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C.R.P.No. 4154 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.10.2024

CORAM :

**THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA**

**C.R.P.No.4154 of 2024**  
**and C.M.P.No.22734 of 2024**

Josuva Ebinezar

... Petitioner

Vs

Sakila

... Respondent

**PRAYER** : Civil Revision Petition filed under Article 227 of Constitution of India, pleaded to set aside the docket order dated 13.05.2024 in CrI.M.P.SR.No.485 of 2024 in D.V.A.No.20 of 2019 and to take the same on file, on the file of learned Judicial Magistrate No.3, Coimbatore.

For Petitioner : Mr.R.Selvakumar

**ORDER**

This Civil Revision Petition has been filed against the docket order passed by the learned Judicial Magistrate No.3, Coimbatore, on 13.05.2024 in CrI.M.P.SR.No.485 of 2024 in D.V.A.No.20 of 2019, returning the petition filed



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by the petitioner under Section 28(2) of DVC Act as not maintainable.

WEB COPY 2. The brief facts of the case are as under :-

2.1. The petitioner is the husband of the respondent. The Respondent/wife had filed a complaint against the petitioner under Section 12 of the Protection of Women from Domestic Violence Act, 2005, in D.V.A.No.20 of 2019 before the learned Judicial Magistrate No.3, Coimbatore. In which, the petitioner remained ex parte and the ex parte order came to be passed on 29.03.2019 directing the petitioner to pay a sum of Rs.9000/- per month to the respondent and a sum of Rs.5000/- to their child as interim maintenance (Totally Rs.14,000/- per month) from 29.01.2019 and to pay a sum of Rs.1 lakh to the respondent towards the compensation.

2.2. Thereafter, the petitioner/husband had filed a petition in C.M.P.No.385 of 2020 seeking to set aside the ex parte order dated 29.03.2019 along with the petition in C.M.P.No.384 of 2020 under Section 5 of the Limitation Act seeking to condone the delay of 284 days in filing the set aside petition. Subsequently, both the petitions were withdrawn as not pressed by the petitioner on 27.01.2020.

2.3. The petitioner had preferred an appeal before the Principal



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District and Sessions Court, Coimbatore, along with the petition in C.M.P.No.2076

of 2023 seeking to condone the delay of 1438 days in filing the criminal appeal against the order passed by the learned Magistrate. The Appellate Court, finding that the petitioner had not shown any sufficient cause to condone the delay, had dismissed the petition, vide order dated 07.10.2023. Thereafter, the petitioner had not proceeded further. The petitioner, after paying the part amount of Rs.1lakh to the respondent, had not paid any amount to the respondent as directed by the learned Judicial Magistrate No.3.

2.4. Thereafter, the petitioner has filed a petition in CrI.M.P.SR.No.485 of 2024 before the Domestic Violence Act (Special Court), Coimbatore, under Section 28(2) of the Domestic Violence Act. The learned Judicial Magistrate No.3, Domestic Violence Act (Special Court), Coimbatore, by an order dated 13.05.2024 had returned the petition stating that the petition is not maintainable. Challenging the same, the present revision petition has been filed.

3. Learned counsel for the petitioner submitted that Section 12 of the Protection of Women from Domestic Violence Act, 2005, prescribes that the Magistrate, before passing any order on an application under Section 12 of the Act,



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should take into consideration any domestic incident report received by him from the Protection Officer or the service provider, however, in this case, the Judicial Magistrate, without there being any domestic incident report from the Protection Officer, had passed an order, thereby, the petitioner has filed a petition under Section 28(2) of DVC Act, seeking to reconsider the order dated 29.03.2019 passed in D.V.A.No.20 of 2019, whereas, the Court below had returned the petition as not maintainable and thereby, he seeks to set aside the impugned order dated 13.05.2024.

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

5. It is seen that a complaint preferred by the respondent/wife against the petitioner/husband before the Judicial Magistrate No.3, Coimbatore, in D.V.A.No.20 of 2019 was allowed on 29.03.2019, in which, the petitioner had remained ex parte. Thereafter, the applications filed by the petitioner seeking to set aside the ex parte order and to condone the delay in filing the set aside application were dismissed as not pressed on 27.01.2020. Further, on 07.10.2023, the petition



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filed by the petitioner seeking to condone the delay of 1438 days in filing an appeal against the order dated 29.03.2019 was also dismissed by the Principal District and Sessions Court, Coimbatore, stating that the petitioner had not shown sufficient cause to condone the delay. The petitioner had not proceeded further and thereafter, the petitioner has filed an petition under Section 28(2) of DVC Act seeking to reconsider the order dated 29.03.2019 and the same was returned by the Court below as not maintainable.

6. In view of the above, this Court is of the opinion that the learned Judicial Magistrate, after passing an order in D.V.A.No.20 of 2019, has become *functus officio* and even in the application seeking to set aside ex parte order, which was later dismissed as not pressed on 27.01.2020, the petitioner had not raised similar plea. The petitioner cannot be allowed to approach the courts at his will and pleasure. This Court does not find any merits in this petition. Accordingly, the Civil Revision Petition stands dismissed. Consequently, the connected miscellaneous petition is also closed. No costs.

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Index : Yes / No

Neutral Citation : Yes / No



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To : The Judicial Magistrate No.3, Coimbatore.

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**A.D.JAGADISH CHANDIRA, J.**

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