

**IN THE COURT OF THE JUDICIAL MAGISTRATE OF FIRST CLASS-I,
PERUMBAVOOR**

Present: Sri.Anish Babu M.B., Judicial Magistrate of First Class-I

Thursday the 20th day of February, 2025/ 1st Phalguna 1946

MC 65/23

Petitioner	Asna Akbar, Aged 21/23, D/o Akbar, Kattithodiyil House, Mudikkal P.O, Mudikkal Kara, Marambilly Village, Kunnathunad Taluk, Ernakulam.
Respondents	<p style="text-align: right;">(By Adv. B. Raghukumar)</p> <ol style="list-style-type: none"> 1. Ubais, Aged 27/23, S/o Meethiyan, Pommurunikkal House, Vengola P.O, Ponjassery Kara, Vengola Village, Kunnathunad Taluk. 2. Meethiyan, Aged 55/23, Pommurunikkal House, Vengola P.O, Ponjassery Kara, Vengola Village, Kunnathunad Taluk. y Village, Kunnathunad Taluk. 3. Suhra, Aged 50/23, W/o Meethiyan, Pommurunikkal House, Vengola P.O, Ponjassery Kara, Vengola Village, Kunnathunad Taluk. 4. Sauda, Aged 23/23, D/o Meethiyan, Pommurunikkal House, Vengola P.O, Ponjassery Kara, Vengola Village, Kunnathunad Taluk. <p style="text-align: right;">(Adv. Bindu.P.Nair - R1, R3 & R4) [Adv. Kadheeja M H - R2 (Legal Aid)]</p>

ORDER

This petition is filed by the petitioner under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as 'the DV Act'). The petitioner prays to strike off the defence of the respondents as the 1st respondent failed to provide interim maintenance in terms of the common order of this court vide CMP No. 3614/2023 & 3615/23 dated

20.04.2024 and he defaulted Rs.89,000/- in that count.

2. The petitioners submit as follows: -

The 1st respondent is the husband of the petitioner and respondents No.2 to 4 are her in-laws. The marriage of the first petitioner with the 1st respondent was solemnised on 28.08.2022 as per the Muslim religious rites at Cheruvelikunnu Jama Ath Hall. At the time of marriage, the 1st respondent was working as tipper lorry driver. The petitioner was given 21 sovereigns of gold ornaments and Rs.2 lakhs as her share. The amount of Rs.2 lakhs was entrusted with the respondents No.2 and 3. The respondents made belief the petitioner and family that the 1st respondent is a graduate and he is also doing the business of vehicles. It was also assured that if the petitioner wishes to continue her studies, they would make arrangements for the same. The petitioner's family also gave some household articles to the petitioner. According to the petitioner two months after the marriage, the respondents started to harass the petitioner physically and emotionally. It is also alleged that the 1st respondent is an addict of ganja, Hans etc. He has an illegal relationship with other ladies. He is always chatting with other ladies. When the petitioner questioned the same, the 1st respondent brutally manhandled her. It is also stated that the 1st respondent had compelled the petitioner to perform unnatural sex and now the petitioner is taking treatment for the same. The 2nd respondent also misbehaved with the petitioner. The respondents are trying to represent the petitioner as a mental

patient. The respondents also evicted the petitioner from the shared household. It is submitted that the respondents are not allowing her to live peacefully in her own house also. The respondents also threatened to leave the life of the 1st respondent. They are trying to dispose of the shared household. The petitioner has no job or income of her own. The 1st respondent is working as a tipper lorry driver and getting an income of Rs.60,000/- per month. According to the petitioner, the 1st respondent is liable to look after the affairs of the petitioner. Hence the petitioner approached before this court. This court vide common order in CMP 3614/23 and 3615/23 dated 20.04.24 has already directed the 1st respondent to pay an amount of Rs.10,000/- per month to the petitioner as interim monthly maintenance from the date of the petition, CMP 3615/23 and that is to be paid on or before 10th of every month. Now it is submitted that an amount of Rs.89,000/- is still due from the 1st respondent towards interim maintenance.

3. Though many opportunities have been granted to the 1st respondent to comply with the direction to provide interim maintenance, he did not even care to pay the same regularly. Lastly, on 06.02.2025, the learned counsel for the petitioner submitted that over Rs. 89,000/- is still due from the 1st respondent towards interim maintenance. Hence the 1st respondent was directed to give at least Rs.50,000/- within 10 days. However, the 1st respondent deliberately evaded the payment of interim maintenance and has not paid a single penny in compliance with the same. When the matter is specifically

posted for hearing on striking of defence, the respective counsel has simply requested further time and submitted that an appeal is pending against the common order passed by this court as early as on 20.04.2024 and also fairly conceded that no order of stay has been obtained so far. After all, mere filing an appeal will not render the order of this court invalid nor the same would act as an unfettered power to flout the order of this court in the matter of providing the interim maintenance. Hence this court was constrained to hear the matter regarding the striking of defence as a last resort.

