

HMP .No. 6/2024**Akshay / Pooja****CNR No. MHOS170001832024**

COMMON ORDER BELOW EXH.52 AND 54
(Passed on 23/12/2025)

1. By virtue of Exh. 52, the respondent claims various reliefs such as direction to deposit arrears of maintenance amount, stay of further trial and payment in compliance of order of interim maintenance and striking of petitioners case due to non payment of interim maintenance. Counter to it, the petitioner filed application at Exh. 54 specifying that against the order of interim maintenance he proposes to file a writ petition. Hence, requesting to direct respondent to conduct cross examination of the petitioner

2. Heard both the Ld. Advocate at length. Admittedly by an order below Exh. 8, interim maintenance of Rs. 6,000/- per month is granted to the respondent which includes expenses of the proceedings. The petitioner submitted that, against said order he proposed a writ petition. Admittedly, it is a constitutional right of the parties to seek redressal before the competent forum either in terms of writ or by other modes. However, the intention of legislature behind enacting Section 24 should not be forgotten. It meant for extending a helping hand to the parties concern to redress their grievances in matrimonial dispute. Therefore, to achieve such object, the order below Exh. 8 is required to be followed, subject to any order about its setting aside or variance thereof. However, petitioner has not placed anything on record which show the existence of any stay or variance or setting aside such order. Therefore, in absence of such order of competent

appellate or writ forum, the order is executable with all its necessary consequence.

3. This analogy equally applicable to the respondent in terms of prayers under Exh.52. So far as direction is to deposit the amount is concern, Exh. 8 is still in operation so question of issuance of fresh direction is not survive. So far as, stay to the proceeding is concern, the petition under Hindu Marriage Act given limited time for disposal of main petition including interim one. Therefore, stay in the proceeding until the compliance of order below Exh. 8 (which will continue till the final disposal of the proceeding) would amounts to stay for uncertain period, which is not purport of section 24. The proportionate balance must be maintain which includes periodical payment as well as continuance of the trial for reaching its logical end.

4. So far as, prayer for initiating coercive action like striking out the case is concern, the findings of Hon'ble Apex Court in Rajenesh Vs. Neha in MANU/SC/0833/2020, plays a important role. While discussing the judgment of Punjab and Haryana High Court the Hon'ble Apex Court has clarify when such action can be taken. It is reproduced herein below:-

The Punjab & Haryana High Court in Mohinder Verma v. Sapna MANU/PH/3684/2014, discussed the issue of striking off the defence in the following words:

8. Section 24 of the Act empowers the matrimonial court to award maintenance pendente lite and also litigation expenses to a needy and indigent spouse so that the proceedings can be conducted without any hardship on his or her part. The proceedings under this Section are summary in nature and confers a substantial right on the Applicant during the pendency of the proceedings. Where this amount is not paid to the applicant, then the very object and purpose of this

provision stands defeated. No doubt, remedy of execution of decree or order passed by the matrimonial court is available Under Section 28A of the Act, but the same would not be a bar to striking off the defence of the spouse who violates the interim order of maintenance and litigation expenses passed by the said Court. In other words, the striking off the defence of the spouse not honouring the court's interim order is the instant relief to the needy one instead of waiting endlessly till its execution Under Section 28A of the Act. 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 for realising the amount. Court cannot be a mute spectator watching flagrant disobedience of the interim orders passed by it showing its helplessness in its instant implementation. It would, thus, be appropriate even in the absence of any specific provision to that effect in the Act, to strike off the defence of the erring spouse in exercise of its inherent power Under Section 151 of the Code of Civil Procedure read with Section 21 of the Act rather than to leave the aggrieved party to seek its enforcement through execution as execution is a long and arduous procedure. Needless to say, the remedy Under Section 28A of the Act regarding execution of decree or interim order does not stand obliterated or extinguished by striking off the defence of the defaulting spouse. Thus, where the spouse who is directed to pay the maintenance and litigation expenses, the legal consequences for its non-payment are that the defence of the said spouse is liable to be struck off.

(emphasis supplied)

95. The order or decree of maintenance may be enforced like a decree of a civil court, through the provisions which are available for enforcing a money decree, including civil detention, attachment of property, etc. as provided by various provisions of the Code of Civil Procedure, more particularly Sections 51, 55, 58, 60 read with Order XXI. 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.

5. As emphasised in Para No. 95, the enforcement of such interim maintenance is just like an enforcement of the decree for which modes under Order 21 of CPC is provided. So far as striking out is concern, as shown and discussed in Para No. 95 above, it should be opted as a final resort after exercising the necessary modes provided earlier along with findings about willful and contumacious conduct of the parties concern.

6. In the light of discussion supra, it is required to direct the petitioner to follow the mandate of order under Exh.8 subject to any order passed by the Hon'ble High Court at the relevant time. At the same time it is further directed to the respondent to take part in the proceeding unless in existing stay by any competent Court in pursuance of order below Exh. 8. Accordingly, the petitioner should comply the order below Exh. 8 till next date, subject to any order by the Hon'ble High Court. In absence thereof, Court will proceed further in terms of guidelines issued by the Hon'ble Supreme Court in the judgment of Rajnesh (supra). Till both parties should take part in conducting trial in hand.

Accordingly both applications below Exh. 52 and 54 are disposed of.

Parties to take note.

Place:- Kallam
Date:- 23/12/2025

(**P. R. Kulkarni**)
Civil Judge Senior Division
Kallam

CERTIFICATE

I affirm that, the contents of this P.D.F. file Judgment / order are same, word to word, as per the original Judgment / order.

Name of Stenographer	Nikita Pandurang Jadhav Stenographer Marathi (L.G.)
Court	Civil Court, Senior Division, Kallam.
Date	23.12.2025
Order signed by the Presiding Officer on	23.12.2025
Order uploaded on	24.12.2025