

Cri.M.A.No.5206/2022
Kusum .Vrs. Satish

ORDER BELOW EXH.111
(Passed on 9th March, 2026)

The present application is filed by non-applicant for dismissal of complaint as per Order VII Rule 11 of Civil Procedure Code. It is contention of non-applicant that applicant is residing separately from him since 2018 i.e. when earlier Domestic Violence proceeding was filed by applicant against him. In earlier Domestic Violence proceeding Domestic Incident Report was filed on 30.07.2018. In that proceeding interim maintenance application was rejected. Later on before the Hon'ble High court the earlier Domestic Violence proceeding has been compromised within the parties. After that the present Domestic Violence proceeding is filed on basis of same Domestic Violence Incident Report dated 30.07.2018. The present proceeding is filed by Power of Attorney of applicant. The present proceeding is arising out of same cause of action of year 2018. The earlier proceeding is amicably settled in year 2021. According to which the parties resumed cohabitation. However the Power of Attorney, who is son of applicant again started to harass non-applicant No.1 for his share in the property. When the earlier Domestic Violence proceeding was compromised, there remain no merit to file present application.

2] In present application there is neither any specific allegation nor there is any specific event is mentioned regarding

domestic violence committed by non-applicant No.1 upon applicant after the date of order passed by Hon'ble High Court in respect of compromise. Therefore, the complaint is false, frivolous and abuse of process of Law. It does not disclose any incident or allegation that constitute domestic violence as defined under Section 3 of this Act. Thus the complaint does not disclose the cause of action. The parties are living separately since the year 2018. There is no recent incident of domestic violence or shared household relationship exists to attract the provision of Domestic Violence Act. The parties have already arrived at mutual settlement of reconciliation which is duly recorded before the Hon'ble High Court. Therefore, the contentions in this proceeding are contrary to the spirit of such settlement. The present proceeding is filed under coercion and the complainant is being used as a proxy by a third party, which is not maintainable. There is clear evidence of coercion and misuse of legal provision. Therefore, the application deserves to be rejected.

3] The applicant has filed her 205 pages say through her Power of Attorney at Exh.204. It was directed to applicant to argue and put before the Court bullet points mentioned in Exh.204. As per order at Exh.112 her Power of Attorney is restricted to argue on Law points. She was further directed to appoint and take assistance from the D.L.S.A. Nagpur to represent her through Advocate. But even after these directions, she neither argue personally or represented herself through Advocate. Apart from this when the matter fixed for argument of applicant on present application and she appeared

before the Court, this Court has asked her to argue Exh.111. On this she has submitted that she is a senior citizen, huge maintenance amount is outstanding, she has to pay money towards installment of car, maintenance of huge Bungalow, salary of servants, medicines and her other necessities. Her focus is just on recovery of interim maintenance amount and apart from this nothing has been submitted by her as argument on Exh.111.

4] On the basis of rival pleadings of the parties, following points for determination arises for the consideration and I have recorded my findings thereon with reasons given below :-

Sr.No.	Points	Findings
1.	Whether there is cause of action to file present complaint ?	No.
2.	Whether the complaint is tenable ?	No.
3.	What Order ?	As per final order

REASONS

AS TO POINT NOS.1 TO 3 :-

5] To avoid repetition, point Nos.1 to 3 are taken up together for consideration.

As per Point No.1, it has to decide whether there is cause of action arisen to file present complaint and as per Point No.2 tenability of the complaint has to be decided. For this purpose let us understand the concept of 'cause of action'.

6] The cause of action in a domestic violence is important aspect as it serves the essential foundation, which establish the legal basis for the complainant to ensure the courts jurisdiction, maintainability of petition and granting of relief. It defines the specific ongoing or incident based acts of abuse physically, mental or emotional, that justify legal intervention. It transforms general allegations into legally recognized acts of violence, such as physical abuse, emotional cruelty or economic abuse. The domestic violence often considered as continuous series of incidents, allowing the cause of action to be based on the most recent incident to keep the petition within limitation period. A clearly defined cause of action is necessary to secure specific remedies like protection orders, residence order or monetary relief. Vague and unsupported pleading can lead to the dismissal of complaint. On the other hand, making specific, evidence backed, detailed and properly articulated cause of action is crucial for a domestic violence case to be recognized as valid, allowing to seek protection and relief.

