IN THE HIGH COURT OF JHARKHAND AT RANCHI

First Appeal No.235 of 2026

…**Appellant/Respondent**

Versus

… … **Respondent/petitioner**

CORAM: HON'BLEMR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE AKHIL KUMAR

For the Appellant : Mr. Manoj Kumar Sah, Advocate
For the Respondent : None

CAV/Reserved on 09.10.2026 **Pronounced on 05/11/2026**

Per Sujit Narayan Prasad, J.

Prayer:

1. The instant appeal under Section 19(1) of the Family Court Act, 1984 is directed against order/judgment dated 05.12.2023 passed by the learned Principal Judge, Family Court, Dumka in Original Suit No. 90 of 2023, whereby and whereunder the learned Principal Judge has allowed the suit ex-parte filed by the petitioner, respondent herein under Section 13(1)(ia)(i-B) of the Hindu Marriage Act, 1955 for grant of decree of divorce.

Brief facts of the case:

2. The brief facts of the case, as per the pleading made in the original suit, needs to be referred herein reads, which reads as under:

3. The parties are legally wedded husband and wife and their marriage was solemnized on 09.05.2006 at village- Bhatdiha, P.O. Godda, P.S. Godda (T), Subdivision and District- Godda (Jharkhand) according to Hindu rites and customs. Out of their wedlock one female child aged about 14 years another male child aged about 08 years named were born at the time of filing of the suit.

4. Case was made out before the learned family court since after marriage, the appellant-wife several times went to her parent's place situated at village- Bhatdiha, sometimes with her father and sometimes with her brother and sometimes with the respondent and stayed there most of the time, as per her own will and desire.

5. It is contended that the plaintiff-husband, the respondent herein, was an educated unemployed at the time of his marriage having no earning of his own and was dependent on his parents, who had little area of agricultural land, while on other hand parents of the defendant-wife, the appellant herein, were men of means, having a big area of agricultural land in their possession. It is stated that since the defendant-wife spent most of the times in her parent's place

as such, the plaintiff-husband used to visit his sasural place time to time, where the defendant became pregnant and deliver her first female child in the year 2007. After birth of the first daughter, the parents of the plaintiff-husband asked the parents of the defendant-wife for "bidagiry" of the defendant but parents of the defendant contrary to it began to put pressure upon the plaintiff-husband to reside as "Gharjamai" in their house and to look after their properties and business. But the plaintiff-husband refused the proposal of the parents of the defendant-wife and as such they became angry and as a result the defendant was not agree to come back with the plaintiff to her matrimonial home. However, later on, due to intervention of his parents and society persons the plaintiff-husband brought the defendant-wife to her matrimonial home. Subsequently, the parents of the defendant began to disturb the plaintiff as at short intervals they used to put pressure before the plaintiff, his parents and upon the other family members of his family for "Bidagiry" of their daughter. However, several times, father of the defendant took her away from her matrimonial home without his consent and his parents and the same character of the defendant's brother in the same matter. He suffered a lot in such situation in which at one hand the defendant was living most of the time at her parents place and plaintiff was passing his life as a Bachelor life and there

was several occasions with him to remain depend on local hotels for his daily food/meal and breakfast. The defendant without his consent or his parents started frequently visiting her parent's house and whenever she visited her parents' house, she used to reside there or a considerable period in each visit and that too without any rhyme and reason. The plaintiff had tried his best to make her understand to lead conjugal happy life with him but the entire efforts of the plaintiff gone in vain. The plaintiff faced such a situation for further several years and under such circumstances he was compelled to visit his sasural but defendant had no interest to live and reside with the plaintiff and in due course of time the defendant delivered an another male child in the year 2015. After birth of the second male child, he brought his wife to his house along with female child but the defendant has no interest to live in her matrimonial home with him along with her children. The plaintiff after a long struggle and hard work and labour of his own has got a L.L.B. Degree in the year 2019, and he has applied in the Bar Council of Jharkhand for certificate of Advocacy. On 14.08. 2019, when the plaintiff was in examination hall for last paper examination of L.L.B., the uncle and brother of the defendant came to the house of the petitioner's sister which house is situated near Polytechnic Gate where the defendant was living with her children in the house of the plaintiff's

sister. They told the sister of the plaintiff that the mother of the defendant is lying serious ill and on this ground showing urgency took away, the defendant and their children with them. The sister of the plaintiff refused to the request of the uncle and brother of the defendant and requested to wait the plaintiff but they do not wait the plaintiff and she left the plaintiff's sister's house and she along with children went with them in her father's house at Bhatdiha, Godda. When the plaintiff arrived his house after examination of L.L.B., the sister of the plaintiff disclosed about the incident to him.

6. After about a week the plaintiff visited his sasural place, but when he knocked door of his house, the defended opened the door and expressed before the plaintiff that she will not reside in his house of "khapra Pose house" and she further added that she has plenty of every things at her parents hose and nothing any type of income which the plaintiff earns from his private tuition itself not sufficient to maintain the status expense and finally told the plaintiff to forgo the private tuition work and come to her parents house with his all belongings, otherwise there was no shelter for the plaintiff in his said sasural place and thereafter closed the door of the house. The plaintiff became very shocked from such type of behaviour of the defendant having no alternative available with him returned back to his house and disclosed about the facts to his sister and brother-in-law including some

relatives and friends. The defendant, her mother and brother has given threatening to implicate in a false Criminal case like 498 'A' I.P.C. and D.P. Act and they said that it is not possible to lead he conjugal life with the plaintiff. The plaintiff filed original suit no. 8/2020 u/s 9 of the Hindu Marriage Act, 1955, but after receiving the notice the defendant had not appeared in Court and after publication of the Gazette, this learned Court passed ex-parte order But the defendant after receiving notice U/S 9 of Hindu Marriage Act, lastly filed a false P.C.R. Case against the plaintiff which was converted to G.R. Case No. 602/2020 which is still pending in the Court of C.J.M. Godda and also filed a maintenance case against the plaintiff before the Principal Judge, Family Court, Godda which is still pending. The plaintiff sent a legal notice upon the defendant on 30.09.2022, regarding judgment and decree u/s 9 of the Hind Marriage Act, for restitution of conjugal rights but the defendant has not taken any step for restitution of conjugal rights till now. Since 2016, over a period of more than seven years has elapsed already and since then there is no conjugal relationship in between the plaintiff and the defendant and that the defendant without any reasonable excuse, has withdrawn herself from the society.

