IN THE HIGH COURT OF JHARKHAND AT RANCHI

F.A. No.65 of 2024

Ashwini Kumar, aged about 33 years, son of Ashok Kumar Roy, resident of Village Piprasole, P.O. Karogram, P.S. Chitra, District Deoghar. Presently residing at Radha Swami Gali, Karnibag, P.O. Ashram, P.S. Kunda, District Deoghar

… … Applicant/Appellant

Versus

Roma Kumari, daughter of Ajay Singh, wife of Ashwini Kumar, resident of Village Bhudharni, P.O. Simariya, P.S. Rajdhanwar, District Giridih. Presently residing at Bhabha Public School, Rajdhanwar, P.O. and P.S. Dhanwar, District Giridih

… … Opposite Party/Respondent

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

For the Appellant : Mr. Arvind Kumar Choudhary, Advocate
For the Respondent : Mrs. Arpita Sinha, Advocate

CAV on 21.09.2026 ***Pronounced on 29/10/2026***

Per Sujit Narayan Prasad, J.

Prayer

1. The instant appeal under Section 19(1) of the Family Courts Act, 1984 is directed against the Judgment dated 29.01.2024 and Decree signed on 12.02.2024 passed by the learned Principal Judge, Family Court, Deoghar in Original Suit No.183 of 2022, whereby and whereunder, the petition filed by petitioner/husband (appellant herein) under Section 13 (i-a) and (i-b) of the Hindu Marriage Act, 1955 for dissolution of marriage, has been dismissed.

Factual Matrix

2. The brief facts of the case, as per the petition, required to be referred herein, as under:

3. It is the case of the appellant-husband herein that his marriage was solemnized with the respondent-wife on 18.06.2017 according to Hindu Rites and Customs. The respondent-wife had stayed only for a week in her matrimonial house and thereafter, she went to her father's house at village Bhudharni, P.S. Rajdhanwar, District Giridih as the appellant had gone to Udaipur, Rajasthan where he was working at that time.

4. It is the further case that thereafter, the appellant had gone to his Sasural for "Bidaai" of his wife (respondent), but the behaviour and attitude of his wife (respondent herein) and mother-in-law was not cordial, rather, hostile against the present appellant. Despite their hostile attitude, the appellant tried to take her to Udaipur, where he was working, but she refused and thereafter, the appellant had offered her to come and reside with him at Deoghar Town, but she refused to do so. It is the further case that continuously, the appellant was persuading her to live with him, but on one or the other ground, she refused to live with him. Thereafter, she had come to the house of the appellant during 'CHHATH' festival in the year 2018 and stayed only for 10 days and then, left her matrimonial home on the pretext of examination.

5. Thereafter, the appellant resigned from his service and shifted to Deoghar for restoration of his matrimonial life. For restoration of his matrimonial life, the appellant also shifted to Ranchi, but the respondent did not agree and lastly, after retirement of the appellant's father in April, 2020, the respondent came to his house in the year 2020 and thereafter started putting pressure upon his father to distribute the amount of retirement benefits and asked his father to allot Rs. 50 Lacs in her favour.

The respondent started putting pressure for purchasing a land at her father's house in Rajdhanwar.

6. It is further case of the appellant that the respondent-wife used to misbehave with the appellant and his parents and after 06.06.2020, she never came to her matrimonial house, rather, she used to abuse the appellant over mobile. After 2 years, i.e., on 11.06.2022, the appellant approached the respondent-wife for dissolution of marriage by mutual consent, but she refused for the same. The respondent is an educated lady and at present, she is working as a teacher in Bhabha Public School, Rajdhanwar, hence, the suit was filed for dissolution of marriage on the ground of cruelty and desertion.

7. After service of summon, the respondent had appeared and filed her written statement on 17.12.2022, before the learned Family Court and denied the allegations leveled against her, rather, she had shown her willingness for restoration of matrimonial life, but due to mental and physical torture, she was forced to live in her father's house. It has further been stated that there was demand of Rs. 5,00,000/- along with a four-wheeler, for which, she had lodged Dhanwar P.S. Case No. 235 of 2022, registered for the offence under Section 498-A, 323, 406, 420, 109, 504, 506 and 34 of the Indian Penal Code and Section 3/4 of the Dowry Prohibition Act.

