IN THE HIGH COURT OF JHARKHAND AT RANCHI

F.A. No. 148 of 2025

… … Plaintiff/Appellant

Versus

… … Defendant/Respondent

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

For the Appellant : Mr. Anurag Kashyap, Advocate
Ms. Kanika Sinha, Advocate
For the Respondent : Mr. Sanjay Prasad, Advocate

C.A.V. on 29th September, 2026 **Pronounced on: 5th November, 2026**

Per Sujit Narayan Prasad, J.

1. The instant appeal under Section 19(1) of the Family Court Act, 1984 is directed against the order/judgment dated 19.03.2025 passed by the learned Additional Principal Judge, Additional Family Court-I, Ranchi in Original Suit No. 270 of 2019, whereby and whereunder, the petition filed under Section 13(1) (1-A) (ii) of the Hindu Marriage Act by the appellant/appellant seeking a decree of divorce against his wife, has been dismissed.

2. The brief facts of the case leading to filing of the divorce petition by the appellant/appellant needs to be referred herein which is as under:

2.1 The case of the appellant is that the marriage of the appellant was solemnized with the respondent on 11.05.1995 according to Hindu rites and rituals and since the date of marriage, appellant and the

respondent started living together as husband and wife at Ranchi and out of their wedlock couple blessed with two male children, first son named aged 14 years and second son aged about 11 years.

2.2 It has been pleaded that since 2013 because of persuasion of her parents, respondent started pressurizing the appellant to settle with her retired old parents at Bhuli, Dhanbad which was not agreeable to the appellant. It has further been pleaded that on 13.04.2013 all of a sudden, the respondent left Ranchi along with the children and went to her parental house at Bhuli and thereafter the appellant tried his level best to bring her and their children at Ranchi, but at the instance of parents of respondent, she never agreed to come to Ranchi, rather she insisted the appellant to get himself settled at Bhuli alongwith their children and insisted the appellant to provide all the amenities.

2.3 It has further been pleaded that finding no alternative, the appellant filed a petition before the Principal Judge, Family Court, Ranchi u/s 9 of Hindu marriage Act for restitution of conjugal rights being M.T.S. No. 197/13 which has already been allowed ex-parte on 11.11.2016.

2.4 Thereafter, the appellant in the month of September 2013 came to know that respondent has filed one complaint case being case no. 1205/13 before the Court of Ld. C.J.M., Dhanbad against the appellant u/s 498A, 323, 506 of IPC by levelling false and fabricated allegation against the appellant.

2.5 It has been further pleaded that the appellant got shocked and surprised to know about the filing of complaint case against him and that too on the basis of false, fabricated and concocted allegations, thereafter the appellant and his well-wishers including relatives have tried their level best to convince the respondent and her parents for bringing the respondent and their children at Ranchi, but she had been quite adamant. Thereafter, through Mediation JHALSA, Ranchi in connection with ABA 708/2014 both the parties agreed to live together along with their children at Ranchi but again the respondent has taken 'U' turn and started putting several conditions.

2.6 It is the case of the appellant that because of the best effort made by appellant and his well-wishers as per the terms of compromise the respondent and the younger son namely were brought to Ranchi and appellant re-admitted his son in a School at Ranchi after payment of more than Rs.10,000/- as admission fee and other miscellaneous expenses and due to non-cooperative and argument attitude of respondent, the appellant and his two minor children have been facing odd and adverse situation.

2.7 It has been pleaded that when the mother of appellant died, he went to ask the respondent to attend her funeral by coming to his native village along with the children, but instead of going there she again came to her father 's house along with their school going son who was attending his school regularly and since the matter was pending before the learned court in which respondent has appeared and the matter has been compromised/settled hence, there was no

occasion for the appellant to pursue and file show cause in M.P. Case no. 104/2014 and respondent agreed to withdraw all the cases filed by her and she started living with appellant at Ranchi.