7. The cause of action for the petition arose on 09.05.2006 when the marriage of the plaintiff with the defendant was

performed. It also arose on several occasion, when the defendant behaved and committed cruelty through several ways towards the plaintiff and without any just and reasonable excuse, withdrawn herself from the society and after birth of the second male child there is no conjugal, relationship in between the plaintiff and defendant and in the meantime the defendant left the matrimonial home on 14.08.2019 without consent of the plaintiff.

8. In the aforesaid background, the petitioner-husband, the respondent herein, had filed the suit wherein prayer was made to pass a decree for dissolution of marriage in favour of the petitioner/ respondent herein.

9. Before the family court, despite being noticed, the respondent-wife, appellant herein, did not appear, as such the case proceeded ex-parte vide order dated 11.10.2023, as against the appellant-wife.

10. The petitioner-husband adduced evidence in support of his case before the Family Court.

11. The learned family court, allowed the suit filed by the petitioner-husband filed under Section 13(1)(i-a)(i-b) of the Hindu Marriage Act, 1955 for grant of decree of divorce.

12. The respondent-wife (appellant herein) being aggrieved with the order passed by the learned family court has approached this Court by filing the instant appeal.

13. On being noticed by this Court, the respondent-husband has appeared and contested the appeal.

Submission of learned counsel for the appellant-wife

14. Submission has been made that the learned family court did not consider the fact that prior to filing of divorce case, the appellant-wife had filed PCR Case No. 602/2020 against the respondent under Sections 498(A) IPC and ¾ D.P. Act and the respondent in order to save his skin had filed the suit for divorce.

15. Submission has been made that the learned family court has proceeded in such a fashion that the Suit has to be dismissed which will appear from the entire record of the case itself.

16. Learned family court has failed to take into consideration the fact while passing the impugned Judgment that the learned court has never discussed in the impugned order, whether the substituted service of notice was ever executed or the process of summon or notice was executed properly.

17. It has been submitted that the learned family court has failed to take into consideration while passing the impugned judgment that the respondent-husband has suppressed several material fact with regard to the cruelty done to the appellant by the respondent i.e., i.e., the appellant had not

left her matrimonial house voluntarily rather the appellant was forced to live in her parental house.

18. Submission has been made that the impugned order has been passed treating the statement made by the husband to be a gospel truth, and on that basis order of divorce has been passed.

19. Therefore, submission has been made that the impugned order may be quashed and set aside.

Analysis:

20. We have heard learned counsel for the appellant and gone through the pleading available on record as also the finding recorded by learned Principal Judge, Family Court, and other materials available on record.

21. This Court before proceeding further needs to refer herein that this Court vide order dated 05.05.2026 issued notice upon the respondent, both by speed post as well as by ordinary process. The service report of the process server reflects that the notice has been personally received by the respondent but the respondent did not appear.

22. However, this Court while admitting the appeal vide order dated 17.07.2026, again issued notice upon the respondent. Pursuant thereto, the respondent appeared by filing Vakalatnama but when the case was taken up, on repeated

call none appeared on behalf of respondent, as such this Court proceeded on the basis of pleading available on record.

23. This Court before appreciating the legality and propriety of the impugned order needs to refer herein the factual aspect of the matter.

24. The marriage of the parties was solemnized on 09.05.2006 and out of their wedlock one female child aged about 14 years and another male child aged about 08 years was born at the time of filing of the suit.

25. Case has been made out before the learned family court that since after marriage, the appellant-wife stayed most of the times in her parental house and pressure was upon him [husband] to become Gharjamai which he refused.

26. It is further case of the plaintiff-husband, the respondent herein, that the plaintiff filed original suit no. 8/2020 u/s 9 of the Hindu Marriage Act, 1955, after receiving the notice the defendant had not appeared in Court, after publication of the Gazette, this learned Court passed ex-parte order, but the defendant after receiving notice U/S 9 of Hindu Marriage Act, lastly filed a false P.C.R. Case against the plaintiff which was converted to G.R. Case No. 602/2020 which is still pending in the Court of C.J.M. Godda and also filed a maintenance case against the plaintiff before the Principal Judge, Family Court, Godda which is still pending. The

plaintiff sent a legal notice upon the defendant on 30.09.2022, regarding judgment and decree u/s 9 of the Hind Marriage Act, for restitution of conjugal rights but the defendant has not taken any step for restitution of conjugal rights till now. Since 2016, over a period of more than seven years has elapsed already and since then there is no conjugal relationship in between the plaintiff and the defendant and that the defendant without any reasonable excuse, has withdrawn herself from the society.

27. The cause of action for the petition arose on 09.05.2006 when the marriage of the plaintiff with the defendant was performed. It also arose on several occasion, when the defendant behaved and committed cruelty through several ways towards the plaintiff and without any just and reasonable excuse, withdrawn herself from the society and after birth of the second male child there is no conjugal, relationship in between the plaintiff and defendant and in the meantime the defendant left the matrimonial home on 14.08.2019 without consent of the plaintiff.

