

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****FA(MAT) No. 116 of 2020**

- Jeevan Lal Barman Alias Jai Singh S/o Late Sukhiram Barman Aged About 42 Years, R/o Babaspur, Tehsil And District Korba Chhattisgarh.

**---- Appellant****Versus**

- Smt. Pritima Barman W/o Jeevan Lal Barman Aged About 34 Years, R/o Ayruvigyan Sansthan, SIMS Hospital Bilaspur, Police Station Civil Lines, Tehsil And District Bilaspur, Chhattisgarh.

**---- Respondent**


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| For Appellant  | : Dr. Shivkumar Shrivastava, Adv. |
| For Respondent | : Shri Avinash Chand Sahu, Adv.   |

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**Hon'ble Shri P. Sam Koshy &**  
**Hon'ble Smt. Justice Rajani Dubey**

**Order on Board****21/10/2021****Per P. Sam Koshy, Judge.**

1. The present is a repeat FA(MAT) preferred on behalf of appellant for the same cause of action.
2. The fact of the case is that an application under Order 9 Rule 9 of the Code of civil Procedure, 1908 (for short 'the C.P.C.') was filed by the appellant before the Family Court, District Janjgir-Champa in Case No. 55A/2012 against an order that was passed on 31.07.2019, whereby an application under Section 13(1) of the Hindu Marriage Act (for short 'the Act') was dismissed for want of prosecution by the Family Court.
3. The appellant had preferred FAM No.278/2018 before this Court wherein the Division Bench of this Court had set aside the order dated 31.07.2019 subject to the payment of cost of Rs. 5000/- payable to respondent/wife within a period of three months. It appears that the appellant could not deposit the

said amount within the stipulated period and he has taken a plea that he was misguided by the Court staff and that he was ever willing to deposit the same, but he could not do so. Thereafter, he had approached the High Court again by way of writ petition seeking extension of time in depositing the said amount vide WP (227) No. 16 of 2020. The said writ petition was finally disposed of on 12.02.2020 holding it to be not maintainable reserving the right of the petitioner to move an appropriate application. Thereafter the present FAM has been dismissed.

4. Learned counsel for the appellant submits that he is ever willing to comply with the order dated 21.02.2019 passed in FAM No. 278 of 2018 and he be permitted to further contest the proceeding under Section 13(1) of the Act, which was dismissed for want of prosecution by the Family Court at Janjgir-Champa on merits.
5. Learned counsel appearing for the respondent, however, opposing the application submits that the appellant, at the first instance, has not complied with the order passed by this Court in FAM No. 278 of 2018 and, therefore, the second FAM on the same ground should not be entertained and would not be sustainable.
6. All said and done the factual matrix of this case as it stands is that an application of the appellant under Section 13(1) of the Act preferred before the Family Court at Janjgir-Champa was dismissed for want of prosecution vide order dated 31.07.2019. Since then the present is a third litigation which the appellant has entered into, which shows that the petitioner is keen to contest the case on merit. He further undertakes that he shall pay the cost earlier imposed by this Court vide order dated 21.02.2019 directly in the bank account of the respondent where the appellant has been regularly paying the monthly maintenance.
7. Taking into consideration all the facts and circumstances of the case and also in the larger interest of justice, the present

FAM, in the light of order passed on 21.02.2019 in FAM No. 278/2018, deserves to be and is, accordingly allowed, subject to the appellant's paying an additional cost of Rs. 5000/- thus making the total amount of Rs. 10,000/- payable by the appellant to the respondent (wife) directly in her bank account within a period of seven days. That upon furnishing the details of the deposit being made in the bank account, the Family Court, Janjgir-Champa, shall restore the Case No. 55A/2012 to its original number and further proceed to decide the same at the earliest, in accordance with law.

8. Accordingly, the FA(MAT) is allowed to the extent indicated herein above.

Sd/-  
**(P. Sam Koshy)**  
**Judge**

Sd/-  
**(Rajani Dubey)**  
**Judge**