Reserved on : 01.07.2025
Pronounced on : 08.07.2025

R

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 08TH DAY OF JULY, 2025

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.21479 OF 2024 (GM - CPC)

BETWEEN:

1 . MR. VENUGOPAL KRISHNAMURTHY
S/O MR.C.N.KRISHNAMURTHY,
AGED ABOUT 50 YEARS,
RESIDENT OF 2700, 11TH MAIN,
D BLOCK, RAJAJINAGAR,
2ND STAGE,
BENGALURU – 560 010.

2 . MRS. POORNA VENUGOPAL
W/O MR. VENUGOPAL KRISHNAMURTHY,
AGED ABOUT 45 YEARS,
RESIDENT OF 370,
4TH CROSS, J.P. NAGAR, 3RD PHASE,
BENGALURU – 560 078.

BOTH PETITIONERS ARE PRESENTLY
RESIDING AT NO.562,
FAIRMOUNT AVE CHATHAM,
NEW JERSEY-07928,
UNITED STATES OF AMERICA,
REPRESENTED BY THEIR GPA HOLDER,

MR.K.NARAYANAN.

... PETITIONERS

(BY SMT.SHWETA KRISHNAPPA, ADVOCATE)

AND:

1 . SMT.M.TEJASWINI
W/O.SRI.S.R.SATYANARAYANA RAJU,
AGE:MAJOR
RESIDING AT NO. 50,
11TH CROSS,
CORNER OF 'BASAVANNA STREET AND
RANGASWAMY STREET',
CHICKPET,
BENGALURU – 560 053.

ALTERNATE ADDRESS:
NO. 50, B.T. STREET, 6TH CROSS,
CHICKKAPET, BENGALURU – 560 053.

HAVING OFFICE AT:
ORANGES PRE-SCHOOL,
SHREE VIDYALANKAR TUTORIALS AND
SHRI PREMA SAI EDUCATIONAL TRUST,
PROPERTY BEARING NO. 46,
2ND CROSS, VIJAYA BANK LAYOUT,
BILEKAHALLI, ARAKERE POST,
BENGALURU – 560 076.

... RESPONDENTS

(BY SRI T.H.AVIN, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDER DTD. 05.07.2024 PASSED BY THE HON'BLE LXIV

ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU (CCH-65) IN O.S.NO. 5660/2022 ON I.A.NO. 10 (PRODUCED AS ANNX-A) AND STRIKE OUT THE DEFENCE OF THE RESPONDENT FILED IN O.S.NO. 5660/2022 FILED BEFORE THE HON'BLE LXIV ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU (CCH-65) (i.e., WRITTEN STATEMENT) IN THE INTEREST OF JUSTICE AND EQUITY.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 01.07.2025, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

The petitioners/plaintiffs are before this Court calling in question an order dated 05-07-2024 passed by the LXIV Additional City Civil & Sessions Judge, Bengaluru City on I.A.No.X in O.S.No.5660 of 2022, rejecting the application filed by the petitioners, filed under Order VI Rule 16 r/w Section 151 of the Code of Civil Procedure, seeking striking off the defence of the defendant.

2. Heard Smt. Shweta Krishnappa, learned counsel appearing for the petitioners and Sri T.H.Avin, learned counsel appearing for the respondent.

3. Facts, in brief, germane are as follows: -

The petitioners are the owners of the suit schedule property. They let it out on tenancy to the respondent who runs a pre-school in the name and style of 'Oranges Play Home and Vidyadarpan Tutorials'. The tenant defaults in payment of rents. The petitioners institute an eviction suit in O.S.No.5660 of 2022 on 30-08-2022 and file two applications – one seeking temporary injunction restraining the respondent/defendant from continuing further in the suit schedule property and I.A.No.2 for deposit of rents. On 02-03-2023 the defendant files her written statement and counter claim. The petitioners also file objections to the counter claim filed by the defendant. Earlier to it, on 20-01-2023, an application under Order XXXIX Rule 10 of the CPC, seeking a direction to deposit arrears of rent between 01-03-2020 and 30-08-2022 was filed by the plaintiffs. The concerned Court, partly allows the application on

15-07-2023 and direct the respondent to pay arrears of rent at ₹82,431/- per month from 01-06-2020 to 30-08-2022. The concerned Court also noted that the respondent by choosing not to pay rent despite expiry of the prescribed period is illegally squatting over the property.

