

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No. 713 of 2017

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1. Pritam Choudhary W/o Sri Devraj Dev resident of Mohalla - Nav Ratan,
P.S. K. Hat, District - Purnea.

.... Appellant/s

Versus

1. Devraj Dev S/o Ram Chandra Bhagat resident of Village - Banmankhi,
Sonar Path, P.S. - Banmankhi, District - Purnea.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Saket Tiwary

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA

ORAL ORDER

3 23-02-2018 Heard the learned counsel for the petitioner and the
learned counsel for the respondent.

The petitioner/wife is the respondent in Matrimonial
Suit No. 201 of 2012. The husband filed the matrimonial suit
seeking divorce on different grounds. The petitioner/wife also
filed W.S. and thereafter filed counter claim for restitution of
conjugal rights. The learned Principal Judge, Family Court, Purnea
by the order impugned decided the counter claim of the
respondent/petitioner during the pendency of the matrimonial suit.

The sole contention of the learned counsel for the
petitioner is that Section 23A of the Hindu Marriage Act, 1955
gives liberty to the respondent to put forth counter claim and the
same should be decided in the proceeding filed by the either side.



The decision of the counter claim should have been decided at the time of final decision of matrimonial suit and not before the disposal of the matrimonial suit itself as the same would cause prejudice and irreparable injury to the petitioner.

Mr. Sandeep Sahi, learned counsel for the respondent, has very fairly submitted that the counter claim should have been disposed of at the time of final disposal of the matrimonial suit, but at the same time submitted that the Principal Judge, Family Court, Purnea be directed to dispose of the matrimonial suit itself within six months since the suit is of the year 2012.

Having considered the submissions of both sides and on perusal of records, I find that the Principal Judge, Family Court, Purnea has committed illegality and jurisdictional error in deciding the counter claim of the respondent/petitioner before final decisions of the matrimonial suit. The procedure requires that a counter claim of a party should be decided along with main suit.

Accordingly, I find that the order dated 10.01.2017 passed in Matrimonial Suit No. 201 of 2012 is not sustainable. Hence, the same is set aside and the present Civil Misc. Petition is allowed.

The matter is remitted back with a direction to the



learned Principal Judge, Family Court, Purnea to decide the suit
itself expeditiously, preferably within six months from the date of
receipt of this order.

(Prabhat Kumar Jha, J.)

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