2.8 It has been pleaded that on the one hand the respondent has stayed with appellant after mediation and has agreed to withdraw all the cases filed by her but on the other hand, she was pursuing M.P. case no. 104/2014. The appellant has suffered a setback with immense mental trauma and pain coupled with financial stress but he did not lose his faith and kept continued spontaneous effect to manage the respondent to join his company but in vain and finally she left the appellant and fled away to her parental house along with the children in August 2015 itself.

2.9 It has been pleaded further that in spite of all the efforts made by appellant and his well-wishers she has not come to appellant and decided to live at her parental house for no reason and the respondent has deserted the appellant without reasonable cause and without consent and against the wish.

2.10 Hence, the suit for divorce was filed before the learned Family Court being Original Suit No.270 of 2019, whereby and whereunder, the petition filed under Section 13(1) (1-A) (ii) of the Hindu Marriage Act by the appellant/appellant, has been dismissed.

3. The learned Family Judge has called upon the respondent-wife. The wife has filed written statement and altogether five issues had been framed which are as follows:

(i) Whether the suit as framed is maintainable?

(ii) Whether the petitioner has valid cause of action for the suit?

(iii) Whether the restitution of conjugal rights as between the parties was made after passing of a decree for restitution of conjugal rights?

(iv) Whether the petitioner is entitled for a decree of divorce on the ground of desertion?

(v) Whether the petitioner is entitled to get any other relief or reliefs as prayed for?

4. The evidences have been laid on behalf of both the parties. Thereafter, the judgment has been passed dismissing the suit by holding that the petitioner/appellant (appellant herein) has not been able to prove his case against the respondent even to the extent of preponderance of probabilities.

Submission of the learned counsel for the appellant/husband:

5. Mr. Anurag Kashyap, learned counsel has contended on behalf of the appellant/petitioner that the factual aspect which was available before the learned Family Judge supported by the evidences adduced on behalf of the appellant/petitioner has not properly been considered and as such, the judgment impugned is perverse, hence, not sustainable in the eyes of law.

6. It has been submitted that the appellant himself filed an application under Section 9 of the Hindu Marriage Act which was allowed *ex-parte* and after passing of the decree of conjugal rights, the respondent has been living separately since the year 2017 which itself shows that the respondent has deserted the appellant for a long period and the same has

not been taken into consideration in right perspective by the learned Family Court.

7. Learned counsel for the appellant/petitioner, based upon the aforesaid ground, has submitted that the judgment impugned suffers from perversity, as such, not sustainable in the eyes of law.

Submission of the learned counsel for the respondent:

8. *Per contra*, Mr. Sanjay Prasad, learned counsel for the respondent-wife, while defending the impugned judgment, has submitted that there is no error in the impugned judgement. The learned Family Judge has considered the issue of restitution of conjugal rights and desertion and having come to the conclusion that no evidence has been adduced to establish either desertion, has dismissed the petition.

9. It has been submitted that the respondent was subjected to matrimonial cruelty at the hands of the appellant and his family members for demand of dowry, hence, she filed a criminal case u/s 498A along with other sections.

10. It has further been submitted that after the compromise taken place in between the parties at Mediation Centre at JHALSA in ABA No.708/2014 arising out of C.P. Case No.1205 of 2013, both the parties lived together but, the respondent was tortured and thrown out of the matrimonial house along with the minor children, thereafter, she filed a maintenance case which was allowed.

11. So far as the decree of conjugal rights is concerned, it has been submitted that the appellant had filed the said case and the same was disposed of *ex-*

parte by suppressing the fact of settlement in between the parties in C.P. Case No.1205 of 2013.

12. It has been further submitted that the respondent is willing to live together with the appellant but it is due to compelling circumstances that she has to live separately.

13. Learned counsel, based upon the aforesaid ground, has submitted that if on that pretext, the factum of desertion has not been found to be established, based upon which the decree of divorce has been refused to be granted, the impugned judgment cannot be said to suffer from error.

