IN THE HIGH COURT OF JHARKHAND AT RANCHI

F.A. No. 418 of 2018

Dukhi Ram Mandal, s/o Pancha Nand Mandal, aged about 48 years, r/o Dhaiya Mochi Kulhi, P.O., P.S. & District Dhanbad.

… … Appellant/Plaintiff

Versus

Pratima Mandal, w/o Dukhi Ram Mandal, r/o Upper Kandra, P.O. & P.S. Sindri, District Dhanbad.

… … Respondent/Defendant

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

For the Appellant : Mr. Arvind Kumar Choudhary, Advocate
For the Respondent : Mr. Kartik Chandra Pramanik, Advocate

CAV/Reserved on 20.11.2025 **Pronounced on : 02.12.2025**

Per Sujit Narayan Prasad, J.

1. The instant appeal under Section 19(1) of the Family Courts Act, 1984 is directed against the order/judgment dated 29.08.2018 and decree signed on 10.09.2018 passed by the learned Additional Principal Judge, Additional Family Court, Dhanbad in Original Suit No. 174 of 2016, whereby and whereunder, the learned court has dismissed the suit in the light of Section 13(1)(i-a)(i-b) of the Hindu Marriage Act, 1955.

2. The brief facts of the case as per the original matrimonial suit needs to be referred herein as under:

The marriage of the appellant/plaintiff was solemnized with the respondent/defendant on 15.03.2007 at Kandra, Sindri as per Hindu rites and customs. The couple were blessed with a son namely, Ayush Mandal, aged 5 years. It has been alleged that the respondent/defendant is an educated lady but did not have care of civilization and culture and never treat beastly with the appellant/plaintiff and she always abused the petitioner/plaintiff and his parents with filthy language and since very first day she was non-co-operative and her behaviour towards the family members of the appellant/plaintiff was unacceptable.

It has been stated that appellant/plaintiff is an employee of Indian Railway and he is working as a Trackman at Baraut, Dist. Baghbat (U.P). It has been alleged that respondent/defendant used to quarrel with the plaintiff over trivial matter and used to abuse the plaintiff and his son. It is also alleged that the respondent/defendant did not make food and appellant/plaintiff has to go his duty without taking meal and when the appellant/plaintiff return, respondent/defendant compel the appellant/plaintiff to remove all cloths, take bath, wash all the clothes and then he will be allowed to touch her or his son.

It has been alleged that in the year 2010 to ruin the martial life of appellant/plaintiff, father of the respondent/defendant instituted a case in Mahila Police Station, Dhanbad and Kanta Kumari, O.C. of Mahila Police Station, Dhanbad threatened the appellant/plaintiff with connivance of father of respondent/defendant but when the matter was investigated by the local police and found that respondent/defendant is peacefully living with appellant/plaintiff in her matrimonial home then the O/C Mahila P.S. Dhanbad failed to institute FIR against the appellant/plaintiff.

It has further been alleged that when respondent/defendant came to know the fact that the appellant/plaintiff has made nominee to the respondent/defendant in his service record and also knowing the fact that she will get the service of appellant/plaintiff in case of his death and other consequential benefit," she refused to cohabit with the appellant/plaintiff without any reasonable excuse.

It has further been alleged that on 08.02.2013 when appellant/plaintiff and respondent/defendant was at Baraut (U.P) railway quarter, in presence of her father, respondent/defendant made cruel behaviour with appellant/plaintiff, abused him with filthy language and also assaulted him with fist and slaps and threatened to kill him. After that incident, appellant/plaintiff reported the matter to the Baraut Bagpat (UP) Police Station and a case was instituted U/s 323/504/506 IPC against respondent/defendant and her father and when police called the respondent/defendant with her father they left the quarter without any excuse.

It has further been alleged that appellant/plaintiff made several attempts to bring the respondent/defendant back to the matrimonial home but she flatly refused to live with the appellant/plaintiff in future and filed a false and fabricated criminal case against him and his family members.

3. It is evident from the factual aspect as referred hereinabove which led to filing of the present appeal that, as per the Original Matrimonial Suit, the appellant/petitioner Dukhi Ram Mandal married with the respondent/defendant on 15.03.2007 at Kandra, Sindri as per Hindu rites and customs. The couple were blessed with a son namely, Ayush Mandal, aged 5 years. It has been alleged that the respondent/defendant always abused the petitioner/plaintiff and his parents with filthy language and.

