

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Miscellaneous Appeal No.346 of 2011**

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Akhilesh Kumar S/o Ramjee Sah, Resident of Village – Bich Bazar, Sohsarai, P.S.  
– Sohsarai, District - Nalanda

.... .... Petitioner/Appellant

Versus

Poonam Kumari D/o Rajendra Sah, Resident of village – Saheri, P.S. – Barh,  
District - Patna

.... .... Opposite party/Respondent

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**Appearance :**

For the Appellant/s : Mr. Raj Kumar Rajesh, Advocate  
Mr. Girish Chandra, Advocate  
Mr. M.S. Mishra, Advocate

For the Respondent/s : None

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**CORAM: HONOURABLE MR. JUSTICE V.N. SINHA**

**and**

**HONOURABLE MR. JUSTICE AHSANUDDIN  
AMANULLAH**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE V.N. SINHA)**

**Date: 21-04-2015**

Having considered the grounds taken in the limitation  
petition, we condone the delay in filing the present appeal.

2. I.A. No. 3269 of 2011 is, accordingly, disposed of.

3. Heard learned counsel for the appellant.

4. In spite of our successive efforts to serve notice of  
these proceedings on the sole respondent, the same could not be  
served, as it has been reported by the process server and all other  
agencies through which we attempted to get the notice served  
that the wife-respondent is not residing in her parental house in  
village, Saheri, P.S. Barh, District Patna.



5. Learned counsel for the appellant submitted that as respondent is getting maintenance in the light of the order passed by the Principal Judge, Family Court, Nalanda at Bihar Sharif, she is not only avoiding appearance in these proceedings but also violated the order dated 15.04.2004 whereunder application of the appellant under Section 9 of the Hindu Marriage Act was allowed and the respondent was directed to cohabit with him and in light thereof she cohabited only for a month in the year 2005 and then again went back to her parental home leading to institution of Matrimonial Case No. 31 of 2005, which has been dismissed under judgment dated 10.02.2010 passed by Principal Judge, Family Court, Nalanda at Bihar Sharif on the ground that wife has lived with the appellant for a period of one month and has not deserted him for one year.

6. The ground of desertion was not made out when judgment dated 10.02.2010 was passed but the wife has been continuously avoiding association of her husband all along, he has no option but to file a fresh divorce case on the ground of desertion from 2005 till date.

7. While permitting the appeal to be withdrawn, we grant leave to the appellant to file a fresh divorce case in the

competent Court as also to take steps for stoppage of the maintenance allowed which is being debited from his salary bill pursuant to the order of the Principal Judge, Family Court, Nalanda at Biharsharif.

8. With the leave aforesaid, the appeal is disposed of.

**(V.N. Sinha, J.)**

**(Ahsanuddin Amanullah, J.)**

Arjun/-

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