Analysis:

14. This Court has heard the learned counsel for the parties and gone through the finding recorded by the learned Family Judge in the impugned judgment.

15. The case has been heard at length. The admitted fact herein is that the suit for divorce has been filed mainly on the ground of desertion in respect of the fact that the respondent has chosen not to live together with the appellant even after passing of the decree of conjugal rights, i.e., by filing an application under Section 13(1)(1-A)(ii) of the Hindu Marriage Act, 1955.

16. It is evident from the factual aspect that the appellant/petitioner had a motion by filing a petition under Section 13(1)(1-A)(ii) of the Hindu Marriage Act, 1955 for decree of divorce on the background of the fact, as has been pleading in the suit, that after solemnization of the marriage in between the parties on 11.05.1995, they have been living together and out of their wedlock two male children took birth.

17. It has been pleaded that since 2013 because of persuasion of her parents, respondent started pressurizing the appellant to settle with her retired old parents at Bhuli, Dhanbad which was not agreeable to the appellant. It has further been pleaded that on 13.04.2013 all of a sudden, the respondent left Ranchi along with the children and went to her parental house at Bhuli, but at the instance of parents of respondent, she never agreed to come to Ranchi, rather she insisted the appellant to get herself settled at Bhuli alongwith their children and insisted the appellant to provide all the amenities.

18. It has further been pleaded that the appellant filed a petition before the Principal Judge, Family Court, Ranchi u/s 9 of Hindu marriage Act for restitution of conjugal rights being M.T.S. No. 197/13 which has been allowed *ex-parte* on 11.11.2016. Thereafter, the appellant in the month of September 2013 came to know that respondent has filed one complaint case being case no. 1205/13 before the Court of Ld. C.J.M., Dhanbad against the appellant u/s 498A, 323, 506 of IPC.

19. Thereafter, through the Mediation Centre at JHALSA, Ranchi is connection with A.B.A. 708/2014 both the parties agreed to live together along with their children at Ranchi but again the respondent has taken 'U' turn and started putting several conditions.

20. It is the case of the appellant that because of the best effort made by appellant and his well-wishers as per the terms of compromise the respondent and the younger son namely were brought to Ranchi and appellant re-admitted his son in a School at Ranchi after payment of more than Rs.10,000/- as admission fee and other

miscellaneous expenses and due to non-cooperative and argument attitude of respondent, the appellant and his two minor children have been facing odd and adverse situation.

21. It has been pleaded that when the mother of appellant died, he went to ask the respondent to attend her funeral by coming to his native village along with the children, but instead of going there she again came to her father 's house along with their school going son and since the matter was pending before the learned court in which respondent has appeared and the matter has been compromised/settled hence, there was no occasion for the appellant to pursue and file show cause in M.P. Case no. 104/2014 and respondent agreed to withdraw all the cases filed by her and she started living with appellant at Ranchi.

22. It has been pleaded that on the one hand the respondent has stayed with appellant after mediation and has agreed to withdraw all the cases filed by her but on the other hand, she was pursuing M.P. case no. 104/2014.

23. It has been pleaded further that in spite of all the efforts made by appellant and his well-wishers she has not come to appellant and decided to live at her parental house for no reason and the respondent has deserted the appellant without reasonable cause and without consent and against the wish.

24. Written statement was filed by the respondent/wife wherein all allegation has been refuted and accordingly, issues have been framed wherein primarily issue nos.3 and 4 pertains to whether the restitution of conjugal rights as between the parties was made after passing of a decree for

restitution of conjugal rights and on the ground of desertion whether petitioner entitled for divorced, respectively.

