



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 6212 OF 2024

GAYABAI SAMBHAJI WAGHMARE

VERSUS

SAMBHAJI GENBA WAAGHMARE

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Advocate for Petitioner : Mr. Biyani Sushil Murlidhar

Advocate for Respondent : Mr. Mayur Subhedar h/f

Mr. Dharurkar Chaitanya V.

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CORAM : ROHIT W. JOSHI, J.

DATE : 12th AUGUST 2025

PER COURT :

1. The Petitioner is wife of Respondent. She had filed a suit bearing RCS No.248/2012 seeking maintenance. The said suit was decreed on 11.09.2013, directing Respondent/husband to pay maintenance @ Rs.10,000/- per month. The Respondent/husband is in arrears of maintenance and therefore the Petitioner/wife has filed execution petition bearing Regular Darkhast No.39/2022. In this execution petition, the Petitioner filed an application at Exhibit-33 for arrest of the Petitioner in civil prison. It will be pertinent to mention that the Petitioner has mentioned a wrong provision in the application. Order XXI Rule 38 of the Civil Procedure Code is only meant for production of the judgment debtor before the Court. The judgment debtor can be arrested and brought before the Court under Order XXI Rule 38, if he does not appear on his own on a notice issued by the Executing Court. Once the judgment debtor appears or

is brought before the Court, inquiry under Order XXI Rule 40 of the CPC is required to be conducted in order to decide as to whether the judgment debtor can be put in civil prison for execution of the decree. In the case at hand, the learned Executing Court has rejected the application on the ground that there is no report on record, indicating that the judgment debtor has any movable and immovable property. The learned Executing Court has to determine as to whether the judgment debtor has the capacity to honor the decree and yet is avoiding to do the same. If that be the case, then order of imprisonment can be passed. However, an inquiry under Order XXI Rule 40 will have to be conducted. The application is rejected without conducting any such inquiry.

2. In view of the above, the order dated 21.12.2023 passed on application at Exhibit-33 in Regular Darkhast No.39/2022, is quashed and set aside.

3. The learned Executing Court is directed to decide the application afresh in accordance with law.

4. Needless to mention that pursuant to order passed by this Court, the Respondent/husband has filed affidavit dated 25.07.2025, stating that he is receiving monthly pension of Rs.38,590/-. The Respondent/husband is directed to produce documentary evidence with respect to the monthly pension before the learned Executing Court. The learned Executing Court shall decide the application in

accordance with law after giving opportunity to both sides to lead evidence in the matter, if they so desire.

5. Having regard to the fact that claim of maintenance is involved, the learned Executing Court is requested to decide the application at the earliest.

6. With this, the petition is disposed of.

ROHIT W. JOSHI
JUDGE

NAJEEB..