4. Heard the learned counsel on both sides.

5. The points that arises for determination is: -

1. Whether the 1st respondent has deliberately failed to provide the interim maintenance to the petitioner?

1. If so, whether this court justified in striking of the defence of the 1st respondent as a last resort?

6. **Point Nos. 1 and 2:-** For the sake of convenience, both points are considered together. An evaluation of the averments in the affidavit filed by the petitioner in MC is sufficient to conclude that the respondents have committed domestic violence against her. This court vide common order in CMP 3614/23 and 3615/23 dated 20.04.24 has already directed the 1st respondent to pay an amount of Rs.10,000/- per month to the petitioner as interim monthly maintenance from the date of the petition, CMP 3615/23. It is submitted by the

petitioner that the 1st respondent has defaulted an amount of Rs. 89,000/- towards interim maintenance. The question to be decided is whether this court will be justifiable in invoking its extraordinary power to strike off the defence on nonpayment of the interim maintenance.

7. The 1st respondent has not filed any objection in the petition for getting interim maintenance. The petitioner is the wife of the 1st respondent. After all, there is no sustainable grounds to deny the ordered interim maintenance to the petitioner. The **Hon'ble Apex Court of India in Anju Garg v. Deepak Kumar Garg, reported as 2022 ICO 2133: 2022 (7) KHC SN 10** has held as follows;

'Though it was sought to be submitted by the learned Counsel for the Respondent, and by the Respondent himself that he has no source of income as his party business has now been closed, the Court is neither impressed by nor is ready to accept such submissions. The Respondent being an able-bodied, he is obliged to earn by legitimate means and maintain his wife and the minor child.'

According to the petitioner, 1st respondent is working as a tipper lorry driver and getting an income of Rs.60,000/- per month. I have perused the statement of assets and liabilities filed by the petitioner. It is affirmed by the petitioner in her statement that she is not earning any income from any source. Further, it is noticed that the petitioner has no independent source of income. From the averments made in the affidavit filed by the petitioner in the Section 12 petition, it is clear that the 1st respondent herein is an able-bodied person and

is capable of earning sufficient income. When the husband has the ability to earn a better livelihood, he has the liability to look after the wife on par with his decency. It is well settled that maintenance laws have been enacted as a measure of social justice to provide recourse to dependant wives and children for their financial support, so as to prevent them from falling into destitution and vagrancy. It is also well settled that the court can strike off the defence of the spouse who violates the interim order of maintenance passed by the said court as a last resort. Where the spouse who is to pay maintenance fails to discharge the liability, the other spouse cannot be forced to adopt time-consuming execution proceedings to realise the amount and the court cannot be a mute spectator watching flagrant disobedience of the interim orders passed by it showing its helplessness in its instant implementation. **The Hon'ble Apex Court of India in Rajnesh Vs. Neha, reported as AIR 2021 SC 569: (2021) 2 SCC 324** has held that striking off the defence of the respondent is an order which ought to be passed in the last resort, if the courts find default to be wilful and contumacious, particularly to a dependant unemployed wife, and minor children. It was also held that the contempt proceedings for wilful disobedience can be initiated before the appropriate court.

8. It is clearly revealed from the case proceedings that the respondent in MC was directed to pay interim maintenance to the petitioner vide common order dated 20.04.2024 in CMP Nos. 3614/23 and 3615/23. It is also pertinent to note here that the non-providing of ordered interim maintenance on

consecutive occasions also shows the evasive stand of the 1st respondent to obey the due court processes. So, as rightly pointed out by the learned counsel for the petitioner in MC, the attempt of the 1st respondent in MC is only to deny the interim maintenance and also to incommode the petitioner economically which itself amounts to harassment. In the case on hand, the petitioner has evidently been running from pillar to post and has been compelled to suffer a lot to get interim maintenance from her husband since 2023. It is really a heart-burning situation that the petitioner in MC is undergoing a pathetic lifestyle even though her able-bodied husband is leading his normal life without even considering the plight of the stranded human being like the petitioner. It is also totally unbelievable that the 1st respondent is not having any sufficient income to provide maintenance to his wife. In view of the discussion made hereinabove, this court is of the considered opinion that it is a fit case to strike off the defence as the respondent is striving to impair the court from proceeding further and also to defeat the very objective of the DV Act by even not paying the ordered interim maintenance amount, regularly. It is already held in the foregoing discussions that the very attempt of the 1st respondent is only to evade the payment of interim maintenance deliberately in one way or another. According to the petitioner an amount of Rs. 89,000/- is still due from the 1st respondent towards interim maintenance. Hence this court is of the firm opinion that this is a fit case to strike off the defence and the points are answered in favour of the petitioner.

In the result, the petition is allowed and the defence of the 1st respondent is struck off, accordingly.

Pronounced by me in Open Court this the 20th day of February, 2025.

sd/-

**Judicial Magistrate of First Class-I,
Perumbavoor**