25. The evidence has been led on behalf of both the parties. For ready reference, the evidence led on behalf of the appellant/petitioner is being referred as under:

(i) **P.W.-1** is the appellant himself and has stated that he is the appellant in the suit and his marriage was solemnized with respondent on 11.05.1995 according to Hindu rites and rituals at Jehanabad and after marriage respondent started living with him in Ranchi. He has stated that out of their wedlock two sons were born namely aged about 17 years and aged about 14 years. He has stated that from the year 2013 respondent, at the behest of her parents started pressurizing him to live with her old aged retired parents in Bhuli, which was not acceptable to him. He has stated that suddenly on 13.04.2013 at the behest of her parents, respondent went to Bhuli along with both their children and in spite of his repeated persuasion, she did not agree to come to Ranchi and on the contrary, respondent started pressurizing him to come and live in Bhuli and bear all the expenses, since he had no other remedy, had to file MTS 197/2013 in Family Court for restitution of conjugal rights, which was allowed in his favour on 11.11.2016. He has stated that respondent made up a false and fabricated story against him and filed a C.P Case No. 1205/2013 u/s 498A, 323 and 506 IPC in the court of Ld. Chief Judicial Magistrate, Dhanbad and thereafter he and his relatives and well-

wishers tried hard to convince the respondent to come and stay with him in Ranchi along with their children but the respondent remained adamant on staying in Dhanbad. He has stated that during the hearing of ABA No. 708/2014 during the mediation in JHALSA, the respondent agreed live with him but later on the respondent refused to live with him and after much persuasion by him and his well-wishers, the respondent agreed to stay with him in Ranchi along with his younger son and he got admitted in the school by paying Rs.10,000/- as school admission fee and other expenses and due to non-cooperation attitude of respondent, he and his children are facing a lot of trouble. He has stated that when his mother passed away in her native village, they all went to her native village for her last rites but from there respondent came to Ranchi, got out of school and went to her maternal home. He has stated that since a settlement was reached in M.P. Case No. 104/2014 and the respondent promised to withdraw all the cases, therefore he did not file his reply in said case whereas he is fully complying with the order of this Ld. Court and regularly paying Rs.16,000/- per month including Rs.10,000/- as previous dues to the respondent which is directly deducted from his salary and transferred to the bank account of the respondent and after the mediation respondent had agreed that she would withdraw all the cases but in spite of that she continued to pursue M.P. Case No.104/2014. He always tried to get the respondent to come and stay with him but there was no positive result and ultimately in August, 2015 respondent went to her parental house with their

children. He has stated that respondent has not complied with the decision of the learned court passed in the original case MTS No.197/2013 dated 11.11.2016 and till date she did not come to his house and she is living separately from him in Dhanbad for more than 7 years without any valid reason. He has stated that respondent does not want to live with him without any valid reason and due to the attitude of respondent, restoration of marital life is no longer possible and prayed to dissolve his marriage.

In his cross examination he has stated that after marriage they lived together at Ranchi for two years and thereafter respondent started living at her maika. He has stated that respondent filed a case of dowry harassment against him in the year 2013 and compromise took place and he was granted bail by the High Court and in the settlement, it was agreed that he would keep his wife peacefully. After that, the respondent came and lived whole day and at 10:00 pm in the night she went to Dhanbad by Pataliputra express train. He has stated that he had filed M.TS. Case No. 197/2013 for restitution of conjugal right in which *ex-parte* order was passed in his favour. He has stated that respondent had filed a maintenance case in the year 2014 in Dhanbad in which order was passed directing him to pay Rs. 6,000/- per month as maintenance to the respondent. The High Court has been pleased to dismiss his application and thereafter from 2021, he started giving maintenance to the respondent He has not solemnized second marriage and after marriage he lived with his wife for 17-18 years.

(ii) **P.W.2,** Anuradha Ranjan has supported the case of appellant in her examination in chief and has stated more or less the similar version as stated by appellant in his evidence. On repeated call no one turn up to cross examine this witness.