4. It has been alleged that respondent/defendant used to quarrel with the plaintiff over trivial matter and used to abuse the plaintiff and his son. It is also alleged that the respondent/defendant did not make food and appellant/plaintiff has to go his duty without taking meal and when the appellant/plaintiff return, respondent/defendant compel the appellant/plaintiff to remove all cloths, take bath, wash all the clothes and then he will be allowed to touch her or his son. It has been alleged that in the year 2010, father of the respondent/defendant instituted a case in Mahila Police Station, Dhanbad and Kanta Kumari, O.C. of Mahila Police Station, Dhanbad but when the matter was investigated by the local police and found that respondent/defendant is peacefully living with appellant/plaintiff in her matrimonial home then the O/C Mahila P.S. Dhanbad failed to institute FIR against the appellant/plaintiff.

5. It has further been alleged that on 08.02.2013 when appellant/plaintiff and respondent/defendant was at Baraut (U.P) railway quarter, in presence of her father, respondent/defendant made cruel behaviour with appellant/plaintiff, abused him with filthy language and also assaulted him with fist and slaps and threatened to kill him. After that incident, appellant/plaintiff reported the matter to the Baraut Bagpat (UP) Police Station and a case was instituted U/s 323/504/506 IPC against respondent/defendant and her father and when police called the

respondent/defendant with her father they left the quarter without any excuse.

6. It has further been alleged that appellant/plaintiff made several attempts to bring the respondent/defendant back to the matrimonial home but she flatly refused to live with the appellant/plaintiff in future and filed a false and fabricated criminal case against him and his family members.

7. It is evident from the factual aspect that the appellant/plaintiff had a motion by filing a petition under Section 13(1)(i-a)(i-b) of the Hindu Marriage Act, 1955 for decree of divorce.

8. The learned Family Judge has called upon the respondent-wife. The wife has filed written statement and altogether four issues have been framed by the learned Family Court which are as follows:

   (i) Whether the suit is maintainable in its present form ?

   (ii) Whether the plaintiff has got a valid cause of action for the suit ?

   (iii) Whether the marriage between the plaintiff and the defendant is fit to be dissolved on the grounds of cruelty and desertion ?

   (iv) What other relief or reliefs the plaintiff is entitled ?

9. The evidences have been made on behalf of both the parties. Thereafter, the judgment has been passed dismissing the suit by holding that none of the ground either of cruelty or desertion has been established by the appellant/plaintiff which is the subject matter of the present appeal.

Submission of the learned counsel for the appellant/plaintiff:

10. It has been contended on behalf of the appellant/plaintiff that the factual aspect which was available before the learned court supported by the evidences adduced on behalf of the appellant/plaintiff has not properly been considered and as such, the judgment impugned is perverse, hence, not sustainable in the eyes of law.

11. It has been submitted that the issue of cruelty and desertion has not been taken into consideration in right perspective even though the fact about living separately has well been established.

12. Learned counsel for the appellant/plaintiff, based upon the aforesaid grounds, 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:

13. *Per contra*, Mr. Kartik Chandra Pramanik, 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 cruelty and desertion and having come to the conclusion that no evidence has been adduced to establish either cruelty or desertion, has rightly dismissed the suit.

14. So far as the issue of cruelty is concerned, the learned counsel for the respondent-wife has submitted that there is no such act of cruelty on behalf of the respondent, rather it is the respondent-wife who has been subjected to cruelty since the respondent/wife when delivered a boy child then she was not taken care properly as also the appellant/plaintiff did not come to see her and the medical expenses was borne by the father of the respondent/wife. When she again became pregnant, the pregnancy was terminated by giving some medicine by the appellant/plaintiff and when again in the year 2009 she became pregnant, she was subjected to cruelty and harassment and was also assaulted and finally the appellant/plaintiff left her to her Maika.

15. It has also been submitted that the respondent/defendant, in her in-laws' house, was taunted by the appellant/plaintiff and her in-laws for not fulfilling the demand at the time of marriage and was demanded Rs.4 lakhs as dowry and on non-fulfillment of the same, she was subjected to mental and physical torture.