7] Section 3 of said act, defines four types of domestic violence :

- (1) mental/physical harm injury which includes
 - physical abuse,
 - sexual abuse,
 - verbal and emotional abuse
 - economic abuse
- (2) harassment or injury caused due to unlawful demand of any dowry or other property or valuable security ;

- (3) any type of threat by respondent/husband or any person related to the respondent/husband in order to create any harm to woman.
- (4) any harm or injury either physical or mental to the woman.

8] As per the explanation of Section 3, physical abuse means any act or conduct as to cause bodily pain, harm, danger to life, limb or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force.

Sexual abuse means any conduct of sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of women.

Verbal and emotional abuse includes insults, ridicule, humiliation, name calling, insults, ridicule specially with regard to not having a child or a male child and repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

Economic abuse means and includes deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of Court or otherwise or whether the aggrieved person requires out of necessity including but not limited to, household necessities for the aggrieved person and her children, if any, Stridhan, property jointly or separately owned by aggrieved person, payment of rental related to the shared household and maintenance.

9] It is settled principle of Civil proceeding that while deciding the application under Order VII Rule 11 of C.P.C., the contents in the petition or complaint has to be taken into consideration and the Written Statement or reply filed by non-applicant or defendant should not be taken into account. Thus, while deciding such application, the defence is immaterial the contents in complaint or petition gets more value than the defence. Therefore, the contents in the petition perused thoroughly.

10] The complaint is filed under Sections 12 read with Sections 17, 18, 19, 20, 22 and 23 of Protection of Woman from Domestic Violence Act, 2005 (hereinafter called as 'said Act' for sake of brevity).

11] Para No.1 and 2 of complaint are in respect of landmark Judgment of Hon'ble Supreme Court attached with petition and the right of equality.

12] In para No.3 of complaint, it is mentioned that complainant has filed, earlier in year 2018, domestic violence case along with D.I.R. with all relevant documents. She has prayed to this Court to consider that earlier D.I.R. and not again called fresh D.I.R.. It is also contention of complainant that D.I.R. is not mandatory, she is aggrieved senior citizen, she is in critical condition. Hence the matter be expedite.

13] In para No.4 it is mentioned that there is prima facie case and all past and present records are available before the Court, therefore, evidence is not required and as per the Law, it is not mandatory and prays to skip the evidence and directly dispose of the application by Judgment.

14] Para No.5 is in respect of son of complainant Mr. Aditya Mohta and she elaborately mentioned how he is helping her in her old age.

15] Para No.6 is in respect of Section 27 of said Act. It is mentioned in para No.6 that the cause of action has happened in Nagpur and Mumbai where non-applicant Nos.1 to 5 and 8 are permanent resident of Nagpur and non-applicant Nos.6 and 7 are permanent resident of Mumbai. Non-applicant Nos.6 and 7 has done domestic violence to complainant during their visits of Nagpur. But in this para how non-applicant Nos.1 to 8 have caused domestic violence to applicant is not narrated. Even no incident is reported in this para.

16] Para No.7 of the complaint is in respect of Section 14 of said Act. According to complainant, she has gone through lot of humiliation, mental and emotional stress, lot of time has been wasted since 2018 onward, justice has been delayed, therefore, there is no scope of any kind of counseling. She is not comfortable at all in counseling.

17] Para No.8 is in respect of directions giving to concern authority for filing FIR under Section 498-A of I.P.C. against all the respondents.

18] In para No.9 the applicant has mentioned that respondents have caused her verbal and economic abuse, cruelty, deprive from economic, financial and other resources, mentally tortured, emotionally distressed, restrained from her legal rights, socially damaged her reputation, cause financial abuse and forced to renounce her rights. But in respect of such kind of abuse, distress, torture no incident has been mentioned.

19] In para No.10 complainant has narrated her relationship with non-applicant Nos.1 to 8.

20] Para No.11 is in respect of her Power of Attorney against whom his wife has filed complaint. As this has no concerned with present complaint it should not be taken into consideration.

21] In para No.12 the complainant has narrated her paternal background, date of marriage as 27.11.1977.