8. On the basis of the pleadings of the parties, the following issues have been framed by the learned Family Judge for adjudication of the suit, which are as follows: -

(i) Whether the suit as framed is maintainable in its present form and for the reliefs claimed?

(ii) Whether the petitioner has got a valid cause of action to bring this suit?

(iii) Whether the opposite party has subjected the petitioner with cruelty?

(iv) Whether the opposite party had deserted the petitioner continuously for 2 years prior to the date of filing of the suit?

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

9. The evidences have been made on behalf of both the parties. Thereafter, the judgment has been passed dismissing the suit filed under Section 13(i-a), (i-b) of the Hindu Marriage Act, 1955 for a decree of divorce by the applicant, appellant herein, which is the subject matter of the present appeal.

Submission of the learned counsel for the appellant-husband:

10. It has been contended on behalf of the appellant/petitioner that the material, 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.

11. It has been submitted that after marriage, the respondent had stayed only for a week in her matrimonial house and thereafter, went to her father's house.

12. It has further been submitted that the behaviour and attitude of the respondent-wife of the appellant and her mother-in-law was not cordial.

13. It has been contended that the appellant tried to take her to Udaipur, where he was working but she refused to go with him. Thereafter, the appellant had offered her to come and resident with him at Deoghar Town but upon this, she also refused to go with him and continuously, the appellant was persuading her to be with him, but on one or the other grounds, she refused to live with him.

14. It has been submitted that the appellant has resigned from his service and shifted to Deoghar for restoration of his matrimonial life.

15. It has further been submitted that the issue of cruelty and desertion has not been taken into consideration in right perspective by the learned Family Court.

16. Learned counsel for the appellant, 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-wife

17. *Per contra*, 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 rightly considered the issue of cruelty and desertion and have come to the conclusion that no evidence has been adduced to establish the issue either of cruelty or desertion, has dismissed the petition.

18. It has been contended that she has shown her willingness for restoration of matrimonial life but due to mental and physical torture, she was forced to live in her father's house. The respondent-wife has never

refused to lead her conjugal life with the appellant and it is the appellant who subjected the respondent-wife with cruelty on the demand of dowry.

19. It has further been contended that after few days of marriage, there was a demand of Rs.5 lakhs along with a four-wheeler, for which, she had lodged Dhanwar P.S. Case No.235 of 2022.

20. It has also been submitted that family members of the appellant were pressurizing her not to live in her matrimonial house, rather, the respondent-wife is ready to live in her in-law's house.

21. Learned counsel, based upon the aforesaid grounds, has submitted that if on that pretext, the factum of cruelty and desertion has not been found to be established, hence, the impugned judgment cannot be said to suffer from an error.

Analysis:

22. 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.

23. The case has been heard at length. The admitted fact herein is that the suit for divorce has been filed on the grounds 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 wherein primarily issue nos. III and IV pertain to cruelty and desertion.

24. The evidence has been led on behalf of both the parties before the learned Family Court. For ready reference, the evidences led on behalf of the parties are being referred as under:

List of petitioner(s) witness(s)

P.W.1, Duti Krishn Rai

P.W.2, Jamni Bhushan Rai

P.W.3, Ashok Rai

P.W.4, Ashwini Kumar (appellant himself)

P.W.1, Duti Krishn Rai, in his examination-in-chief has deposed that the applicant/appellant was married to the respondent in June 2017. Subsequently, the respondent went with her husband to his native village, Piprasol, where, after staying for only a week, she went to Bhudharni village with her father, and the applicant, Ashwini, went to his workplace in Udaipur, Rajasthan.