28. In the aforesaid background, the plaintiff-husband, the respondent herein, had filed the suit seeking decree for dissolution of marriage.

29. Before the learned family court the suit proceeded ex parte against the appellant-wife, as despite being notice upon the

appellant-wife, she did not appear. However, it has vehemently been opposed by learned counsel for the appellant stating that the process of summoning the appellant has not been complied with nor the notices have been served to the appellant properly nor sufficient opportunity was given to the appellant to appear, further no mode of substituted service was executed.

30. In absence of appellant-wife, the defendant in the suit, in course of the proceeding, three witnesses have been examined by the plaintiff which includes the plaintiff himself as P.W.1 P.W. 2 and P.W. 3 ।. Besides this some documents were also marked as exhibit.

31. P.W.1 is the plaintiff himself has fully supported his own case as mentioned in the plaint above mentioned. Further deposed that he was married with the defendant according to Hindu rites on 09.05.2006 as per Hindu rites and rituals at village-Bhatdiha, P.S. Godda, District -Godda. After marriage his wife came to the house of the defendant situated at Mohalla- Karharbil and they started to lived together happily. Further deposed that since after marriage his wife several times went to her parent's place situated at village- Bhatdiha, sometimes with her father and sometimes with her brother and sometimes with

him, stayed there most of the time, as per her own will and desire. He was an educated unemployed at the time of his marriage having no earning of his own and was dependent on his parents, who had a little area of agricultural land of his own in village Danre within Poraiyahat Police station, District- Godda, while on other hand parents of the defendant were men of means, having a big area of agricultural land in their possession, so she stated to him that she is unable to stay with him because there is no accommodation in his house and she spent most of the times in her parent's place in a circumstances, he used to visit his sasural time to time, where his wife became pregnant and deliver her first female child in the year 2007. After birth of the first daughter he and his parents asked the parents of the defendant for "bidagiry" of the defendant but parents of the defendant contrary to it began to put pressure upon him to reside as "Gharjamai" in their house and to look after their properties and Business of the vehicles and shop, his wife also has a Tailor shop and she carrying a business of sewing cloths/dresses of the students of the local private school, they have suggested to him to live as a Gharjamai in his house but he refused the proposal of his parent's-in-law and as such they became angry and as a result his wife was not agree to come back with him to her matrimonial home, situated at Mohalla Karharbil, P.S Dumka Town,

Subdivision and District-Dumka. Later on, due to intervention of his parents and society persons he brought his wife to her matrimonial home.. Subsequently, the parents of his wife began to disturb him as at short intervals they used to put pressure before him, his parents and upon the other family members of his family for "Bidagiry" of their daughter. Further deposed that father of his wife took her away from her matrimonial home without his consent and will and his parents and the same character of brother of his wife in the same matter. He suffered a lot in such situation in which at one hand the defendant was living most of the time at her parents place and he was passing his life as a Bachelor life and there was several occasions with him to remain depend on local hotels for his daily food/meal and breakfast due to his parents has died as there was no any member in his house he is alone in his family. His wife without his consent started frequently visiting her parent's house and whenever she visited her parents' house, she used to reside there or a considerable period in each visit and that too without any rhyme and reason. He had tried his best to make her understand to lead conjugal happy life with him but the entire efforts of the plaintiff gone in vain and he faced such a situation for further several years and under such circumstances he was compelled to visit his sasural place and in due course of time the

defendant delivered an another male child in the year 2015. After birth of the second male child, he brought his wife to his house. Thereafter a long struggle and hard work and labour of his own he has got a L.L.B. Degree in the year 2019, and he has applied in the Bar Council of Jharkhand for certificate of Advocacy. On 14.08. 2019, when he was in examination hall for last paper examination of L.L.B., the uncle and brother of his wife came to his sister's house and she left the plaintiff's sister's house with her uncle and brother and went to her father's house Bhatdiha, Godda. After about a week he visited his sasural place, but his wife told that she will not reside in his house at Mohalla Karharbil in "khapra Pose house". He had filed a original suit no. 8/2020 u/s 9 of the Hindu Marriage Act, 1955, after receiving the notice the defendant had not appeared in Court, after publication of the Gazette in "Prabhat Khabar", learned court passed ex-parte order, but she after receiving notice U/S 9 of Hindu Marriage Act, lastly filed a false P.C.R. Case against the plaintiff which is converted in G.R. Case No. 602/2020 which is still pending in the Court of C.J.M. Godda and also filed a maintenance case against the plaintiff before the Principal Judge, Family Court, Godda which is still pending. Since 2016, over a period of more than seven years has elapsed already and since then there is no conjugal relationship in between them and the defendant

without any reasonable excuse, has withdrawn her self from the society of her husband. No body appeared to cross-examine this witness so this witness has been discharged without cross-examination.

32. P.W. 2 and P.W. 3 have fully supported the case of the plaintiff including his marriage with the defendant which was solemnised according to Hindu rites on 09.05.2006 as per Hindu rites and rituals at village-Bhatdiha, P.S. Godda, District-Godda. After marriage the defendant came to the house of the plaintiff situated at Mohalla- Karharbil and they started to lived together happily. Further deposed that since after marriage the defendant several times went to her parent's place situated at village- Bhatdiha, sometimes with her father and sometimes with her brother and sometimes with the plaintiff, stayed there most of the time, as per her own will and desire. The plaintiff was an educated unemployed at the time of his marriage having no earning of his own and was dependent on his parents, who had a little area of agricultural land of his own in village- Danre within Poraiyahat Police station, District- Godda, while on other hand, parents of the defendant were men of means, having a big area of agricultural land in their possession, so she stated to him that she is unable to stay with him because there is no accommodation in his house and she spent most