22] In para No.13 the complainant has narrated that after marriage she came at Nagpur and started to reside with non-applicant No.1 at 742, Nelson square, Chindwada road, Nagpur in joint family in a very big and huge beautiful house like a palace. She along with her husband would be shifting to Mumbai for work related to family business.

23] In para No.14 the complainant has mentioned that non-applicant No.1 intended to purchase 3 BHK Sea facing flat at Bulabai Desai road, Mumbai.

24] In para No.15 the complainant has narrated that her father made request to the father of non-applicant No.1 that as they have not expected anything from them in marriage instead of giving his daughter gift, jewelry or valuable articles, he would be giving wedding gift as Stridhan of Rs.51,000/- in cash to purchase new flat in Mumbai.

25] In para No.16 the complainant has mentioned that father of non-applicant No.1 accepted her father's request and promised that in flat purchased at Mumbai he would make the complainant joint owner with 50% share in it. It was also committed between father of complainant and non-applicant No.1 that the amount given by her father i.e. Rs.51,000/- in cash is wedding gift, Stridhan and the marriage will be performed at Ujjain and all the expenses would be done by the family of complainant side.

26] In para No.17 the applicant has narrated how her marriage has been performed on 27.11.1977, the cash of Rs.51,000/- was given which was utilized to purchase flat at Breach Candy, Mumbai. The price of flat is Rs.88,390/-, out of this amount Rs.44,390/- were given from her wedding stridhan gifts i.e. Rs.51,000/- cash. The flat is purchased on 26.01.1978 and she has 50% ownership and possessory right over it.

27] Para No.18 is in respect of conduct of non-applicant Nos.6 and 7. It is stated by complainant that when she visited Mumbai and tried to enter in her flat, the non-applicant Nos.6 and 7 restrained her from entering in flat. As the conduct of non-applicant Nos.6 and 7 was suspicious, she checked all records. She visited office of society namely Surya Apartment joint/Associate Membership. From the record she came to know that non-applicant Nos.6 and 7 have submitted before the Society fake, forged sign relinquishment deed, which is notarized. By this notary relinquishment deed, the non-applicant Nos.6 and 7 are trying to remove her 50% ownership right in the flat.

28] In para No.19 the complainant has mentioned that on 14.06.1994 the non-applicant No.6 with her undertaking has informed that she has lost share certificate and hence applied for new share certificate. Thus, the non-applicant No.6 and 7 tried manually to strike the name of complainant from the share certificate in all records by managing society authorities.

29] Para No.20 is in respect of residence of complainant after her marriage at 742, Nelson square, Chindwada road, Nagpur. She has further stated that at present she is residing with several staff in this house. She has also done police complaint at Mumbai.

30] Para No.21 is in respect of allegations made against non-applicant No.6.

31] Para No.22 is in respect of dispute regarding ownership and possession of flat at Mumbai. According to complainant, the non-applicant No.6 by playing tactics and games trying to grab 50% share of complainant in flat. The complainant could not bear the behaviour of non-applicant No.6 and therefore, along with her husband she shifted back to Nagpur. It is her contention that non-applicant No.1 did not support her for her right of 50% ownership in the flat at Mumbai.

32] Para No.23 is in respect of children born from the wedlock of complainant and non-applicant No.1. Their son Anuj Mohta died in the year 2013.

33] In para No.24 it is stated by complainant that at the age of 16, she got married and at the age of 58 she has filed complaint of domestic violence in year 2018, because non-applicant No.1 along with non-applicant Nos.2 and 3 deserted her alone in huge bungalow with high maintenance and difficulties for day to day survival and later on under the pressure and fake promises threatened her to withdraw the case of domestic violence. The complainant has further submitted that as per the Order of Hon'ble Session Court Rs.1,00,000/- per month as interim maintenance has been granted and Rs.36,00,000/- are pending to recover towards interim maintenance.

34] In para No.25 the complainant has stated that the house at Nelson Square belongs to her son Aditya Mohta, Jamabandi NMC

record bears his name. He does not live in that premises. He mostly travel out of Nagpur due to his work. Therefore, she is living in this huge bungalow and somehow trying to survive without financial help from non-applicant No.1. For proper functioning of the bungalow security, convertible and peaceful environment, need of domestic help and high maintenance is required. It is duty of non-applicant No.1 to take care of complainant and give her same standard of living he is using.

