



OP (FC) NO. 22 OF 2025

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2025:KER:11323

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

&

THE HONOURABLE MRS. JUSTICE M.B. SNEHALATHA

TUESDAY, THE 11TH DAY OF FEBRUARY 2025 / 22ND MAGHA, 1946

OP (FC) NO. 22 OF 2025

AGAINST THE JUDGMENT DATED 10.09.2024 IN I.A.NO.4/2024
IN OP NO.1187 OF 2023 OF FAMILY COURT, KUNNAMKULAM

PETITIONER/PETITIONER:

FATHIMA, AGED 56 YEARS
W/O. VAPPINU, PARUVANATHU HOUSE, ANDATHODU P.O.,
KADIKKADDESOM, PUNNAYURKKULAM VILLAGE, CHAVAKKAD TALUK,
THRISSUR DISTRICT, PIN - 680506

BY ADVS.
K.N.ABHILASH
SUNIL NAIR PALAKKAT
RISHI VARMA T.R.
RITHIK S.ANAND
SREELAKSHMI MENON P.
K.M.TINTU
ANU PAUL
SREEJITH A.
V.SREEJITH

RESPONDENT/RESPONDENT:

VAPPINU, AGED 63 YEARS
S/O. AMMUNNI, PARUVANATHU HOUSE, ANDATHODU P.O.,
NOW RESIDING AT C/O. MUSTHAFA, PULLIKAL HOUSE,
MULLIYAMKURISHI, MELMURIDESOM, PATTIKKAD P.O.,
PERINTHALMANNA, MALAPPURAM DISTRICT, PIN - 679325
BY ADVS.
JAGADEESH K
V.RENJU(K/2317/1999)
NIKHEL K GOPINATH(K/000352/2016)

THIS OP (FAMILY COURT) HAVING COME UP FOR HEARING ON
10.02.2025, THE COURT ON 11.2.2025 DELIVERED THE FOLLOWING:

**CR****DEVAN RAMACHANDRAN & M.B.SNEHALATHA, JJ.**

O.P (FC) No.22 OF 2025

Dated, this the 11th February, 2025**JUDGMENT**M.B.Snehalatha, J.

The petitioner/the estranged wife of the respondent has filed this Original Petition challenging Ext.P6 order of the learned Family Court, Kunnamkulam, by which her petition filed under Order VI Rule 17 of Code of Civil Procedure to incorporate reliefs under Sections 18 and 19 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as 'DV Act, 2005') was dismissed by the Family Court.

2. The Original Petition was filed by the petitioner before the Family Court under Section 7(1) Explanation (c) and (d) of the Family Courts Act seeking permanent prohibitory injunction restraining the respondent from trespassing into the petition schedule property and from forcibly evicting her from the said property.



3. During the pendency of the Original Petition, petitioner filed I.A.No.4/2024 seeking amendment of the Original Petition to incorporate reliefs under Sections 18 and 19 of the DV Act, 2005 also.

4. Respondent resisted the said petition for amendment and sought dismissal of the said petition contending that there was no domestic violence against the petitioner; that till the filing of the petition seeking amendment, she had not filed any petition seeking reliefs under the DV Act; that in O.P.No.1716/2015 filed by her she had claimed ownership over the property which was found against her and therefore her petition to amend the Original Petition seeking reliefs under the DV Act has been filed only as a counterblast to O.P.No.262/2023 filed by the respondent against her seeking eviction from the petition schedule property.

5. By order dated 10.9.2024, the learned Family Court dismissed I.A.No.4/2024 which is impugned herein.

6. Heard both sides.

7. The learned counsel for the petitioner vehemently contended that Section 26 of the DV Act entitles the petitioner to seek reliefs under Sections 18 to 22 of the DV Act and therefore the learned Family Court is in error in dismissing the petition



seeking amendment filed by the petitioner to incorporate the reliefs under Sections 18 and 19 of DV Act, 2005.

8. The learned Counsel for the respondent on the other hand contended that an Original Petition filed under Section 7 of the Family Courts Act cannot be permitted to amend to incorporate reliefs under the DV Act and if the amendments sought by the petitioner is allowed, it would change the very nature and character of the Original Petition as rightly held by the learned Family Court and therefore the amendment sought for is not to be allowed and the order impugned be left uninterdict.

9. Petitioner/the estranged wife of the respondent filed the Original Petition before the Family Court under Section 7(1)(c) and (d) of the Family Courts Act seeking a decree of permanent prohibitory injunction restraining the respondent and his men from trespassing into petition A schedule property and from forcibly evicting her and her children from the house situated therein. The case of the petitioner is that after the marriage with the respondent, her mother transferred 25 cents of land for the construction of the house; that the house therein was constructed by utilising the sale proceeds of her gold ornaments;



that she and her children are residing in the said residential property. Her grievance in O.P.No.1187/2023 is that the respondent/husband ill-treated her and her children and he married another lady and he is now trying to evict her forcibly from the petition schedule property and also trying to alienate the said property. According to her, the petition schedule house wherein she now resides is her 'shared household' as defined in the DV Act and therefore she has every right to continue her residence in the said house; that the respondent has no right to evict her or to alienate the said property and therefore she is entitled to get the reliefs under Sections 18 and 19 of the DV Act for which she filed the petition under Order VI Rule 17 of CPC to amend the Original Petition to incorporate the said reliefs also.