3.1. The order directing deposit of rent is called in question before this Court in M.F.A.No.6772 of 2023. The appeal comes to be dismissed on 09-02-2024. Even then, the rent was not paid. Therefore, the petitioners then prefer application in I.A.No.X under Order VI Rule 16 seeking the trial Court to strike off the defence of the respondent that was taken in the written statement filed in O.S.No.5560 of 2024 on her failure to pay and comply with the order dated 15-07-2023. The concerned Court rejects the application of striking off defence which has driven the plaintiffs to this Court in the subject petition.

4. The learned counsel for the petitioners, taking this Court through the documents appended to the petition, would vehemently

contend that the respondent is squatting over the property without paying a rupee of rent for the last five years. The total arrears of rent, as on today, has mounted close to ₹50/- lakhs. The concerned Court's order directing deposit of rent was challenged before this Court in an appeal, which also comes to be rejected. Notwithstanding all these, not a rupee of rent is paid. Therefore, the petitioners had appropriately filed the application seeking striking off the defence, as the orders of this Court and the concerned Court were blatantly violated, which ought to have been answered in favour of the petitioners, more so, in the light of the fact that there is already a counter claim by the respondent.

5. Per contra, the learned counsel appearing for the respondent would submit that she has a case for waiver of rent between 2020 and 2022, as it was during COVID-19 and the school did not function though the respondent was in possession of the property. That issue is not answered by the plaintiffs and the entire arrears has mounted only for the said period. The respondent now is not in a position to pay the rent, unless the school commences. The learned counsel would further contend that if reasonable time is

granted, the respondent would pay arrears of rent and continue the school. The reasonable time, according to the respondent, is about two years to clear the arrears.

6. The learned counsel for the petitioners would put up vehement opposition in her rejoinder submissions contending that the licence of the school is already cancelled way back in 2023. No school is running today. The respondent is squatting over the property. The owners of the property are wanting to bring in their aged parents into the property. The respondent is neither running the school nor paying the rent nor vacating the property.

7. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

8. The afore-narrated facts, dates, link in the chain of events are all a matter of record. The issue now would be, whether the application filed under Order VI Rule 16 CPC to strike off the defence requires entertainment or not?

9. Order VI Rule 16 CPC reads as follows:

> "**16. Striking out pleadings**.—The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading—
>
> (*a*) which may be unnecessary, scandalous, frivolous or vexatious, or
>
> (*b*) which may tend to prejudice, embarrass or delay the fair trial of the suit, or
>
> (*c*) which is otherwise an abuse of the process of the Court."

Order VI Rule 16 CPC permits striking off of the defence in the written statement, if there is violation of the orders passed. Therefore, I deem it appropriate to notice the order that would bound the defendant. The suit in O.S.No.5660 of 2022 is instituted and the concerned Court passes an order on 15-07-2023 on the application I.A.No.2 filed under Order XXXIX Rule 10 r/w 151 CPC by the plaintiffs, which reads as follows:

> "ORDER
>
> I.A.No.II under Order XXXIX Rule 10 r/w Section 151 of Code of Civil Procedure filed by the plaintiffs is allowed in part.
>
> No order as to costs.

> **The defendant is directed to deposit the arrears of rent @ ₹82,431/- 9Eighty two thousand four hundred and thirty one rupees only) per month from 01-06-2020 till 30-08-2022 within two months from the date of this order.**"

(Emphasis added)

The application is allowed and the defendant was directed to deposit arrears of rent @₹82,431/- per month, for 26 months which had not been paid, within two months from the date of the order. The said order is called in question before this Court in M.F.A.No.6772 of 2023. This Court rejects the appeal by the following order:

"…. …. ….

> 3. On perusal of the records, it is seen that the present miscellaneous first appeal is filed challenging the order passed on I.A.No.II which was filed under Order 39 Rule 10 read with Section 151 of CPC and the Trial Court directed the appellant/defendant to deposit the arrears of rent at **Rs.82,431/- per month from 01.06.2020 till 30.08.2022 within two months from the date of the order. The said order has not been complied with and even inspite of granting sufficient opportunity to comply with the order of the Trial Court to deposit the arrears of rent, though the appeal was filed in 2023, till date, the appellant has not deposited the rent. Hence, the question of entertaining this appeal does not arise when rent has not been deposited as directed by the Trial Court and this Court and the appellant is squatting on the property without payment of rent from 2020 and running the school in the premises**.

