


MHNG080027462023 	PWDVA No.47/2023 Prerana Vs. Sachin
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Order below Exh.24

1. Applicants by way of this application praying for striking out of defence of non-applicant under Order VI Rule 16 of Code of Civil Procedure read with Section 23 of Protection of Women from Domestic Violence Act (hereinafter referred as DV Act, 2005)
2. According to applicants interim maintenance is granted in their favour. But till today not a single pie is paid towards interim maintenance. Learned Advocate for applicants placed reliance upon the judgment of Hon'ble Kerala High court in the case of Nitu Vs. Trijo Joseph. Finally to allow the application.
3. Read application, heard learned Advocate for applicant Smt Ganvir for applicants and peruse record. Admittedly order below Exh.16 is passed by this court on 24 January, 2025 directing non-applicant to pay maintenance of Rs.5,000/- per month to applicant No.1 while Rs.4,000/- to applicant No.2 as a interim maintenance.
4. Further Criminal M.A. No.51/2025 is already filed by applicants for recovery of arrears of amount. Record further shows in the criminal M.A. No.51/2025 notice is served to non-applicant within the court premises as per order below Exh.5. Non-applicant had sought time to file reply. Record shows purshis below Exh.8 is filed by non-applicant contending that criminal appeal bearing No.65/2025 is pending before Hon'ble District Court, Nagpur. Application below Exh.12 dated 08.04.2025 was filed by applicants praying for issuing of distress warrant against non-applicant for recovery of amount of Rs.1,17,000/-.
5. Interesting here to be noted that, non-applicant had filed application for stay to the proceeding at Exh.28 till bring stay order from

appellate court. Which also came to be rejected by this court by observing that, since there is no provision to stay to the order passed by the court itself. Today when the matter is called out and Advocate for non-applicant is ready to cross examine the witness. The applicant filed this application with a prayer of striking out defence.

6. Be that as it may with all respect to the ratio laid down by Hon'ble Kerala High Court in the case cited (Supra). It has been observed that defence can be strike out as a last resort. The word "**last resort**" has been used which means that, if all efforts fails in such circumstances court as to exercise jurisdiction under Section 28 by adopting its own procedure and court may strike out the defence of non-applicant. Since this court has already issued distress warrant against non-applicant as per order below Exh.12 dated 30.06.2025. Report of distress warrant is awaited in such circumstances. This court is of the opinion that, it is not a fit case at this juncture to strike out of the defence of non-applicant. Hence, I pass following order.

Order

1. Application is rejected.

Date- 05.08.2025

Place- Kamptee

(Q. R. Syed)

Judicial Magistrate First Class,
(Court No.3), Kamptee, Dist. Nagpur.

Conduct

After passing of order, learned Advocate for non-applicant submitted that, as the appeal is pending before appellate court order of interim maintenance is not final. Both sides of parties heard by appellate court. Matter is posted for order on stay application next date posted on 11.08.2025. Hence conduct recorded.

As there is no speaking stay order granted by appellate court, order of distress warrant is intact. Parties to take note and act accordingly.

ENDORSEMENT

Case argued on	:	05.08.2025
Order dictated on	:	05.08.2025
Transcription ready on	:	05.08.2025
Order checked and signed on	:	05.08.2025

CERTIFICATE

I affirm that the contents of this P.D.F. File are same word to word as per original Order.

Name of Steno :- **Vrushabh Wanjari**