



Order Below Exh.1 in
Criminal (DV) Appeal
No. 9/2022

Mr Sawant, Ld advocate for the appellant-husband has filed purshis Exh 10 vide which he has informed that the appellant is not making contact with the Ld advocate regarding this appeal for any other reason.

2] I have perused the roznama of this appeal. The appellant and his Ld advocate have consistently remained absent, save the presence of Ld advocate Sawant on a few dates. The provision of appeal under the Domestic Violence Act falls under Chapter IV. So far as Chapter IV provisions are concerned, it is provided under section 28 as follows.

28. **Procedure.**—(1) Save as otherwise provided in this Act, all proceedings under sections 12,18, 19, 20, 21, 22 and 23 and offences under section 31 shall be governed by the provisions of the Code of Criminal Procedure, 1973 (2 of 1974).

(2) Nothing in sub-section (1) shall prevent the court from laying down its own procedure for disposal of an application under section 12 or under sub-section (2) of section 23.

3] I am particularly concerned with sub section 2 of section 28 which gives liberty to the Court for laying down its own procedure for disposal of an application under section 12 or under sub section 2 of section 23.

4] However, there is no similar provision under the provision of appeal under section 29. However, by

implication, if the appellant is not paying heed to the appeal, the appeal can be dismissed for default akin to the dismissal under Order 41 Rule 17 of the Code of Civil Procedure (CPC). Moreover, while dismissing the appeal, liberty of the appellant can be preserved for restoration of the appeal, akin to the provision under Order 9 Rule 9 of the CPC.

5] Moreover, if in the absence of appellant or may be in the absence of both parties, the appeal is decided on merit, the appellant shall be left with no recourse except approaching the Hon'ble Higher Court. In that event, not only the appellant, but the respondent will also unnecessarily suffer both financially as well as in terms of time. The time spent in litigation is irreversible. Therefore, dismissal of appeal which liberty to restoration would be a middle part to deal with such situation. Moreover, deciding any appeal without hearing Ld advocates of both sides, particularly for Ld advocate for the appellant, the judgment in the appeal may suffer so many discrepancies because of absence of argument on behalf of the appellant.

6] The appellate remedy under Section 29 of the Protection of Women from Domestic Violence Act, 2005 is a statutory remedy which the appellant is bound to prosecute diligently. In the present matter, despite repeated opportunities, the appellant consistently remained absent and, as reported by learned counsel, even failed to maintain contact regarding conduct of the appeal. A judicial

proceeding cannot be permitted to remain pending indefinitely merely because a litigant, after invoking appellate jurisdiction, loses interest in prosecuting the matter. Considering the hybrid and quasi-civil nature of proceedings under the DV Act, which substantially concern civil reliefs such as maintenance, residence, protection and compensation, strict criminal appellate principles against dismissal for default need not be mechanically applied.

7] In absence of any express prohibition under the Act, the appellate court possesses incidental, procedural, and implied authority to regulate its docket, prevent dormant litigation, and terminate proceedings abandoned by the appellant, particularly when repeated adjournments unnecessarily consume judicial time and prolong uncertainty for the respondent.

8] Further, dismissal for want of prosecution, coupled with liberty to seek restoration upon showing sufficient cause, causes less prejudice than adjudicating the appeal finally on merits in absence of the appellant, since it preserves the substantive right of hearing while ensuring procedural discipline and effective administration of justice.

9] Hence, I am passing the following order.

ORDER

1. The Criminal (DV) Appeal is dismissed for want of

prosecution.

2. The appellant shall be at liberty to restore the said appeal within 30 days from the date of uploading of this order.
3. The appeal stands disposed of.

Date: 06.05.2026
Place: Oros

Sd/-
(Dr Sudhiir M Deshpande)
Sessions Judge
Sindhudurg at Oros

All concerned to act upon digitally signed uploaded copy of this order, the printout of which can be verified from the official website of this court. In this regard attention of all concerned is invited to the authority of the Hon'ble High Court of Bombay (Bench at Aurangabad) **Shital Krushna Dhake v. Krushna Dhake**, MANU/MH0285/2018.