> 4. Learned Senior counsel for the caveator-respondent Nos.1 and 2 submits that as on today, rent due from the appellant is Rs.27 lakhs. The learned Senior counsel for the appellant would submit that the appellant is running a kinder garden school and due to Covid-19 Pandemic, the appellant could not pay the rent. **The rent is not paid from 2020 and we are in 2024 and without any valid reason, this Court cannot encourage the appellant by granting time to pay the rent, though the same is not paid from 2020. Hence, no grounds are made out to consider the matter on merits without payment of rent and once again grant time to deposit the arrears of rent and sufficient opportunity has already been given**.
>
> Consequently, the appeal is dismissed."
>
> (Emphasis supplied)

A coordinate Bench records that rent is not paid from 2020 to 2024 and this Court cannot encourage the appellant by granting time to pay the rent. The rent is unpaid for four years then.

10. The plea that is projected before this Court is that the respondent is running the school. The petitioners have secured information by filing an application under the Right to Information Act that licence to run the school stood cancelled on 02-03-2023 itself, after which there is no renewal of licence. It is at that point in time, the petitioners prefer the aforesaid application to strike off the defence. Even before this Court, the respondent is not willing to

clear arrears of rent. What the respondent communicates to the petitioners is as follows:

> "Dear Sir/Madam,
>
> We are also extremely glad to receive positive response from your end.
>
> As we are well aware that we have been occupying your premises for the past 2 years as you have mentioned in your previous mail, our intention was to continue in your premises by regularising post covid arrears at the earliest for the smooth functioning of our institution.
>
> **We never expected/anticipated all your abrupt actions of disturbing our peaceful possession of your premises which shattered all our financial plan and caused massive damages financially up to a tune of ₹2/- crores, a bitter truth for your kind information.**
>
> However, we would not wish to keep your premises any longer.
>
> **We shall hand over the keys on or before 30th April, 2025, as our goodwill has been put to stake in the society by your wrongful actions which has in turn caused us to be defaulters.**
>
> **Hence, if you allow us to vacate peacefully without claiming any rental arrears by mutually settling off O.S.No.5660 of 2022.**
>
> We would be ever grateful to you if you oblige our humble request mentioned above."

(Emphasis added)

The letter written by the respondent only exacerbates the indignity of the situation, wherein she states that she would vacate peacefully, provided the landlords-plaintiffs forego the claim for rent. In the concerned view of the Court, it is a proposal that smacks of audacity, rather than remorse.

11. **Jurisprudence is replete with precedents that reiterate that a litigant who defies the interim order/directions of the Court is undeserving of any indulgence**. The Apex Court, in the case of **AERO TRADERS (P) LIMITED v. RAVINDER KUMAR SURI**[1], has held as follows:

> "…. …. ….
>
> **6.** The question which, therefore, requires consideration is whether the appellant has made out any ground for exercising discretion in his favour of not striking out his defence. According to *Black's Law Dictionary* "judicial discretion" means the exercise of judgment by a judge or court based on what is fair under the circumstances and guided by the rules and principles of law; a court's power to act or not act when a litigant is not entitled to demand the act as a matter of right. The word "discretion" connotes necessarily an act of a judicial character, and, as used with reference to discretion exercised judicially, it implies the absence of a hard-and-fast rule, and it requires an actual exercise of judgment and a consideration of the facts and circumstances which are necessary to make a sound, fair and just determination, and a knowledge of the facts upon which the discretion may properly operate. (See *27 Corpus Juris*

[1] **(2004) 8 SCC 307**

Secundum, p. 289). When it is said that something is to be done within the discretion of the authorities, that something is to be done according to the rules of reason and justice and not according to private opinion; according to law and not humour. It only gives certain latitude or liberty accorded by statute or rules, to a judge as distinguished from a ministerial or administrative official, in adjudicating on matters brought before him.

7. In the present case, the finding of the Rent Controller and also of the Rent Control Tribunal is that the appellant set up a totally false plea of his having sent the rent through cheques to the landlord. Apart from pleading that he had sent the amount through cheques, he pleaded no other fact which could be taken into consideration by the Rent Controller for exercising discretion in his favour. It may be noted that the premises are commercial and are situate in Karol Bagh, which is a prime business area of Delhi and the rent is a paltry sum of Rs 30 per month. But the appellant did not pay even this small amount of rent, which is virtually a pittance, and has remained in arrears for a long period of time. There is absolutely no ground on which any discretion could be exercised in his favour. The High Court was, therefore, perfectly justified in setting aside the order passed by the Rent Control Tribunal and restoring that of the Rent Controller."

