

Karthikeyan Vs. Sheeja

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SooperKanoon Citation : sooperkanoon.com/723571

Court : Kerala

Decided On : Feb-04-2008

Reported in : II(2008)DMC92

Judge : R. Basant, J.

Acts : [Protection of Women from Domestic Violence Act, 2005](#) - Sections 12 and 29; [Constitution of India](#) - Article 227

Appeal No. : W.P. (C) No. 34531 of 2007

Appellant : Karthikeyan

Respondent : Sheeja

Advocate for Def. : M.R. Sarin Panicker,; M.R. Sasith Panicker,; Kirar Sanka

Advocate for Pet/Ap. : K. Sasi Kumar and; Rinny Stephen Chamaparampil, Advs.

Disposition : Petition dismissed

Judgement :

R. Basant, J.

1. This writ petition is directed against Ext. P4 order. The respondent herein had approached the learned Magistrate with an application under Section 12 of the [Protection of Women from Domestic Violence Act, 2005](#). An ex parte final order

was passed against the petitioner. The petitioner filed an application to set aside the said ex parte order. That petition was dismissed by Ext. P4 order. The petitioner has now come to this Court with a prayer that the powers under Article 227 of the Constitution may be invoked.

2. The learned Counsel for the petitioner was requested to explain why he has come to this Court with a writ petition and why the option to prefer an appeal under Section 29 of the Protection of Women from Domestic Violence Act has not been invoked. The learned Counsel for the petitioner submits that the impugned order is only a procedural order and, therefore, under the impression that such an order is not appealable under Section 29 of the Act, no appeal was preferred and the petitioner has come to this Court with this writ petition.

3. The impugned order is certainly one affecting the rights of the petitioner. He wants the ex parte order to be set aside. He can either challenge the ex parte order passed on merits. In the alternative, he can only request the Court to set aside the ex parte order. When that application to set aside the ex parte order is dismissed on the ground that such a petition will not lie, the said finding/order is according to me certainly an appealable order under Section 29 of the Act. The petitioner must have challenged the order by a properly instituted appeal under Section 29 of the Act. I find no reason to entertain this writ petition at the instance of the petitioner who has a right of appeal under Section 29 of the Act. This writ petition cannot, hence, be entertained as the petitioner has an efficacious alternative remedy under Section 29 of the Protection of Women from Domestic Violence Act to challenge the said order. This writ petition is, in these circumstances, dismissed. I make it clear that the dismissal of the writ petition will not in anyway affect the rights of the petitioner to challenge either the original ex parte final order passed against him or the subsequent order (Ext. P4) passed against him in a properly instituted appeal under Section 29 of the Protection of Women from Domestic Violence Act, subject of course to the law of limitation.