

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Miscellaneous Appeal No.807 of 2024**

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... .. Appellant

Versus

... .. Respondent

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**Appearance :**

For the Appellant : Mr. Sanjay Kumar, Advocate  
For the Respondent : Mr. Sunil Kumar Pandey, Advocate

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**CORAM: HONOURABLE MR. JUSTICE NANI TAGIA**  
**and**  
**HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY**  
**CAV JUDGMENT**  
**(Per: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY)**

**Date : 24-04-2026**

**I.A. No. 01 of 2024**

1. This is an application under Section 5 of the Limitation Act for condonation of delay of about 410 days in filing the present miscellaneous appeal.

2. For the reasons stated in the interlocutory application, delay in filing the present miscellaneous appeal is condoned.

3. The interlocutory application is accordingly disposed of.

**M.A. No. 807 of 2024**

Heard learned counsel for the appellant and



learned counsel for the respondent.

2. The present appeal is directed against the judgment dated 06.06.2023 passed by the learned Principal Judge, Family Court, Sheohar in Matrimonial Divorce Suit No. 19 of 2023 whereby and whereunder petition filed by both the plaintiffs under Section 13(B) of Hindu Marriage Act, 1955 (hereinafter referred to as "the Act") has been rejected on the ground that the parties have not been living separately for one year since on first motion itself that the respondent/husband has established conjugal relation on 15.03.2023 whereas the joint divorce petition with mutual consent was filed on 11.05.2023 though the respondent has sworn affidavit to the extent that he has been living separately for last more than one year.

3. Briefly stated facts of the present appeal is that appellant and respondent were married as per Hindu rituals and customs on 28.04.2021 and marriage was solemnized in village Gobinapur, Sheohar. After marriage, the appellant went to her matrimonial home at Sri Krishna Nagar, Motihari and both started to lead their conjugal life and the marriage was consummated and out of their wedlock, one girl child took birth on 19.03.2022. It is further stated that appellant was selected as a government teacher and she was posted in Primary School,



: After solemnization of marriage, cordial relation between the parties no longer existed on account of which doubt was created in the mind of both parties. Since both parties have been residing separately from each other since March, 2022 and both are not willing to fulfill matrimonial obligations, appellant and respondent have decided to part ways, to live their happy life, in their own way despite efforts have been taken by the family and friends to pacify the matter. Accordingly, both parties filed a joint petition under Section 13 (B) of the Act for dissolution of marriage on the basis of mutual consent. As per terms and conditions of the agreement between the parties, respondent agreed to pay the amount of rupees twenty lacs as permanent alimony to the appellant along with rupees two lacs as maintenance cost to the daughter and as per agreement, rupees ten lacs was agreed to be paid on 04.05.2023 to the appellant by the respondent through demand draft and rest amount of rupees ten lacs through demand draft and paper regarding fixed deposit of rupees two lacs for daughter have to be deposited in the court of learned S.D.J.M or District and Sessions Judge by 15.06.2023 which would be payable to the appellant only after disposal of matrimonial suit. It was further agreed that after obtaining



decree of divorce through mutual consent, the appellant (plaintiff no. 2 in matrimonial suit No. 19 of 2023) would not claim any share in movable or immovable property of the respondent (plaintiff no. 1 in matrimonial suit No. 19 of 2023), either self acquired or paternal property inherited by him. It was further agreed that daughter, \_\_\_\_\_ would be in custody of the appellant,/her mother and she/appellant would be responsible for her upkeep and maintenance for which fixed deposit of rupees two lacs would be made by the respondent. It was further agreed that the criminal case filed by the appellant against the respondent and his other family members would be withdrawn or appellant would assist the respondent in disposal of the cases, provided that paper of demand draft of rest amount of rupees ten lacs and fixed deposit of rupees two lacs would be deposited in the court. The appellant and respondent also agreed that they would not register any case against each other in future.