Subsequently, in February 2018, the applicant went to his father -in-law's house to fetch the respondent and brought her with him. After returning, the applicant told him and other family members that his wife and mother-in-law were not treating him well at his in-laws' house. The respondent taunted him on every occasion, saying it was his misfortune to be married to the applicant, as he did not own a four-wheeler, while the respondent would travel around in her father's house in a four-wheeler. Respondent Roma Kumari while serving him food plunked the utensils at her father's house and taunt him on every matter, which caused the applicant great distress and humiliation. However, he nevertheless persuaded the respondent and brought her with him. The aforementioned witness also stated that when the applicant expressed his desire to take the respondent to the place where he works, the respondent flatly refused to accompany him and respondent after staying at her in-laws' house for only fifteen days, returned to her father's house. Despite numerous attempts by Ashwini

Kumar and his father, the respondent did not return to her in-laws' home, citing the excuse that she would pursue higher education in Rajdhanwar until the 2018 Chhath Puja. During that time, Roma Kumari forced Ashwini Kumar's father to deposit a total of ₹48,000 into her account in the name of her education. After spending approximately ten days in her matrimonial home, she returned to her parents' home, citing an excuse of exam. Meanwhile, the applicant left his private job in Rajasthan and moved to his father's house in Karnibag, Deoghar, and began living there. He made numerous attempts to bring her, but his wife flatly refused to come with him, and his mother-in-law treated him disrespectfully. The applicant's wife constantly insulted her parents-in-law by calling them "old man" and "old woman" and threatened them not to contact her in the future. The respondent's mother threatened to file a criminal case against the applicant's parents over the phone if they try to take the respondent to their home.

During his cross-examination, the witness admitted that he had never visited the applicant's in-laws' house. He spoke with the respondent only once over the phone, which happened before the case was filed. He cannot specify the date, day, or month of the conversation. The phone number from which he spoke was on his mobile phone, but he cannot identify it without inspecting the phone. He spoke with Roma Kumari once. He did not speak with her after that. He heard in April 2020 that Roma Kumari travels around in a four-wheeler. The applicant told him this. He cannot specify the date or time of the conversation. Roma Kumari's mother's name is Mala Devi. The witness further denied the suggestion that the applicant is trying to get rid of the respondent by making false allegations against her.

P.W.2, Jamni Bhushan Rai, in his examination-in-chief has deposed that after the marriage, the respondent came to the applicant's home in Piprasol. After staying there for a week, she returned to her father's home. Subsequently, in February of the following year, the applicant brought the respondent to his home. He told them that the behaviour of the respondent and her mother were not good towards him at his in-laws' house, and that they humiliated him and plunked the plate in which the food was served. The respondent then stayed at the applicant's home for approximately fifteen days before returning to her father's home. After much effort, the respondent returned to the applicant's home for Chhath Puja in 2018. After staying there for only ten days, she returned to her father's home. Thereafter, for approximately one and a half years, despite the applicant's parents' tireless efforts, the respondent would not visit the applicant's home. She would use derogatory language and behave rudely towards Ashwini Kumar's parents, referring to them as "old man" and "old woman."

This witness has further deposed that the applicant's father retired in April 2020, after which Roma Kumari came to Ashok Kumar Rai's residence in Deoghar in May 2020 and stayed there for approximately fifteen days. During this time, she created such a ruckus that the applicant's father's home became a living hell. The witness also stated that at Ashok Kumar Rai's request, he visited his home in Deoghar and witnessed the entire scene. He had stated that he tried very hard to convince Roma Kumari, but she remained firm on her demand that the applicant's father has to give fifty lakh rupees to the applicant/appellant, with which land will be purchased in Rajdhanwar to build a house and to keep the applicant there. The opponent also threatened to commit suicide at the applicant's father's residence if she

did not receive the fifty lakh rupees. She continued to abuse and insult the applicant's parents, referring to them as old and repeatedly threatened to harass and destroy them by implicating them in false criminal cases. Ultimately, in June 2020, Roma Kumari/respondent returned to her parents' home.