(Emphasis supplied)

The said case arose out of interpretation of the Delhi Rent Control Act. Owing to the fact of repeated violations of the interim order, the Delhi High Court strikes off the defence upon non-payment of rent by the tenant. The same would become squarely applicable to the facts of the case on hand.

12. The Apex Court, later, in the case of **ASHA RANI GUPTA v. VINEET KUMAR[2],** has held as follows:

"…. …. ….

> **32.** Though the aforesaid decisions in *Santosh Mehta* [*Santosh Mehta* v. *Om Prakash*, (1980) 3 SCC 610] , *Kamla Devi* [*Kamla Devi* v. *Vasdev*, (1995) 1 SCC 356] and *Manik Lal Majumdar* [*Manik Lal Majumdar* v. *Gouranga Chandra Dey*, (2005) 2 SCC 400] related to the respective rent control legislations applicable to the respective jurisdictions, which may not be of direct application to the present case but and yet, the relevant propositions to be culled out for the present purpose are that any such provision depriving the tenant of defence because of default in payment of the due amount of rent/arrears have been construed liberally; and the expression "may" in regard to the power of the Court to strike out defence has been construed as directory and not mandatory.
>
> … … …
>
> **39.** For what has been discussed hereinabove, the decision of the High Court in *Ladly Prasad* [*Ladly Prasad* v. *Ram Shah Billa*, 1975 SCC OnLine All 294 : (1976) 2 ALR 8] does not require much dilation when it remains indisputable that it is not always obligatory on the court to strike off the defence. However, the said decision cannot be read to mean that despite default of the tenant in payment of rent, the defence has to be permitted irrespective of its baselessness. The decision in *Kunwar Baldevji* [*Kunwar Baldevji* v. *Addl. District Judge, Bulandshahar*, 2003 SCC OnLine All 311: (2003) 1 ARC 637] , again, would have no application to the facts of the present case. Herein, the respondent-defendant has not only omitted to deposit the rent on the first date of the hearing but, has also omitted to deposit the accrued rent during the pendency of the suit.
>
> … … …
>
> **45. In the totality of facts and circumstances, we are clearly of the view that there was absolutely no**

[2] **(2023)20 SCC 273**

reason for the High Court to have interfered in the present case, where the trial court had struck off the defence after finding that there was no evidence on record to show the payment or deposit of rent in favour of the plaintiff by the respondent-defendant. The Revisional Court had also approved the order of the trial court on relevant considerations. Even the High Court did not find the pleas taken by the respondent-defendant to be of bona fide character, particularly when survey number of the shop let out to him was clearly stated in the sale deed executed in favour of the plaintiff. We find it rather intriguing that, despite having not found any cogent reason for which discretion under Rule 5 Order 15CPC could have been exercised in favour of the respondent-defendant, the High Court, in the last line of para 44 of the order impugned [*Vineet Kumar* v. *Upper District Judge*, 2018 SCC OnLine All 5788], abruptly stated its conclusion that:"*yet the defendant/tenant deserves some indulgence*"."

(Emphasis supplied)

13. The High Court of Madras in the case of **ANITA v. MAHAVEER SANCHETI**[3], holds as follows:

"…. …. ….

Every court must be deemed to possess by necessary intendment all such powers, as are necessary to make its orders effective. This principle is embodied in the *maxim* '*ubialiquidconceditur, conceditur et id sine quo res ipsaesse non potest* (Where anything is conceded, there is conceded also anything, without which the thing itself cannot exist.) (Vide Earl Jowitt's Dictionary of English Law 1959 Edn. P.1797). Whenever anything is required to be done by law and it is found impossible to do that thing, unless something not authorised in express terms be also done, then that something else will be supplied by necessary intendment

… … …

[3] **2014 SCC OnLine Mad 4893**

6. **Even though there are no express provisions enabling the Court to strike out pleadings/defences, in case of non-payment of maintenance/non obedience to the orders of the Court, still various Courts have held, as indicated below, that, in order to effectively adjudicate and to administer justice**, in a meaningful way, invoking powers under Section 151 of the CPC is imperative and in appropriate cases, Court can strike out pleadings:

(i) *FAMILY COURT, PALAKKAD* v. *JAYASREE* (Mat. Appeal. No. 672 Of 2011 - dated 09.03.2012 - Kerala High Court):

> "…A court is meant to do justice, no doubt, within the confines of law and principles which are settled from time to time. A court is intended to be an effective adjudicator of disputes. If the court is to be an effective adjudicator of disputes it must inevitably be clothed with necessary power to deal with situations which may arise where the court must have power to strike off defence so that the people will continue to repose faith in the system and *resort to lawful means which are provided by the courts*. It is for the purpose of preserving its power and effectiveness that the courts have recognized inherent power to strike off defence outside Order 6 Rule 16.