26. The respondent-wife has also been examined as D.W.-1. For ready reference, her evidence is being referred as under:

(i) **D.W.-1**, who is respondent herself has stated in her affidavited examination-in-chief that the respondent is the legally wedded wife of appellant and their marriage was solemnized on 11.09.1995 at Jehanabad and out of the said wedlock two male children were born namely now aged about 15 years and one aged about 12 years, after few years of marriage physical assault and torture was started by appellant upon respondent for non-fulfillment of dowry demands then respondent had also filed a complaint case in the court of C.J.M., Dhanbad, against the appellant being C.P. Case no. 1205/2013 u/s 498 (A), 323, 506 of I.P.C for the assault and ousting of the respondent from her matrimonial house on the non-fulfillment of the illegal demands of the appellant. The respondent was driven out of her matrimonial house with their two sons in the year 2013 by the appellant and thereafter she had taken shelter at the house of her retired old father at Dhanbad. She has stated that during the pendency of C.P. Case no.1205/2013, compromise took place at the mediation Centre, JHALSA on 24.06.15 in A.B.A. no. 708/14 and in accordance with the compromise, the respondent went to her matrimonial house but

again assault and torture was repeated by the appellant and only after few days the respondent was ousted from her matrimonial house at the mercy of her old father at Dhanbad. The only intention of the appellant for entering into a settlement at the mediation centre was to obtain the Anticipatory bail, by misleading the High Court in the garb of mediation. Since the respondent was again ousted from her matrimonial house by appellant with their two minor kids after obtaining anticipatory bail from the High Court then she had taken shelter at her old father house at Dhanbad but since she had no source of income to fulfill the basic need of herself and her two kids and the situation was near to starve for herself and both the children, the respondent for her survival had filed a Maintenance Petition No.104 of 2014 u/s 125 Cr.P.C. before the Court of Principal Judge, Family Court, Dhanbad for getting a monthly maintenance allowance from the appellant wherein the learned family Court at Dhanbad, after considering the circumvolving facts and circumstances of the case, passed an appropriate order of maintenance to the respondent vide order dated 10.06.2016 in M.P. no. 104/2014, whereby and where under, he has been pleased to allow the maintenance of Rs.4,000/- per month from the date of application i.e. on 01.04.2014, payable to petitioner wife and further Rs.1,000/- to each son till they attain majority. She has stated that respondent in her evidence before the learned Family Court in Maintenance Petition No. 104 of 2014, has narrated the entire story of assault, torture and further ousting her from the matrimonial house twice by the appellant. The appellant had

challenged the order of maintenance at Jharkhand High Court in Cr. Rev. No. 1043 of 2016, which was dismissed vide order dated 01.07.2020 and on her identification copy of order of said Cr. Rev. No. 1043/2016 has been marked "X" for identification. She has stated that nevertheless the harassment of the respondent did not end here. The appellant has filed the present Divorce petition before this learned Court making false allegation upon the respondent. That the very Divorce petition indicates the intention of the appellant in releasing himself from all kind of family responsibilities and live a liability free life. He has stated that there is no cruelty made out against the appellant rather the appellant has several criminal antecedents to show the cruelty being made on the respondent on several occasions with frivolous allegations to seek divorce from the respondent. The respondent is victim in the hands of the appellant throughout her matrimonial life and till date. The appellant has never given respect and love to the respondent as his wife and broken all sacred bonding of marriage and the respondent wife has remained a silent victim in this relationship. However, the respondent has all the respect for this sacred relationship and would never want to break the same. The respondent has always tried her best to keep the appellant happy in this matrimonial relationship but the greedy and cruel nature of the appellant never made this matrimonial relationship grow in peace and always tried to disturb and exploit the respondent and thus this application has no merit and has only been filed to satisfy the ego of the appellant and to

harass the respondent and two minor children in multiplicity of litigations.