of the times in her parent's place in a circumstances, the plaintiff used to visit his sasural time to time, where his wife became pregnant and deliver her first female child in the year 2007. After birth of the first daughter he and his parents asked the parents of the defendant for "bidagiry" of the defendant but parents of the defendant contrary to it began to put pressure upon the plaintiff to reside as "Gharjamai" in their house and to look after their properties and business of the vehicles and shop, the defendant also has a Tailor shop and she carrying a business of sewing cloths/dresses of the students of the local private school, they have suggested to him to live as a Gharjamai in his house but the plaintiff refused the proposal of his parent's-in-law and as such they became angry and as a result the defendant was not agree to come back with the plaintiff to her matrimonial home, situated at Mohalla Karharbil, P.S Dumka Town, Subdivision and District-Dumka. Later on, due to intervention of parents and society persons of the plaintiff, he brought his wife to her matrimonial home. Subsequently, the parents of the defendant began to disturb him as at short intervals they used to put pressure before him, his parents and upon the other family members of his family for "Bidagiry" of their daughter. Further deposed that father of the defendant took her away from her matrimonial home without consent and will of the plaintiff and his

parents and the same character of brother of the defendant in the same matter. The plaintiff suffered a lot in such situation in which at one hand the defendant was living most of the time at her parents place and the plaintiff was passing his life as a Bachelor life and there was several occasions with him to remain depend on local hotels for his daily food/meal and breakfast due to which his parents has died as there was no any member in his house, he is alone in his family. The defendant without his consent started frequently visiting her parent's house and whenever she visited her parents house, she used to reside there for a considerable period in each visit and that too without any rhyme and reason. He had tried his best to make her understand to lead conjugal happy life with him but the entire efforts of the plaintiff gone in vain and he faced such a situation for further several years and under such circumstances he was compelled to visit his sasural place and in due course of time the defendant delivered an another male child in the year 2015. After birth of the second male child. the plaintiff brought his wife to his house. Thereafter a long struggle and hard work and labour of his own the plaintiff has got a L.L.B. Degree in the year 2019, and he has applied in the Bar Council of Jharkhand for certificate of Advocacy. On 14.08. 2019, when the plaintiff was in examination hall for last paper examination

of L.L.B., the uncle and brother of the defendant came to his sister's house and she left the plaintiff's sister's house with her uncle and brother and went to her father's house Bhatdiha, Godda. After about a week the plaintiff visited his sasural place, but when he knocked door of his house, his wife opened the door and expressed that she will not reside in his house at Mohalla Karharbil in "khapra Pose house". The plaintiff had filed a original suit no. 8/2020 u/s 9 of the Hindu Marriage Act, 1955, after receiving the notice the defendant had not appeared in Court, after publication of the Gazette in "Prabhat Khabar", this learned court passed ex-parte order, but the defendant after receiving notice U/S 9 of Hindu Marriage Act, lastly filed a false P.C.R. Case against the plaintiff which is converted in G.R. Case No. 602/2020 which is still pending in the Court of C.J.M. Godda and the plaintiff was on bail in that case and the defendant also filed a maintenance case against the plaintiff before the Principal Judge, Family Court, Godda which is still pending. Since 2016, over a period of more than seven years has elapsed already and since then there is no conjugal relationship in between them and the defendant without any reasonable excuse, has withdrawn her self from the society of her husband. No body appeared to cross-examine these witnesses so these witnesses have been discharged without cross- examination.

33. Some documents have also been filed on behalf of plaintiff-husband, the respondent herein. Ext. 1 is Notice delivered to Premlata Devi with registered receipt by the Advocate of Madhur Kumar Singh with judgment and decree sheet passed in O.S. 81/2020. Ext 2 is certified copy of order sheet of O.S. no. 08/2020 from dated 14.01.2020 to 28/.05.2022, Ext. 3 is Certified Copy of judgment passed in O.S. 08/2020 and Ext. 4 is Certified copy of decree sheet of O.S. 08/2020.

34. It requires to refer herein that since appellate jurisdiction has been invoked herein, therefore, before entering into merit of the case, at this juncture it would be purposeful to discuss the appellate jurisdiction of the High Court.

35. It needs to refer herein that under section 7 of the Family Courts Act, the Family Court shall have and exercise all the jurisdiction exercisable by any District Court or any Sub-ordinate Civil Court under any law for the time being in force in respect of suits and proceedings of the nature which are described in the explanation to section 7(1).

36. Sub-section (1) to section 19 of the Family Courts Act provides that an appeal shall lie from every judgment or order not being an interlocutory order of a Family Court to the High Court "both on facts and on law". Therefore, section 19 of the Family Courts Act is parallel to section 96 of the Code of Civil Procedure, the scope of which has been dealt with by the Hon'ble Apex Court in series of judgments.

37. The law is well settled that the High Court in a First Appeal can examine every question of law and fact which arises in the facts of the case and has powers to affirm, reverse or modify the judgment under question. In ***"Jagdish Singh v. Madhuri Devi" (2008) 10 SCC 497*** the Hon'ble Supreme Court observed that it is lawful for the High Court acting as the First Appellate Court to enter into not only questions of law but questions of fact as well and the appellate Court therefore can reappraise, reappreciate and review the entire evidence and can come to its own conclusion. For ready reference the relevant paragraph of the said judgment is being quoted as under:

> *"It is no doubt true that the High Court was exercising power as the first appellate court and hence it was open to the Court to enter into not only questions of law but questions of fact as well. It is settled law that an appeal is a continuation of suit. An appeal thus is a rehearing of the main matter and the appellate court can reappraise, reappreciate and review the entire evidence--oral as well as documentary--and can come to its own conclusion."*

38. Herein, the learned counsel for the appellant has argued that the evidence of cruelty and desertion as also the demand of dowry has not properly been considered and as such, the judgment suffers from perversity, hence, not sustainable in the eyes of law.

