

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 2672 OF 2015

1. Vishal Arunkumar Yadav,
Aged about 37 years, Occu: Govt.
Service, R/o. A/Po. Antargaon,
Tq. Savli, Dist. Chandrapur.
2. Arunkumar S/o. Shivilal Yadav,
Aged about 62 years, R/o. Besides
Harry's Pastry Corner, WCH Rd,
Dharampeth, Nagpur.
3. Sau. Chhaya Arunkumar Yadav
Aged about 58 years, Occu. Legal
Practitioner, R/o. Besides Harry's
Pastry Corner, WCH Rd. Dharempeth,
Nagpur.

.... **PETITIONERS.**

// **VERSUS** //

Sau. Kiran Vishal Yadav,
Aged about 28 years, Occu.: Legal
Practitioner, R/o. At/Po. Darva,
Tq. Darva, Dist. Yavatmal.

.... **RESPONDENT.**

Shri Ashwin Deshpande and Shri A.M.Sudame, Advocates for Petitioners.
Shri Anand Deshpande, Advocate for Respondent.

CORAM : Z.A.HAQ, J.
DATED : SEPTEMBER 01, 2015.

ORAL JUDGMENT :

1. Heard.

2. **RULE.** Rule made returnable forthwith.

3. The petitioners have challenged the order passed by the trial Court allowing the application (Exh.38) filed by the respondents for striking-off defence of the petitioners.

4. According to the respondent, the trial Court directed the petitioners to pay Rs.7,000/- per month towards interim maintenance and Rs.5,000/- towards expenditure for litigation, however, the petitioners were not regular in paying the amount of maintenance and till 17th September, 2014 an amount of Rs.1,05,000/- was due in addition to the amount of Rs.5,000/- towards litigation expenses. As the petitioners did not comply with the directions of the trial Court, the application (Exh.38) came to be filed praying that the defence of the petitioners be struck-off.

5. The learned trial Judge, by the impugned order, found that the petitioners were liable to pay Rs.89,000/- till 17th June, 2014 out of which the petitioners had deposited Rs.24,000/- and balance amount of Rs.65,000/- was payable by the petitioners. The learned trial Judge has struck-off the defence of the petitioners.

6. This Court, while issuing notice, by the order dated 6th May, 2015 directed the petitioner No.1 to deposit Rs.65,000/- with the trial Court. The learned advocates for the respective parties submit that the amount is accordingly deposited by the petitioner No.1.

7.- In the circumstances, in my view, the interests of justice would be sub-served by the following order :

- i. The impugned order is set aside.
- ii. The application (Exh.38) is rejected in view of subsequent compliance by the petitioners.
- iii. The defence of the petitioners is restored.

Rule is made absolute in the above terms. In the circumstances the parties to bear their own costs.

Shri Anand Deshpande, learned advocate for the respondent submits that the petitioners are in the habit of committing default in paying the amount of interim maintenance, which is resulting in undue hardships to the respondent.

The respondent will be at liberty to move appropriate application if such contingency arises and the learned trial Judge shall pass appropriate orders in the matter considering the earlier conduct of the petitioners.

JUDGE