



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL WRIT PETITION NO.1010 OF 2024

- 1) Amol s/o Pralhad Shinde,
Aged about 42 years,
Occupation – Service
(Divisional Manager), Buldhana
Urban Cooperative Bank Ltd.,
Buldhana. Branch at Washim.

- 2) Atul Pralhd Shinde,
Aged about 40 years,
Occupation – Service.

- 3) Sau. Vaishali Atul Shinde,
Aged about 36 years,
Occupation – Housewife

Nos.2 and 3 R/o. Siddheshwar
Colony, Ward No.2, Malegaon,
Tah. Malegaon, District – Washim.

- 4) Uddhav s/o Ganpat Bajad,
Aged about 46 years,
Occupation – Teacher,
R/o. Ambad, Tah. Jalna,
District – Jalna.

...PETITIONERS

VERSUS

Sau. Amolika w/o Amol Shinde,
Aged about 37 years,
Occupation – Housewife
R/o. C/o. Rajaram Jayaji Hajare,
Dreem Land City, Near Rajesh
Electronics Washim,
Tah. and District – Washim.

...RESPONDENT

Mr. K. Agrawal, Advocate h/f Mr. J.B. Gandhi, Advocate for the petitioners.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : JULY 16, 2025.

ORAL JUDGMENT :

RULE. Rule is made returnable forthwith.

2. Heard finally with the consent of the learned Counsel for both the parties.

3. By this writ petition, the petitioners have challenged the order dated 08/08/2024 passed by Judicial Magistrate First Class, Court No.1, Washim in PWDVA No.76/2023 rejecting the application of the present petitioners for setting aside the ex-parte order.

4. Brief facts which are necessary for the disposal of the writ petition are as under:

A] Present petitioners are the original non-applicants in the DV proceeding bearing No.76/2023. The respondent had filed a complaint under the provisions of Protection of Women from Domestic Violence Act, 2005 against the present petitioners and notices were issued to the petitioners. However, along the said copy of the notice, the documents

attached were not annexed, therefore, the petitioners had refused to accept the notice.

B] Learned trial Court passed an order to proceed ex-parte as the petitioners had refused to accept the notice. The petitioners as soon as learnt that the matter is proceeded ex-parte they approached to the Court and filed an application for setting aside ex-parte order. The said application came to be rejected on the ground that the application was not supported with an affidavit of the petitioners.

5. Being aggrieved with the same, present petition is preferred by the petitioners.

6. Learned Counsel for the petitioners submitted that merely because the application was not supported with the affidavit, the application of the present petitioners was rejected by the Judicial Magistrate First Class, Washim for setting aside the ex-parte order.

7. Learned Magistrate has not considered that the opportunity is to be given to the present petitioners to contest the petition on its own merits. Moreover, the respondent has not supplied the copy of the application filed under the provisions of the Protection of Women from Domestic Violence Act, 2005, and therefore, that notice was not accepted by the petitioners. There was no other intention to refuse the notice.

8. Now, the petitioners are ready to contest the petition, and therefore, the opportunity is to be given to them.

9. Despite the service of notice, none appears for the respondent. Considering the fact that immediately the petitioners have filed the application for setting aside the ex-parte order. Learned Magistrate has to take into consideration the fair opportunity is to be granted to the present petitioners to contest the same. In view of that, the writ petition deserves to be allowed. Accordingly, I proceed to pass the following order:

(i) In view of that the writ petition is allowed.

(ii) The order dated 08/08/2024 passed by Judicial Magistrate First Class, Washim in PWDVA No.76/2023 is hereby quashed and set aside.

(iii) The Magistrate shall consider the application of setting aside the ex-parte order if filed by the petitioners along with the affidavit.

10. The petition stands disposed of. Rule made absolute in the aforesaid terms.

(URMILA JOSHI-PHALKE, J.)