2026:AHC:211703

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 40346 of 2026

Musa

.....Applicant(s)

Versus

State Of U.P. And 2 Others

.....Opposite Party(s)

Counsel for Applicant(s)	:	Chandra Shekhar Pal, Sunil Kumar Yadav
Counsel for Opposite Party(s)	:	G.A.

Court No. - 72

HON'BLE DEEPAK VERMA, J.

1. Heard learned counsel for the applicant; learned A.G.A. for the State and perused the record.

2. The present 528 B.N.S.S. application has been filed to quash the judgment and order dated 28.01.2026 passed by the learned Principle Judge Family Court, (Court No. 2), Muzaffarnagar in Case No. 822 of 2025 (Smt. Sumaya & Others Vs. Musa) u/s 147 of B.N.S.S. (whereby the Learned Principle Judge Family Court, (Court No. 2), Muzaffarnagar issued the Recovery Warrant of Rs. 75,000/- for recovery as well as Non Bailable Warrant against the applicant) pending before Learned Principle Judge Family Court, (Court No. 2), Muzaffarnagar.

3. Learned counsel for the applicant submits that the order passed by the learned Principal Judge, Family Court is against the provision laid down by the Apex Court in **Rajnesh vs. Neha & Another** (2021)2 SCC 324, wherein it has been directed that the enforcement/execution of order of maintenance, may be enforced under Section 28A of the Hindu Marriage Act, 1956; Section 20(6) of the D.V. Act; and Section 128 of Cr.P.C., as may be applicable. The order of maintenance may be enforced as a money decree of a civil court as per the provisions of the C.P.C., more particularly Sections 51, 55, 58, 60 read with Order XXI of C.P.C.

4. It is further submitted that the impugned order has been passed to enforce the recovery of arrears of maintenance by issuing recovery warrant as well

as arrest warrant against the applicant is without following the procedure as provided in the Civil Procedure Code.

5. The matter is related to settled position of law. There is no other point for consideration except issuing recovery warrant as well as arrest warrant to recover the arrears of maintenance, due to this reason, the opportunity to call the counter affidavit from the opposite party no. 2 is dispensed with.

6. In view of the above facts and circumstances, the application is **partly allowed** and the order dated 28.01.2026, is, hereby quashed.

7. It is made clear that the court concerned may proceed to enforce or recover the arrears of maintenance amount as money decree of a civil court as per provisions of the Code of Civil Procedure as per the law laid down by the Supreme Court in **Rajnesh** (supra).

(Deepak Verma,J.)

October 8, 2026
Meenu Singh

Digitally signed by :-
MEENU SINGH
High Court of Judicature at Allahabad