4. Learned counsel for the appellant has submitted that the joint petition was filed under Section 13(B) of the Act on the sweet will of both parties and the concerned court had dismissed the petition. The question has been raised by the learned counsel appearing on behalf of the appellant's side that



the statement of husband/respondent was recorded by the court as applicant no. 1 who has deposed that on 15.03.2023, there was a conjugal relation between both the parties and the present case has been filed on 11.05.2023. In this way, the finding has been recorded by the court that both parties have not been residing separately since one year or more than one year on oath. Learned counsel further submitted that the concerned court did not bother to record the statement of appellant (plaintiff no. 2 in the matrimonial suit) and without looking into the averment made in the application and the affidavit filed by the respective parties, dismissed the matrimonial suit on the averment or statement of the respondent in the court on the ground that both parties have not lived separately for one year. It has also been raised by the counsel of the appellant that when application under Section 13(B) of the Act was filed by the parties, in which there is specific averment that they have been living separately since more than one year so the concerned court has not taken into account the averment of the petition which has been made by both the parties. Learned counsel on behalf of the appellant has submitted that the very statement as deposed by the husband/respondent is just to foist the progress of divorce suit. Learned counsel for the appellant has submitted that the court



has not taken into account specific word stated by the husband that he has been living separately from his wife since March, 2022. In place of giving weightage to the written statement of respondent, the concerned court has given due weightage to the oral statement of the respondent which was given in a open court in a huff. Hence, the judgment passed by the concerned court is not justified and legal and same is liable to be set aside.

5. It is necessary to discuss Section 13(B) of the Hindu Marriage Act, 1955 which reads as under:-

***"13-B. Divorce by mutual consent.-***

*(1) Subject to the provisions of this Act a petition for dissolution of marriage by a decree of divorce may be presented to the district Court by both the parties to a marriage together, whether such marriage was solemnized before or after the commencement of the Marriage Laws (Amendment) Act, 1976, on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved.*

*(2). On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in subsection (1) and not later than eighteen months after the said date, if the petition is not withdrawn in the meantime, the court shall, on being satisfied, after hearing the parties and after making such inquiry*



*as it thinks fit, that a marriage has been solemnized and that the averments in the petition are true, pass a decree of divorce declaring the marriage to be dissolved with effect from the date of the decree."*

6. In the present case, both parties have filed the joint divorce petition with mutual consent under Section 13 (B) of the Act and the court has to satisfy that the averment made by both parties must be in accordance with the spirit of Section 13(B) of the Act and for the purpose of satisfaction, court has to make inquiry whether both the parties, since the date of presentation of the petition, are living separately for a period of one year or more.

7. In the present case, when the court has enquired the husband/respondent as AW-1 and has found that the husband has admitted that he has fulfilled the marital obligation with his wife/appellant on 15.03.2023 as mentioned in the deposition of AW-1 and the averment as stated in the joint divorce petition under Section 13(B) of the Act is divergent with the deposition of AW-1 and the court has reached to the conclusion that the divorce petition filed under Section 13(B) of the Act is fit to be dismissed. While analyzing the statutory provision as mentioned in Section 13(B) of the Act the 'living separately' for a period of



one year should be immediately preceding the presentation of the petition. "Living separately" means not living as husband and wife, regardless of physical residence. Parties may live under the same roof yet be separated in law, or live in different places yet continue a marital relationship. The essential requirement is a complete cessation of marital obligations, coupled with an intention not to resume cohabitation, for a continuous period of one year immediately preceding the petition.

8. In the present case, the husband has admitted as AW-1 that he has fulfilled the marital obligation on 15.03.2023 and the court is satisfied on the basis of inquiry that averment made in the petition filed under Section 13(B) of the Act is quite divergent with the statement of AW-1, who is none else than husband himself. The statutory provision, as envisaged in Section 13(B) of the Act, has not been fulfilled. In this way, the reason quoted by the concerned court is justified and legal and the court is satisfied at the time of inquiry that Section 13(B) of the Act is totally inconsistent with the statement given by the husband-AW-1 and there is no reason to interfere with the judgment passed by the concerned court. Accordingly, the present miscellaneous appeal stands dismissed.



9. However, during pendency of the present miscellaneous appeal, a joint compromise petition has been filed on 17.02.2026. In the light of aforesaid joint compromise petition, both parties are directed to appear before the Principal Judge, Family Court, Sheohar by filing a petition in the spirit of statutory provision envisaged under Section 13(B) of the Act afresh within a period of four weeks from the date of receipt/production of copy of the judgment and the concerned court is directed to hear such petition and decide the same as per relevant provision of law, without being prejudiced by the previous judgment dated 06.06.2023 passed by the said court.

10. Interlocutory application(s), if any, shall also stand disposed of.

**(Nani Tagia, J)**

**(Alok Kumar Pandey, J)**

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AFR/NAFR	AFR
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