35] In para No.26 the complainant has stated that her son Aditya Mohta is her dependent and non-applicant No.1 to 5 lead several acts of domestic violence with him. As per her contention, Aditya Mohta helping her, taking her care. Therefore, the non-applicants trying to harass him, they have filed police complaint against him.

36] In para No.27 the complainant has again stated about her Stridhan wedding gift i.e. flat at Breach Candy, Mumbai and how non-applicant No.6 and 7 are harassing, restraining, mentally and physically torturing her so as to restrain her from entering in the flat. According to her, at Gramdevi Police Station she has made complaint against non-applicant Nos.6 and 7. (The complaint is dismissed against Non-applicant Nos.6 and 7)

37] Para No.28 is also in respect of residence of non-applicant Nos.1 to 3 at flat No.402 Clarke Manor building, Clarke Town, Kadvi

Chowk, Nagpur. It is contention of complainant that on 17/18 October 2022 in early morning the non-applicant No.1 run away to flat No.402 and started to reside with his youngest son Shравan, his wife and their children.

38] In para No.29 the complainant has mentioned that the non-applicants have done family conspiracy against her and her son Aditya Mohta. Non-applicant No.1 has not taken care of her needs and purposely made applicant and her dependent son financially depend on him. She is uneducated, unemployed, physically and medically not fit to take care of herself, the non-applicant No.1 neglected to maintain her financially, her physical health is deteriorating with her growing age and she is depend on several attendants for her comfort and day to day survival.

39] In para No.30 the complainant has stated her paternal background. She further narrated that non-applicant No.1 is addict of consuming alcohol, gambling cards, in drunken condition he orally abused her, pressurize her to give her Stridhan to fulfill his dreams and desires, addictions, showoff in high society in Gondwana Club, Seminary Hills, Nagpur, he took everything and sold. Therefore, the complainant does not have anything and due to harassment she has facing lots of health issues, feels physically, mentally and emotionally very weak and disturb.

40] In para No.31 complainant has stated about previous domestic violence application bearing No.2367/2018, interim

maintenance granted by Sessions Court in it and about compromise before the Hon'ble High Court. She further stated that for recovery of amount of Rs.36,00,000/- she has filed application under Section 125 (3) of CR.P.C.

41] In para No.32 the complainant has stated that non-applicant No.3 has also done domestic violence on her with help of respondent Nos.8 and 1 to 3. They have also harassed and dominate her mentally, emotionally and verbally abused her, deprived her from economic resources, restricted her from various share household things like fruits, food and grocery etc. They given directions to staff not to listen her, no freedom was given to her to eat, live and sleep peacefully, it affected her health. Such behaviour of non-applicant Nos.3 and 8 was silently watched by non-applicant No.1 without any reaction. Non-applicant Nos.3 and 8 have attacked complainant at late night in flat No.402 Kadvi Chowk, Nagpur. (The complaint is dismissed against Non-applicant No.8)

42] In para No.33 the complainant has narrated that non-applicant Nos.4 and 5 have threatened her verbally and emotionally abused her, caused mental distress over phone call. She also stated about the complaint filed at Sadar Bazar Police Station against the non-applicant No.4, the order of Court and clean chit given to non-applicant No.4. (The complaint is dismissed against non-applicant Nos.4 and 5)

43] Para No.34 is in respect of her passion of singing and dancing since her childhood, but non-applicant No.1 never allowed to pursue her passion.

44] Para No.35 is in respect of health issues suffering by complainant. According to her, today she is suffering from high Blood Pressure, High Sugar, Arthritis and other physical ailments which also affected her financial stability. She needs assistance of home nurses and other several staff to maintain her to survive comfortably.

45] In para No.36 the complainant has stated that on 05.04.2018 the non-applicant No.1 for the first time started to reside separately in his own 3 BHK posh Flat having price in crores at Kadvi Chowk. She has also stated that non-applicant No.1 owns many luxuries Cars like BMW (price Rs.80,00,000/-), Maruti Brezza and several other luxuries Cars.

46] In para No.37 the complainant made allegations that in year 2018 due to severe illness, she was hospitalized, but non-applicant No.1 has not paid bill of hospital.

47] In para No.38 the complainant has narrated financial income source of non-applicant No.1 that from rent he is earning Rs.15,00,000/- per month and he has also other sources of earning.

