

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1657 of 2018**

=====

1. Manisha Maurya @ Manisha Morya, Wife of Kaushik Kumar Prabhudh and daughter of Uday Chand Kumar Sinha (Photojee), resident of Village-Sonemai, P.S.- Dhanarua, District- Patna.

.... Petitioner/s

Versus

1. Kaushik Kumar Prabhudh, Son of Sri Ashok Kumar Singh, Resident of Village- Nighwan, P.S.- Kurtha, District- Arwal, at present resident of Flat No. 102, Om Mundeshwari Apartment, Block- A Ved Nagar, Rukunpura, Bailey Road, P.S. Rupaspur, District- Patna.

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Nawal Kishore Singh

For the Respondent/s : Mr.

=====

**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA**

ORAL ORDER

2 20-11-2018 Heard learned counsel for the petitioner and learned counsel for the respondent.

The petitioner is the wife. Petitioner filed this civil miscellaneous petition against the order dated 18.09.2018 passed by Additional Principal Judge, Family Court, Patna in Matrimonial Case No.744 of 2018 by which the petition of the petitioner and the respondent for giving the period of six months to pass decree of divorce with mutual consent as prescribed under Section 13(B)(ii) of the Hindu Marriage Act has been rejected.

Learned counsel for the petitioner submits that marriage of the petitioner with the respondent was solemnized on 03.12.2013. The petitioner and respondent lived together for few days but on



account of incompatibility of each other, the petitioner and respondent could not continue their marital relation. The respondent filed Matrimonial Case No.1000 of 2017 for restitution of conjugal rights but during the course of reconciliation, both the husband and wife agreed to seek divorce with mutual consent and consequently Matrimonial Case No.1000 of 2017 was withdrawn and the present matrimonial case for dissolution of marriage with mutual consent was filed in which after admission of the case 21.01.2019 was the next date fixed but the husband and wife filed joint petition for recalling that date and waiving the second motion as mandated under Section 13(B)(ii) of the Hindu Marriage Act but the learned Additional Principal Judge rejected the petition for giving the second motion in contrary to the law laid down by the Hon'ble Supreme Court in the case of Amardeep Singh v. Harveen Kaur reported in 2017 (4) PLJR 37(SC) but from perusal of the impugned order I find that the learned Additional Principal Judge rejected the petition for waiving the second motion on the ground that there is no material to show that any reconciliation effort was made between the husband and the wife and the husband and wife are living separately for more than one year.

In this view of the fact, I think it proper to set aside the order and remitted the case to the Court of Additional Principal



Judge, Family Court to hear the petition of the petitioner for waiving the second motion after calling for the record of Matrimonial Case No.1000 of 2017 in which all efforts were made for reconciliation between the husband and the wife and when the same failed the husband and the wife mutually agreed to seek divorce with mutual consent and consequently the present petition was filed. Accordingly the order dated 18.09.2018 passed in Matrimonial Case No.744 of 2018 is set aside and matter is remitted to the Court of Additional Principal Judge, Family Court, Patna to hear the petitioner and respondent afresh after calling for the record of Matrimonial Case No.1000 of 2017 and to pass order immediately thereafter in accordance with law.

Accordingly, this civil miscellaneous petition is disposed of with the direction as aforesaid.

(Prabhat Kumar Jha, J)

Saurabh/-

U			
---	--	--	--

