

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Miscellaneous Appeal No.205 of 2021**

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Vishnu Dayal Choudhary @ Bishnu Dayal Choudhary, son of Shital Prasad Choudhary, resident of Mohalla-Noorpur, P.S.-Madhusudanpur (Nathnagar), District-Bhagalpur.

... .. Appellant/s

Versus

Shobha Devi, wife of Vishnu Dayal Choudhary and daughter of Late Shankar Choudhary, resident of Mohalla-Barari, P.O. and P.S.-Barari, District-Bhagalpur.

... .. Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Manoj Kumar Jha  
For the Respondent/s : Mr. Nishant Sinha

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**CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI**  
**And**  
**HONOURABLE MR. JUSTICE S. B. PD. SINGH**  
**CAV JUDGMENT**  
**(Per: HONOURABLE MR. JUSTICE S. B. PD. SINGH)**

**Date : 18-06-2025**

Heard the parties.

2. The appellant has come up in this appeal against judgment and decree dated 02.01.2020 passed by the learned Principal Judge, Family Court, Bhagalpur in Matrimonial Case No. 323 of 2012, whereby the petition filed by the appellant under Section 13(1)(i-a) of the Hindu Marriage Act, 1955 (in short 'the 1955 Act') seeking dissolution of marriage by a decree of divorce, has been



rejected.

3. The pleaded case of the appellant in his petition under Section 13 of the Hindu Marriage Act, 1955 is that the marriage of the appellant was solemnized with the respondent on 07/05/1999 without taking any dowry and after marriage, respondent came to the house of appellant and started leading her conjugal life with the appellant and during that period respondent was not indulged in her ancestral business (Toddy sell) of her parental house as appellant was not doing his ancestral business i.e. selling of Toddy. After sometime, the behaviour of the respondent started changing and she used to quarrel with the appellant and her other in-laws family members. After a long treatment, seven years after marriage, she was blessed with two sons namely Jay Kumar (5 years) and Vijay Kumar (4 years) out of her wedlock with appellant.

4. That appellant is living separate from his parents and two brothers and running a Photostat shop. The appellant tried his best to meet the needs of his wife and children but in maintaining his family appellant was in debt of Rs.25000/-. In the meanwhile, in November, 2010,



father-in-law of the appellant died and appellant spent about Rs. 35000/- in his last rituals.

5. After death of her father, the respondent used to live with her mother and brother at her *Maike* and started doing her ancestral business of selling of Toddy. The appellant requested several times to join her matrimonial obligation but every time, she refused to join her *Sasural*. Ultimately on 16/01/2012 appellant and his relatives went to her *Maike* and requested the respondent to come with him but mother of the respondent and other members of the family started abusing and assaulting them, who somehow fled away and saved their lives.

6. The respondent has completely failed to discharge her matrimonial obligation towards her husband and other in-laws members. The actions/misdeeds of the respondent have caused great torture and harassment in the mind of the appellant. This causes enormous pain and grief in the mind of the appellant and he found that in spite of giving best possible love and affection, there was no change in her behaviour towards him, his parents, relations and friends. The respondent has left the society and



company of the appellant and went to her *Maike* in November, 2010. The matrimonial relation between the appellant and respondent has already irretrievably broken down and there is no hope of restoration of their conjugal life.

7. After filing of the Matrimonial Case, summons were issued to the opposite party/respondent but despite of that the opposite party/respondent did not chose to appear in the case. Consequently, the case was fixed for *ex-parte* hearing against opposite party/respondent vide order dated 01.06.2015. The Trial Court records show that during the course of *ex-parte* hearing the opposite party/respondent appeared on 27.09.2016 and filed a petition to recall the order of ex-parte hearing passed against her but on the same day, the case was dismissed for default due to long absence of the appellant. The record further shows that against that order off dismissal, Miscellaneous Petition No. 14 of 2016 was filed by the appellant to recall the order of dismissal dated 27.09.2016 and ultimately the Miscellaneous Petition No. 14 of 2016 was allowed on 12.04.2017 and accordingly Matrimonial Case No. 323 of



2012 was restored.

8. The written statement of opposite party/respondent has been filed in which she has stated that the instant case is fit to be dismissed as it is not maintainable either in the eye of law or on fact. The appellant-wife has submitted that she is mother of two children and passing pitiable life since long due to highhandedness of the appellant who is a man of desperate character. She further submitted that appellant is habitual of harassing the respondent due to his illicit relationship with other married lady and due to this reason, he has filed Matrimonial Case No. 323 of 2022 seeking dissolution of marriage without considering the fact that he is father of two children and if marriage is broken, it will deeply effect the mental, physical and financial health of the children. The respondent had never given threat, not ill behaved, humiliated or quarreled with any in-laws family members and all the allegations made against the respondent-wife are fake with a view to take divorce from her. Hence, the divorce petition is liable to be dismissed.

9. It is submitted on behalf of the appellant that



during pendency of Matrimonial Case No. 323 of 2012, the respondent-wife has filed a petition u/s 24 of the Hindu Marriage Act on 27/06/2018 for getting interim maintenance by the appellant. After hearing the parties, learned Principal Judge, Family Court, Bhagalpur vide order dated 26/11/2018 has allowed the petition of the respondent filed u/s 24 of the H.M. Act and directed the appellant to pay Rs. 2000/- per month to the respondent as maintenance without considering the fact that appellant runs a photostat shop in his rural village and only earns Rs. 100-150 per day and he is financially crunched due to pending litigation with the respondent. Due to the aforesaid reason, appellant could not pay the amount of interim maintenance on time to the respondent which resulted in dismissal of Matrimonial Case No. 323 of 2022 which was filed for dissolution of marriage.

10. In a memo of appeal, it is averred on behalf of the appellant that appellant was ready to pay the due amount of maintenance as per order of learned Principal Judge, Family Court but the learned Principal Judge has not considered the prayer and dismissed the Matrimonial



Suit in default of payment of maintenance amount.

11. After going through the impugned order passed by the learned Principal Judge, Family Court, it appears that the Matrimonial Suit was not decided on merits rather it has been dismissed simply on the basis of default in payment of interim maintenance amount awarded by this Court under Section 24 of the Hindu Marriage Act. So, the adjudication of the Matrimonial Suit is required after adducing the evidence of both the parties and giving an opportunity to both of them to argue on the basis of materials available on record.

12. Accordingly, the order dated 02.01.2020 passed by the learned Principal Judge, Family Court, Bhagalpur in Matrimonial Case No. 323 of 2012 is set aside.

13. The matter is remanded back to the Principal Judge, Family Court, Bhagalpur to decide the case on merits after giving opportunity to both the parties to adduce their evidence. The appellant is also directed to pay the entire payment of interim maintenance awarded under Section 24 of the Hindu Marriage Act by the learned



Principal Judge, Family Court, Bhagalpur on 26.11.2018

within a period of six months from today.

( S. B. Pd. Singh, J)

(P. B. Bajanthri, J)

Shageer/-

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| AFR/NAFR          | NAFR       |
| CAV DATE          | 01/05/2025 |
| Uploading Date    | 19/06/2025 |
| Transmission Date | N/A        |