In her cross examination she has stated that her marriage was solemnized with with consent of her parents at Jehanabad and at the time of marriage her father was working in BCCL at Dhanbad and she was living with her parents at BCCL colony at Dhanbad. After marriage she lived in her Sasural first time for six months and after that she went to her maika and after 1½ months she again came to her Sasural and thereafter she does not remember when she visited her maika but it was continued. She has stated that their both the sons were born at Dhanbad at her maika. Her father has retired in the year 2014 and presently she is living with her father in quarter at Dhanbad. She wants to live with her husband but he used to assault her. She has stated that presently her husband is working in Railway and he joined in the year 2009 and after joining of her husband she lived with him for 3-4 years with him. She has not complained regarding assault to her at any police station and since 2015 till today she has not tried to meet with her husband or live with him. She is getting maintenance Rs.16,000/- per month and she has never come to Ranchi to settle with . She has denied that in the year 2013 she left her husband and went to her maika without any reason. She has not gone at last rituals of her mother-in-law. She has stated that during pendency of maintenance case as well as complaint case no.1205/2013 no compromise between them took place. She has stated that during course of hearing of ABA No. 708/2014

compromise took place between them at JHALSA where her husband has agreed to keep her and their children peacefully and on the basis of compromise, she went to her Sasural with her younger son where admission of her younger son was made in the school and she does not know what expenses was incurred at the time of admission. She does not know at present where her husband is posted. Her father-in-law died in the year 2013 and she did not go at the time of his last rituals and when her father-in-law died at that time complaint case was pending. She wants to live with her husband. She has denied that she does not want to fulfill her matrimonial obligation with her husband. Her elder son is studying and he is not doing any work. She wants to live with her husband but there is threat of her life and life of their children. She is living separately from her husband since 2013. She is getting maintenance of Rs. 16,000/- per month (Rs. 6,000/- for herself and Rs. 10,000/- for her children).

27. The learned Family Judge after assessing the evidences led on behalf of the parties as also the submission made in the pleading, i.e., plaint and written statement, has found that the appellant has not been able to prove the case against the respondent even to the extent of preponderance of probabilities and accordingly dismissed the said suit against which the present appeal has been filed.

28. The learned counsel for the appellant/petitioner has argued that the evidence put forth before the learned Family Court has not properly been

considered and as such, the judgment suffers from perversity, hence, not sustainable in the eyes of law.

29. While on the other hand, argument has been advanced on behalf of the respondent has submitted that the judgment is well considered one and merely by committing fraud, the suit for divorce has been filed.

30. This Court while appreciating the argument advanced on behalf of the parties 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 Encyclopedic Edn.)

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.""*

31. 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.

32. 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.

33. 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.***

34. It needs 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. Further, it needs to refer herein that under section 3 of the Indian Evidence Act a fact is said to be proved when the Court either believes it to exist or

considers its existence so probable that a prudent man under the circumstances would proceed on the supposition that such fact really exists. Therefore, the normal rule of preponderance of probability is the rule which governs the civil proceedings like this.

39. The expression "preponderance of probability" is not capable of exact definition nor can there be any strait-jacket formula or a weighing machine to find out which side the balance is tilted. The preponderance of probability would imply a positive element about possibility of existence of a fact. This means a higher degree of probability of happening of something and existence of a fact.

40. In "***A. Jayachandra v. Aneel Kaur" (2005) 2 SCC 22*** the Hon'ble Apex Court has observed that the concept, a proof beyond the shadow of doubt, is to be applied to criminal trials and not to civil matters and certainly not to matters of such delicate personal relationship as those of husband and wife.

41. Since this Court is exercising the power of appeal as referred hereinabove and as per the settled position of law which require the consideration of the appellate Court is that the order/judgment passed by the appropriate Forum, if suffers from perversity, the same is to be taken as a ground for its reversal.

42. It is an admitted position that the appellant has preferred the suit for dissolution of marriage under Section 13(1-A) (ii) of the Hindu Marriage Act, 1955, asserting that the decree for restitution of conjugal rights, passed earlier, has not complied with by the respondent-wife.

