



ORDER BELOW EXH. 27
(Passed on 30.01.2026)

1. The applicant has moved this instant application for striking of defence of the respondents. It is the contention of the applicants that, the order below Exh.5 was passed on 10.04.2025 and thereby directed the respondent No.1 to pay Rs.3,000/- each per month to the applicant No.1 to 3 towards interim maintenance from the date of the application till final decision of the case. It is further contended that despite the order, the respondent No.1 did not pay the amount as ordered to the applicant. Since 10.04.2025 there is Rs.1,33,000/- outstanding against the respondent No.1. The respondent No.1 has disobeyed the order of the Court. Hence, applicants prayed for striking of the defence of the respondents.

2. On the other hand, the the ld. Advocate for the respondents strongly opposed the application by filing their reply at Exh.28. It is submitted that, the application is not tenable in the eyes of law. The respondent No.1 has paid considerable amount towards arrears of maintenance. Respondents have filed an appeal against the order of interim maintenance passed on 10.04.2025 vide Misc.Cri.Appl.No.41 of 2025 and this appeal is pending in the Court of District & Sessions Court, Khamgaon. Applicants left house of the respondent without any reason. Applicant No.1 is not depend on respondent No.1 and she is earning to support livelihood of applicants. Respondent No.1 has filed a HMP petition



in the Court of CJJD, Malkapur for restitution of conjugal right. Hence, the application is liable to be rejected with cost.

3. Perused the application and record. Heard both parties. After perusing the record it is noticed that after passing order on 10.04.2025 the respondent No.1 has failed to pay interim maintenance to applicants. The respondent No.1 has paid Rs.2,000/- to the applicants on 11.07.2025 vide Exh.24 and Rs.2,000/- on 31.12.2025 vide Exh.32.

4. The Apex Court in the case of **Rajnish -Vs- Neha Crim. Appeal No. 730/2020** it was held that "*the Court has powered to strike off the defence if there is non-compliance with the order of the payment of maintenance. However, it was held that striking off defence is an order which ought to be passed in the last resort, if the Court finds default to be willful and contumacious, particularly to a dependent unemployed wife and child.*"

5. The learned Advocate for the respondent No.1 has placed his reliance upon Girish Pardeshi Vs. Harsha Pardeshi & Ors. Write Petition No.606 of 2018, wherein it was held by Hon'ble Bombay High Court that, "*Even if the husband had not obeyed the orders of the Court and had not deposited the arrears of interim alimony, then also before taking a drastic measure of striking off the evidence, he should have been given a reasonable opportunity*



to pay the arrears of pendent lite. The proper courses would have been to permit the wife to lead her evidence and Court could have directed the husband to pay some portion of the arrears of maintenance and on payment of such amount he could have been permitted him to cross examine the witnesses produced by his wife and the husband should have further been directed that only in case he deposits the total arrears of maintenance pendent lite he would be permitted to lead his own evidence. Striking off evidence is a very serious matter. It renders the party defenseless. This action is to be taken only as last resort when all other means fail. It cannot be used as short cut to divest any party of its valuable right to cross examine the witnesses of the opposite side and to lead evidence in support of its case”.

6. Therefore, one thing is clear that, the defence of the respondent can be struck off if the respondent did not obey the order of Court. The only impediment is that, the striking of the defense is an order which ought to be pass in the last resort, if the Court finds that, the default is willful.

7. In the present matter admittedly the order of interim maintenance is passed on 10.04.2025. The respondent No.1 has only paid Rs.4000/- interim maintenance amount to the applicants till today. Merely because the respondent No.1 has preferred an appeal against the order of interim maintenance and he has filed HMP petition for restitution of conjugal right that does not mean

MHBU070010252024



PWDVA No. 20/2024
Jyoti & Ors. Vs. Gopal & Ors.

that, respondent No.1 is not liable to pay interim maintenance. Admittedly there is no stay order granted in favour of respondent No.1 in the said appeal which he has been preferred against interim maintenance order.

8. Upon perusal of the record it is noticed that, the applicant No.1 did not take any step for execution of the interim maintenance order. The filing of application of striking of defence would be the last resort available to the applicants. Considering the stage of the matter the applicant is at liberty to execute the interim order passed in her favour. The applicant is also directed to lead evidence. It may be noted that, the respondents will only get opportunity to cross examine the applicant and her witnesses if he pay some portion of the arrears of interim maintenance. In view of the above discuss circumstances the present application is rejected. Both the parties shall take note of this order.

Shegaon.
Dt. 30.01.2026

(Smt.M.K.Gote)
Judicial Magistrate (First Class)
(Court No.2), Shegaon.