48] In para No.39 the complainant has stated that since 2018 she is alone residing in bungalow at Nelson Square but non-applicant No.1 never checked how she is managing everything. Such conduct of non-applicant No.1 is cruel and for complainant it is hard to tolerate this agony in her old age. The non-applicant No.1 also threatened her that he would sell bungalow. She has also narrated the incident of her birthday dated 11.07.2018 when the non-applicant No.1 instead of giving her birthday wishes threatened to sell bungalow and abused her.

49] In para No.40 the complainant has stated that the non-applicant No.1 neglected to maintain her from November 2022 onward. He has sold her Stridhan given to her by her in-laws (respondent No.1's parent) for his business and gambling and also to repay the loans. According to her, non-applicant No.1 has sold her 127 tolas gold and about 67 kg. silver articles.

50] In para No.41 the complainant has stated that non-applicant No.1 never bothered to purchase life insurance for her which proves that he has complete disaffection, dishonesty and partial for her and her son Aditya Mohta.

51] In para No.42 the complainant has again repeated that in earlier domestic violence case, the Hon'ble Sessions Court has granted her interim maintenance of Rs.1,00,000/- per month.

52] Para No.43 is in respect of the financial expenses which the complainant required for her day to day survival. According to her, Rs.1,50,000/- per month required for food, fruits, vegetable, medicine, electricity, staff payment and maintenance etc, Rs.50,000/- per month for insurance, Rs.2,00,000/- per month for investment, Rs.1,60,000/- for car, petrol, insurance and salary of driver, as such she requires Rs.7,00,000/- per month.

53] In para No.44 she has stated that the non-applicant No.1 gave her high hopes that he will reside together as happy couple and would be responsible and caring husband. But he did not follow his promises and as such does domestic violence on her.

54] In para No.45 the complainant has again narrated that non-applicant No.1 is residing separately in flat No.402, Kadvi Chowk. He occasionally came as a guest in house at Nelson square and whenever he visit her he harassed and left her. Therefore, she again has filed present petition.

55] In para No.46 the complainant has narrated the incident of dt.17.10.2022 and 18.10.2022 when non-applicant No.1 abused her, forced and emotionally blackmail her to sign property papers. She refused to sign, therefore, non-applicant No.1 started to abuse her, threatened her that he would not give a single penny from next month i.e. November 2022 and desert her forever.

56] In para No.47 the complainant has stated that Rs.36,00,000/- arrears are to be recoverable from non-applicant No.1.

57] In para No.48 she has given details of her daily and monthly expenses.

58] In para No.49 she has stated that from November 2022 non-applicant No.1 refused to maintain her till then he was maintaining and given complainant Rs.2,00,000/- per month, but there was no love, respect or descent behaviour, complainant has 50% share in income of non-applicant No.1 and hence entitled for interim relief and compensation.

59] Para No.50 is in respect of jurisdiction of this Court and in prayer clause lots of prayers are made and reliefs have been claimed against non-applicant Nos.1 to 8.

60] It is not disputed that applicant has filed Criminal M.A. No.2367/2018 on 16.07.2018, wherein she was represented by Advocate Anima Maroli Kollanandy. In her earlier application also she has stated that from last 41 years she is suffering economical and mental abuse, pain, helplessness, unhappiness, constant threatening, trauma, agony, fear for her life, destitute without any money and assets, never properly taken care by non-applicant, not permitted to mold her talent of singing and dancing, non-applicant has not paid for her dedication and hard work nature, neglected to maintain

house and her day to day affairs. At present she is 58 years old and physically not able to do any housework, she is suffering from blood pressure, sugar, Arthritis, Hormonal changes, she cannot live without assistance of home Nurse, several staff is required to maintain her surrounding, bungalow and to take care of her. Non-applicant has several ill-logical, inhuman, unkind issues with her son Aditya. He made her son's life miserable physically, financially and mentally.

61] She had further pleaded in Criminal M.A.No.2367/2018 that on 05.04.2018 non-applicant started to live in 3 BHK flat at Kadvi Chowk and neglected her completely. He used and possess branded Cars like BMW, Honda City, Honda Mobilio, Maruti Ignis, Hyundai Creta, Hyundai i10. He also gets Rs.15,00,000/- per month from the rented premises. She has 1/3rd share being the class-I heir of her deceased son namely Anuj. When she asked her share, non-applicant denied her share, abused and threatened her.