16. Learned counsel, based upon the aforesaid ground, has submitted that if on that pretext, the factum of cruelty and 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 an error, as such, the present appeal is fit to be dismissed.

Analysis:

17. 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.

18. It requires to refer herein that from the order dated on 24th April 2025 passed by this Court it is evident that on the joint prayer of the both the parties, the instant appeal was fixed on i.e., for 06.05.2025 for exploring the possibility of re-union of both the parties. On 06.05.2025 both the parties appeared before this Court and this Court had interacted with them and asked for re-union but the husband refused to reside with the wife, accordingly, the matter was fixed for adjudication on merit. For ready reference order dated 24th April 2025 and 6th May 2025 are being referred herein as under:

> ***"10/Dated: 24th April, 2025***
>
> *1. Learned counsel appearing for both the parties have submitted that the parties are ready for re-union.*
>
> *2. Learned counsel for the parties have expressed their views that for the aforesaid purpose let the appellant and the respondent be appeared before this Court on the next date of hearing.*
>
> *3. Considering the said positive approach on behalf of the learned counsel for the parties, the appellant and the respondent-wife are directed to appear before this Court on the next date fixed.*
>
> *4. Learned counsel for the appellant has submitted that estimated expenditure amounting to Rs.3000/- incurred in travelling including food by the wife along with the child from Dhanbad to Ranchi, will be paid by the appellant on the next date of hearing to the respondent-wife.*
>
> *5. As jointly prayed for, list this case on 06.05.2025.*
>
> ***11/Dated: 06th May, 2025***
>
> *1. In pursuance of the order dated 24.04.2025, both the parties have appeared before this Court and we have interacted with them and asked for re-union but the husband is bent upon not to reside with the wife and as such this Court has no other option but to hear the matter on merit.*
>
> *2. Accordingly, list this case on 23.06.2025 for hearing on merit.*
>
> *3. Personal appearance of the parties is hereby dispensed with."*

19. The case has been heard at length. The admitted fact herein is that the suit for divorce has been filed on the ground of cruelty and desertion, i.e., by filing an application under Section 13(1) (i-a) (i-b) of the Hindu Marriage

Act, 1955 and accordingly, issues have been framed by the learned Family Court wherein primarily issue no.(iii) pertains to cruelty and desertion.

20. The evidences have been led on behalf of both the parties before the Family Court. For better appreciation, the evidences led on behalf of the appellant/plaintiff are being referred as under:

(i) P.W-1 Dukhi Ram Mandal is appellant/plaintiff himself and P.W.-2 Navin Kumar Mandal is brother of appellant/plaintiff and both have stated similar fact in their examination in chief on affidavit as stated in the plaint of the appellant/plaintiff.

During cross-examination P.W.-1 Dukhi Ram Mandal has stated that prior to filing the original suit, his wife/defendant had filed a case u/s 498(A) IPC against him and his family members in which they are on bail and the same is pending before the court. Respondent/defendant had also filed a Maintenance Case against him in which, the learned court passed an order directing him to pay Rs.9000/- per month to his wife/defendant and after filing Execution case, he is paying the same. He had also filed suit for custody of his minor son but he cannot remember the number of this case but he had not filed suit for restitution of conjugal right against his wife/defendant because he is not ready and willing to live with his wife/defendant. He has further stated that after the wedlock, they have been blessed with a son on 18.07.2010 at Central Hospital "but at that time, he was on duty at Baraut, Baghbat Dist. U.P hence, parents of defendant got admitted her in Central Hospital but he had paid the entire treatment expenses of his wife. He took his wife/defendant to U.P in the year 2007 where she lived about 6 months but their life was not peaceful. At the time of her stay, he had filed a complaint before Baraut Police Station and F.I.R was also registered but he cannot say the number of the said case and he had filed the paper of the same before the court. He has further stated that he cannot say the name of the Officer of Baraut Police Station who had lodged the complaint. He has further stated that since December 2013, their son is living with his

mother/defendant but at present, he has no knowledge about the fact that at where his son is studying and since the year 2013 he had not met with his son. He had told his wife/defendant about insertion of her name as nominee in his Service Book in the year 2013. He had informed the incident of 08.02.2013 thereafter, he was transferred to Punjab and on 08.02.2013, he was treated in the government hospital by the Baraut police but he had not filed any document before the court in this regard. His marriage was solemnized with defendant in the year 2007 and they lived together till December 2013 and since the year 2013, he had not visited the Maika of his wife/defendant to see her. He has further stated that there was a Panchayati held in presence of Parshad and members of both the families were present in that meeting. In the Panchayati, it was decided that he will pay Rs.5,000/- per month to his wife/defendant but prior to that Panchayati, he was paying maintenance to his wife. His wife had also filed a case against him with allegation that he had performed second marriage.