43. In order to appreciate the aforesaid ground, it would be apt to refer herein the Section 13(1-A) (ii) of the Hindu Marriage Act, 1955:

> *((1A)Either party to a marriage, whether solemnised before or after the commencement of this Act, may also present a petition for the dissolution of the marriage by a decree of divorce on the ground*
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> *--------*
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> *(ii)that there has been no restitution of conjugal rights as between the parties to the marriage for a period of [one year or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.]"*

44. Thus, from the aforesaid it is evident that Section 13(1-A)(ii) of the Hindu Marriage Act, 1955 confers an independent right upon either spouse to seek dissolution of marriage by a decree of divorce where, despite the passing of a decree for restitution of conjugal rights, there has been no resumption of cohabitation between the parties for a continuous period of one year or more thereafter. The legislative intent behind the provision is that when a decree for restitution of conjugal rights fails to achieve its object of restoring matrimonial harmony and the parties continue to live separately even after the decree, the marriage may be treated as having irretrievably broken down in substance. The continued non-restoration of conjugal relations for the statutory period constitutes a valid ground for seeking divorce, irrespective of which party had initially obtained the decree for restitution of conjugal rights.

45. Thus, Section 13 (1A) (ii) of the Act 1955, provides that in case there is no restitution of conjugal rights despite a Decree under section 9 of Act 1955 for a period of one year, either party can seek dissolution of marriage.

46. 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.

47. Admittedly, the respondent is the legally wedded wife of the appellant, and their marriage was solemnized on 11.05.1995 at Jehanabad, Bihar, in accordance with Hindu rites and customs. It is also an admitted position that out of the said wedlock, two sons were born, both of whom are presently residing with the respondent-mother.

48. The evidence adduced by the respective parties reveals that the appellant had instituted a petition under Section 9 of the Hindu Marriage Act, 1955, being M.T.S. No. 197 of 2013, before the Family Court at Ranchi, seeking restitution of conjugal rights. The said proceeding ultimately culminated in an *ex parte* decree in favour of the appellant on 11.11.2016.

49. The records further disclose that the respondent-wife had instituted Complaint Case No. 1205 of 2013 under Section 498A of the Indian Penal Code and allied provisions against the appellant. In connection therewith, the appellant had preferred A.B.A. No. 708 of 2014 before this Court seeking anticipatory bail. During the pendency of the said proceeding, the dispute between the parties was referred to the Mediation Centre, JHALSA, where an amicable settlement was arrived at and both parties agreed to resume cohabitation along with their children. It is the case of the appellant that only after considerable persuasion by him and his family members, the respondent, along with their younger son, came to Ranchi, whereupon he secured the admission of the child in a school.

50. It is the further case of the appellant that, during the aforesaid period, his mother passed away at their native village. The appellant proceeded to attend her funeral rites and requested the respondent to accompany him

with their children. However, instead of attending the funeral of her mother-in-law, the respondent allegedly left for her parental home along with the children without informing the appellant.

51. *Per contra*, the respondent has asserted that the settlement before the Mediation Centre, JHALSA, was entered into by the appellant only with a view to securing anticipatory bail and that, after she returned to her matrimonial home pursuant thereto, she was once again subjected to torture and humiliation. According to her, being left with no alternative, she returned to her parental home along with her minor children and, with the assistance of her aged retired father, pursued Maintenance Petition No.104 of 2014 under Section 125 Cr.P.C. before the Principal Judge, Family Court, Dhanbad. The said proceeding was allowed vide order dated 10.06.2016, whereby the appellant was directed to pay maintenance of Rs.6,000/- per month to the respondent and their children.

52. It is evident from record that the appellant had challenged the order passed in the maintenance proceeding by filing Criminal Revision No. 1043 of 2016 before this Court, which came to be dismissed on 01.07.2020 and only after dismissal of the said revision petition, the appellant commenced payment of maintenance to the respondent and the children. Thus, from the aforesaid factual aspect it is apparent that such conduct reflects the appellant's lack of concern towards the maintenance and educational needs of his wife and children.

