

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.186 of 2025

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Anupma Kumari daughter of Chandra Mauli Sharma, Resident of Village- Belbanna, Ward No.- 5 (Paschmi Pandarak) and P.S.- Pandarak, District- Patna.

... .. Appellant/s

Versus

Gopal Kumar, S/o Vijay Singh, through his Guardian and father Sri Vijay Singh, Resident of Village- Harauli, P.S.- Barh, District- Patna, at present residing at Mohalla- Shahjanand Nagar, Right of State Bank of India Branch Barh, District- Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Jnanchandra Bhardwaj, Advocate
For the Respondent/s : Mr.Abhay Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
and
HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE DR. ANSHUMAN)

Date : 23-02-2026

Heard learned counsel appearing for the appellant and

learned counsel appearing for the respondent.

Re. Interlocutory Application No. 01 of 2025.

2. The present interlocutory application has been filed under Order I Rule 10 of the Code of Civil Procedure seeking impleadment of the father of the respondent as Respondent No. 2 in the present Miscellaneous Appeal.

3. Learned counsel for the appellant submits that the sole respondent is a person of unsound mind and, therefore, ought to be represented through a guardian for the purpose of the proceedings. It is further submitted that the negotiations



relating to the marriage, including matters concerning dowry and settlement, were conducted between the father of the appellant and the father of the respondent. On that basis, it is contended that the father of the respondent is a necessary party and should be impleaded in the Memo of Appeal.

4. In view of this Court, the grounds urged for impleadment of the respondent's father as Respondent No. 2 are legally unsustainable for the following reasons. Firstly, the present Miscellaneous Appeal arises out of Matrimonial Case No. 1363 of 2022 instituted by the appellant. In the said matrimonial proceeding, the father of the respondent was not a party, the dispute being exclusively between the husband and the wife. Section 13(1) of the Hindu Marriage Act, 1955 explicitly provides that a petition for dissolution of marriage by a decree of divorce may be presented only by either the husband or the wife. Therefore, a third party, including the father of either spouse, is neither a necessary nor a proper party to such proceedings. Secondly, the appellant herself has taken the plea that the respondent is a person of unsound mind and that such condition existed even at the time of institution of the matrimonial (divorce) case in the year 2022. Order XXXII of the Code of Civil Procedure governs suits by or against minors



and persons of unsound mind. In particular, Order XXXII Rule 15 CPC provides as follows:

“[15. Rules 1 to 14 (Except rule 2A) to apply to persons of unsound mind.—Rules 1 to 14 (except rule 2A) shall, so far as may be, apply to persons adjudged, before or during the pendency of the suit, to be of unsound mind and shall also apply to persons who, though not so adjudged, are found by the Court on enquiry to be incapable, by reason of any mental infirmity, of protecting their interest when suing being sued.]”

Meaning thereby, any suit by or against a person of unsound mind is required to be instituted and prosecuted through a duly appointed next friend or guardian, in accordance with the provisions of Order XXXII of the Code of Civil Procedure.

5. In the present case, it transpires that the matrimonial (divorce) proceeding was neither instituted through a next friend nor was the present Miscellaneous Appeal filed in compliance with the said mandatory procedure.

6. This Court is of the considered view that the defect goes to the root of the matter. In such circumstances, the present interlocutory application cannot be entertained or allowed at the appellate stage, particularly when the original matrimonial proceeding itself was not conducted through a next friend as required under law.

7. Accordingly, the present interlocutory application is hereby dismissed.



Re. Interlocutory Application No. 02 of 2025.

8. The present interlocutory application has been filed under Section 5 of the Limitation Act, 1963, seeking condonation of a delay of 24 days in filing the appeal.

9. However, from the stamp report, it transpires that the present appeal has been filed within the prescribed period of limitation. In light of the order dated 03.05.2023 passed by the Division Bench of this Court in MA No. 474 of 2021 (***Ranju Devi vs. Chitranjan Singh***), it has been held that the period of limitation in matrimonial matters arising out of disputes from marriage before this Hon'ble Court shall be 90 days instead of 30 days.

10. As such, the present interlocutory application does not survive for consideration and need not be pressed.

11. Accordingly, the present interlocutory application stands dismissed as not pressed.

Re. Miscellaneous Appeal No. 186 of 2025.

12. Upon perusal of the judgment under challenge, it transpires to this Court that the matrimonial (divorce) case was instituted against a person alleged to be of unsound mind without adherence to the mandatory provisions contained in Order XXXII of the Code of Civil Procedure, which governs



proceedings by or against minors and persons of unsound mind.

The suit appears to have been decreed *ex parte*.

13. In such circumstances, we are not inclined to grant any relief to the appellant, as the appeal itself is not maintainable in law. Accordingly, the present Miscellaneous Appeal is hereby dismissed as not maintainable.

(Bibek Chaudhuri, J)

(Dr. Anshuman, J)

Ashwini/-

AFR/NAFR	
CAV DATE	NA
Uploading Date	26/02/2026
Transmission Date	NA