(ii) P.W.-2 Navin Kumar Mandal is brother of plaintiff and he has also supported the case of plaintiff as well as plaint in his examination in chief.

During cross-examination P.W.-2 Navin Kumar Mandal has stated that prior to filing of the suit, father of respondent/defendant had filed a dowry case bearing G.R Case No.5272/2013 against the appellant/plaintiff and his family members and he is also an accused in that case which is pending before the court. He had knowledge that Pratima Mandal/defendant had filed Maintenance Case against her husband against which maintenance of Rs.9,000/- per month was allowed to the defendant thereafter she had filed Enforcement Case No.88/2014 in which, plaintiff appeared before the court and on the basis of compromise, an order was passed directing the plaintiff to pay an amount of Rs. 18,000/- per month to the defendant till realization of arrear amount and thereafter, an amount of Rs.9,000/-per month was to be paid to the defendant. He has

further stated that with regard to the incident mentioned in Para.4, 5, 6, & 7, appellant/plaintiff had not filed any complaint before Dhanbad Police Station but Panchayati was held. His brother Dukhi Ram Mandal took his wife Pratima Mandal from Dhanbad to Baraut in the year 2008. Appellant/plaintiff Dukhi Ram Mandal had narrated him the incident of Baraut. He has no knowledge about the second marriage of plaintiff nor he has knowledge about the fact that Pratima Mandal had filed a case against plaintiff with allegation of solemnization of second marriage. His brother Dukhi Ram Mandal had hot filed any suit for restitution of conjugal right.

(iii) P.W.-3 Vijay Kumar Tiwary is the Bill Clerk of Central Hospital of BCCL, Dhanbad and he has stated in his evidence that Bill No 738 dtd. 20.07.2010 was prepared by him which was issued in favour of patient Pratima Devi which is of his writing and signature and the same was marked as Exhibit-6 and the Money Receipt No.4949 dtd.20/07/2010 amounting to Rs.2189/ of the said bill was marked as Exhibit-7.

21. The evidences led on behalf of the respondent/defendant are being referred as under:

(i) D.W.-1 Pratima Mandal is the respondent/defendant herself and has denied the case of appellant/plaintiff by her Written Statement and has stated that her marriage took place with appellant/plaintiff on 13.05.2007 and after marriage she went to her Sasural. She has further stated that they are blessed with a son namely Aayush, aged about 7 years and living with her. She has further stated that at the time of birth, information was given to the plaintiff, but he did not come to see his wife/defendant and his son and the entire treatment expenses were paid by her father She has further stated that prior to that, she was conceived for three months but plaintiff terminated the same after administering medicine by force and thereafter in the year 2009, when she again became pregnant, the appellant/plaintiff took her with him at Baraut where he used to assault her and also did not provide her proper medical treatment and food and finally