10. The moot question for consideration is whether a petition for amendment under Order VI Rule 17 CPC to incorporate reliefs under Sections 18 to 22 of the DV Act, 2005 is maintainable in an Original Petition filed before the Family Court under Section 7 of the Family Courts Act, 1984.

11. The Protection of Women from Domestic Violence Act, 2005 has been enacted to provide for more effective protection of the rights of women guaranteed under the



Constitution who are victims of violence of any kind occurring within the family and for the matters connected therewith or incidental thereto. DV Act, 2005 was enacted by the parliament to give effect to various international conventions.

12. The provisions of Act being beneficial and social legislation, the approach of the court always has to uphold the parliamentary intention and give it liberal interpretation rather than avoiding it which would certainly lead to defeating the objectives of the law.

13. Chapter IV of the Protection of Women from Domestic Violence Act, 2005 deals with the procedure for obtaining orders of reliefs under the said Act.

14. Section 12 of the DV Act provides that an aggrieved person or a protection officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under the said Act.

15. Before adverting to the question as to whether amendment sought by the petitioner is allowable or not, we can have a look at Section 26 of the DV Act, 2005.

"26. Relief in other suits and legal proceedings:-

(1) Any relief available under sections 18, 19, 20, 21 and 22 may also be sought in any legal proceeding,



before a civil Court, family Court or a criminal Court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act.

(2) Any relief referred to in sub-section (1) may be sought for in addition to and alongwith any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal Court.

(3) In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief."

16. Section 36 of the DV Act states that the provisions of the said Act shall be in addition to, and not in derogation of the provisions of any other law, for the time being in force.

17. Section 26 of the DV Act provides that any relief available under Sections 18 to 22 may also be sought in any legal proceeding, before a civil Court, family Court or a criminal Court, affecting the aggrieved person and the respondent. Any relief available under Sections 18 to 22 can also be sought by the aggrieved person in a legal proceeding before the Family Court.

18. Section 26 of the DV Act is a special provision which empowers the Civil Court, Family Court or a Criminal Court to grant reliefs mentioned in Sections 18 to 22 of the DV Act.

19. Section 18 of the DV Act empowers the court to pass protection orders of the categories enumerated therein. Section



19 of the DV Act empowers the court to pass residence orders in favour of an aggrieved person who is subjected to domestic violence.

20. A reading of Section 26(1) of the DV Act would show that it entitles the aggrieved person to seek remedy under Sections 18 to 22 of the said Act in any legal proceeding before a civil Court, family Court or a criminal Court, affecting the aggrieved person and the respondent.

21. In *Hiral P. Harsora and Ors. Vs. Kusum Narottamdas Harsora and Ors.* [(2016) 10 SCC 165], the Apex Court considered the ambit and scope of DV Act, 2005 and in para 23 of the said judgment the Apex Court stated as follows:

"23. When we come to Section 26 of the Act, the sweep of the Act is such that all the innovative reliefs available Under Sections 18 to 22 may also be sought in any legal proceeding before a civil court, family court or criminal court affecting the aggrieved person and the Respondent. The proceeding in the civil court, family court or criminal court may well include female members of a family, and reliefs sought in those legal proceedings would not be restricted by the definition of "Respondent" in the 2005 Act. Thus, an invidious discrimination will result, depending upon whether the aggrieved person chooses to institute proceedings under the 2005 Act or chooses to add to the reliefs available in either a pending proceeding or a later proceeding in a civil court, family court or criminal court. It is clear that there is no intelligible differentia between a proceeding initiated under the 2005 Act and proceeding initiated in other fora under other Acts, in which the self-same reliefs grantable under this Act, which are restricted to an adult male person, are grantable by the other fora also against female members of a family."



22. In *Vaishali Abhimanyu Joshi v. Nanasaheb Gopal Joshi* (MANU/SC/0626/2017), wherein the question was whether in a suit filed under Section 26 of Provincial Small Cause Courts Act, 1887 a counterclaim by the aggrieved person seeking right under Section 19 of the DV Act can be entertained, the Hon'ble Supreme Court answered in the affirmative and held as follows:

"Section 26 of the DV Act, 2005 has to be interpreted in a manner to effectuate the very purpose and object of the Act. Unless the determination of claim by an aggrieved person seeking any order as contemplated by Act 2005 is expressly barred from consideration by a civil court, this Court shall be loath to read in bar in consideration of any such claim in any legal proceeding before the Civil Court."

