

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

CRM(M) 107/2026

BENISH AIJAZ AND ANOTHER **...Petitioner/Appellant(s)**

Through: Mr. Z. A. Shah, Sr. Advocate with
Mr. Syed Rehan, Advocate

Vs.

TARIQ WALI **...Respondent(s)**

Through: None

CORAM: HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

ORDER

08.05.2026

1. Having regard to the controversy involved, the matter is taken up for consideration. The present petition appears to be a second round of litigation between the parties. Earlier, it was the respondent-husband who had challenged the order of maintenance, whereas now the petitioner-wife has approached this Court seeking to assail the order passed by the Appellate Court in proceedings arising under the Domestic Violence Act.
2. Briefly stated, the parties were engaged in proceedings under the Protection of Women from Domestic Violence Act, 2005 in short, the DV Act, as well as under Section 125 Cr.P.C. The petitioners had initially instituted an application under Section 12 of the DV Act along with a petition under Section 125 Cr.P.C. During the pendency of those proceedings, a compromise was arrived at before the Lok Adalat on 17.04.2021. The parties were also blessed with a minor daughter. However, the settlement failed to fructify on account of alleged breaches committed by either side, compelling the petitioners

to file fresh proceedings under Section 12 of the DV Act and Section 125 Cr.P.C. before the Additional Special Mobile Magistrate, Shopian. In the proceedings under the DV Act, petitioner No.1 was awarded maintenance to the tune of Rs.25,000/- per month, whereas in the proceedings under Section 125 Cr.P.C., maintenance of Rs.20,000/- per month came to be granted, thereby entitling the petitioners to a total monthly maintenance of Rs.45,000/-. Subsequently, the proceedings under Section 125 Cr.P.C. were transferred to the Court of 4th Additional Sessions Judge/Family Court, Srinagar, where the matter is presently pending.

3. In the meantime, the petitioners-initiated execution proceedings. Petitioner No.1 also sought execution of the Lok Adalat award dated 17.04.2021, which, however, came to be set aside by this court at the instance of the respondent in CM(M) No.244/2024 titled *Tariq Wali vs. Banish Aijaz and Anr.* vide order dated 16.05.2025. Consequent upon quashment of the proceedings culminating in the compromise before the Lok Adalat, and considering that the petitioners had already resorted to fresh proceedings under the DV Act and Section 125 Cr.P.C., this Court directed that interim monetary relief be paid in terms of the order dated 30.01.2023 passed by the Additional Special Mobile Magistrate, Shopian, so that the accumulated arrears could be cleared by the respondent.
4. During the pendency of the execution proceedings, the Trial Court, vide order dated 31.10.2025, found that the respondent had fallen into arrears amounting to Rs.3,48,000/- and had failed to liquidate the same. Consequently, the Trial Court ordered attachment of the respondent's property for recovery of the said amount. Aggrieved thereof, the respondent preferred Criminal Appeal No.132/2025 before the Court of Additional Sessions Judge, Srinagar, which came to be decided on 08.12.2025. The Appellate Court observed that, against the total arrears claimed by the petitioners amounting to Rs.8,25,000/-, the respondent had already paid Rs.8,17,000/-, leaving only a balance of Rs.7,000/-. It was further held that the Trial Court had not properly assessed the arrears and had tentatively computed

amounts that were not part of the original execution petition. Accordingly, the Appellate Court set aside the order passed by the Trial Court and directed the petitioners to file a fresh execution petition for recovery of any outstanding amount after furnishing proper calculations and statement of accounts. The aforesaid order is under challenge in the present petition.

5. During the course of arguments, learned counsel for the petitioners fairly conceded that, insofar as the earlier arrears were concerned, only an amount of Rs.7,000/- remained outstanding out of the total claimed arrears of Rs.8,25,000/-. It was, however, contended that the amount of Rs.3,48,000/- represented arrears that had accrued during the pendency of the execution proceedings and, therefore, the Trial Court had rightly directed recovery of the said amount. Learned counsel admitted that when the execution petition was filed on 02.02.2025, the outstanding arrears were Rs.8,25,000/- and during the pendency thereof, the respondent had paid Rs.8,17,000/-, leaving only Rs.7,000/- outstanding. It was also conceded that the arrears accruing subsequently during the pendency of the execution petition could appropriately be made the subject matter of a separate execution petition, though it was argued that filing of a fresh execution petition was not necessary.
6. Having considered the matter, this Court finds no infirmity in the view taken by the Appellate Court. Once the arrears originally sought to be recovered in the execution petition stood substantially satisfied and only an amount of Rs.7,000/- remained unpaid, any subsequent arrears accruing during the pendency of the execution proceedings were required to be pursued independently by way of a separate execution petition in accordance with law and within the prescribed period of limitation. The Appellate Court has correctly appreciated the controversy and has rightly observed that the Trial Court could not have tentatively computed and included amounts which were not part of the original execution petition. Accordingly, the order impugned does not warrant any interference by this Court. Nevertheless, the petitioners shall remain at liberty to seek recovery