left her at her Maika. She has further stated that on 28.10.2011, her parents left her along with her son at the house of appellant/plaintiff at Baraut where she was assaulted by the appellant/plaintiff and when their son was suffering from wound which was spread all over his body, the appellant/plaintiff did not provide him medical treatment rather, he left her with the son at his house at Dhaiya and went to Baraut. She informed her father, who came and treated her son by Dr. Nityanand and after his recovery, her father left her with her son to her Sasural. She has further stated that in her Sasural, she was again assaulted by her Sas, Sasur, Bhaisur and Gotni and finally ousted from her Sasural and since then, she is living, in her Maika. She has further stated that in the year 2012, her parents went to her Sasural and requested her Sasural people to keep her peacefully and the matter was also informed to the Parshad. The matter was compromised before the Mahila P.S, Dhanbad and after executing bond by the appellant/plaintiff that he will keep his wife and son with dignity, he took them to Baraut. She has further stated that on 27.03.2013, when her father went to Baraut to bring appellant/plaintiff and his family for attending the marriage of his second daughter, the appellant/plaintiff refused for the same and had assaulted her and then left her and their son at Kandra More. She has further stated that on 16.08.2013 a meeting was held in the house of Parshad and as per the decision of Panchayati, the appellant/plaintiff brought her to his Sasural and again went to Baraut. During stay at her Sasural, she was ill treated by her in-laws and she was not provided proper food and shelter. On 28.12.2013, she, was mercilessly beaten by her in-laws and on information, her father came with local police, who took her to PMCH, Dhanbad for her treatment where she was treated. She has further stated that at the time of living in her Sasural, she was taunted by her husband/plaintiff and in-law people for bringing insufficient dowry and they also demanded Rs 4 lakh and due to non-fulfilment of the same, she was tortured physically and mentally due to which, her father had filed Dhanbad P.S. Case No. 1225/2013 U/s 498(A) IPC

and 3/4 D.P Act against her husband and in-laws which is pending before the Court. She had filed M.P. Case No. 88/2014 against the appellant/plaintiff against which, maintenance of Rs.8,000/- per month for herself and Rs.1,000/- per month for her minor son was allowed by the court but the appellant/plaintiff did not comply the order of the court thereafter, she had filed Enforcement Petition which was ended on the basis of compromise and as per the compromise, the appellant/plaintiff deposited Rs.18,000/- per month in her account. She has further stated that on 09.08.2016, plaintiff had performed second marriage for which, she had filed a criminal case before Dhanbad Police Station.

During cross-examination, DW-1 Pratima Mandal has stated that after six months of marriage, she went to Baraut and stay 3-4 months. So many times, she went there and came back but she cannot say the total period of her stay at Baraut. On 09.02.2011, she was at Baraut and living with her husband and as per her version, her father had filed a complaint before Mahila Police Station, Dhanbad and in that case, names of brothers of appellant/plaintiff were also included. She denied the suggestion that she ill-treated with her in-laws and also assaulted and snatched the ornaments of her Gotni for which G.R Case No.5271/2013 was filed against her in which, she is on bail and that case is pending before the court. She has further stated that she has no knowledge about the fact that whether her name has been incorporated in the Service Book of appellant/plaintiff and she denied the suggestion that due to non-incorporation of her name in the Service Book of plaintiff, her father had filed a case with allegation of her torture. She has further stated that she was living in her Maika when she was carrying pregnancy of 5 months and after giving birth to the baby, she stayed there till the month of June but she further stated that she lived in her Maika for 8 months. In the dowry case bearing G.R. No.5272/2013, she was treated by the doctor of P.M.C.H, Dhanbad and she is having the prescription of the doctor and she can file the same. It was decided in the Panchayati in presence of Ward

Commissioner Praful Mandal that after two months, appellant/plaintiff took her to his working place and it was also decided that the appellant/plaintiff will pay Rs.5000/- to Praful Mandal from whom, she got the same. She has no knowledge with the fact that appellant/plaintiff had booked their ticket and came to Dhanbad to take her. She denied the suggestion that appellant/plaintiff came to take her but she refused for the same. She has also denied the suggestion that she had called her father and filed a case against her husband and in-laws by her father with a view not go to the Sasural. She has further stated that it is true that Dukhi Ram Mandal/plaintiff had solemnized his second marriage.

(ii) DW-2 Ashok Kumar Mandal, father of defendant and DW-3 Subhadra Mandal, mother of defendant both have stated common fact as stated by DW-1 Pratima Mandal in her evidence.

DW-2 Ashok Mandal has also stated in his evidence that on 28.10.2011 he left his daughter/defendant along with her son Aayush to the house of appellant/plaintiff at Baraut, U.P for living their happy conjugal life but she was assaulted by her husband/plaintiff and their son suffering from wound which was spread all over his body, appellant/plaintiff did not provide him medical treatment rather, he left his wife and their son at his house at Dhaiya and went to Baraut. After receiving the information, he had gone to the Sasural of his daughter at Dhaiya and treated her son by Dr. Nityanand and after his recovery, when she again went to her Sasural, her Sas, Sasur and Dewar assaulted her and ousted from her Sasural then she came to his house at Kandra. He has further stated that in the year 2012, he went to the Sasural of his daughter/defendant at Dhaiya and requested her Sasural people to keep her peacefully and the matter was also informed to the Parshad and Mahila Police Station, Dhanbad. The matter was compromised before the Mahila P.S, Dhanbad and after executing bond by the appellant/plaintiff that he will keep his wife and son with all dignity and care, he took defendant and their son to Baraut. He has further