62] On 18.05.2018 when she was hospitalized, non-applicant has not helped her nor come to take care of her. He always used to threaten her that he will send her out of the house where she is living, demolished the bungalow and convert it in commercial building. Non-applicant has compelled her to file complaint of false allegation against Aditya and his wife to get unlawful benefit from Civil Court in R.C.S. No.519/2018 but when she come to know about truth she withdraw the complaint, at that time Non-applicant had threatened her that soon he will make her shelterless and send her at

street for begging. Thus, the conduct of non-applicant is unkind and merciless. Her life is not safe and secure. She spent her entire life facing mental trauma, suffering agony, pain due to merciless behaviour of non-applicant, threat to disposes her from property, not giving her maintenance to live life according to her standard of living.

63] It is her further contention in earlier Domestic Violence complaint that, on 11.07.2018 on occasion of her birthday, non-applicant has not called her nor given her birthday wishes instead he threatened her and abused. As such he has not given love and affection to her. He has not provided her financial security, her entire jewelry is in his possession. There is no property in her name. No LIC policy is opened in her name, she is not nominee of any property. Her younger son Shravan is the only nominee. Non-applicant has left her with no self confidence, no self esteem, no confidence, no money, therefore, she is unable to look after herself. She requires Rs.6,72,640/- per month towards foods, dairy, kitchen, two electricity bills of huge bungalow, medical expenses, treatment expenses, house driver salary, housemaid, clothing and other leisure, mediclaim EMI, bungalow maintenance including Carpenter, Mason, electrician, Paste-control, Painting, Plumbing, 20 split AC, gardeners salary, travel expenses for Ayurvedic treatment to Kerala. In earlier petition, she has claimed Rs.2,00,000/- towards litigation expenses and Rs.5,00,00,000/- towards the compensation.

64] As per the Order dated 08.09.2021 passed on Exh.1 in earlier petition the matter is disposed of as withdrawn by applicant. On 08.09.2021 the applicant was present before the Court with Adv. Shilpa Ashar. She has filed withdrawal application Exh.71 contending that 'due to her own will and wish she do not want to proceed in the matter'. As such the earlier Domestic Violence proceeding has been withdrawn by applicant unconditionally, as per her own will and wish.

65] If the contents in present petition and earlier petition perused minutely, it appears that, the incident of 05.04.2018, 11.07.2018 and 18.05.2018 are re-introduced in present petition. The contention regarding Rs.15,00,000/- per month income, dispute between her elder son Aditya and non-applicant is also repeated in present petition. It is gathered from the contention in earlier petition that non-applicant left her on 05.04.2018 and therefore she has filed earlier domestic violence case. No doubt the settlement occurred before the Hon'ble High Court and according to that settlement, she has withdrawn the earlier petition.

66] The proceeding under Domestic Violence Act is quasi civil and quasi criminal proceeding. The non-applicant has moved present application for dismissal of complaint on the ground as stated above. As per Order 23 Rule 1 of C.P.C. if a suit is withdrawn, the cause of action is considered abandoned. Once the settlement is entered the complainant cannot pursue the original complaint. The

settlement agreement make the complaint to come to an end. The settlement act as a final closure of the dispute, ending the legal right to sue based on the original set of facts. Future legal occasion is typically restricted to enforce the terms of settlement. After a valid settlement of dispute in the Court the cause of action does not survive. The settlement act as a final resolution that merges the original cause of action into consent decree. Once the settlement is reached, parties are bound by its terms and the original cause of action is extinguished. It means the party cannot re-litigate the same.

67] In present complaint, it is contention of complainant that the non-applicant No.1 has threatened her to disposes from residential bungalow situated at Nelson Square. The same allegation has been made by her in earlier petition, but from record it appears that since from 2018 till date the non-applicant No.1 has not made any attempt to throw out the complainant from her residential bungalow. Even at present she is residing in same bungalow. The span of almost 8 years has been gone, but no attempt on part of non-applicant has been made which shows that he has tried to disposes the complainant from the bungalow situated at Nelson Square.

