

MC 256/2022
CNR NO.WBHG06-001654-2022

Order dated 01.07.2026

Today is fixed for passing order in respect of the non-maintainability application in respect of the amended petition u/s 23(1) of PWDV Act filed by the petitioner on 28.04.2025 and 15.12.2025.

Petitioner files hazira.

The Ld. Advocate for the petitioner has not pressed the petition u/s 23(1) of PWDV Act which was filed on 24.06.2022 i.e. on the date of filing of this case.

OP is absent without step.

Both sides were previously heard in full.

Ld. Advocate for the OP no.1 husband has submitted that the petitioner/wife had filed this case on 24.06.2022 along with a petition u/s 23(1) of PWDV Act. On 08.12.2023 the petitioner filed a petition for amendment of the petition u/s 12 of PWDV Act and after hearing the same, this Court had allowed the amendment petition and 16.01.2025 was fixed for filing the amended application u/s 12 of PWDV Act. It is further submitted by the Ld. Advocate for the OP no.1 that no application for amending the application u/s 23(1) of PWDV Act was filed but on 28.04.2025 the petitioner has filed an amended application u/s 23(1) of PWDV Act and 14.08.2025 was fixed for filing show cause against the amended petition u/s 12 of PWDV Act and w/o against the amended petition.

Ld. Advocate for the OP no.1 has further submitted that on 15.12.2025 the Ld. Advocate for the petitioner had not pressed the amended application u/s 23(1) of PWDV Act which was filed on 28.04.2025 and without filing any petition praying liberty to file the same in future, on the same date after 04.30 p.m. filed another petition u/s 23(1) of PWDV Act. Accordingly, the OP no.1 has prayed for dismissal of the amended application u/s 23(1) of PWDV Act dated 28.04.2025 and 15.12.2025.

Ld. Advocate for the petitioner raised vehement verbal objection against the instant application and prayed for its dismissal.

Perused the petition and other connected materials on record.

Considered.

Since the Ld. Advocate for the petitioner today at the very outset has not pressed the application dated 24.06.2022 u/s 23(1) of PWDV Act, the question of seeking for amendment of the same or filing any amended application in respect of the application dated 24.06.2022 becomes irrelevant and infructuous altogether. It is to be mentioned that in total three petitions u/s 23(1) of PWDV Act were filed by the petitioner dated 24.06.2022, 28.04.2025 and 15.12.2025 and at present the petition dated 24.06.2022 and 28.04.2025 have been not pressed. Thus, the only application u/s 23(1) of PWDV Act which is surviving at this stage is the application dated 15.12.2025. Now the pertinent question that arises before this Court is that whether it is permissible to not press an interim application and file a similar application thereafter. In this regard the Hon'ble

Order dated 01.07.2026 contd....

Apex Court has held the following in ***Daryao And Others vs The State of U.P. & Others, AIR 1961 SC 1457*** that “If a writ petition is dismissed in limine and order is pronounced on that behalf, whether or not dismissal would constitute a bar would depend upon the nature of the order. If the order is on the merits it would be a bar; if the order shows that dismissal was for the reason that the petitioner was guilty of laches or that he had an alternative remedy it would not be a bar, except in cases we have already indicated.”.

In ***Stephy Watson vs. State of Kerala B.A. No.5668 of 24 dated 23.12.2024*** the Hon’ble Kerala High Court has held that “However, if the earlier application of the same nature was dismissed as withdrawn/not pressed, the Registry shall first place it before the Judge who disposed off the earlier application who shall have the discretion to decide whether the earlier application was considered on merits before it was dismissed as withdrawn/not pressed. If the Judge who passed the orders of withdrawal/not pressed, is of the view that there was no consideration on merits of the earlier application, the said Judge will be at liberty to direct the Registry to place it before the Judge as per the prevailing roster.”.

Thus, in this case where the previous two applications u/s 23(1) of PWDV Act being dated 24.06.2022 and 28.04.2025 were not disposed of on merit, as the same were not pressed, there is no bar in filing a subsequent application.

Further the Hon’ble Delhi High Court in ***Manoj Kumar vs. Sangeeta CRL.REV.P. (MAT.) 167/24 dated 01.07.2025*** has held that “If a narrower interpretation were to be given to the provision i.e. that an application is a pre-condition for grant of interim maintenance, the same would militate against the very object of the scheme of providing maintenance to a dependant, who is unable to maintain himself/herself, where the person who has sufficient means has refused or neglected to maintain the dependant.

16. Keeping in view the beneficial object of the statute, it is held that the filing of an application seeking interim maintenance would not be a precondition for grant of interim maintenance pending consideration of the petition seeking maintenance under section 125 Cr.P.C.. It would be open to the trial court to grant interim maintenance, in the facts and circumstances of the case, pending consideration of the application for grant of maintenance under section 125 Cr.P.C.

17. I find no merit in the contention of the learned counsel for the petitioner that since respondent had withdrawn her application, she had forgone her right to claim maintenance. Said application was withdrawn for expeditious disposal but expeditious disposal has not happened. Two and a half years have passed since the withdrawal and the wife is without any maintenance.”.

Thus by the force of section 28 of PWDV Act where it is provided that all the proceedings under the various provisions of PWDV Act including section 23 shall be governed by the Code of Criminal Procedure 1973 the above decision also applies squarely in this case.

Order dated 01.07.2026 contd....

Thus, in the light of the discussions made hereinabove the petitioner can move the application u/s 23 (1) of PWDV Act dated 15.12.2025 independently with that from the previous applications under the same provisions which were not pressed.

Hence, it is

Ordered

that the application dated 16.03.2026 of non-maintainability of interim applications is hereby rejected on contest.

Fix **31.08.2026** for hearing of the application u/s 23 (1) of PWDV Act dated 15.12.2025.

D & C by me,

JM/3rd Court/Serampore

JO Code:WB01406