In his cross-examination, the said witness has deposed that the applicant is his cousin grand-son. He never visited the applicant's in-laws' house. Roma Kumari did not visit him. The applicant brought Roma Kumari from her parents' home three times. Once, Roma Kumari's father brought her himself. The applicant's father owns a house in Deoghar. He does not own a residential house in Deoghar. What he had said in his affidavit was told to him by the applicant. Roma Kumari had not filed any case against her husband or any other member of her in-laws' family before filing of this case. Before filing of this case, the applicant had not filed any other complaint or case against Roma Kumari's conduct. Again, this witness denied the suggestive statement that Roma always lived as a good and well-mannered woman in her in-laws' home and treated her husband and his family with respect.

P.W.3, Ashok Rai, in his examination-in-chief has deposed that after marriage, his daughter-in-law came to his home in Piprasol village with his son. She stayed there for a week and then returned to her father's home in Mudharan village, Giridih district. Subsequently, on 18.02.2018, his son went to respondent father's house to bring the respondent back. Upon his return, his son told him that the respondent and her mother were not good towards appellant at his in-laws' house and insulted him in various ways. Ashwini also told him that Roma Kumari and her mother while serving him

food plunked the utensils. The applicant subsequently contacted the respondent via mobile phone and requested the respondent to come and live with him in his newly constructed house in Deoghar. However, the respondent refused the applicant's offer.

After that, he, along with applicant had made several attempts to bring Roma Kumari back to our home, but she did not return until the 2018 Chhath Puja festival. She forced him to deposit ₹48,000 into her account in the name of her education. In addition to the above amount, he also deposited other funds into Roma Kumari's account, but later learned that she had not continued her education. Meanwhile, his son, Ashwini Kumar, left his private job in Rajasthan and began living at his residence in Deoghar. After numerous attempts, the respondent came to his home for the 2018 Chhath Puja festival, but after staying there for only ten days, she returned to her father's home. The applicant then went to her home to bring her back, but they treated very cruelly and said that the applicant/appellant was mentally retarded and did not earn any money. Ultimately, the respondent refused to accompany the applicant, leading to the applicant returning home alone. After that, his wife and he contacted the opposite party several times on mobile and requested her to come back and live with Ashwini Kumar at his residence in Deoghar. However, she would quarrel with them on request and would abuse them by calling them old and would also abuse his wife by calling her deaf and would also say that she would not live with a mentally retarded boy.

Her mother threatened him and his wife over the mobile phone that if we try to take the respondent back to her in-laws' house, the respondent will file a criminal case against them. After that, he along with his wife and other

relatives tried hard to bring Roma Kumari back, but she always treated them disrespectfully. Meanwhile, he retired from his teaching job in April 2022. After that, Roma Kumari returned to his residence in Deoghar in May 2020, staying for about 15 days. During this time, she continuously pressurized him to give Ashwini Kumar, fifty lakh rupees from his retirement salary, so that he could build a house in Rajdhanwar and respondent would live there with Ashwini Kumar. During that period, the opposite party continued to create a ruckus in his house day and night, sometimes calling him old, sometimes abusing his wife, calling her deaf, and threatening to commit suicide. During that time, his house was turned into hell due to the cruel behavior of the opposite party and ultimately, after torturing and insulting them, the opposite party went back to her father's house on 06.06.2020 and despite many efforts, she never returned to his house. Fed up with the continuous cruelty, insulting and tormenting behavior of Roma Kumari, Ashwini Kumar found that it was no longer possible for him to live with the opposite party Roma Kumari, then, he filed the case for divorce.

During his examination, this witness has deposed that he had visited his samdhi’s house twice. He was treated well the first time, but not the second time. He could not say whether his son would keep his daughter-in-law with him even if she appeared in court and gave a written undertaking that she would live well and treat the entire family with due respect. My daughter-in-law has never filed a lawsuit against them. He has deposed that his son had not filed any criminal case regarding the ill-treatment meted out to him by Roma Kumari. Again, the said witness has denied the suggestive statement that these people used to demand dowry from Roma Kumari and regularly beat her and drive her out of her in-laws' house. Again, the said

witness has also admitted in paragraph 26 of his examination that he is living in the village and his son lives in Deoghar.