53. It is evident from record that although M.T.S. No. 197 of 2013 was decreed *ex-parte* on 11.11.2016, the suit before the learned Family Court for dissolution of marriage had been instituted by the appellant on

29.04.2019, i.e., after a lapse of more than two and a half years from the date of the decree.

54. Further it is evident from the impugned judgment that the learned Family Court has also noted the aforesaid factual aspect while passing the impugned judgment and has observed that no material was brought on record by the appellant to demonstrate that he had taken any steps whatsoever to execute or enforce the decree for restitution of conjugal rights with a bona fide intention of restoring matrimonial cohabitation with the respondent.

55. It needs to refer herein that the judgment rendered in M.T.S. No. 197 of 2013 does not reflect any disclosure by the appellant regarding the settlement arrived at before the Mediation Centre, JHALSA, or the fact that the parties had resided together for a certain period during the pendency of the said proceeding.

56. On the other hand, the respondent, in her oral testimony before the learned Family Court, categorically asserted that she had no knowledge of the *ex parte* judgment and decree passed in M.T.S. No. 197 of 2013.

57. The learned family Court has taken into consideration the aforesaid factual aspect also and has observed that there was no material on record to establish that the respondent had ever been made aware of the said decree, nor had the appellant produced any documentary evidence to prove such knowledge on her part.

58. Further from the impugned judgment it is evident that the respondent, in clear and unequivocal terms, stated in her deposition that she is willing to reside with the appellant.

59. The aforesaid factual aspect led the learned Family Court, to drew an inference that the respondent's separate residence was neither deliberate nor motivated by an intention to permanently terminate cohabitation. Rather, such separation was held to be a consequence of compelling circumstances arising out of prolonged matrimonial discord and continuous litigation between the parties, which had rendered their relationship strained and non-cordial.

60. It is evident from perusal of the impugned judgment that the learned Family Court based upon the aforesaid circumstances has concluded that the appellant (petitioner therein) failed to adduce any cogent and trustworthy evidence to establish that the respondent-wife, despite having knowledge of the judgment and decree passed in M.T.S. No. 197 of 2013, had wilfully refused to resume matrimonial life with him. In the absence of any such evidence, the allegation that the respondent had deliberately declined to comply with the decree for restitution of conjugal rights was held to be unsubstantiated.

61. Thus, based upon the discussion made hereinabove, this Court, is of the considered view, that the appellant has not adduced any cogent and reliable evidence that the respondent-wife had not resumed her conjugal life with the appellant despite knowing about the judgement and decree passed in M.T.S. No. 197/2013.

62. Further, in the facts of the present case, although the factum of separation between the parties stands established, the appellant has failed to prove that the respondent had the requisite intention to bring matrimonial cohabitation permanently to an end. The evidence available on record does not disclose the existence of *animus deserendi* on the part of the

respondent. Rather, the materials on record, including her categorical assertion expressing willingness to reside with the appellant, indicate that her separate residence was not driven by an intention to forsake the marital relationship permanently, but was a consequence of the prevailing circumstances. As such, one of the essential ingredients constituting desertion remains unproved, and the plea of desertion advanced by the appellant cannot be said to have been established in accordance with law.

63. This Court, based upon the aforesaid discussion, is of the view that the appellant/petitioner has failed to establish the element of perversity in the impugned judgment as per the discussion made hereinabove, as such, the instant appeal deserves to be dismissed.

64. Accordingly, the instant appeal fails and is dismissed.

65. Pending interlocutory application(s), if any, also stands disposed of.

(Sujit Narayan Prasad, J.)

I agree,

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

5th November, 2026

Saurabh/

A.F.R.

Uploaded on 05.11.2026