

**IN THE HIGH COURT AT BOMBAY  
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 794 OF 2016

Revti w/o. Rajensh Taksalkar,  
Age 31 years, Occu. Household,  
R/o. Aarvi, Tq. & Dist. Parbhani.

**....Petitioner.**

**Versus**

1. Rajesh s/o. Gangaram Takslakar,  
Age 34 years, Occu. Agri.,
2. Gangaram s/o. Baburao Taksalkar,  
Age 63 years, Occu. Agri.,
3. Gangubai w/o. Gangaram Taksalkar,  
Age 58 years, Occu. Household,

All R/o. Sirpur, Tq. Mantha, Dist. Jalna. **....Respondents.**

Mr. S.K. Chavan, Advocate for petitioner.

Mr. P.B. Kadam h/f. Mr. S.J. Salunke, Advocate for respondent Nos.  
1 to 3.

**CORAM : T.V. NALAWADE, J.**  
**DATED : 26th August, 2016.**

**JUDGMENT :**

1) Rule. Rule made returnable forthwith. By consent,  
heard both the sides for final disposal.

2) The proceeding is filed to challenge the order made  
on Exh. 32 in Regular Civil Suit No. 28/2012, which is pending in  
the Court of Civil Judge, Junior Division, Manta, District Jalna.  
The said proceeding is filed for relief of maintenance and order

of interim maintenance is also made in the said proceeding in favour of petitioner, wife. As the interim maintenance is not paid, application was moved at Exh. 32 for striking of the defence of the defendant, husband. After hearing both the sides, the Trial Court rejected the application. The Trial Court held that it is the discretionary relief and it will not be proper to strike of the defence.

3) The submissions made and the record show that the wife was required to file proceeding for maintenance under section 125 of Criminal Procedure Code and in that proceeding, maintenance came to be granted by the decision dated 10.12.2012 and it was granted from the date of application i.e. 27.2.2006. Then the civil suit was also filed, but in the year 2012 and in the civil suit, maintenance at the same rate is granted as interim maintenance. The submissions made and the record show that in January 2013, last time husband paid maintenance and he is in huge arrears of maintenance. In view of these circumstances, this Court gave opportunity to the husband to show that some amount was paid after the order made by Civil Court. There is virtually no record with the husband to show that any amount was paid. Thus, on one hand,

husband is not paying anything as maintenance both in accordance with order made by Judicial Magistrate, First Class and in accordance with the order made by the Civil Court. He is only seeking time. Due to this conduct, it can be said that he is interested only in protracting the decision of the matter. If no order to strike of defence is made, the husband will do everything to see that decision of the Civil Court is protracted. That will cause harassment to the wife.

4) The learned counsel for wife placed reliance on the case reported as **1999 (2) Mh.L.J. 297 BOMBAY HIGH COURT [Vanmala w/o. Maroti Hatkar Vs. Maroti Sambhaji Hatkar]**. In this case, this Court has discussed the provision of section 24 of the Hindu Marriage Act, 1956 and section 151 of Civil Procedure Code and held that Court can strike of defence of such party. On this point, the learned Judge of the Trial Court has referred one case and in the present proceeding, the learned counsel for husband placed reliance on the case reported as **2007 (2) AIR BOMBAY Report 121 [Ramavatar Surajmal Modi Vs. Mulchand Surajmal Modi]**. In this case, the Division Bench of this Court has discussed the provisions of Maharashtra Amendment and it is laid down that the rule

applicable in Maharashtra is directory in nature. For making such observations, one case of Supreme Court is referred by this Court. It is true that this provision is directory in nature, but the fact remains that the Court is expected to use the discretion when the party is suffering due to conduct of other side and the party cannot prosecute the matter effectively due to the conduct of other side. No reasoning at all is given by the Trial Court for not using the discretion in favour of the wife. There are aforesaid circumstances and this Court holds that the order has no support of reasons and so, interference is warranted. It needs to be kept in mind that it will be open to husband to come forward and to deposit the money and he can again participate in the matter as observed by the Division Bench of this Court in the case cited supra.

5) In the result, petition is allowed. Order made by the Trial Court on Exh. 32 in R.C.S. No. 28/2012 is hereby set aside. The application is allowed and the defence of the defendant is struck off.

Rule is made absolute in aforesaid terms.

**[ T.V. NALAWADE, J. ]**

ssc/