stated that on 27.03.2013, when he went to Baraut to bring appellant/plaintiff and his family for attending the marriage of his second daughter, appellant/plaintiff refused for the same and in his presence, appellant/plaintiff assaulted her and thereafter, prior to two days of marriage, he left defendant and their son at Kandra and went to Baraut. He informed the matter to the Parshad and on 16.08.2013 a meeting was held in the house of Parshad and as per the decision of Panchayati, appellant/plaintiff brought her to his Sasural at Dhaiya. He has further stated that defendant was ill-treated by her in-laws and she was not provided proper food and shelter. On 28.12.2013, she was badly assaulted and upon information, he rushed to her Sasural along with police personnel. Police sent her to PMCH, Dhanbad for her treatment where she was treated.

DW-2 Ashok Kumar Mandal, father of defendant has stated in his cross-examination that at the time of birth of his grandson Aayush, total treatment expenses were borne by him and bills were given to his son-in-law/plaintiff. He has no knowledge that whether appellant/plaintiff had incorporated name of defendant as nominee in his Service Book or not. After 28.10.2011, he got his grandson treated by Dr. Nityanand and the documents were given to appellant/plaintiff for reimbursement. He had made written complaint before the Mahila Police Station as well as before the Parshad and his daughter/defendant had put her signature over the complaints petition. He denied the suggestion that at the time of filing complaint at Mahila Police Station, his daughter was at Baraut. On 05.02.2013, he went to Baraut to invite his son-in-law and his daughter for the marriage of his second daughter. On 16.08.2013 a meeting was held in presence of Parshad and after the meeting, Dukhi Ram Mandal went for training and again said that after leaving Pratima at her Sasural Dhaiya, he went for his training. He is having no knowledge that after completion of training, Dukhi Ram Mandal after getting reservation, came to Dhaiya to take Pratima Mandal with him. He had filed the Case U/s 498(A) IPC on

30.12.2013 but denied the suggestion that at that time, maintenance case was also filed. His daughter/defendant is living with him since 28.11.2012 but again said that from 28.12.2013.

DW-3 Subhadra Mandal, mother of defendant has stated during her cross examination that her daughter/defendant is living with them since 28.12.2013 and thereafter, she did not go to her Sasural. They filed a case before the Mahila Police Station in the year 2012 and she has the documents of the same but she has no document with regard to the compromise.

22. The learned Family Judge has gone into the interpretation of the word "cruelty" and "desertion" and assessing the same from 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 element of cruelty and desertion could not have been established.

23. The learned counsel for the appellant/plaintiff has argued that the evidence of cruelty and desertion has not properly been considered and as such, the judgment suffers from perversity, hence, not sustainable in the eyes of law.

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

25. 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.*
>
> ***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.*
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> ***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.*
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> ***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.""*

<u>Issue of cruelty</u>

26. In the background of aforesaid factual aspect this Court is adverting to appreciate the issue of cruelty as alleged to be committed by the respondent wife upon the appellant/husband.

27. The "cruelty" has been interpreted by the Hon'ble Apex Court in the case of ***Dr. N.G. Dastane vs. Mrs. S. Dastana, (1975) 2 SCC 326*** wherein it has been laid down that the Court has to enquire, as to whether, the conduct 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.

28. This Court deems it fit and proper to take into consideration the meaning of 'cruelty' as has been held by the Hon'ble Apex Court in ***Shobha Rani v. 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.

29. According to the Hon'ble Apex Court, "cruelty" is the "conduct in relation to or in respect of matrimonial conduct in respect of matrimonial 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."

30. The Hon'ble Apex Court has further observed therein that while dealing with such complaints of cruelty 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."

31. 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.

32. 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 a cross-examination. The Hon"ble Apex Court held these allegations against the husband to constitute "cruelty".

33. In ***Vijaykumar 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.

34. 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.