39. This Court, while appreciating the argument advanced on behalf of learned counsel on the issue of perversity, needs to

refer herein the interpretation of the word “perverse” as has been interpreted by the Hon'ble Apex Court which means that there is no evidence or erroneous consideration of the evidence. The Hon'ble Apex Court in ***Arulvelu and Anr. vs. State [Represented by the Public Prosecutor] and Anr., (2009) 10 SCC 206*** while elaborately discussing the word perverse has held that it is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law. Relevant paragraphs, i.e., paras-24, 25, 26 and 27 of the said judgment reads as under:

> ***“24.*** *The expression “perverse” has been dealt with in a number of cases. In Gaya Din v. Hanuman Prasad [(2001) 1 SCC 501] this Court observed that the expression “perverse” means that the findings of the subordinate authority are not supported by the evidence brought on record or they are against the law or suffer from the vice of procedural irregularity.*
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> ***25.*** *In Parry's (Calcutta) Employees' Union v. Parry & Co. Ltd. [AIR 1966 Cal 31] the Court observed that “perverse finding” means a finding which is not only against the weight of evidence but is altogether against the evidence itself. In Triveni Rubber & Plastics v. CCE [1994 Supp (3) SCC 665 : AIR 1994 SC 1341] the Court observed that this is not a case where it can be said that the findings of the authorities are based on no evidence or that they are so perverse that no reasonable person would have arrived at those findings.*

> ***26.*** *In M.S. Narayanagouda v. Girijamma [AIR 1977 Kant 58] the Court observed that any order made in conscious violation of pleading and law is a perverse order. In Moffett v. Gough [(1878) 1 LR 1r 331] the Court observed that a "perverse verdict" may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence. In Godfrey v. Godfrey [106 NW 814] the Court defined "perverse" as turned the wrong way, not right; distorted from the right; turned away or deviating from what is right, proper, correct, etc.*
>
> ***27.*** *The expression "perverse" has been defined by various dictionaries in the following manner:*
>
> *1. Oxford Advanced Learner's Dictionary of Current English, 6th Edn.*
>
> *"Perverse.—Showing deliberate determination to behave in a way that most people think is wrong, unacceptable or unreasonable."*
>
> *2. Longman Dictionary of Contemporary English, International Edn.*
>
> *Perverse.—Deliberately departing from what is normal and reasonable.*
>
> *3. The New Oxford Dictionary of English, 1998 Edn.*
>
> *Perverse.—Law (of a verdict) against the weight of evidence or the direction of the judge on a point of law.*
>
> *4. The New Lexicon Webster's Dictionary of the English Language (Deluxe EncyclopedicEdn.)*
>
> *Perverse.—Purposely deviating from accepted or expected behavior or opinion; wicked or wayward; stubborn; cross or petulant.*
>
> *5. Stroud's Judicial Dictionary of Words & Phrases, 4th Edn.*
>
> *"Perverse.—A perverse verdict may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence."*

40. Thus, from the aforesaid, it is evident that any order said to be perverse if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into

consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality.

41. Thus, "perversity" refers to a finding or decision so unreasonable or irrational that no reasonable person acting judicially could have reached it. It signifies a gross and unreasonable assessment of evidence or law by a court.

42. Further Perversity is a high threshold for intervention, distinguishing it from a mere error of fact or law. The "safest approach on perversity is the classic approach on the reasonable man's inference on the facts but inadequacy of evidence or a different reading of evidence is not perversity, reference in this regard be made to the judgment rendered by the Hon'ble Apex Court in the case of ***Damodar Lal v. Sohan Devi, (2016) 14 SCC*** 197.

43. In the backdrop of the aforesaid factual and legal circumstances, this Court has carefully examined the impugned judgment and decree passed by the learned Family Court in order to ascertain whether the findings recorded therein suffer from perversity, arbitrariness, or any patent illegality warranting interference in the exercise of appellate jurisdiction.

44. Allegation has been made on behalf of the respondent-husband before the learned family court that

the appellant/respondent-wife committed mental and physical cruelty against him as also deserted him.

45. So far the allegation of cruelty is concerned, it requires to refer herein the definition of '*cruelty'* as has been defined by Hon'ble Apex in the judgment rendered in ***Dr. N.G. Dastane Vs. Mrs. S. Dastane [(1975) 2 SCC 326],*** wherein it has been held that the Court is to enquire as to whether the charge as cruelty, is of such a character, as to cause in the mind of the petitioner, a reasonable apprehension that, it will be harmful or injurious for him to live with the respondent.

46. The cruelty has also been defined in the case of ***Shobha Rani Vs. Madhukar Reddi [(1988) 1 SCC 105],*** wherein the wife alleged that the husband and his parents demanded dowry. The Hon'ble Apex Court emphasized that "cruelty" can have no fixed definition.

47. According to the Hon'ble Apex Court, "cruelty" is the "conduct in relation to or in respect of matrimonial conduct in respect of matrimonial duties and obligations". It is the conduct which adversely affects the spouse. Such cruelty can be either "mental" or "physical", intentional or unintentional. For example, unintentionally waking your spouse up in the middle of the night may be mental cruelty; intention is not an essential element of cruelty but it may be

present. Physical cruelty is less ambiguous and more "a question of fact and degree."

48. The Hon'ble Apex Court has further observed therein that while dealing with such complaints of cruelty that it is important for the Court to not search for a standard in life, since cruelty in one case may not be cruelty in another case. What must be considered include the kind of life the parties are used to, "their economic and social conditions", and the "culture and human values to which they attach importance."

49. The nature of allegations need not only be illegal conduct such as asking for dowry. Making allegations against the spouse in the written statement filed before the court in judicial proceedings may also be held to constitute cruelty.

