

MHWS090015032021



PWDVA No. 55/2021
Sadhna + 1 -Vs- Vivek +7

ORDER BELOW EXH. 32
(Passed on 17/03/2025)

The present application is filed by the applicant for striking off defense of the non-applicant. Say filed by non-applicant. Heard Ld. Advocate Shri. T. A. Khan for the applicant and Shri. P. N. Chaudhari for the non-applicants. Perused the record and documents.

2] In short it is the contention of the applicant that she has filed application against non-applicants under Section 12, 18, 19, 20, 21, 22 and 23 of the Protection of Women from Domestic Violence Act, 2005. (Herein-after referred to as ***The D V Act***). She had further filed application for interim monitory relief. The said application was partly allowed by the Court vide order dated 04/08/2023. As per the said order non-applicant no.1 has to pay maintenance amount of Rs.2000/- each to the applicant no.1 and 2 from the date of filing of the application dated 29/12/2021. However, neither the non-applicant no.1 nor the other non-applicants comply the order Exh.5. From 29/12/2021 to 28/01/2024 the total amount of Rs.1,00,000/- is outstanding against him. The applicant has filed separate Execution Petition No. 5/2023 against the non-applicant. Despite the fact non-applicant did not comply the order. Therefore, it is necessary to strike off their defense. Accordingly, the applicant prayed for striking off defense of the non-applicants for non-compliance of the order dated 04/08/2023.

3] Non-applicants opposed the application and submitted that, there is no provision under Cr. P. C. to strike off the defense of the non-applicants without given them proper opportunity. In the present case, the marriage of the applicant is disputed and denied by the non-applicant. He has also filed revision before Hon'ble District Court, Mangrulpir vide Criminal Revision No. 17/2023 which is pending for appearance of the applicant. Now the said matter is fixed on 23/03/2024. In the said matter, the non-applicants have filed stay application along with revision. Therefore, that matter may be decided urgently. Therefore, he prayed that the application may be rejected on the ground of principle of natural justice.

4] Considering the rival submission of both the sides, following points arose for my determination. I recorded my findings thereon for the reasons given below:-

Sr.No.	POINTS FOR DETERMINATION	FINDING
1.	Does the applicant prove that the non-applicant did not comply interim order under Section 23 of the DV Act dated 04/08/2023 ?	Yes
2.	Whether the non compliance of the interim order supra is deliberate and willful on the part of the non applicant ?	Yes
3.	What order?	As per final order

AS TO POINTS NO. 1 & 2 :

5] As the these points are interconnected, same are being taken together for discussion. In order to substantiate the case of applicant she has mainly relied on order dated 04/08/2023 below Exh. O5 and also PWDVA Execution No. 05/2023.

6] The Ld. advocate for the applicant argued that till date non applicant didn't pay single penny as per interim order. She has further filed execution petition for enforcement of order. Applicant is unable to maintain herself and son for the want of amount as she has no source of income. Therefore, he further prayed for striking off defense of the non applicant. On the contrary, Ld. advocate for the non-applicant argued that he has filed revision against supra order. NA has denied the marriage with applicant. However both the Ld. Advocates mutually submitted that till date no stay granted by the Honble Sessions Court in the case of Criminal Revision No. 17/2023.

7] In view of submission supra it is necessary to discuss the important legal provisions on the issue involved in a case. The DV Act serves as a critical piece of legislation in safeguarding the rights and interests of women facing domestic violence. It is settled that the DV Act though primarily a civil law, incorporates procedural aspects drawn from the Code of Criminal Procedure, 1973. Section 28 of the DV Act permits the court to lay down its own procedure if required. Further Rule 6(5) of the Protection of Women from Domestic Violence Rules, 2006 specifies that proceedings shall be governed by Cr.PC.. Hence, courts derive its power to strike off defence through a combination of DV Act and principles of procedural law.

8] While deciding the present application it is necessary to see the deliberate and willful disobedience to the order of the court. Admittedly till date no single amount of the interim maintenance came to be paid by the non applicant towards the compliance of the order Exh. 05 supra. Even after passing of order dated 04/08/2023 more than one and half year passed. However despite the fact same is not enforced till date. In this regard except submission as supra non applicant failed to cite any proper and fair explanation on record to satisfy on this point.

9] Besides the supra discussion it further appears that despite order below Exh. 01 dated 8/6/23 and 4/8/23 non applicant failed to file the affidavit of assets and liabilities in view of direction of Hon'ble Appex Court in the Case of ***Rajnish Vs. Neha*** [(2020) 3 SCC 794 **Criminal Appeal No.730/2020 D.D. 04/11/2020**] which is mandatory for both the sides. Same also noted in order below Exh. 5 dated 4/8/23. NA was further directed to comply order Exh. 1 vide order below Exh. 26. Despite the fact he did not heed to comply the same.

10] In such facts and circumstances of the case it is necessary to cite the relevant para of Hon'ble Authority in the case of ***Rajnish Vs. Neha*** supra as follows:

“Discussion and Directions on Enforcement of Orders of Maintenance

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.”

11] The principle of natural justice embodied in the maxim *audi alteram partem* (let the other side be heard), is a cornerstone of Indian jurisprudence. It ensures that no person is condemned unheard and that proceedings remain fair. In the present context, efforts have been made to balance the need to enforce compliance with the non-applicant's right to a fair hearing. As regards the argument by Ld. Adv for non applicant is concerned in the present case opportunity of filing say already granted to the non-applicants. Say of the non-applicant is also on record. Ld. Adv further conducted hearing on the present application. Therefore, in view of the discussion supra, it cannot be said that no fair opportunity granted to the non-applicant to present their case. it appears that there is willful and deliberate breach of order dated 4/8/23 on the part of the non applicant no.1. Hence, point No. 1 and 2 is answered in affirmative.

12] The primary objectives behind striking off defence is to prevent abuse of the legal process. It ensures the applicant's right to timely relief is not frustrated and further deterring the non-applicant from deliberate non-compliance. Considering the facts of the case if defense of non-applicants as alleged is struck out at once, same would disallow him from contesting a case by filing reply and leading evidence. further upon striking off the defence, the court may proceed ex parte, relying on the applicant's evidence only. Therefore, in the given case non- applicant has to be given one strict last opportunity as a fair chance to justify himself prior to striking off his defence in the interest of justice. Moreover, it will be justiciable to direct the non-applicant No. 1 to deposit 50% of the maintenance amount on or till next date.

13] In view of the discussion supra the application as prayed is deserves to be allowed. Considering the facts and circumstances of the case and in answer to point no.3 I am inclined to pass the following order.

ORDER

1. Application Exh.32 is allowed.
2. Non-applicant no.1 to deposit 50 % of the maintenance amount as per order Exh.05 dated 04/08/23 in the Court on or till next date, failing which his defense shall stand struck out.

(Dictated and pronounced in open Court.)

Date : 17/03/2025.

(Trushna G. Bansod)
Judicial Magistrate First Class,
(Court no.2), Manora.

CERTIFICATE

I affirm that the contents of this PDF file Judgment/Order are same word to word as per the original Judgment/Order.

Name of the Stenographer	-	Smt. R. K. Chavhan Stenographer (Grade-III)
Court	-	(Smt. T.G. Bansod) Jt. C.J.J.D. & J.M.F.C., Manora.
Date of Judgment/Order	-	17.03.2025
Judgment/Order signed by the Presiding Officer on	-	17.03.2025
Judgment/Order uploaded on	-	20.03.2025