35. It is, thus, evident 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.

36. Now reverting to the fact of the case wherein it has been alleged by the appellant/husband that the respondent/defendant is an educated lady but

did not have care of civilization and culture and never treat beastly with the appellant/plaintiff and she always abused the petitioner/plaintiff and his parents with filthy language and since very first day she was non co-operative and her behaviour towards the family members of the appellant/plaintiff was unacceptable. It is also alleged that the respondent/defendant did not make food and appellant/plaintiff has to go his duty without taking meal and when the appellant/plaintiff returned, respondent/defendant compel the appellant/plaintiff to remove all cloths, take bath, wash all the clothes and then he will be allowed to touch her or his son.

37. *Per contra,* the respondent/wife had stated in her testimony before the learned Family Court that at the time of birth, information was given to the plaintiff, but he did not come to see his wife/defendant and his son and the entire treatment expenses were paid by her father She has further stated that prior to that, she was conceived for three months but plaintiff terminated the same after administering medicine by force and thereafter in the year 2009, when she again became pregnant, the appellant/plaintiff took her with him at Baraut where he used to assault her and also did not provide her proper medical treatment and food and finally left her at her Maika. She has further stated that on 28.10.2011, her parents left her along with her son at the house of appellant/plaintiff at Baraut where she was assaulted by the appellant/plaintiff and when their son was suffering from wound which was spread all over his body, the appellant/plaintiff bid not provide him medical treatment rather, he left her with the son at his house at Dhaiya and went to Baraut.

38. Admittedly, the plea of cruelty has been raised by the appellant husband thus onus is upon him to prove the fact of cruelty caused upon him by the respondent/wife. It is evident from the oral evidence of appellant referred hereinabove that the appellant has himself stated in his evidence that his marriage was solemnized with defendant in the year 2007 and they lived together till December 2013 and since the year 2013, he had not visited the Maika of his wife/defendant to see her. He has further stated that since December 2013, their son is living with his mother/defendant but at

present, he has no knowledge about the fact that where his son is studying and since the year 2013 he had not met his son. The aforesaid statement of the appellant/husband itself indicative of the fact that he has not cared his marital obligation.

39. He has further stated that after the wedlock, they have been blessed with a son on 18.07.2010 at Central Hospital but at that time, he was on duty at Baraut, Baghbat, U.P. hence, parents of defendant got admitted her in Central Hospital but he had paid the entire treatment expenses of his wife. However, the payment of said expanses had been denied by the respondent/wife.

40. Further, the appellant had stated that respondent/defendant did not make food and appellant/plaintiff has to go his duty without taking meal and when the appellant/plaintiff return, respondent/defendant compel the appellant/plaintiff to remove all cloths, take bath, wash all the clothes and then he will be allowed to touch her or his son.

41. The aforesaid statement of appellant/petitioner clearly indicates that whatever the allegation has been made by the appellant/petitioner regarding the alleged cruelty on behalf of respondent/wife are nothing more than daily abrasion of a marital life.

42. This Court has also gone through the impugned judgment wherefrom it is evident that the learned Family Court has appreciated the evidences led by both the parties at length and specifically reached to the finding that the plaintiff could not prove any act of cruelty on the part of defendant either in his plaint or evidence adduced on his behalf and the evidence which has been adduced on behalf of plaintiff fails to demonstrate any act of cruelty perpetrated against plaintiff by defendant rather, the evidence and conduct suggests that the appellant/plaintiff is guilty of matrimonial misconduct.

43. This Court, based upon the aforesaid discussions on the issue of cruelty, is of considered view that the issue of cruelty as has been alleged by the appellant-husband against his wife could not be proved satisfactorily and further since, the learned Family Judge after appreciating the entire evidence had recorded its finding, therefore, it is considered view of this

Court that the appellant/petitioner has failed to establish the element of perversity in the aforesaid finding of the learned Family Court.

44. Thus, as per the discussions made hereinabove and law laid down by Hon'ble Apex Court which has also been referred herein above this Court has no reason to take different view that has been taken by the learned Family Court proving the ground of cruelty, accordingly the finding of learned Family Court on the point of cruelty requires no interference by this Court.