50. In ***V. Bhagat vs. D. Bhagat (Mrs.), (1994)1 SCC 337***, the wife alleged in her written statement that her husband was suffering from "mental problems and paranoid disorder". The wife's lawyer also levelled allegations of "lunacy" and "insanity" against the husband and his family while he was conducting cross-examination. The Hon"ble Apex Court held these allegations against the husband to constitute "cruelty".

51. In ***Vijay kumar Ramchandra Bhate v. Neela Vijay Kumar Bhate, (2003)6 SCC 334*** the Hon'ble Apex

Court has observed by taking into consideration the allegations levelled by the husband in his written statement that his wife was “unchaste” and had indecent familiarity with a person outside wedlock and that his wife was having an extramarital affair. These allegations, given the context of an educated Indian woman, were held to constitute “cruelty” itself.

52. The Hon‟ble Apex Court in ***Joydeep Majumdar v. Bharti Jaiswal Majumdar, (2021) 3 SCC 742***, has been pleased to observe that while judging whether the conduct is cruel or not, what has to be seen is whether that conduct, which is sustained over a period of time, renders the life of the spouse so miserable as to make it unreasonable to make one live with the other. The conduct may take the form of abusive or humiliating treatment, causing mental pain and anguish, torturing the spouse, etc. The conduct complained of must be “grave” and “weighty” and trivial irritations and normal wear and tear of marriage would not constitute mental cruelty as a ground for divorce.

53. Cruelty” has an inseparable nexus with human conduct and is always dependent on social strata or milieu to which parties belong, their ways of life, relationship, temperaments and emotions that are conditioned by their social status, reference be made to the judgment rendered by the Hon’ble Apex Court in the case ***Vishwanath***

***Agrawal* v. *Sarla Vishwanath Agrawal*, (2012) 7 SCC 288**.

54. The Hon'ble Apex Court in the case of ***K. Srinivas Rao* v. *D.A. Deepa*, (2013) 5 SCC 226** has observed that cruelty is evident where one spouse so treats other and manifests such feelings in other, as to cause reasonable apprehension in mind of other that it would be harmful or injurious to reside with other spouse and cruelty may be physical or mental. It has further been observed that staying together under the same roof is not a precondition for mental cruelty. Spouse can cause mental cruelty by his or her conduct even while he or she is not staying under the same roof.

55. In matrimonial relationship cruelty mean absence of mutual respect and understanding between spouses which embitters relationship. Sometimes it may take form of violence, or at times may just be an attitude or approach. Silence in some situations may also amount to cruelty reference be made to the case of ***Ravi Kumar v. Julmidevi, (2010) 4 SCC 476.***

56. For considering dissolution of marriage at instance of a spouse who alleges mental cruelty, result of such mental cruelty must be such that it is not possible to continue with matrimonial relationship reference may be taken from the judgment rendered by the Hon'ble Apex

Court in the case of ***Joydeep Majumdar v. Bharti Jaiswal Majumdar, (2021) 3 SCC 742.***

57. Further the word 'cruelty' is used relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct and one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. There may be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted, reference in this regard be made to the judgment rendered by the Hon'ble Apex Court in the case of ***Vinita Saxena* v. *Pankaj Pandit*, (2006) 3 SCC 778.**

58. Further, in the case of ***Manish Tyagi* v. *Deepak Kumar*, (2010) 4 SCC 339 the** Hon'ble Apex Court has categorically observed that to constitute 'cruelty', it is enough that conduct of one of parties is so abnormal and below accepted norm that other spouse could not reasonable be expected to put up with it. Conduct is no longer required to be so atrociously abominable which would cause reasonable apprehension that it would be harmful of injurious to continue cohabitation with another spouse. Hence, it is not necessary to establish physical

violence. Continued ill-treatment, cessation of marital intercourse, studied neglect, indifference may lead to inference of cruelty.

59. The word "cruelty" under Section 13(1)(i-a) of the Act has got no static connotation, and therefore, gives a very wide discretion to the Court to apply it liberally and contextually. What is cruelty in one case may not be the same for another and has to be applied from person to person while taking note of the attending circumstances. Harm or injury to health, reputation, the working-career or the like, would be important considerations in determining whether the conduct of the defending spouse amounts to cruelty. It has to be shown that the defending spouse has treated him with cruelty to cause reasonable apprehension in his/her mind that it will be harmful or injurious to live with the contesting spouse.

60. Since issue of desertion has also been raised before the learned Family Court it would be apt to discuss herein the element of constituting desertion.

61. It needs to refer herein that the word 'desertion' has been given in Explanation to Section 13 (1) wherein it has been stated that "the expression desertion means the desertion of the one spouse by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the wilful

neglect of the one spouse by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly.

62. It is pertinent to note that the word 'desertion', as has been defined in Explanation part of Section 13 of the Act, 1955, means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the wilful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly.

63. *Rayden on Divorce* ,which is a standard work on the subject at p. 128 (6th Edn.), has summarised the case-law on the subject in these terms:

> *"Desertion is the separation of one spouse from the other, with an intention on the part of the deserting spouse of bringing cohabitation permanently to an end without reasonable cause and without the consent of the other spouse; but the physical act of departure by one spouse does not necessarily make that spouse the deserting party."*

64. The legal position has been admirably summarised in paras-453 and 454 at pp. 241 to 243 of *Halsbury's Laws of England* (3rd Edn.), Vol. 12, in the following words:

> *"In its essence desertion means the intentional permanent forsaking and abandonment of one*

> *spouse by the other without that other's consent, and without reasonable cause. It is a total repudiation of the obligations of marriage. In view of the large variety of circumstances and of modes of life involved, the Court has discouraged attempts at defining desertion, there being no general principle applicable to all cases.*

65. Desertion is not the withdrawal from a place but from a state of things, for what the law seeks to enforce is the recognition and discharge of the common obligations of the married state; the state of things may usually be termed, for short, 'the home'. There can be desertion without previous cohabitation by the parties, or without the marriage having been consummated. The person who actually withdraws from cohabitation is not necessarily the deserting party.