(ii) *Parukutty Amma* v. *Thankamma Amma*, 1988 (1) KLT 883:

> "5. The next question is, should such a power with the court include a power to strike off the defence in deserving cases for meeting the ends of justice. If the court feels that to meet the ends of justice such a course is necessary, namely, to strike off the defence, *I am of the view that such a power inhers with the court from its very constitution as a court and that power is absolutely necessary in certain circumstances to meet the ends of justice*. I make it clear that the question is not res integrata."

(iii) AIR 1932 Madras 263 (*Venkatacharyulu* v. *Yesobu*):

> "…..that the striking off of the defence was within the jurisdiction of the Court in the exercise of its inherent powers under S.151 although it was not the only order

which the Court could pass under the circumstances of the case".

(iv) 1992 (2) KLT 553 (*Mangalam* v. *VelayudhanAsari*):

> "*To hold that the levying of execution is the only remedy for enforcement of an order made under S.24 of the Hindu Marriage Act may result in making such order : wholly nugatory and ineffective*. Even in the absence of a provision in the Hindu Marriage Act for striking off the defence in case, one of the parties to the proceedings wilfully refuses to comply with the order of the court, there is inherent power in the court to pass such orders as are necessary for the ends of justice or to prevent the abuse of the process of the court. S.151 of the Code of Civil Procedure saves the inherent powers of the court and, in exercise of that power, the court can strike off the defence in deserving cases for meeting the ends of justice. The court below had inherent jurisdiction under S.151 of the Code of Civil Procedure, to give effect to its order. It had inherent jurisdiction to prevent the abuse of the process of the court. *In giving effect to its order, the court below would have been justified to strike off the defence, even if there is no such provision in the Hindu Marriage Act."*

6.1. In the decision of this Court, reported in I (2003) DMC 562, (2002) 3 MLJ 319 (*Hema* v. *Parthasarathy* on 31 July, 2002) the following cases have been considered : -

(i) 1988 (1) Law Weekly 44 (*Raju* v. *Devaki*):

> "It has been held by this Court that S. 151, C.P.C. could be invoked to stay the trial of an O.P., in which the petitioner fails to pay maintenance granted under S. 24 of the Hindu Marriage Act. Therefore, when a spouse fails to pay interim maintenance as ordered by Court, the court has no other alternative than to stay the trial of the O.P."

(ii) 1989 (2) Law Weekly 423 (*Narayana Nadar* v. *Jayakodi*

> "… There is no specific provision in the Act to the effect that non-compliance with an order passed by the Court in the course of matrimonial proceedings, would enable the other party to seek the striking out of the defence of the defaulting party. Further, under S. 151, Code of Civil Procedure, which is indisputably applicable to

proceedings under the Act, the Court may exercise its powers for serving the ends of justice or for prevention of the abuse of the process of Court. In this case, it may be that the petitioner had not done or failed to do anything, amounting to the abuse of the process of Court. Even so, in order to serve the ends of justice, particularly in matters relating to matrimony, it cannot be regarded that the Court is helpless when a party flouts and disobeys an order of Court for payment of interim alimony and litigation expenses and thereby puts the other party at a disadvantage in the matter of the conduct of the proceedings, necessarily leading to a delay in the conclusion of such proceedings. *Under those circumstances, the order of striking out the defence of the defaulting party, would subserve the ends of justice and only such an order would enable the fulfilment of the Ammal) : objects of the Act of preventing inequity in the matter of conduct of the matrimonial proceedings and securing speedy relief as well*. It is found that the respondent had initiated proceedings for restitution of conjugal rights and by the non-payment of the interim alimony and litigation expenses by the petitioner, if the proceedings are to be stayed till the amount is realised by execution, many years would roll by in the interval and in the absence of any effective method of stopping ageing process of the parties, the relief that may ultimately be made available, may become illusory or even futile. *It seems to me that the only method by which a person opposing matrimonial proceedings under the Act, could be compelled to further the objects of the Act and to secure speedy disposal of the matrimonial causes and reliefs prayed for therein, is by striking out the defence of the defaulting party*…."

