

First Appeal No. 01 of 2025

Sarthak Upadhyay, age about 11 years, Son of Sri Sanjay Upadhyay Represented through his natural mother and guardian Bandana Nayan **Appellant**

...

...

Appellant

Versus

Sanjay Upadhyay

...

... Respondent

**CORAM :HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE ARUN KUMAR RAI**

HON'BLE MR. JUSTICE ARUN KUMAR RAI

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

For the Respondent : Mr. Sanjay Kumar Pandey, Advocate

Order No. 09 : Dated 14th August, 2025

1. The appeal has been filed under Section 19(1) of the Family Court's Act, 1984 against order dated 16.08.2024 passed by learned Family Court, Koderma in Civil Miscellaneous Case No. 05 of 2024 whereby and whereunder the petition filed under Section 28A of the Hindu Marriage Act read with Section 18 of the Family Courts Act, 1984, seeking direction upon the father of the child (minor) to comply with the terms and conditions of the compromise based upon that a decree of divorce, was granted vide judgment dated 13.06.2019 passed in Original Suit No. 68 of 2018 while closing the proceeding instituted on the application filed under Section 13B of the Hindu Marriage Act, 1952, has been dismissed.

2. The said petition has been rejected on the ground that the child (minor) was not party to the Original Suit No. 68 of 2018. However, at the moment, we are not going into the legality and propriety of the order for the reason that for a sum of Rs. 2,66,500/-, which is alleged to have accumulated on the basis of a direction to make payment of Rs. 7500/- per month in favour of

son (minor), the appellant herein. It has also been contended that even the monthly maintenance amount to the tune of Rs. 7500/- is not being paid.

3. This Court, therefore, is of the view that at the moment as per the direction passed by the learned Family Court, the same is to be complied with in letter and spirit. It is for the reason that the decree passed on the application filed under Section 13B, which carries in two parts. The first part is with respect to dissolution of marriage based upon the consent of the parties on the basis of certain terms and conditions, therefore, the part of the direction as contained in the judgment dated 13.06.2019 if has not been given effect to, then it is the accountability and responsibility of one of the parties, the husband, respondent herein, who is duty bound to comply the terms and conditions upon which the decree of divorce has been passed.

4. It needs to refer herein, when the matter has been taken up, Mr. Pandey, learned counsel for the respondent-husband on his own has agreed to make payment of arrears of amount as also the amount to be paid in favour of the child on month to month basis but this Court has asked him to have the instruction from his client, therefore, the matter has been passed over for few cases.

5. When the case has again been called out, Mr. Pandey, has again appeared having with the telephonic instruction of his client, the respondent herein. Mr. Pandey, on instruction of his client, who is working as Non-Commissioned Officer in

the Indian Army, has submitted that the respondent is ready to disburse the arrears of amount to the tune of Rs.2,66,500/- as on date but since the respondent is also to take care of his parents, as such, he has made prayer for the disbursement of the entire amount of Rs.2,66,500/- in four installments.

6. Mr. Pandey has also been instructed that within 15 days from today, a sum of Rs.50,000/- shall be paid against the total arrear of Rs.2,66,500/-. It has been contended that the rest of the amount shall be paid in three equal installments at the interval of 15 days.

7. In view thereof, the entire amount, therefore, is to be paid within the period of two months from today.

8. So far as the current maintenance amount which has been directed to be paid by the learned Family Judge vide judgment dated 13.06.2019, which is to the tune of Rs.7,500/-, Mr. Pandey, on instruction of the respondent, has submitted that by the 10th of each month, the maintenance amount to the tune of Rs.7,500/- shall be paid positively.

9. This Court, considering the said submission made on behalf of the respondent, on instruction, as has been submitted at Bar by Mr. Pandey, the following directions are being passed :-

I. A sum of Rs.50,000/- shall be paid against the total arrear of Rs.2,66,500/- within a period of 15 days from today and the rest of the amount as accrued as arrears shall be paid in three equal installments at the interval of 15 days. The entire amount, therefore, is to be paid within the period of two months from today.

II. So far as the current maintenance amount, it shall be paid by the 10th of each month.

10. It is made clear that the child, under the guardianship of his mother, will be at liberty to make application before this Court in case any of the undertakings furnished by the respondent before this Court will be flouted.

11. If such situation will arise, then the Court may pass appropriate order to communicate the same to the employer of the respondent-husband.

12. Let the matter be posed after four weeks, i.e., on 17.09.2025.

(Sujit Narayan Prasad, J.)

(Arun Kumar Rai, J.)