

ORDER BELOW EXH. 1

1. Non-applicant by name Ram s/o Krushnarao Deshmukh R/o. Manishnagar, Nagpur is produced before me. Today at about 04:45 p.m. under execution of arrest warrant for commission of his default to pay interim maintenance to applicant. It appears that my Ld. Predecessor pleased to observe that non-applicant is deliberately refusing to pay the amount of maintenance. Despite of issuance of distress warrant he failed to pay the amount of maintenance. Not only this but in the open court he flatly refused to pay the amount. As such his conduct shows that he do not want to pay the amount and obey orders of court.

2. Earlier my Ld. predecessor issued arrest warrant on 05.03.2025 returnable on 19.03.2025. On the date 19.03.2025 report of service of warrant is not received therefore fresh arrest warrant was issued returnable on today. However police submitted earlier report and executed the warrant. Admittedly the warrant remains in force unless it is canceled. Therefore though police have executed earlier arrest warrant, it may be technical error. It is noticed that till today the warrant is not canceled.

3. Considering all aforesaid facts, I have heard non-applicant

in person. He has no complaint of ill-treatment at the hands of police. He submitted that he do not want to pay amount to applicant. He also made statement that court is issuing warrants though he is remaining present before court. He is not represented by an Advocate therefore an Panel Advocate on behalf of State i.e. Retainer Lawyer Smt. K. S. Lanjewar is appointed to represent him. It is submitted by Adv. Shri. P. R. Bhandarkar for applicant that the non-applicant is deliberately avoiding to pay amount of maintenance. His behavior is not proper. He is not obeying orders of court therefore there is no option but to detain him behind bars. On the contrary Ld. Adv. Smt. K. S. Lanjewar submitted that non-applicant is unable to pay maintenance.

4. Taking into consideration submissions made by both side, it is seen that my Ld. predecessor pleased to grant interim maintenance in PWDVA Apl. No. 28/2022 on 10.08.2023. An amount of Rs. 3000/- is directed to pay since 21.10.2022. However non-applicant has not paid amount till today. On asking him about the payment today he flatly refused and stated that he will not pay the amount to applicant. It appears that earlier distress warrant was sent time to time but invain. Therefore my Ld. Predecessor appears to be consider all facts and pleased to issue arrest warrant as non-applicant committed

default. No doubt, non-applicant has committed default to pay interim maintenance to applicant therefore much amount is due for him. He refused to pay the amount. Even though in my view there are specific guidelines given by Apex Court in ***Rajnish Vs. Neha (2021) 2 SCC 324.***

5. Hon'ble Apex Court has laid down specific guidelines and procedure for the purpose of execution of amount of maintenance and other charges. It is specified that the amount of maintenance should be recovered as money decree therefore procedure laid down in Order XXI of CPC, more particularly section 51, 55, 58 and 60 of CPC should be followed. Considering those principles, it is necessary to issue notice, distress warrant in respect of movable and thereafter for immovable property. If it is noticed that there is no such property available for attachment then court should proceed for arrest of non-applicant, extreme circumstances. However on perusal of record and proceeding, I do not find such reports to show that he is not having immovable property. As such it is noticed that the procedure prior to issuance of arrest warrant is missed. There is option for applicant to get orders for attachment of the property either movable or immovable belongs to non-applicant, if it is not available then to proceed for further steps.

6. In view of aforesaid reasons, though non-applicant refused to pay the amount of interim maintenance and committed default for the same, due to failure to follow the procedure to attach his property, I do not find justifiable reason to send him behind bars. It is therefore necessary to release him with direction to applicant to take appropriate steps as per guidelines given in the judgment of Hon'ble Apex Court in *Rajnesh Vs. Neha (Cited Supra)*. Hence by making aforesaid observations I pass following order.

ORDER

1. The order of arrest warrant made earlier is hereby set aside in the interest of justice.
2. Non-applicant be released forthwith.
3. Applicant is directed to take appropriate steps as per guidelines given in the judgment of Hon'ble Apex Court in *Rajnesh Vs. Neha (2021) 2 SCC 324*.

Place : Tirora
Date : 02.04.2025

(D. S. Wamane)
I/c. Judicial Magistrate First Class,
Tirora.