(iii) II (1990) DMC 486 (*Atreyapurapu Venkata Subba Rao* v. *Atreyapurapu Venkata Shyamala*):

"**I am of the view that to secure the ends of justice and to prevent the abuse of the Court's process, striking out the defence can be resorted to under Section 151, CPC. The intention of the petitioner is to drive the respondent to take recourse to execution under Section 28 and to stay the main proceedings**. *If execution has to be resorted to staying the main proceedings, the petitioner would be achieving the object of protracting the proceedings. That would also be encouraging the parties to flout the order of the Court and to delay the proceedings which are expected to be expeditious. In such circumstances, striking out the defence of such a defaulting party would be a proper order* and the trial Court was right in passing the said order."

(iv) II (1992) DMC 545 (*Mangalam* v. *P.S. Krishna Pillai*):

"… **the trial Court had inherent jurisdiction under Section 151 of Code of Civil Procedure to give effect to its order and prevent the abuse of the process of the Court by striking off the defence, even if there is no such provision in the Hindu Marriage Act**."

(v) AIR 1999 Bom 388 : 2000 (1) BomCR 114 (*Vanmala* v. *MarotiSambhajiHatkar*):

"The remedy of execution is not an easy remedy. The execution does not at all provide short cuts to the destination. The difficulties of a successful litigant begin when he succeeds to obtain an order in his favour. *Driving out a penniless wife to initiate a separate execution proceedings for the purpose of recovery of arrears of interim alimony and expenses of the proceedings frustrates the very purpose and spirit of Section 24 of the Hindu Marriage Act*. The approach adopted by the learned Matrimonial Court makes the very purpose of Section 24 of the Hindu Marriage Act redundant and nugatory.

…. A Court can, in exercise of its powers under Section 151 of the Civil Procedure Code, pass an order of staying the petition of divorce if it is found that the husband deliberately and contumaciously flouts the order of the Court. …. Similarly, if the erring party is the respondent, the Court can strike off the defence of such a party if it is found that the respondent is deliberately flouting the orders of the Court.

…. In befitting situation and in appropriate circumstance, *the Matrimonial Court should not hesitate to invoke the inherent powers under Section 151 of the Civil Procedure Code in the matter of implementation of order with regard to interim alimony and the expenses of the litigation by staying the proceedings filed under the Hindu Marriage Act for non-compliance of the order passed under Section 24 of the aforesaid Act and by striking off the pleadings of defaulting party*."

(vi) 1997 (1) Law Weekly 637 (*Kannamma* v. *Y. Subramaniam*):

"… If the order of the court below is not obeyed, petitioner herein (wife) is entitled to initiate proceedings against the husband for disobedience of orders of Court. At the same time, the lower court also will consider whether it

should continue to stay the trial or whether it should dispose of the main petition by dismissing the same for non-compliance of the order. If the Court feels that some more time has to be given for compliance of the Order, this order shall not stand in the way. In such a case, further proceedings of the main petition shall stand stayed. Even during the period of stay, respondent is bound to pay maintenance to both the children and alimony to the petitioner at the rates fixed by the earlier order of the court below. *If the court below is inclined to grant some time for the husband to make the payment, it should not adjourn the main H.M.O.P. indefinitely, and it is made clear that whenever the trial begins, the entire amount due as on that date must have been paid*."

(vii) The Hon'ble Supreme Court in (Appeal (civil) 1473 of 1999) *Hirachand Srinivas Managaonkar* v. *Sunanda*:

"(i) whether refusal to pay alimony by the appellant is a wrong within the meaning of section 23(1)(a) of the Act so as to disentitle the appellant to the relief of divorce. The answer to the question, as noted earlier, depends on the facts and circumstances of the case and no general principle or straight-jacket formula can be laid down for the purpose. We have already held that even after the decree for judicial separation was passed by the Court on the petition presented by the wife it was expected that both the spouses will make sincere efforts for a conciliation and cohabitation with each other, which means that the husband should behave as a dutiful husband and the wife should behave as a devoted wife. In the present case the respondent has not only failed to make any such attempt but has also refused to pay the small amount of Rs. 100 as maintenance for the wife and has been marking time for expiry of the statutory period of one year after the decree of judicial separation so that he may easily get a decree of divorce. In the circumstances it can reasonably be said that he not only commits the matrimonial wrong in refusing to maintain his wife and further estrange the relation creating acrimony rendering any rapprochement impossible but also tries to take advantage of the said wrong for getting the relief of divorce. Such conduct in committing a default cannot in the facts and circumstances of the case be brushed aside as not a matter of sufficient importance to disentitle him to get a decree of divorce under section 13(1A)."

