



C.R.P.No.4024 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 01..10..2024

Coram

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

Civil Revision Petition No.4024 of 2024

and

C.M.P.No.22135 of 2024

1.Bharathidasan

2.Mrs.Sivagami

4.Mrs.Jayanthi

4.Annamalai

..... Petitioners

-Versus-

Mrs.B.Sasikala

..... Respondent

Petition filed under Article 227 of the Constitution of India, praying to set aside the order dated 12.08.2024 passed in CrI.M.P.No.3849 of 2024 in D.V.C.No.115 of 2023 by the learned Judicial Magistrate (FAC), Mahila Court, Puducherry.

For Petitioner : Ms.V.Usha



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ORDER

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This civil revision petition arises against an order passed by the learned Judicial Magistrate (FAC), Mahila Court at Puducherry in Cr.M.P.No.3849 of 2024 in D.V.C.No.115 of 2023 dated 12.08.2024.

2. The 1st petitioner in the revision is the husband and respondent is the wife. The 2nd petitioner is the mother and the 3rd petitioner is the sister of the 1st petitioner. The 4th petitioner is the husband of the 3rd petitioner.

3. The case in D.V.C.No.115 of 2023 was originally presented before the Mahila Court at Puducherry by the aggrieved wife invoking Sections 18, 19, 20, 21 and 22 of the Protection of Women from Domestic Violence Act, 2005. Summons were issued to the respondents/civil revision petitioners herein and they also regularly appeared before the court. When the matter was posted on 24.05.2024, the wife was not present in the forenoon. Her counsel was present and requested an adjournment. The learned judge rejected the request for adjournment and passed a conditional order that the wife should appear along with the child in the afternoon. When the matter was called in the afternoon, a petition came to be filed on behalf of the wife for adjournment, pleading that



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due to personal inconvenience she was unable to appear in court. The learned

Judge would have none of it and dismissed D.V.C.No.115 of 2023 for default.

4. Within a week after the dismissal of D.V.C.No.115 of 2023, an application was filed by the wife under Order IX, Rule 9 of CPC, seeking the restoration of D.V.C.No.115 of 2023. The plea of the wife is that on 24.05.2024, she was undergoing menstrual cycle and therefore, due to this personal inconvenience, she was unable to be present in court. The husband filed a detailed counter. According to him, if a proceeding is dismissed for default, the remedy is only to file an appeal under Section 29 of the Protection of Women from Domestic Violence Act, 2005. Apart from that, the husband would refer to the previous orders passed by the court to point out that the wife did not appear on 12.04.2024, 03.05.2024, 10.05.2024, and finally on 24.05.2024. Hence, the husband opposed the restoration.

5. The learned Judge considered the affidavit and petition and decided to restore D.V.C.No.115 of 2023 to his file. Aggrieved by the same, the present revision.

6. Heard Ms. V. Usha for the civil revision petitioners.



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7. Ms. V. Usha vehemently contends that the court has been very liberal and casual in restoring the proceedings in D.V.C. No. 115 of 2023. She pleads that on several occasions, the matter has been adjourned for the appearance of the wife, and in fact, on 03.05.2024, the court had directed the wife to appear along with the child, and still she did not comply with the same. She states that the plea that had been originally raised by the learned counsel appearing for the wife before the trial court was that she was engaged in personal project work and the plea of menstrual cycle was never informed to the court. Apart from that, she would argue that the order is appealable in terms of Section 29 of the Protection of Women from Domestic Violence Act, 2005 and an application for restoration is not maintainable.

8. I have carefully considered the submissions made by Ms. V. Usha.

9. At the outset, I have to point out that in terms of the Protection of Women from Domestic Violence Act, 2005, the procedure that has been evolved for disposal of the application under Section 18 to 23 of the said Act is in terms of the Code of Criminal Procedure, 1973. However, Sub-section (2) of Section 28 makes it clear that it is left to the court trying a proceeding under Section 12 to evolve its own procedure under Section 12 or sub-section (2) of



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Section 23 of the said legislation. Being legislation brought in for the protection of the women, the learned Judicial Magistrate-III could have accommodated the wife by a day. The wife has pleaded that she was suffering from her menstrual cycle and, therefore, she was unable to be present in court. The difficulties expressed by the wife have been considered by the learned Judge now dealing with the application, and he has restored the same.

10. With respect to the plea that only an appeal is maintainable under Section 29 of the Protection of Women from Domestic Violence Act, 2005, I have to point out that even under the Code of Civil Procedure, 1908, where a proceeding is dismissed for default, an appeal is not maintainable. Further, an “order” dismissing a petition for default cannot be treated as an order that has decided the rights and liabilities of the parties in order to enable the aggrieved person to prefer an appeal before the Court of Session. All that the court does when dismissing a petition for default is to note the absence of the petitioner and pass a consequential order. Such an order can certainly be set aside by the very same court, especially when wide room is given to the learned Magistrate in terms of Section 28(2). In fact, under Section 28(2), the procedure for disposal of a proceeding under Section 12 is wide enough that the court can also bypass the strict procedures as laid down under the Code of Civil



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Procedure, 1908. The learned Judge having exercised the discretion to restore the proceedings in D.V.C.No.115 of 2023, taking into consideration the plea of the wife, I am not inclined to entertain the revision.

11. At this stage, I have to take note of the submission of the learned senior counsel for the civil revision petitioners after the respondent/wife has filed D.V.C.No.115 of 2023, she is not cooperating for the disposal of the case, The learned Mahila Court at Puducherry shall ensure that D.V.C.No.115 of 2023 is disposed of on or before 28.02.2025.

With the above observations, this civil revision petition stands dismissed.

No costs. Consequently, connected CMP is closed.

Index : yes / no
Neutral Citation : yes / no
Speaking / Non Speaking Order
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To

1.The Judicial Magistrate, Mahila Court, Puducherry.



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V.LAKSHMINARAYANAN.J.,

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