Issue of desertion

45. Since desertion has also been taken as a ground, therefore, it would be apt to discuss herein the element of desertion. The definition of "desertion" is required to be referred herein as defined under explanation part of Section 13 which 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 willful neglect of the petitioner by the other party to the marriage.

46. *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."*

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.*

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. The fact that a husband makes an allowance to a wife whom he has abandoned is no answer to a charge of desertion.

47. 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. 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.

48. It is, thus, evident from the aforesaid reference of meaning of desertion that the quality of permanence is one of the essential elements which differentiates 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.

49. 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 form the necessary intention aforesaid. In such a situation, the party who is filing for divorce will have the burden of proving those elements.

50. Recently also, 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. The law consistently laid down by this Court is 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. The view taken by the Hon'ble Apex Court has been incorporated in the Explanation added to sub-section (1) of Section 13 by Act 68 of 1976. The said Explanation reads thus:

> *"**13. Divorce**.—(1) ...*
>
> *Explanation.—In this sub-section, the expression "desertion" 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."*

51. This Court, on the premise of the interpretation of the "desertion" has considered the evidences of the witnesses as has been incorporated by the learned Court in the impugned judgment.

52. The ground of desertion has also been taken but the desertion has been defined and interpreted by the Hon'ble Apex Court that the desertion will be said to be desertion if either of the party, on his/her own wish, has left the matrimonial house.

53. It is evident from the impugned judgment that the learned court has taken into consideration the fact that prior to filing of the suit, the father of the defendant/respondent had filed a case being Dhanbad P.S. Case No. 1225 of 2013 u/s 498(A) IPC and 3/4 of Dowry Prohibition Act against the appellant/plaintiff and his family members and the said fact has been deposed by the respondent/defendant herself that the appellant/plaintiff and his family members used to demand Rs.4 lakhs as dowry and on non-fulfillment of the same, she was subjected to torture both mental and physical.

54. As discussed hereinabove, the desertion will be said to be desertion if either of the party, on his/her own wish, has left the matrimonial house but from the aforesaid it is evident that respondent wife has been compelled to leave her matrimonial house. Further from testimony of the witnesses it is evident that no cogent evidence has been produced by the appellant/plaintiff to prove the element of desertion showing that the respondent/defendant has left her matrimonial house with her own wish.

55. Further, this Court has gone through the impugned judgment wherefrom it is evident that the learned Family Court has specifically observed that "Separation between spouse is not sufficient for grant of a decree of divorce on the ground of desertion unless and until the intention to desert is proved to exist in the mind of defendant. The only evidence on record adduced on behalf of plaintiff is that defendant is living separate from her husband at her own motion and there is nothing to suggest that it was defendant who deserted the do plaintiff with an intention to put the cohabitation permanently to an end nor there is any evidence that plaintiff has tried to bring back the defendant to their matrimonial home. The separation and Animus Deserendi are essential ingredients which are required to be proved for success in a suit for divorce preferred on the ground of desertion. Thus, the evidence led by plaintiff in support of plea of desertion is. in my opinion, not suffice to prove and establish the plea of desertion Thus, I find and hold that the plaintiff has not succeeded in proving the plea of desertion against the defendant also and this ground is also hot available to him for a decree of divorce against the defendant."

56. Further from impugned order it is evident that desertion has not been proved before the Family Court through concrete and tangible evidence. Thus, the learned Family Judge, on consideration of issue of desertion, has not found the alleged desertion as ground for dissolution of marriage and therefore, dismissed the suit.

57. This Court, on the basis of discussions made hereinabove, is of the view that the appellant husband has not been able to prove the ground of desertion for one of the grounds for divorce before the learned Family

Court. As such, we have no reason to take a different view that has been taken by the learned Family Court.

58. 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.

59. This Court, on the basis of discussions made hereinabove, is of the view that the judgment dated 29.08.2018 and decree signed on 10.09.2018 passed by the learned Additional Principal Judge, Additional Family Court, Dhanbad in Original Suit No. 174 of 2016, whereby and whereunder, the learned court has dismissed the suit filed under Section 13(1)(i-a)(i-b) of the Hindu Marriage Act, 1955, requires no interference by this Court.

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

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

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

(Arun Kumar Rai, J.) **(Arun Kumar Rai, J.)**

02nd December, 2025

Saurabh/**A.F.R.**

Uploaded on: 02.12.2025