
(2008) 03 KL CK 0028
In the High Court Of Kerala
Case No : WP (C) No. 1540 of 2008 (G)

Fousiya

APPELLANT

Vs

Muringakandy Jasmi and Others

RESPONDENT

Date of Decision : 28-03-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Protection of Women From Domestic Violence Act, 2005 — Section 29

Citation : (2008) 03 KL CK 0028

Hon'ble Judges : R. Basant, J

Bench : Single Bench

Advocate : K.V. Reshmi, for the Appellant; T.G. Rajendran, for the Respondent

Judgement

R. Basant, J.—The petitioner claims to be aggrieved by Ext.P9 order passed under the provisions of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the DVA). The petitioner herein was not a party to that proceedings. A sister of the petitioner had filed that application. The brothers of the petitioner as also a son of a sister of the petitioner are shown as respondents in that petition. The dispute in that proceedings is about the right of the petitioner in the said proceedings to reside peacefully in a house in which the brothers and sisters have right. That is alleged to be a shared household. As stated earlier, the petitioner was not arrayed as a party. After keen contest it is seen that an order has been passed in the said proceedings by the court under the DVA to the following effect.

Respondents are prohibited from committing any act of domestic violence against the petitioner. So also, they are prohibited further from aiding or abetting any act of domestic violence and also from alienating the movables and immovables jointly owned by the petitioner. I further order to restrain the respondents from dispossessing or in any other manner disturbing the possession of the properties of the aggrieved petitioner from her shared household.

2. The respondents in that petition, it is submitted, have preferred an appeal u/s

29 of the Act and the same is pending before the Sessions Court, Kozhikode. The petitioner, instead of preferring an appeal, has come to this Court with this writ petition. Eventhough no order of stay has been granted in the appeal pending before the Sessions Court, the petitioner in that petition has succeeded in obtaining an interim stay of the operation of Ext.P9 order until further orders. It is at this stage that the petitioner in the DVA proceedings has come before this Court with a prayer that the interim order may be vacated and this writ petition may be dismissed.

3. The learned Counsel for the respondents submits that the petitioner has a right of appeal u/s 29 of the Act and without and before exhausting that right which the petitioner herein has, she is not justified in coming to this Court. The learned Counsel for the petitioner herein contends that the petitioner has no right of appeal u/s 29 and hence she is obliged to come before this Court with this writ petition under Article 226 of the Constitution.

4. Section 29 of the DVA reads as follows:

29. Appeal. - There shall lie an appeal to the Court of Sessions within thirty days from the date on which the order made by the Magistrate is served on the aggrieved person or the respondent, as the case may be, whichever is later.

A plain reading of Section 29 eloquently conveys that not only a respondent, but any aggrieved person has a right to prefer an appeal. The petitioner claims to be aggrieved by the impugned order. The learned Counsel for the first respondent/claimant before the court below contends that the petitioner is only fighting a proxy battle on behalf of the respondents in the proceedings before the court below. If she were aggrieved, she had to prefer an appeal u/s 29. Having not preferred the same, she is not entitled to come before this Court with this petition, submits the learned Counsel for the respondents.

5. I find merit in the objections raised against the maintainability of this writ petition. The petitioner, if she is aggrieved by the impugned order, must certainly be held to be having a right of appeal u/s 29 of the Act. The mere fact that such appeal has to be preferred within 30 days from the date on which the order passed by the learned Magistrate is served on the aggrieved person and that the petitioner being a non-party has not been served with any such order cannot certainly be held to affect the right of the petitioner to prefer an appeal u/s 29. The stipulation of service of order is incorporated in Section 29 not to identify the person who has a right of appeal, but only to ascertain and stipulate the time within which the appeal should be preferred. I do, in these circumstances, take the view that the petitioner herein, though not a respondent in the proceedings under the DVA before the court below, if she is an aggrieved person can prefer an appeal u/s 29 of the Act before the learned Sessions Judge. This is so notwithstanding the fact that she has not been served with the order passed by the Magistrate. The petitioner has now received a copy of the order and such receipt of copy or knowledge of the impugned order can be reckoned as

commencement of the period of limitation so far as the petitioner is concerned.

6. The petitioner can hence prefer an appeal u/s 29 of the Act before the Sessions Court. The Sessions Court, needless to say, must consider such appeal along with the appeal preferred by the other respondents before it. It is agreed that if the petitioner would prefer an appeal, there can be a direction that the said appeal must be entertained by the learned Sessions Judge condoning the delay, if any, in filing the appeal. The interim order also shall remain in force for a further period of 15 days from this date. In the application to be filed by the petitioner, if she seeks any interim orders, the learned Sessions Judge must consider such application on merits and the fact that such order has been passed by this Court till this day or that such order is directed to remain for a further period of 15 days need not and shall not influence the learned Sessions Judge while considering such application.

7. With the above observations, this Writ Petition is dismissed.