68] In present complaint the complainant has also added the contention that she has 50% ownership in flat at Mumbai and non-applicant is denying her ownership. Here it is to be noted that the dispute of ownership and possession of immovable property does not come under the subject matter of Domestic Violence Act. The proper

remedy is available to applicant in Civil Law. Therefore, denial of right over immovable property does not amount to domestic violence.

69] In matrimonial matters the cause of action can arise again even if a previous dispute was settled and the case withdrawn. In earlier petition whatever cause of action was raised by complainant at the then time has been settled as per the Order dated 08.09.2021. The present complaint deals with matrimonial dispute, therefore, it has to look whether after withdrawal of earlier petition on 08.09.2021 any new cause of action has arisen afterwards.

70] As stated earlier lots of contents in earlier complaint are reproduced in present complaint in elaborated manner. Therefore, due to settlement whatever contention pleaded by complainant till date of withdrawal of complaint i.e. 08.09.2021 gets no value in eyes of law. Whatever cause of action has arisen till 08.09.2021 has extinguished and complainant can't re-litigate same. Furthermore, vide Order below Exh.1 the present complaint is dismissed against non-applicant Nos.4 to 8. Therefore, the allegations made against them also could not be taken into consideration. As such it has to see whether after 08.09.2021 is there incident occurred which gives new cause of action to file present complaint on 01.12.2022. In short from 08.09.2021 to 01.12.2022 i.e. within span of 15 months new cause of action should be pleaded in the present petition.

71] The applicant has mentioned the incident dt.17/18 October 2022 contending that the non-applicant No.1 was forcing and emotionally blackmailing her to sign property papers. The alleged act of non-applicant is criminal act and for that remedy is available under Penal Laws.

72] According to applicant, since November 2022 the non-applicant No.1 has not provided her maintenance and therefore, she is struggling for her day to day affairs to maintain herself. Here it is pertinent to note that the complainant at present is residing in huge bungalow as described by her in present complaint. It is also her contention that the non-applicant owned and possessed luxurious Cars and get Rs.15,00,000/- per month from rented premises. In such situation, it sounds unreliable that on 17/18 October 2022 non-applicant has compelled applicant to sign property papers. In one breath the applicant has stated that there is no property, no life insurance, security on her name and she is not nominee of any property and in another breath she is stating that non-applicant compelled her to sign property papers. If there is no property on her name, why non-applicant will try to obtain her signature on property papers ? Thus the statements of complainant regarding the allegations made against non-applicant No.1 are self contradictory.

73] The complainant has also pleaded that domestic violence is also done on her son Aditya. Mr. Aditya is Power of Attorney of complainant. He is major. Therefore, he is quite eligible to raise voice

for any kind of violence alleged to be done on him by non-applicant No.1. Applicant is not entitled to claim any relief for her son by way of filing this application.

74] In entire complaint, it is not contention of applicant that non-applicant No.1 as demanded her dowery, beat her mercilessly, used filthy and abusive language to her or sexually abused her. Thus there is no allegation of domestic violence in form of physical cruelty, verbal abuse, sexual abuse or mental abuse. Even it is also not allegation of applicant that non-applicant No.1 cursed her for death of her son Anuj and emotionally caused domestic violence on her.

75] Since year 2018 non-applicant No.1 is residing separately from complainant. If complainant wants to reside with him or wants that non-applicant No.1 should join her company then proper remedy is available in Hindu Marriage Act. Prior to year 2018 and till date complainant is residing in her matrimonial huge bungalow situated at Nelson Square, Nagpur. There is no prima facie evidence to show that non-applicant No.1 has tried to throw her out from huge bungalow.

76] From the documents filed on record, it is seen that complainant has two bank account, one is in Axis Bank and other is in Kotak Mahindra Bank. She is also income tax payee and in year 2022-2023 her income was Rs.2,28,700/-. Further it is evident that (cross of applicant in Domestic Violence No.2367/2018), she gets Rs.24,000/- per month from Telecommunication Tower.

