

CNR.No.MHPU200039392023.

PWDVA Exe. Petition No. 51/2023.
Komal Gavhane Vs Nitin Gavhane.

PWDVA. Petition No. 51/2023.
Komal Gavhane Vs Nitin Gavhane.
CNR.No.MHPU200039392023.
ORDER BELOW EXH.20
[Passed on 20/06/2025].

The present application is prepared by the applicant for striking out the the defence as the non-applicant willfully and intentionally had not obey the order of interim maintenance.

2. The present applicant has filed petition under Section 12 of the Protection of Women from the Domestic Violence Act against the non-applicants for the relief of protection order along with maintenance and other ancillary orders. After filing of the petition the non-applicants No.1 to 6 have filed their say and written statement below Exh.11 and contested the present application. During the pendency of the petition the application for the interim maintenance was finally decided on 21/06/2024 and the non-applicant No.1 was directed to provide interim maintenance of Rs.4000/- to applicant No.1 and Rs.2000/- to applicant No.2 till the final decision of the case. Thereafter, even though the application had filed the examination-in-chef affidavit but the non-applicant had left in arrears for paying the maintenance granted by the Court. Hence, the applicant contended that the non-applicant No.1 though have been granted ample opportunities to comply with the order below Exh.5 he deliberately and willfully neglected to pay the arrears of the maintenance. Hence, by the present application applicant has prayed to struck out the defence of the non-applicant No.1.

3. The non-applicant No.1 has contested the present application by filing say on the overleaf of the application and contended that the non-applicant No.1 is a poor person and as per his

financial condition he had paid certain amounts towards the arrears of the maintenance. He is ready to abide by the order of the Court of Justice. Hence, he prayed to reject the application.

4. Heard the learned Advocate appearing on behalf of the applicant. The non-applicant No.1 and his learned Advocate though remained absent till 03.30 pm hence the application is taken for order.

5. Perused the record of the case. It appears that the main petition under Section 12 of the Protection of Women for Domestic Violence Act was filed on 22/11/2023. The non-applicants filed their say on 06/03/2024. The application for interim maintenance (Exh.5) was finally heard and decided on 21/06/2024. After passing of the order of interim maintenance on many occasions the applicant was constrained to file application for issuance of recovery warrant so as to compel the non-applicant No.1 to pay the arrears of the maintenance. In the meantime the non-applicant No.1 had paid Rs.2500/- on 23/07/2024, Rs.3000/- on 22/08/2024 and Rs.6000/- on 20/06/2024 and thereafter the non-applicant No.1 had failed in arrears to pay the regular amount of interim maintenance awarded in favour of the applicants.

6. Recently the Hon'ble Supreme Court of India has established a precedent for striking out the pleadings in domestic violence case where there are arrears of maintenance. This is based on the principle that a party's failure to comply with the interim maintenance orders can be considered as willful and contumacious. In this regard I am guided by the observation of Hon'ble Kerala High Court in the case of Nithu Vs. Trijo Joseph in which the Hon'ble Kerala High

Court was pleased to observed the the Courts have inherent powers under Section 151 of the Code of Civil Procedure to strike out the defence under ground of non compliance of interim maintenance orders. However, Hon'ble High Court was also pleased to observe before striking out the defence the Court should give the defaulting party and opportunity to comply with the order. It is also observed that the Courts are more likely to strike out the defence when the wife is dependent and is unemployed.

7. In the present case the non-applicant No.1 is absent and he had not paid on regular basis the awarded interim maintenance amount in favour of the applicant. The record shows that more than Rs.1,00,000/- is pending towards the arrears of the maintenance. The conduct and the absency of the non-applicant No.1 in a day to day proceeding itself shows and draws an inference that the default which has been committed by the non-applicant No.1 is a deliberate and intentional only to protract from paying the arrears of the interim maintenance. After perusal of the record on many occasions after filing of the application for recovery of maintenance recovery warrant has been issued by this Court. However, the said has been unserved. Though having knowledge about the order of interim maintenance showed his inability to pay the arrears.

8. By taking into consideration the ratio laid down in the above cited case of Hon'ble Kerala High Court the defence of non-applicants is to be strike out as the non-applicant No.1 has willfully and deliberately committed default in paying arrears of interim order.

9. Thus, I proceed to pass the following order.

CNR.No.MHPU200039392023.

PWDVA Exe. Petition No. 51/2023.
Komal Gavhane Vs Nitin Gavhane.

::O r d e r ::

1	Application below Exh.20 is allowed.
2.	The defence of non-applicants is strike out.

Date :- 20/06/2025.

[C. M. Kharkar]
Judicial Magistrate First Class,
[Court No. 4], Ghodnadi-Shirur.

CNR.No.MHPU200039392023.

PWDVA Exe. Petition No. 51/2023.
Komal Gavhane Vs Nitin Gavhane.

CERTIFICATE

I affirms that the contents of this P. D. F. file order are same word for word as per original Judgment.

Name of the Court	:-	C.M. Kharkar 3rd C.J.J.D. & Judicial Magistrate First Class, Ghodnadi- Shirur, Dist. Pune
Name of the Steno 3	:-	Ghungarad V M- Steno Grade-
Date	:-	20.06.2025
order signed by presiding officer	:-	20.06.2025
order uploaded on	:-	21.06.2025