(Emphasis supplied)

The Court holds that non-payment of interim maintenance by the husband to the wife, by violating the orders passed by the Court, should result in striking off the defence.

14. The High Court of Delhi in the case of **ERUM TRAVELS v. KANWAR RANI** [4], has held as follows:

> "…. …. ….
>
> **11.** The learned Single Judge considered the scope of the inherent powers under Section 151, CPC. The learned Civil Judge was of the view that striking out the defence is the heaviest penalty which could be imposed on the defendant in a suit, since it denied the defendant "reasonable opportunity of being heard" This could be satisfied only when the party is afforded the opportunity of stating his case, of producing his evidence of cross-examining the witnesses etc. Learned Judge noted that only in specific cases, the Legislature in its wisdom considered necessary to forfeit basic right of defendants and made specific provisions ***viz.*** Order VI Rule 16, Order VIII, Rule 10, Order XII, Rule 21 and Order XVI, Rule 20, CPC etc. The Court further held that inherent powers could not be exercised so as extend the penal provisions as given in Order XI, Rule 21, CPC, to other cases by imposing penalty. If this was done, the Court would be investing to itself a penal power not conferred by the statute. The impugned order striking out the defence was set aside.
>
> **12.** I find that although the learned Single Judge in the above case has referred to the decision of the Apex Court in *Mls. Rani Chand & Sons Sugar Mills Pvt. Ltd., Barabanki* v. *Kanhayalal Bhargava*, (AIR 1966 S.C. 1899) and even included an extract, therefrom, the ratio of decision in *Rant Chand & Sons Sugar Mills Pvt. Ltd., Barabankiv.*

[4] **1997 SCC OnLine Del.793**

Kanhayalal Bhargava, (supra) does not appear to have been appreciated. The observations made by the Apex Court in the above case run counter to reasoning advanced in *R. Ganga Reddy* v. *P. Raghunatha Reddy* (supra). In *Ram Chand & Sons Sugar Mills Pvt. Ltd., Barabanki* v. *Kanhayalal Bhargava*, an order had been passed under Order XXIX, Rule 3, CPC for the personal presence of the Director. **There was repeated non-compliance with the said order. Thereupon after issue of show cause, the defence of the defendant was struck off. Here also the argument raised was that Section 151, CPC could not be invoked to strike out the defence in circumstances covered by Order XXIX, CPC. The arguments being that Order XXIX, Rule 3, CPC, only empowered the Court to require personal presence and did not provide for any penalty in case the Director required to appear in the Court failed to do so**. In this context, the findings of the Apex Court in para 7 need to be reproduced:

> "Even so, learned Counsel for the appellant contended that Order XXIX Rule 3 of the Code did not provide for any penalty in case the Director required to appear in Court failed to do so. By drawing an analogy from other provisions where a particular default carried a definite penalty, it was argued that in the absence of any such provision it must be held that the Legislature intentionally had not provided for any penalty for the said default. In this context the learned Counsel had taken us through Order IX, Rule 12, Order X, Rule 4. Order XI, Rule 21, Order XVI, Rule 20 and Order XVIII, Rules 2 and 3 of the Code. No doubt under these provisions particular penalties have been provided for specific defaults. For certain defaults, the relevant order provide for making an ***ex-parte*** degree or for striking out the defence. ***But it does not follow from these provisions that because no such consequential provision is found in Order XXIX, the Court is helpless against recalcitrant plaintiff or defendant who happens to be a Company. There is nothing in Order XXIX of the Code, which, expressly or by necessary implication, precludes the exercise of the inherent power of the Court under Section 151 of the Code. We are, therefore, of the opinion that in a case of default made by a Director who failed to appear in Court when he was so required under Order XXIX Rule 3 of the Code, the Court can make a suitable***

consequential order under Section 151 of the Code as may be necessary for the ends of justice or to prevent abuse of the process of the Court."