66. The offence of desertion is a course of conduct which exists independently of its duration, but as a ground for divorce it must exist for a period of at least two years immediately preceding the presentation of the petition or, where the offence appears as a cross-charge, of the answer.

67. Desertion as a ground of divorce differs from the statutory grounds of adultery and cruelty in that the offence founding the cause of action of desertion is not complete, but is inchoate, until the suit is constituted, desertion is a continuing offence.

68. It is, thus, evident from the aforesaid reference of meaning of desertion that the quality of permanence is one of the essential elements which differentiate desertion from wilful separation. If a spouse abandons the other spouse in a state of temporary passion, for example, anger or disgust, without intending permanently to cease cohabitation, it will not amount to desertion. For the offence of desertion, so far as the deserting spouse is concerned, two essential conditions must be there, namely, *(1)* the factum of separation, and (*2*) the intention to bring cohabitation permanently to an end.

69. Similarly, two elements are essential so far as the deserted spouse is concerned: (*1*) the absence of consent, and (*2*) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to from the necessary intention aforesaid.

70. The Hon'ble Apex Court in ***Debananda Tamuli vs. Kakumoni Kataky, (2022) 5 SCC 459*** has considered the definition of 'desertion' on the basis of the judgment rendered by the Hon'ble Apex Court in ***Lachman Utamchand Kirpalani* v. *Meena*, AIR 1964 SC 40** which has been consistently followed in several decisions of this Court.

71. The law consistently has been laid down by this Court that desertion means the intentional abandonment of

one spouse by the other without the consent of the other and without a reasonable cause. The deserted spouse must prove that there is a factum of separation and there is an intention on the part of deserting spouse to bring the cohabitation to a permanent end. In other words, there should be *animus deserendi* on the part of the deserting spouse. There must be an absence of consent on the part of the deserted spouse and the conduct of the deserted spouse should not give a reasonable cause to the deserting spouse to leave the matrimonial home.

72. This Court, on the backdrop of aforesaid facts, provisions of law and law laid down by Hon'ble Supreme Court, has gone into the grounds on which decree of divorce has been granted by the learned family court and found therefrom that allegation against the appellant-wife is that she used to left her matrimonial house on the one pretext or the other and further pressure was put upon the respondent-husband to live as 'Gharjamai', as he was unemployed at that time and has less agricultural property.

73. Whereas the case of appellant-wife is that it is the respondent-husband who used to assault her and inflicted mental and physical torture, which forced her to leave her matrimonial house. It is admitted case of the parties that for demand of additional dowry and torture a case was lodged by the appellant-wife being GR Case No. 602/2020 by the

appellant-wife against the respondent under Sections 498(A) IPC and ¾ D.P. Act. The appellant-wife has made out a case that the respondent-husband in order to save his skin from the said case had filed the suit for divorce.

74. It is necessary to notice that the matrimonial relationship between the parties is not in dispute. Their marriage was solemnized on 09.05.2006 and two children were born out of the wedlock. The dispute essentially relates to the circumstances under which the parties started living separately and whether the respondent had established the statutory grounds for dissolution of marriage.

75. From the materials available on record, it appears that the respondent's main allegation was that the appellant had left the matrimonial home on 14.08.2019 and had not returned thereafter. The respondent also alleged that the appellant had been residing at her parental home for considerable periods even prior to the aforesaid date. However, the aforesaid allegations were seriously disputed by the appellant in the present appeal. Her specific case is that she was subjected to cruelty and harassment on account of demand of dowry and was ultimately compelled to leave the matrimonial home. She has also asserted that the respondent suppressed the aforesaid material facts while instituting the matrimonial proceeding.

76. The foundational question which falls for consideration before this Court is as to whether the respondent-husband was able to establish the grounds of cruelty under Section 13(1)(ia) and desertion under Section 13(1)(ib) of the Hindu Marriage Act, 1955, so as to entitle him to a decree of dissolution of marriage.

77. From the pleadings as well as the evidence of P.W.-1, it transpires that the principal allegation levelled against the appellant-wife is that she used to stay for substantial periods at her parental house and that her family members wanted the respondent-husband to reside as a "Gharjamai". It has also been alleged that she left the matrimonial house on 14.08.2019 and thereafter did not return.

78. However, upon careful consideration of the evidence available on record, this Court finds that no specific incident constituting cruelty, either physical or mental, has been narrated by the respondent-husband. The allegations are general, omnibus and devoid of particulars regarding date, time, place or manner of commission of any act amounting to cruelty.

79. Mere assertion that the wife preferred staying at her parental home or that her parents desired the husband to reside with them cannot, in itself, be construed as matrimonial cruelty within the meaning of Section 13(1)(ia)

of the Act, unless it is shown that such conduct caused such mental pain and suffering to the spouse that it became impossible for the parties to live together.

80. Significantly, the evidence of P.W.-2 and P.W.-3 does not advance the case of the respondent-husband any further. Both witnesses have merely reiterated the same facts narrated by P.W.-1. Their depositions are substantially repetitive and appear to be reproduction of the assertions made by the plaintiff himself. No independent act of cruelty has been disclosed by these witnesses.

81. The factum of issue of filing of case under Section 498A IPC for demand of dowry has been accepted by the respondent-husband in his testimony. So there is no denial of the fact that the allegation against the respondent-husband is of demand of dowry and in order to save his skin he has filed the suit for grant of decree of divorce.

