

IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE,
FTC III, ALIPORE, SOUTH 24 PARGANAS.

Present	Souvik De (WB01069) Additional Sessions Judge, Fast Track 3rd Court, Alipore, South 24 Parganas.
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Criminal Appeal No.	46 of 2026
CNR	WBSP01-002394-2026
Appeal Under Section	29 of PWDV Act
Order Under Challenge	Order dated 21.01.2026, passed in connection with AC Case No. 1683 of 2023 by the Ld. 1st Judicial Magistrate, Alipore
Appellant	Subrata Roy
Represented By	Mrinmay Halder, Ld. Advocate
Respondent No. 1	Poulomi Roy
Represented By	Prasenjit Raha, Ld. Advocate
Respondent No. 2	The State of West Bengal
Represented By	Unrepresented
Date Of Filing Of Appeal Before Ld. Sessions Judge, South 24 Parganas , Alipore	17.02.2026
Date Of Receipt Of Record By This Court	19.03.2026
Date on which Argument Done	08.07.2026
Date of the Judgment	08.07.2026

JUDGMENT

Prologue

The present criminal appeal has been preferred under Section 29 of the Protection of Women from Domestic Violence Act, 2005 by the appellant/husband challenging the final order dated **21.01.2026** passed by the Learned Judicial Magistrate, 1st Court, Alipore in **A.C. Case No. 1683 of 2023**, whereby the Learned Trial Court, proceeding ex parte against the present appellant, finally disposed of the application under Section 12 of the Protection of Women from Domestic Violence Act,

2005 by granting reliefs in favour of the aggrieved person/private respondent.

The learned Advocate appearing for the appellant has been heard in full. The learned Advocate appearing on behalf of the private respondent/wife has also been heard at length.

Despite due service of notice, none appeared on behalf of the State respondent. Accordingly, the appeal has been heard and is being disposed of in its absence.

Appearance

The appellant/husband was represented by his learned Advocate.

The private respondent/wife entered appearance through her learned Advocate and contested the appeal.

Despite service of notice, the State respondent remained absent and unrepresented.

Submission on behalf of the Appellant

The learned Advocate for the appellant submitted that although the appellant could not effectively contest the proceedings before the Learned Trial Court, he is genuinely desirous of contesting the proceeding on merits.

It is submitted that the learned Magistrate proceeded ex parte and ultimately disposed of the application under Section 12 of the PWDV Act without affording the appellant an effective opportunity of contesting the allegations.

According to the appellant, valuable civil consequences flow from an order passed under the Domestic Violence Act. Such an order ought ordinarily to be passed after both parties are given an adequate opportunity of placing their respective cases before the Court.

It is argued that the object of judicial adjudication is to decide disputes on merits and not merely on account of procedural defaults.

The learned Advocate accordingly, prayed that in the larger interest of justice, the impugned order be set aside and the matter be

remanded to the Learned Trial Court for fresh adjudication after giving the appellant one final opportunity to contest.

Submission on behalf of the Private Respondent/Wife

Per contra, the learned Advocate appearing for the private respondent vehemently opposed the appeal.

It is argued that the appellant himself is solely responsible for the present situation.

Attention of this Court has been invited to the previous proceedings arising out of the very same case, particularly Criminal Appeal No.16 of 2026 decided by this Court on **22.06.2026**, wherein this Court had elaborately recorded the repeated defaults, negligence and deliberate conduct of the appellant in delaying the disposal of the proceeding before the Learned Trial Court.

It is submitted that despite repeated opportunities granted by the Learned Magistrate, the appellant failed to take appropriate legal steps and repeatedly adopted dilatory tactics.

According to the respondent, the appellant cannot be permitted to take advantage of his own wrong.

It is further argued that the respondent has already suffered immense financial hardship because of the prolonged litigation. Any remand of the proceeding would further delay the relief legitimately due to her.

Accordingly, it is prayed that the appeal be dismissed.

Points for Determination

The following points arise for determination:-

1. Whether the impugned order dated 21.01.2026 suffers from any illegality, impropriety or material irregularity?
2. Whether, despite the conduct of the appellant, the ends of justice require one final opportunity to contest the proceeding?

3. To what other reliefs, if any, are the parties entitled?

Discussion and Findings

This Court has bestowed its anxious consideration to the rival submissions advanced by the learned Advocates appearing on behalf of the respective parties.

At the very outset, it requires to be recorded that this Court does not find the conduct of the appellant to be deserving of any appreciation whatsoever.

On the contrary, while deciding **Criminal Appeal No.16 of 2026** arising out of the very same A.C. Case No.1683 of 2023, this Court had occasion to examine in detail the conduct of the present appellant before the Learned Trial Court. This Court had specifically observed that despite repeated opportunities, the appellant consistently failed to take legally appropriate steps and repeatedly sought adjournments, thereby, delaying the proceeding. The Court further observed that a litigant cannot be permitted to take advantage of his own wrong and that the appellant's conduct disclosed repeated attempts to prolong the litigation.

Those observations continue to hold good even today.

Therefore, this Court has absolutely no hesitation in observing that the appellant himself substantially contributed to the situation resulting in the passing of the impugned ex parte order.

Ordinarily, a litigant displaying such conduct would not deserve any discretionary relief from an appellate court.

However, the matter does not end there.

The impugned order is a final adjudication of an application under Section 12 of the Protection of Women from Domestic Violence Act.

The consequences flowing from such an adjudication are substantial and affect valuable rights of both parties.