77] It is alleged by complainant that non-applicant No.1 has not provided her maintenance to maintain the huge bungalow at Nelson Square. In para No.25 of her complaint, she has stated that, her marital house i.e. 742, Nelson Square, Chindawada road, Nagpur, belongs to respondent No.1's eldest son Aditya Mohta as per Jamabandi NMC records. If this is the situation, then how she can expect that non-applicant No.1 should provide her money for maintenance of huge bungalow wherein she is residing. According to her, if the bungalow is in name of Aditya Mohta then being the lawful owner and possessor, he should maintain the house. It is his responsibility and not of the non-applicant No.1 to maintain the bungalow. Therefore, complainant can not claim amount for maintenance of bungalow which belongs to Mr. Aditya Mohta. Merely because complainant is residing in that bungalow, she can't claim it's huge maintenance charges from Non-applicant No.1.

78] In para No.6 of complaint though words 'cause of action' are used but the cause of action should not be determined on basis of residence of non-applicant. The 'cause of action' is bunch of incidents which gave rise for institution of litigation for violation of right, title, interest or claim.

79] From the contents in entire complaint, it is gathered that since from date 05.04.2018 there is no domestic relationship between complainant and non-applicant No.1. Domestic relationship means a relationship between two persons who live or have at any

point of time lived together in a shared household, when they are related by consanguinity, marriage or through a relationship in the nature of marriage, adoption or are family members living together as joint family. In present case, prior to 05.04.2018 complainant and non-applicant No.1 were living together in bungalow situated at Nelson Square, Nagpur. But after settlement and withdrawal of D.V. case No.2367/2018 on 08.09.2021 whatever incidents alleged to be domestic violence happened in that bungalow have been extinguished or abandoned. The non-applicant No.1 is not residing in that bungalow from 05.04.2018. Hence, it can be said that since 05.04.2018 there is no domestic relation between complainant and non-applicant No.1. Domestic relationship is important ingredient of domestic violence definition and if it is absent the complaint is not tenable.

80] Furthermore, from entire contentions in complaint the act of physical injury, unlawful demand of dowry or other property or valuable security, threat in order to create any harm to complainant or any physical or mental harm to her is not gathered. No such incident is narrated nor reported to police station.

81] In the same way, any act of conduct of physical abuse, which cause bodily pain, harm, danger or life, limb, health, assault or criminal force not gathered from contents in pleading. The entire complaint is silent on domestic violence by way of sexual abuse. Insult, ridicule, humiliation though pleaded by complainant, no

specific incident is narrated by her. Even recent or current incident also not pleaded. Hence, pleading of verbal and emotional abuse appeared to be vague and formal in nature.

82] The non-applicant No.1 has not taken any step to throw applicant out from bungalow situated at Nelson Square. On contrary he himself leave the bungalow. complainant is getting reasonable income from telecommunication tower, she has 50% share in flat at Mumbai, substantial amount is also crediting in her account every month. Therefore, depriving her from any economic resource does not arises. As stated earlier to maintain huge bungalow at Nelson Square is responsibility of Aditya Mohta as his name is on Jamabandi record on NMC and the bungalow belongs to him.

83] Thus, any kind of domestic violence as described in Section 3 of this Act, has not been revealed or gathered from entire contentions of complaint. It also appears that no cause of action has been arose after settlement and withdrawal of earlier D.V. application on 08.09.2021. The allegations made against non-applicant No.1 are ambiguous, formal, vague, not specific in nature. No incident of domestic violence is described and narrated. Mere statement the complainant that non-applicant No.1 has harassed, mentally tortured, economically abused is not sufficient. Hence I came to conclusion on basis of contents in pleading itself that entire complaint does not disclose cause of action to file present case on 01.12.2022. Further there is no domestic relationship between

complainant and non-applicant No.1 since from 05.04.2018. No incident has occurred during period 08.09.2021 i.e. after withdrawal of earlier D.V. proceeding to 01.12.2022 i.e. till filing of present complaint which constitutes the domestic violence. Hence, I answer Point Nos.1 and 2 in affirmative and as to point No.3, proceed to pass following order :-

ORDER

1. The application Exh.111 is allowed.
2. The complaint is rejected as per Order VII Rule 11 (a) (d) of Civil Procedure Code.
3. Interim maintenance order passed on 02.08.2023 stands vacated.
4. All the pending applications of complainant and non-applicant Nos.1 to 3 are filed and disposed off accordingly.
5. Proceeding is closed.

Nagpur
Date : 09.03.2026

(Smt. D.M. Shinde)
14th Jt. Civil Judge (Sr. Dn),
Nagpur.