82. Furthermore, the appellant-wife had also taken the ground that it is the appellant-wife who is subjected to cruelty and ousted by the respondent-husband and in-laws, as such she left with no support for herself she was having no source of income, she filed Original Maintenance Case, which is pending. As the ground of desertion, as has been taken by the respondent-husband before the learned Family Court cannot be said to be tenable as it is the wife who has

been forced to leave her matrimonial house due to mental and physical torture meted out to her.

83. So far as the ground of cruelty under Section 13(1)(ia) of the Hindu Marriage Act, 1955, is concerned, the Court is required to consider the nature, gravity and cumulative effect of the alleged conduct in the background of the matrimonial relationship.

84. The allegations made by the respondent regarding the appellant's frequent visits to her parental home and her alleged unwillingness to reside in the matrimonial home required an objective assessment. Such conduct cannot be mechanically characterized as cruelty without examining the surrounding circumstances.

85. We further find that the respondent examined himself and two other witnesses in support of his case. However, the fact that the evidence remained unchallenged because the trial was proceeded ex parte that does not absolve the Court of its duty to examine the inherent probability, consistency and legal sufficiency of such evidence.

86. The learned Family Court appears to have accepted the testimony of the plaintiff-husband at its face value without undertaking the judicial exercise of determining whether the facts deposed by him legally constituted

cruelty as contemplated under Section 13(1)(ia) of the Hindu Marriage Act, 1955.

87. So far as the ground of desertion is concerned, the law is well settled that desertion consists not merely of physical separation but also of *animus deserendi*, namely the intention to permanently bring cohabitation to an end.

88. In order to establish desertion, the petitioner is required to prove that the respondent deserted him without reasonable cause and against his wish and that such desertion continued for the statutory period immediately preceding presentation of the petition.

89. In the case at hand, the respondent-husband has failed to establish that the appellant-wife left the matrimonial house without reasonable cause.

90. On the contrary, the appellant-wife has specifically contended before this Court that she was subjected to cruelty on account of demand of dowry, was assaulted, and was ultimately compelled to leave the matrimonial home whereafter GR Case No. 602 of 2020 was instituted under Section 498-A IPC and Sections 3/4 of the Dowry Prohibition Act.

91. Although such allegations were not tested before the Family Court because the proceeding went *ex parte,* the existence of the criminal proceeding itself assumes

significance inasmuch as it demonstrates that the appellant-wife had set up a case that she was compelled to leave the matrimonial home on account of the conduct of the husband and his family members.

92. The respondent-husband has merely described the criminal case as false. However, no material has been brought on record to show that the said criminal proceeding culminated in acquittal or that the allegations levelled therein were found to be false by a competent court.

93. Therefore, mere filing of a criminal case by the wife cannot automatically be treated as cruelty or as proof of desertion, particularly when the said proceeding is stated to be pending.

94. This Court further finds that the learned Family Court has proceeded substantially on the basis of an earlier decree passed in Original Suit No. 08 of 2020 filed under Section 9 of the Hindu Marriage Act.

95. However, a decree for restitution of conjugal rights by itself does not automatically entitle a party to a decree of divorce.

96. The Court is still required to examine whether the statutory ingredients under Section 13(1)(ia) or Section

13(1)(ib) stand independently established through cogent and reliable evidence.

97. From the evidence available on record, this Court is of the considered view that there is no legal evidence establishing any specific act of cruelty on the part of the appellant-wife.

98. Likewise, there is no convincing evidence to establish that the appellant-wife had withdrawn from the society of the respondent-husband without reasonable cause and with the intention of permanently terminating the matrimonial relationship.

99. This Court also finds substance in the submission advanced on behalf of the appellant that before proceeding *ex parte*, the learned Family Court ought to have satisfied itself regarding effective service of notice upon the appellant-wife.

100. In a proceeding concerning dissolution of marriage, which affects the civil status of the parties permanently, strict adherence to the principles of natural justice assumes greater significance.

101. The learned Family Court has failed to undertake such exercise and appears to have proceeded mechanically merely because the appellant-wife did not enter appearance.

102. It is a cardinal principle that a decree of divorce cannot be granted solely on the basis of unchallenged testimony unless such testimony independently establishes the statutory grounds contemplated under the Act. The evidence must be considered in the light of the pleadings, the documentary materials and the statutory requirements governing the grant of divorce.

103. Upon overall consideration of the facts, evidence and circumstances of the case, this Court is of the considered opinion that the respondent-husband failed to discharge the burden cast upon him to establish cruelty and desertion in accordance with law.

104. The findings recorded by the learned Principal Judge, Family Court, Dumka are therefore not sustainable in the eyes of law and suffer from non-appreciation of material facts and improper application of the provisions of the Hindu Marriage Act, 1955.

105. In view of the discussions made hereinabove, this Court is of the considered opinion that the respondent-husband failed to establish the grounds of cruelty under Section 13(1)(ia) and desertion under Section 13(1)(ib) of the Hindu Marriage Act, 1955.

106. Therefore, this Court does not find any element of cruelty and/or desertion to sustain the decree of divorce in favour of respondent-husband.

107. This Court, in view of the discussions made hereinabove, is of the view that the order passed by the learned family court requires interference.

108. Accordingly, the impugned order/judgment dated 05.12.2023 passed by the learned Principal Judge, Family Court, Dumka in Original Suit No. 90 of 2023, is hereby quashed and set aside.

109. Resultantly, the instant appeal stands allowed.

110. Pending Interlocutory Application, if any, stands disposed of.

I agree **(Sujit Narayan Prasad, J.)**

(Akhil Kumar, J.) **(Akhil Kumar, J.)**

05/_11/2026

*Alankar***/A.F.R.**

Uploaded on 06.11.2026