(Emphasis supplied)

13. From the foregoing, it would be clear that the submissions which have been made, the basis of the decision in *R. Ganga Reddy* v. *P. Raghunatha Reddy* (supra) had been negatived by the Apex Court in the aforesaid decision. **The Court is accordingly vested with the jurisdiction to invoke inherent powers and pass consequential orders including striking out of the defence, to meet the ends of justice or prevent abuse of process of Court. Further this could be done even where the applicable provision does not contain a penal consequence**.

14. It would also be recalled that even in *Shankar DeobaPatial* v. *GanpatilalShiodayalChamedia's* (supra) case the Court recognised that an order for striking out the defence in a given case could be passed in exercise of powers under Section 151, CPC, but that should be done only when the acts of defaults are wilful and as a last resort.

…. …. ….

16. Having reached the conclusion that there is jurisdiction to pass an order for deposit of arrears of rent under Order XXIX, Rule 10, CPC and in case of default to pass a order under Section 151, CPC for striking out the defence, let us consider whether the said jurisdiction has been exercised lawfully in the instant case?"

(Emphasis supplied)

The High Court of Delhi strikes off the defence on an application filed under Order VI Rule 16 CPC for the reason that rents ordered under Order 39 Rule 10 CPC has not been deposited by the tenant.

15. A Division Bench of the High Court of Kerala in the case of **SHAFI v. RAIHANATH**[5], has held as follows:

"…. …. ….

> **12.** The power of the court under Order 6 Rule 16 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code') to strike out the defence can be exercised only in the specific circumstances mentioned therein. Unless any of the circumstances which are referred to in Order 6 Rule 16 of the Code are present, the court cannot strike off the defence in exercise of the power under that provision. **But, outside the provisions contained Order 6 Rule 16 of the Code, the court has inherent power to strike off defence**. A court is meant to do justice and it is intended to be an effective adjudicator of disputes. Then, it must inevitably be clothed with necessary power to deal with situations which may arise where the court must have power to strike off defence so that the people will continue to repose faith in the system and resort to lawful means which are provided by the courts. It is for the purpose of preserving its power and effectiveness that the courts have recognized inherent power to strike off the defence (See *Jayasree* v. *Vivekanandan* : 2012 (2) KHC 199 : 2012 (2) KLT 249).
>
> **13. There is inherent power in the court to pass such orders as are necessary for the ends of justice or to prevent the abuse of the process of the court. Section 151 of the Code saves the inherent powers of the court and, in exercise of that power, the court can strike off the defence in deserving cases for meeting the ends of justice. If a party to a proceedings before the court has wilfully disobeyed the orders of the court, the court can strike off the defence. Striking off the defence of the spouse, who does not honour the order of the court, is the instant relief that can be granted to the opposite party. The court cannot be a mute spectator watching flagrant disobedience of the interim orders passed by it showing its helplessness in instant implementation of**

[5] **2018 SCC OnLine Ker 2636**

> **such orders. Law is not that powerless. If the husband has wilfully failed to make payment of maintenance and litigation expenses to the wife, his defence can be struck out in exercise of the powers under Section 151 of the Code.**"
>
> (Emphasis supplied)

What would unmistakably emerge from the law as elucidated by the Apex Court and other High Courts, is that, **judicial discretion must not be exercised in favour of a party indulging in contumacious defiance. No party has a right to be heard on merits, when interim orders are violated with impunity**.

16. **This Court is not unmindful of the fact that the power to strike off a defence must be exercised with restraint and circumspection. Yet, in the present circumstance, where the orders of this Court and the trial Court have been wilfully ignored and no cogent justification exists for such non-compliance, indulgence would tantamount to rewarding disobedience**.

17. The defendant, for the last 5 years, has not paid a rupee of rent. In the year 2023, the Court directed deposit of rent; not a rupee of rent is paid. The coordinate Bench of this Court in 2024

while not entertaining the appeal, also directed deposit of rent. Not a rupee is paid. Therefore, the application under Order VI Rule 16 CPC had to be allowed and the defence of the defendant to be struck off, only on the conduct of the defendant, **projecting obstinate non-compliance**.

18. For the aforesaid reasons, the following:

O R D E R

(i) Writ Petition is allowed.

(ii) Order dated 5-07-2024 passed by the LXIV Additional City Civil and Sessions Judge, Bangalore City on I.A.No.X in O.S.No.5660 of 2022 stands quashed.

(iii) I.A.No.X filed under Order VI Rule 16 CPC in O.S.No.5660 of 2022 is allowed and the defence of the defendant to the suit is struck off.

Sd/-
(M.NAGAPRASANNA)
JUDGE

Bkp/CT:MJ