It is one of the fundamental principles governing judicial adjudication that wherever reasonably possible, disputes should be

decided after giving both parties adequate opportunity of contesting the matter on merits.

Courts exist to advance substantial justice.

Procedure is intended to facilitate justice and not to defeat it.

The power of an appellate court is wide enough to mould relief in such manner as may advance the cause of justice while simultaneously, ensuring that a litigant guilty of delaying tactics does not derive any advantage from his own conduct.

The present case is one where the competing interests of both parties deserve equal protection.

If the ex parte order is simply affirmed, the appellant would lose his opportunity of defending himself on merits.

Conversely, if the matter is remanded unconditionally, the respondent-wife, who has already undergone prolonged litigation because of the conduct of the appellant, would suffer further financial hardship.

The Court is therefore required to strike a balance between the competing equities.

This Court is of the considered opinion that the ends of justice would be adequately served, if the appellant is granted one final opportunity to contest the proceeding, but only upon imposing stringent and meaningful conditions, which sufficiently compensate the respondent-wife for the delay already occasioned.

The costs imposed should not be symbolic.

Rather, they must serve the purpose of providing immediate sustenance to the aggrieved wife during the period within which the remanded proceeding is directed to be concluded.

This Court is therefore of the opinion that payment of Rs.50,000/- by the appellant to the private respondent would sufficiently balance the equities.

The said amount is not being awarded as compensation on merits.

Nor shall it prejudice the rights and contentions of either party during the trial.

The amount is being directed purely as a condition precedent for restoration of the appellant's right to contest and for enabling the respondent-wife to sustain herself during the period fixed by this Court for disposal of the proceeding.

Further safeguards are also necessary.

The Learned Trial Court should be directed to conclude the proceeding expeditiously.

At the same time, if for any reason the proceeding cannot be concluded within the stipulated period, the Learned Magistrate should remain free to consider granting appropriate interim monetary relief in accordance with law, if approached by the respondent-wife.

Finally, the appellant must not be permitted to violate the conditional order.

Accordingly, this Court considers it appropriate to direct that failure to deposit the amount of Rs.50,000/- on the date fixed by this Court shall automatically result in revival of the impugned ex parte order, which shall thereafter become fully operative and executable without any further reference to this Court.

Such a condition alone would adequately secure the interest of the respondent-wife while simultaneously granting one last opportunity to the appellant.

Edict

Accordingly, it is

ORDERED

1. The criminal appeal stands **allowed on contest**, subject to the conditions recorded hereinbelow.
2. The final order dated **21.01.2026** passed by the Learned Judicial Magistrate, 1st Court, Alipore in **A.C. Case No.1683 of 2023** is hereby **set aside**.
3. The proceeding is remanded to the Learned Judicial Magistrate, 1st Court, Alipore for fresh disposal on merits after giving both

parties adequate opportunity of leading evidence and advancing arguments.

4. The appellant/husband shall pay a sum of **Rs.50,000/- (Rupees Fifty Thousand only)** to the private respondent/wife **in one lump sum** on the date fixed by this Court for appearance of both parties before the Learned Trial Court.
5. The aforesaid payment of **Rs.50,000/-** is imposed as a condition precedent for restoration of the appellant's right to contest the proceeding and is intended solely to provide sustenance to the private respondent/wife during the period fixed by this Court for disposal of the proceeding.
6. **In default of payment of the aforesaid amount on the date so fixed, the present appellate judgment shall automatically cease to operate, the impugned ex parte order dated 21.01.2026 shall stand revived and become absolute without any further order of this Court, and the private respondent/wife shall be at liberty to execute the same in accordance with law.**
7. The Learned Trial Court shall make every endeavour to dispose of **A.C. Case No.1683 of 2023 within a period of five (05) months** from the date of communication of this judgment without granting unnecessary adjournments to either side.
8. The aforesaid amount of **Rs.50,000/-, as ordered to be paid by the appellant to the private respondent,** will be adjusted with the amount of maintenance, so to be awarded/ if awarded, by the Ld. Trial Court, while finally disposing of the application u/s 12 of the PWDV Act.
9. If, for any reason beyond the control of the Court, the proceeding cannot be concluded within the aforesaid period of five months, it shall be open to the Learned Magistrate/Trial Court, if approached by the private respondent/wife, to consider and pass an appropriate order granting interim monetary relief in accordance with law, uninfluenced by any observation contained in this judgment.
10. Both parties are directed to appear before the Learned Judicial Magistrate, 1st Court, Alipore on **04/08/2026** without awaiting any further notice.

11. The Learned Trial Court shall thereafter proceed with the matter from the stage immediately preceding the passing of the ex parte order and shall decide the proceeding independently on its own merits without being influenced by any observation made in the present judgment except the directions contained herein.
12. Let a copy of this judgment be transmitted forthwith to the Learned Trial Court for information and necessary compliance.
13. Interim orders, if any, passed in this appeal stand vacated.
14. The appeal is accordingly disposed of.
15. Let necessary entries be made in the relevant register.
16. Let a copy of this judgment be uploaded in CIS in accordance with the Criminal Rules and Orders of the Hon'ble High Court at Calcutta.
17. The judgment is pronounced and delivered in open court on 08.07.2026.

Dictated & corrected

Sd/-

Souvik De
Additional Sessions Judge
Fast Track 3rd Court, Alipore
South 24 Parganas

Sd/-

Souvik De(WB01069)
Additional Sessions Judge
Fast Track 3rd Court, Alipore
South 24 Parganas