

MHWS100008542022



**ORDER BELOW EXH.26 P.W.D.V.A. NO.29/2022**

(Tarabai Sayaji Devakate Vs. Rameshwar Laxman Bajad)

Passed on 09<sup>th</sup> August, 2023

1. This is an application filed by applicant for the striking out the defence.
2. It is the contention of the applicant that, this Court had passed an order dated 17.11.2022 and granted interim maintenance. Since the order, the non-applicant has not paid any maintenance. The non-applicant is deliberately avoiding to deposit the maintenance amount. Hence, prayed to strike off the defence.
3. Non-applicant filed his say and submitted that, the non-applicant preferred an appeal before the Hon'ble Court at Washim vide Criminal Appeal No.34/2022. Striking out the defence is the last resort. The present non-applicant has failed his legal right of appeal before the competent court. If the order is passed then the voluble and legal right of the non-applicant got affected. On perusal of the original application it would reveal that no prayer for maintenance is there. Hence, the applicant did not need any maintenance. Hence, prayed to reject the application.

**Rival Submissions :-**

4. The learned Advocate for the applicant submitted that, the non-applicant has not paid any interim maintenance amount. Applicant is the old aged person lady. Non-applicant did not obey the order of this

Court. No stay order has been passed by the Court of Sessions. The non-payment of interim maintenance amount shows the arrogance of non-applicant. It is a beneficial statute. The interim maintenance is granted for the survival of the applicant. Hence, in such circumstances, it is proper to strike off the defence of the non-applicant. Thus, prayed to allow the application.

5. Per contra, the learned Advocate for the non-applicant Mr.Joshi submitted that, there is no prayer for maintenance in main application. She is competent to maintain herself. The right of appeal is a statutory right. The non-applicant has preferred an appeal before the Court of Sessions. Appeal is not decided yet. The matter is subjudice before the Court of appeal. If the strike off defence order is passed then it would be harsh order. Appeal has substance and it is a last resort. There is no conduct of the non-applicant that he is intentionally avoiding to pay. Hence, prayed to reject the application.

6. Considering the application, say and rival submissions of the learned advocates, the following points arose for determination for the reasons given below :-

<b><u>SR.NO.</u></b>	<b><u>POINTS</u></b>	<b><u>FINDINGS</u></b>
1	Whether the application deserves to be allowed ?	No.
2	What Order ?	Application is Rejected.

**REASONS****AS TO POINT NOS.1 AND 2 :-**

7. The applicant has filed the application under Section 23 and the same is allowed on 17.11.2022. This Court has granted interim maintenance to the applicant. On perusal of the record it appears that, non-applicant has not deposited any interim maintenance amount. Thereafter, the applicant has filed the application for issuance of distress warrant. The same is also allowed. The applicant has adduced her evidence at Exh.25. The matter is for cross-examination of applicant. Admittedly, the non-applicant has preferred an appeal before the Hon'ble Court of Sessions, being aggrieved by the order dated 17.11.2022. Though the appeal is pending no stay order has been passed till today. The applicant by filing applications trying to recover the interim maintenance amount. The report of distress warrant is not received till today. The **Hon'ble Supreme Court** in the case of **Rajesh Vs. Neha and others 2020 (6) KHC (1)** It was held that,

*"The Court has power to strike off defence, if there is no compliance of the order of payment of maintenance but the said order is last resort if the Court finds default to be willful and contumacious, particularly to a dependent unemployed wife and minor child."*

8. In the present case, the default is due to filing of an appeal. The non-applicant has the hope in the appeal. Though the appeal has been filed, the order is still in existence and in force. Therefore, the non-applicant has no option to deposit the interim maintenance amount. So

far as the question of striking off defence is concerned, the striking of defence is the last resort. The applicant has by filing an application trying to recover the interim maintenance amount. The distress warrant is not served till today. The report of the distress warrant is not on record. Thereafter, in such circumstances, if the striking of defence order is passed then non-applicant will lost his valuable right of defence. The applicant after the report of distress warrant can also avail the other remedies also. After availing of the remedies, applicant has liberty to file an application for striking of defence. In view of the above discussion, I answer in point No.1 in negative and answer to point No.2 the following order is passed :-

**ORDER**

1. Application is rejected.
2. Non-applicant is directed to pay interim maintenance amount within fifteen days from today.
3. If non-applicant has fails to pay interim maintenance amount within fifteen days, or fails to show the reasons for non compliance then applicant may apply for recovery the interim maintenance amount in accordance with law.
4. The applicant after availing all the resorts for recovery of interim maintenance amount has liberty to file application for striking off the defence.

(Dictated and pronounced in open Court)

Place : Malegaon.  
Date : 09.08.2023

**[Pravin U.Kulkarni]**  
J.M.F.C. Court No.2, Malegaon  
Dist. Washim

**CERTIFICATE**

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

Name of the Stenographer : **Shivam B. Patange (L.G.)**

Court & Judge Name : P.U.Kulkarni  
Jt. C.J.J.D. & J.M.F.C., Malegaon.

Date of Order : 09.08.2023

Order signed by the  
Presiding Officer on : 11.08.2023

Order uploaded on : 11.08.2023