CRP.132 of 2022

In the High Court of Judicature at Madras

Reserved on: 19.03.2024

Delivered on : 12.07.2024

C O R A M

**THE HONOURABLE MRS.JUSTICE J.NISHA BANU**

**C.R.P.No.132 of 2022**  
**and CMP.No.2560 of 2022**

1.R.Martin

S/o.T.Rethinasamy

2.RPhilomina

S/o.T.Rethinasamy

... Petitioners

Princy Martin

W/o.Martin

... Respondent

**PRAYER:** Civil Revision Petition is filed under Article 227 of Constitution of India against the proceedings dated 25.10.2021 in DVC No.12 of 2021 pending on the file of the IX Metropolitan Magistrate Court, Saidapet.

For Petitioner : Mr.R.Prabhakaran

For Respondent : Mr.R.Mohandoss  
for M/s.Swaninathan

**ORDER**

This Civil Revision Petition has been filed against the DVC proceedings initiated by the respondent against the petitioners, pending on the file of the IX Metropolitan Magistrate Court, Saidapet,



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2. It is averred in the petition that the respondent is the wife of the 1<sup>st</sup> revision petitioner. 2<sup>nd</sup> revision petitioner is the sister of the 1<sup>st</sup> revision petitioner. After 41 years of marriage, the respondent / wife had waged a legal battle. There were several family dispute between the 1<sup>st</sup> petitioner and the respondent. Further, the 2<sup>nd</sup> revision petitioner also lodged criminal complaint against the respondent for production of all original property documents which is in the illegal custody of the respondent.

3. It is further contended by the revision petitioners that the respondent had initiated DVC proceedings against her husband and his two sisters for possession of her properties and valuable securities which she is entitled to and for monetary relief and compensation under the Domestic Violence Act. The respondent also filed petition in Crl.M.P.No.16/2021, before the IX Metropolitan Magistrate, Saidapet, Chennai, wherein the learned Judge has passed protection and residence order, under Section 18 and 19, in favour of the respondent on 05.02.2021 .

4. Further the revision petitioners also filed C.R.P.No.1288 of 2021 before this Court, wherein this Court by an order dated 08.07.2021, held as follows:



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*5. All these are facts which can be determined only in the presence of both the parties before the Magistrate Court. Where these facts can be raised, and where the facts can be disputed and then issues which arise can be determined. I am confident that the IX Metropolitan Magistrate, Saidapet, would examine all the facts put forth by the revision petitioner. The petitioners have not approached the Magistrate Court still. They should approach the Magistrate Court and file relevant documents, file necessary affidavits to prove their bona fide and thereafter urge the learned Magistrate to pass a judicial order. Only when the Court passes a judicial order, can there be further re-examination of the facts determined. In this case, no such order has been passed.*

*6. Giving full liberty to the revision petitioners to approach the IX Metropolitan Magistrate at Saidapet, and to raise all possible contentions, the Civil Revision Petition is dismissed as pre-mature. Consequently, connected miscellaneous petitions are is closed. No order as to costs."*

5. Thereafter, the revision petitioners filed petition raising preliminary objection regarding the maintainability in DVC proceedings and also filed M.P.No.6183 of 2021 to revoke the interim order dated 05.02.2021, passed in Crl.M.P.No.16 of 2021 and also approached this Court by filing the present CRP, challenging the proceedings under DVC, filed by the respondent.

6. The learned counsel appearing for the revision petitioners pointed out the age of the first revision petitioner and that of the respondent herein and stated that they had been in marital relationship for over 30 years and now the



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petition seeking protection under the Domestic Violence Act had been preferred by the respondent. The learned counsel therefore assailed the *bona fide* of the respondent in filing such an application. The learned counsel further drew the attention of this Court to the fact that there is a period of limitation stipulated in the Act viz., DVC should be filed within 12 months from the date of separation and the learned counsel also further contended that the first petitioner herein and the respondent had been separated for over 20 months. Therefore, DVC proceedings initiated by the respondent-wife is barred by limitation.

7. The learned counsel appearing for the respondent submitted that the 2nd revision petitioner is causing domestic violence and has been indulging in all illegal activities ensuring that the 1<sup>st</sup> petitioner does not reunite with the respondent. The protection order obtained by the respondent under Sections 18 and 19 of the Domestic Violence Act is still in force and the revision petitioners have not challenged the same, however, filed the present CRP as against the law.

8. It is further submitted by the learned counsel for the respondent that the impugned order dated 25.10.2021 is an adjudication order and



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challenge to the said order does not serve any purpose. It is the order dated 05.02.2021 that gives protection to the respondent-wife and the revision petitioners, if at all prefers to challenge the same, it can be challenged by filing appeal under Section 29 of the Domestic Violence Act.

9. As far as property issues are concerned, learned counsel for the respondent submits that properties are joint family properties; from 1979 to 1992, respondent-wife was the sole proprietor for the Trinity & Co firm. The respondent-wife filed Civil suit before this court and the same is pending adjudication. According to the respondent-wife, the 1<sup>st</sup> petitioner cannot claim exclusive ownership of the properties that have been jointly and severally purchased by the 1<sup>st</sup> revision petitioner and the respondent, for the benefit and welfare of the family in entirety.

10. As far as Domestic violence is concerned, the learned counsel for the respondent would submit that the 1<sup>st</sup> petitioner and the respondent-wife got married in the year 1979. The respondent continued her father's business in the name of Trinity & Co and she was the sole proprietrix till the year 1992 and raised her family and business. Since the petition schedule properties under the Domestic violence case are joint family properties, as per the interim protection



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order, 1<sup>st</sup> petitioner-husband should not sell any assets including the individual property of the 1<sup>st</sup> petitioner. Further the 1<sup>st</sup> petitioner has committed acts of Domestic violence as late as February 2021 even after interim protection order. The learned counsel for the respondent prayed this court to dismiss the CRP as the revision petitioners have not obeyed the orders of the court.

11. Heard both sides.

12. Admittedly, DVC.No.12 of 2021 is pending before the IX Metropolitan Magistrate Court, Saidapet. This CRP is as against the order dated 25.10.2021. A perusal of the order passed in DVC.No.12 of 2021 dated 25.10.2021 would go to show that the matter has been pending enquiry. Further the revision petitioners herein already approached this court by filing CRP.No.1288 of 2021 and this court by order dated 08.07.2021 dismissed the said CRP by giving liberty to the revision petitioners to approach the IX Metropolitan Magistrate at Saidapet and to raise all possible contentions as the issue is pre-mature.

13. Thereafter the DVC was listed on 25.10.2021 and the adjudication of the learned Judge is that the matter is pending enquiry and posted the matter



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on 22.11.2021. This civil revision petition is filed on 21.01.2021 and the same is taken on file as CRP.No.132 of 2022 and thereafter, revision petitioners filed a petition to amend the prayer in CRP to strike off the impugned order dated 25.10.2021 in proceedings D.V.C.No.12 of 2021 and direct the petitioner to deposit all the original documents in the court. In the considered opinion of this court, the facts and issues raised in this CRP with a prayer to set aside the impugned order dated 25.10.2021 are all facts raised in D.V. Case and the entire issue can be determined by the learned IX Metropolitan Magistrate after enquiry of evidence let in by both sides. Therefore, this court is not inclined to grant any relief to the revision petitioners herein at this stage. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

nvsri

**12.07.2024**

**J.NISHA BANU, J.**

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To



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The IX Metropolitan Magistrate Court, Saidapet.

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