


MHSN030021862018 	COMMON ORDER BELOW EXH. 59 and 60 IN CRI. M. A. NO. 270/2018 Padmashri Ashish Chudappa & Ors. Vs Ashish Mahavir Chudappa
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The present applications are filed to deny the permission to cross-examine and defence struck off under Order 39 Rule 11 of C.P.C. respectively.

2. The present matter is pending before the Court for cross examination of the applicant at the hands of non applicant. It is the contention of the applicant that, the non applicant has deposited Rs.2,75,500/- out of 11,70,000/- towards the arrears of interim maintenance. Now the due amount is of Rs.8,94,500/-. The applicant filed recovery application under section 128 of Cr.P.C. vide Cri. M. A. no. 342/2023 on 25.08.2023. However, the non applicant deliberately avoiding execution of notice in the said recovery application and he is not paying the arrears of interim maintenance in this proceeding. Therefore, it will not be proper to allow the non applicant to cross-examine the applicant and hence, she prayed that, his defence be struck off.

3. Whereas these applications are strongly objected by the non applicant by filing say below Exh. 61 and 62. He denied all the contentions in the application. It is the non applicant submitted that, the non applicant has paid Rs.3,25,000/- to the applicant till January 2024. Therefore, the amount stated by the applicant in her application as a due is not true and correct. It is further submitted that, when the non applicant came to know that she has file separate application for recovery

of interim maintenance, he stopped the payment of interim maintenance in this application. Moreover, the non applicant never denied or avoided the execution of summons or notice in Cri.M.A. no. 342/2023. The part cross-examination of the applicant is already completed and now these applications are filed to intent to delay the proceeding before court. Hence, he prayed for rejection of both applications.

4. Perused the applications and say filed. Heard. Perused the entire record before me. Perused the citation filed by the applicant i.e. Ganpat Waghmare Vs. Anjalibai Waghmare and Ors. 2001 (3) BOM CR 31. I have taken into consideration in principle laid down in the said authority while appreciating merits of these applications.

5. According to the applicant, there are pending dues of arrears of interim maintenance at the hands of non applicant and the non applicant paid interim maintenance in part. There is a dispute respect of amount due from the non applicant. As per the contentions in the applications and say, it appears that, the applicant filed a recovery application for interim maintenance and the non applicant had knowledge the said recovery proceeding and still he didn't appear there and paid arrears of interim maintenance. However, he has stopped the payment of interim maintenance since January 2024, when he came to know about the filing of recovery application.

6. Considering this fact it appears that, the non applicant had a knowledge of recovery application filed by the applicant. However he didn't appear in it and paid the arrears. Therefore, it appears that, the non applicant is taking benefit of the loopholes of the law which is not

permitted. At the same time, when the recovery application for arrears of interim maintenance is pending before the court it will not be proper to take a drastic step like striking out the defence of the non applicant. However, the conduct of the non applicant as to his non appearance in the recovery proceeding inspite of knowledge cannot be go unnoticed. The interim maintenance is given for the purpose of survival of the applicants and considering this fact and reasons recorded above, I am of the opinion that, it will be proper to direct the non applicant to deposit Rs. 3,00,000/- towards recovery of arrears of interim maintenance. The payment made in this court will be adjusted in the recovery proceeding. In result, I pass following order -

ORDER

1. The applications are partly allowed.
2. The non applicant is directed to pay of Rs. 3,00,000/- towards the recovery of arrears of interim maintenance.
3. The non applicant is directed to pay the said amount till next date.
4. If the non applicant failed to comply this order then his right to cross-examination will be forfeited till further order of this Court.
5. The payment made in compliance of this order will be adjusted in the recovery proceeding for arrears of interim maintenance.

Place : Sangli.
Date : 04/03/2025.

(Rohini S.Patil)
4th Judicial Magistrate First Class,
Sangli.

:- CERTIFICATE :-

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

Name of Stenographer	: Shri. S.A.Jamadar
Name of the court	: J.M.F.C., Court No. 04, Sangli.
Date	: 04/03/2025
Order signed by presiding officer on	: 04/03/2025
Order uploaded on	: 05/03/2025