23. In the decision cited supra, the Hon'ble Supreme Court held that the counterclaim filed by the appellant therein seeking right under Section 19 of the DV Act, 2005 has to be considered by the Small Causes Court.

24. In *Satish Chander Ahuja v Sneha Ahuja* [MANU/SC/0767/2020], Apex Court held as follows:

"Therefore, on conjoint reading of Sections 12(2), 17, 19, 20, 22, 23, 25, 26 and 28 of the D.V. Act, it can safely be said that the proceedings under the D.V. Act and proceedings before a civil court, family court or a criminal court, as mentioned in Section 26 of the D.V. Act are independent proceedings, like the proceedings Under Section 125 of the Code of Criminal Procedure for maintenance before the Magistrate and/or family court and the proceedings for maintenance before a civil court/family court for the reliefs under the Hindu



Adoption and Maintenance Act. However, as observed hereinabove, the findings/orders passed by the one forum has to be considered by another forum".

25. Undoubtedly, Section 26 of the DV Act empowers the Family Court to grant reliefs under Sections 18 to 22 of the DV Act.

26. It is true that a petition under Section 12 of the DV Act 2005 is to be filed before the Magistrate.

27. The reliefs which can be claimed under Sections 18 to 22 of the DV Act, may also fall in any of the categories envisaged under Section 7 of the Family Court Act. Family Courts can provide reliefs under DV Act to ensure comprehensive protection and justice to the aggrieved person. The reliefs under Section 18 to 22 of the DV Act, 2005 align with the categories under Section 7 of the Family Courts Act. Therefore, if an Original Petition filed under Section 7 of the Family Court Act seeking various reliefs is permitted to be amended, for incorporating certain reliefs as provided under Sections 18 to 22 of the DV Act, it will not change the nature and character of the Original Petition pending before the Family Court.

28. Undoubtedly, in view of the express provision of



Section 26 of the DV Act, 2005, which empowers a civil Court, family Court or a criminal Court to grant reliefs under Sections 18 to 22 of the DV Act, an amendment of the Original Petition filed under Section 7 of the Family Court Act to incorporate certain additional reliefs under Sections 18 to 22 of the DV Act 2005 is permissible in law.

29. In the case at hand, in the Original Petition filed before the Family Court, Kunnampkulam, petitioner has pleaded the factual foundations of her case regarding domestic violence meted out by her at the hands of the respondent. Therefore, the argument advanced by the learned counsel for the respondent that the amendment sought by the petitioner would change the nature and character of the Original Petition, is untenable. Whether the petitioner is entitled to the reliefs sought by her under the DV Act, 2005 is a matter which has to be decided by the Family Court after trial and we are not entering into the merits of the said issue at this juncture. The amendment sought by the petitioner will not change the nature and character of the Original petition and it would not cause any prejudice to the respondent. Therefore, the amendment petition has to be allowed.



Accordingly, this Original Petition is allowed; the impugned order in I.A.No.4/2024 in O.P.No.1187/2023 of Family Court, Kunnampulam stands set aside and I.A.No.4/2024 stands allowed.

Sd/-

**DEVAN RAMACHANDRAN
JUDGE**

Sd/-

**M.B.SNEHALATHA
JUDGE**

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APPENDIX OF OP (FC) 22/2025

PETITIONER EXHIBITS

- Exhibit P1 THE TRUE COPY OF THE ORIGINAL PETITION
IN OP-110/2021 FILED BY THE RESPONDENT
HUSBAND DATED 18/1/2021
- Exhibit P2 A TRUE COPY OF O.P. NO. 1187/2023 DATED
28.09.2022 BEFORE THE FAMILY COURT,
THRISSUR
- Exhibit P3 A TRUE COPY OF THE STATEMENT DATED
03.02.2023 SUBMITTED BY THE RESPONDENT
IN O.P. NO. 1187/2023 ON THE FILES OF
FAMILY COURT, KUNNAMKULAM
- Exhibit P4 A TRUE COPY OF I.A. NO. 4/2024 IN O.P.
NO. 1187/2023 DATED 15.01.2024 ON THE
FILES OF THE FAMILY COURT, KUNNAMKULAM
- Exhibit P5 A TRUE COPY OF THE COUNTER IN I.A. NO.
4/2024 IN O.P. NO. 1187/2023 DATED
26.02.2023 FILED BY THE RESPONDENT ON
THE FILES OF THE FAMILY COURT,
KUNNAMKULAM
- Exhibit P6 A TRUE COPY OF THE ORDER DATED
10.09.2024 IN I.A. NO. 4/2024 IN O.P.
NO. 1187/2023 ON THE FILES OF FAMILY
COURT, KUNNAMKULAM

RESPONDENTS EXHIBITS: NIL