

KAUK030004722017



**ORDERS ON APPLICATION SEEKING TO STRUCK OFF
THE DEFENCE OF THE RESPONDENT**

1. The petitioner has filed this application seeking to struck off the defence raised by the respondent.

2. In the application it is stated that respondent has been ordered to pay interim maintenance to the tune of Rs.2,500/- per month to the petitioner. However, the respondent has consistently failed to comply the order of this Court for a period of two years and above and has even refrained from appearing before the Court to file his affidavit pertaining to his assets and liabilities inspite being directed. Besides, he is also evading the warrant issued by this Court. It is further stated that there has been willful and deliberate disobedience of the order of this Court by the respondent hence she prays to struck off the defence raised by the respondent.

3. Respondent resisted the application on the grounds that he was earlier working in a hotel at Puna and he was a lower cadre employee. During Covid pandemic said hotel is closed and he has lost his job. That he is sick now and is not in a position to do any work. He is presently unemployed and has no source of earning. He being sick is under treatment and he is unable to bear his own medical expenses. On the other hand, petitioner is a healthy lady and she is not dependent. That the son of the petitioner and respondent is with her and he is earning as such she is taken care of by her son. Therefore, she does not require maintenance. Further it is contended that he is not an

intentional defaulter since he has paid the maintenance for long time which is more than Rs.50,000/-. Arrears of maintenance if any is due to the inevitable circumstances as described supra. That the opportunity should be given to both the parties to put forth their case completely and if the defence is struck down it will not be possible to adjudicate the case effectively. It is also contended that P.W.1 consistently remained absent before this Court as such the matter is delayed and his counsel is ever ready to cross-examine the P.W.1. In this regard, he sought for dismissal of the application.

4. Heard both the sides. Perused the materials placed fore of this Court.

5. Having regard to the above assertions and contentions the following points arise for the consideration of this Court;

(i) Whether the petitioner has made out sufficient grounds so as to allow the instant application and thereby to struck off the defence of the respondent?

(ii) What order?

6. My answer to the above points are as follows;

Point No.1: In the **Negative**

Point No.2: As per the final order for the following.

REASONS

7. POINT NO.1: Instant application is preferred by the petitioner praying to struck off the defence raised by the respondent since he has constantly failed to comply the

order of this Court for the period of more than two years and has not paid the interim maintenance of Rs.2,500/- per month to the petitioner as ordered. Besides he is evading the warrant issued by this Court. Per contra, respondent contended that he has lost his job during Covid pandemic and currently he is sick now which has restrained him from doing any work. He being unemployed finding it difficult to bear his own medical expenses. That the inevitable circumstances has placed him in financial crisis as such he could not comply the order of this Court. He states that the maintenance due if any is only because of unavoidable circumstances explained supra.

8. I have gone through the medical reports of the respondent produced by him. Medical Reports are of 2020. However upon perusal of the ordersheet and the materials available on record it appears that respondent has paid only Rs.32,500/- till date. Arrears of maintenance were standing to the tune of Rs.53,000/- that too as on 10.02.2021. Learned Advocate for the petitioner relied upon the Judgment of the Hon'ble High Court of Kerala in Neethu v. Trijo Joseph in OP (Crl.) No.226 of 2022 in support of his case and argued that the Hon'ble Apex Court in Rajnesh v. Neha and another reported in 2020 (6) KHC 1 upheld the power of the Court to strike off the defence if there was non-compliance with the order of payment of maintenance. It can be seen that respondent not at all appeared before the Court during the pendency of proceedings.

9. The counsel for respondent would argue that failure on the part of the respondent to pay the maintenance is not intentional rather due to exceptional circumstances. That the respondent being sick he could not work for gain. Besides, son of the petitioner and respondent is residing with the petitioner and he is employed and he is taking care of the petitioner. It is the argument of the counsel for respondent that if the defence of the respondent

is ordered to be struck off, then he would be unable to put forth his version and consequently it would not be possible to adjudicate the lis effectively. At this juncture, it is necessary to note here that principles of natural justice contemplates that person shall not be condemned unheard. It is true that respondent has not paid the interim maintenance to the petitioner as ordered by this Court. However the circumstances under which he has done so also needs to be taken into consideration. It is submitted that respondent is not well and he is undergoing treatment. In case if the defence of the respondent is ordered to be struck down then respondent cannot establish his case or demonstrate as to why the relief claimed by the petitioner should not be granted or orders should not be passed against him. Further it will lead to multiplicity of proceedings and there will no end to the litigation. Hence for the foregoing reasons and discussion point No.1 is answered in the ***Negative***.

10. POINT NO.2: In light of answering point No.2 in the negative this Court proceeds to pass the following.

ORDER

The application filed by the petitioner seeking to struck off the defence of the respondent is dismissed.

However it is hereby made clear that respondent shall deposit part of arrears of maintenance on the next date of hearing.

Call on for cross-examination of P.W.1 by 09.07.2024.

**Addl. Civil Judge & JMFC-II,
Karwar.**