


MHSN030021862018	COMON ORDER BELOW EXH. 66 and 69 IN CRI.M.A.
	NO. 270/2018
	Padmashri Ashish Chudappa & Ors.
	Vs.
	Ashish Mahavir Chudappa

The present applications are filed for defence struck of and direction to pay the remaining outstanding amount of Rs. 10,13,068/- immediately.

2. It is the contention of the applicant that, the non applicant failed to pay the arrears of interim maintenance as per the directions in the order passed below Exh. 4. However, the non applicant has only paid Rs. 5,25,000/- out of 12,75,000/-. The non applicant is not paying arrears of interim maintenance regularly. Therefore, these applications be allowed and not the matter is posted for cross-examination. As the non applicant is in default, his defence be struck of and he be directed to pay remaining arrears immediately. Hence, these applications.

3. Whereas this application is strongly objected by the non applicant by filing say below Exh. 67 and 77 respectively. The non applicant strongly objected this application and contended that the applicant has filed application bearing no. 142/2023 in respect of order dated 29.10.2021 below Exh.4. The respondent appeared and filed say. The present application is filed with intend to delay the proceeding. Therefore, he prayed for rejection of the applications.

4. The applicant relied upon the judgment of **Hon'ble Bombay High Court in Ganpat Waghmare Vs. Anjalibai Rao Waghmare and Anr. 2001 (3) BOM (CR) 31** held that, the application was filed for permission

to cross-examination and the said application was opposed by the respondent on the ground that Court has already struck of the defence of the petitioner. Therefore it is not open for petitioner for permission to cross-examination to respondent. The Court accepted the said objections and concluded that since the defence is struck of the matter is proceeded exparte against him and he got no right to cross-examine the witness. I have kept the principle laid down in it in my mind while passing the order.

5. Perused the applications and say filed. Heard both sides. Perused the record.

6. Upon the perusal of record it appears that, this Court vide order passed below Exh. 59 and 60 directed to non applicant to deposit Rs. 3,00,000/- till next date towards the recovery of arrears of maintenance and it is further directed that if he fails to comply this order, his right to cross examine will be forfeited. However, the respondent didn't comply the said order on next date, but subsequently he has paid Rs. 3,00,000/- as per the order of this Court. This Court didn't forfeit his right to cross-examination by express order. Therefore, no such presumption can be drawn in respect of defence struck of.

7. The applicant admittedly filed recovery application and yet considering the fact that she didn't receive arrears of interim maintenance for her livelihood, this Court passed an order below Exh. 59 and 60 and directed the respondent to pay the arrears of the interim maintenance in tune of Rs. 3,00,000/-. However, from the applications on record it appears that, even after the receipt of those three lakhs she didn't want to proceed with the cross examination and filing one after another, an applications with number of prayers. Admittedly, the recovery application

bearing no. 142/2023 is pending before the Court. The applicant certainly can take steps for the recovery of arrears of maintenance in the execution application filed in the Court. When the applicant has other mode to recover the arrears of interim maintenance and there is nothing on record which shows that, she has obtained any of the such means to recover the arrears, there is no need to struck of the defence of the non applicant. The applicant can certainly apply in the execution proceeding for recovery of arrears of maintenance and till then it is not necessary to halt the present proceeding and deprive the right of the non applicant to cross-examine the applicant. In view of above observations and reasons recorded and with due respect to the principle laid down in above authority, I am not inclined to allow both of these applications and the order,

ORDER

1. The applications are rejected.
2. The applicant is directed to appear for the cross-examination on next date without fail.

Place : Sangli.
Date : 15/11/2025.

(Rohini S.Patil)
Judicial Magistrate First Class,
(Court no.1), 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. 01, Sangli.
Date	: 15/11/2025
Order signed by presiding officer on	: 15/11/2025
Order uploaded on	: 17/11/2025