IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 2726 OF 2026

Shambhu Mahto And Ors …Petitioners

Versus

Kanti Devi Shambhu Mahto …Respondent

Mr. Gaurav Ugale, for the Petitioners.
Mr. Deepak Shukla a/w Mr. Praveen Maurya and Ms. Shweta Thakur i/b BNS legal for the Respondent.
Ms. S.D. Shinde, APP for the State.

CORAM: MADHAV J. JAMDAR, J.
DATED : 16th October, 2026

PC:-

1. Heard Mr. Ugale, learned Counsel appearing for the Petitioners and Mr. Shukla, learned Counsel appearing for Respondent.

2. By this Writ Petition, the challenge is to the legality and validity of the Order dated 29th January, 2026 passed by the learned Additional Sessions Judge-9, Thane in PWDV Appeal No. 30 of 2024 ("**said D.V. Appeal**"). In the said D.V. Appeal, the challenge was to the Order dated 9th October, 2023 passed by the learned Chief Judicial Magistrate, Thane passed below Exhibit-41 in PWDV Application No. 106 OF 2017. The said Application

bearing Exhibit-41 was filed to strike out the Respondents' defence for non-compliance with the court's order, Learned Chief Judicial Magistrate rejected the said application and the learned Appellate Court by allowing said D.V. Appeal allowed the said Application at Exhibit-41 and thereby struck off the defence of the Petitioner.

3. Mr. Ugale, learned counsel for the Petitioners submits that the Petitioner No. 1 has partially complied with the order by paying maintenance from the date of the order, however, as the maintenance application was filed in the year 2017 and was decided in the year 2023, arrears for the five-years period have remained unpaid. Furthermore, learned counsel contends that the remedy of striking off a defence for non-compliance is unavailable in these proceedings, asserting that Domestic Violence (DV) proceedings are not civil in nature.

4. On the other hand, Mr. Shukla, learned Counsel appearing for Respondent states that, admittedly, the arrears are huge amounting to Rs.15,14,000/- (Rupees Fifteen Lakhs Fourteen Thousand only). He submits that the nature of DV proceedings are initially civil in nature but upon non-compliance of the Order and

the punitive action of the DV Court, the proceedings assume a criminal nature. Accordingly, he submits that no interference with the impugned order is warranted.

5. Perusal of the record shows that the Respondent (wife of the Petitioner No.1) has instituted Domestic Violence proceedings registered as PWDV Application No. 106 of 2017 under the provisions of the Protection of Women from Domestic Violence Act 2005. In the said proceeding application seeking interim reliefs have been filed bearing Exhibit-3, seeking restraining order, protection order and interim maintenance. By Order dated 10th January, 2023 passed by learned Chief Judicial Magistrate, Thane, the Petitioner No.1- Shambhu Mahto i.e husband of the Respondent was directed to pay an amount of Rs. 20,000/- per month towards interim maintenance from the date of said Application. It is admitted position that the Petitioner No.1 has been paying the monthly maintenance from the date of the Order dated 10th January, 2023 but huge amount of arrears amounting to Rs. 15,14,000/- remained unpaid.

6. Therefore, the Respondent filed an Application seeking striking of defence. The said Application was initially dismissed as premature. The Respondent challenged the said order by filing PWDV Appeal No. 30 of 2024. By the impugned order dated 29th January, 2026 passed by the learned Addl. Sessions Judge-9, Thane, allowed the Appeal as well as the Application bearing Exhibit-41 and resultantly the Petitioner's defence is struck off.

7. The learned Appellate Court has, inter alia, observed that the said appeal had remained pending for a considerable duration and that, even throughout the pendency of the appeal, the Petitioner No. 1 has not shown any readiness to pay the said amount and to comply with the order and thereby the Petitioner No.1 is a wilful defaulter. By relying on various judgments, the Court has observed that the Court has power to pass the said order. It is required to be noted that the Hon'ble Supreme Court in the case of **Shaurabh Kumar Tripathi v. Vidhi Rawal**[1] has held as under :-

> **"27.** The learned counsel appearing for the respondent tried to rely upon the nature of proceedings under the DV Act, 2005. He invited our attention to a decision of this Court in the case

1 2025 SCC OnLine SC 1158

of *Kunapareddy alias Nookala Shanka Balaji* v. *Kunapareddy Swarna Kumari*4 He relied upon paragraphs 11 and 12 of the said decision which read thus:

"11. We have already mentioned the prayers which were made by Respondent 1 in the original petition and Prayer A thereof relates to Section 9. However, in Prayer B, Respondent 1 also sought relief of grant of monthly maintenance to her as well as her children. This prayer falls within the ambit of Section 20 of the DV Act. In fact, Prayer A is covered by Section 18 which empowers the Magistrate to grant such a protection which is claimed by Respondent 1. Therefore, the petition is essentially under Sections 18 and 20 of the DV Act, though in the heading these provisions are not mentioned. However, that may not make any difference and, therefore, no issue was raised by the appellant on this count. In respect of the petition filed under Sections 18 and 20 of the DV Act, the proceedings are to be governed by the Code, as provided under Section 28 of the DV Act. At the same time, it cannot be disputed that these proceedings are predominantly of civil nature.

12. In fact, the very purpose of enacting the DV Act was to provide for a remedy which is an amalgamation of civil rights of the complainant i.e. aggrieved person. Intention was to protect women against violence of any kind, especially that occurring within the family as the civil law does not address this phenomenon in its entirety. It is treated as an offence under Section 498-A of the Penal Code, 1860. The purpose of enacting the law was to provide a remedy in the civil law for the protection of women from being victims of domestic violence and to prevent the occurrence of domestic violence in the society."

(emphasis added)

"28. Reliance is also placed by the respondent on a decision of this Court in the case of *Prabha Tyagi* v. *Kamlesh Devi*5 and in particular paragraph 50 which reads thus:

"**50. In our view, the DV Act is a piece of civil code which is applicable to every woman in India irrespective of her religious affiliation and/or social background for a more effective protection of her rights guaranteed under the Constitution and in order to protect women victims of domestic violence occurring in a domestic relationship.** Therefore, the expression "joint family" cannot mean as understood in Hindu Law. Thus, the expression "family members living together as a joint family", means the members living jointly as a family. In such an interpretation, even a girl child/children who is/are cared for as foster children also have a right to live in a shared household and are conferred with the right under sub-section (1) of Section 17 of the DV Act. When such a girl child or woman becomes an aggrieved person, the protection of subsection (2) of Section 17 comes into play."

(emphasis added)

28.1 Thus, there is no doubt that, notwithstanding the penal provisions in the form of Sections 31 and 33 of Chapter V, the proceedings before the Magistrate under the DV Act, 2005, are predominantly of a civil nature."

8. Thus, as the DV proceedings are predominantly of a civil nature.

The power of striking out defence is available in DV proceedings.

9. Thus, for the above reasons, there is no substance in contention raised that as Domestic Violence (DV) proceedings are not of civil nature the Court has no power to struck down the defence.

10. As huge arrears of maintenance of Rs. 15,14,000/- are admittedly due, no interference with the impugned order is warranted.

11. However, learned counsel appearing for the Petitioners is right in contending that the Order directing payment of maintenance dated 10th January, 2023 is only against the present Petitioner No.1 – Shambhu Mahto and therefore the defence of other Petitioners cannot be struck off. To that extent impugned Order dated 29th January, 2026 passed by the learned Additional Sessions Judge-9, Thane in PWDV Appeal No. 30 of 2024 is quashed and set aside.

12. Accordingly, the Writ Petition is disposed of in above terms.

[MADHAV J. JAMDAR, J.]