P.W.4, Ashwini Kumar (appellant himself) has deposed in his examination-in-chief that on 18.02.2018, when he went to his wife Roma Kumari's house to pick her up, his wife and her mother behaved was not good towards him. She taunted him on every matter, saying that it was her misfortune to have him as her husband. She would also say that she travels around in her father's house in a four-wheeler and his family does not own a four-wheeler. His wife and her mother plunked utensils while serving him food to humiliate him. Nevertheless, after some persuasion, he brought Roma Kumari home that time. His wife refused to go with him to his workplace in Udaipur, Rajasthan. He then tried to convince her over the mobile phone that he would start a business in Deoghar, but despite this, his wife refused to stay in Deoghar and said that she would stay in Rajdhanwar to pursue higher education. After that, despite many efforts by him and his father, Roma Kumari did not return till the Chhath festival of 2018. In the name of further education, she(respondent) forced appellant’s father to deposit a total of Rs 48,000/- in her account from time to time, but despite this she did not continue her education. Because of respondent’s cruel , insulting behaviour it has become impossible to live with the respondent, therefore he has filed the divorce suit.

In his cross-examination, the witness stated that he had not called a panchayat regarding his wife's abuse, nor had he filed a case with any police station. He has further deposed that his wife has not filed any case against him or his family before filing of this case. Even if his wife would filed written bond before the court stating that she would live in well-

behaved/well-mannered way at her in-laws' place, he would not keep her with him. He stated that he had visited his in-laws' house three times. His wife's house has a *khapra* house in the village and has permanent house in Rajdhanwar. He has stated that he had never left his meals at his in-laws' place. He also denied the suggestion that he and his family harassed the respondent for dowry and denied that whenever she came to stay with him, they would constantly beat her and driven her out of the house. Again denied that he has filed the case by making false allegations to get rid of his wife.

List of Respondent(s) witness(s)

D.W.-1, Jayant Kumar Singh

D.W.-2, Ajay Kumar Singh

D.W.-3, Roma Kumari (respondent herself)

D.W.-1, Jayant Kumar Singh, in his examination-in-chief has deposed that the opposite party, Roma Kumari, is his cousin. At the time of the marriage, Roma Kumari's father provided a dowry and various types of gold and silver jewelry to Roma Kumari as per his capacity. After the marriage, Roma Kumari went to her in-laws' house, where, after some time, her in-laws began harassing her for more dowry. Whenever, the applicant visited his in-laws' home, he was given due respect, and Roma Kumari readily agreed to accompany him. Roma Kumari desired to live her married life as an Indian woman, but her husband and in-laws consistently mistreated her and rebuked her for marrying Ashwini Kumar into a low-class family. When Roma Kumari visited her in-laws' home during Chhath Puja, her in-laws accused her of being an uninvited prostitute and forced her back to her parents' home. The aforementioned witness also deposed that the applicant or his family never attempted to force the respondent to leave. The respondent, Roma Kumari, is willing to stay at her in-laws' home under any

circumstances, and they prepared to see her off so that they can live a happy married life. Roma Kumari's in-laws used to demand Rs 5 lakh in cash and a four-wheeler from her and for this they used to torture her mentally and physically and have filed the case on false and fabricated grounds.

During cross-examination, he has deposed that he visited Roma Kumari's in-laws' house once. He has also visited Roma Kumari's father-in-law's house in Deoghar. After the Chhath Puja of 2020, Roma Kumari has never visited her in-laws' house and is currently at her parents' house. The demand for dowry caused tension between the husband and wife. They had come together twice for reconciliation, and that is reason why he knew about the dowry demand. This witness further denied the suggested statement that Roma Kumari had been insulting and ill-treating her husband and her inlaws family members and that the behavior of appellant and his mother had been cruel from the very beginning with Roma Kumari.

D.W.-2, Ajay Kumar Singh (father of the respondent), in his examination-in-chief has deposed that, according to his means, he gave ten lakh rupees in cash as wedding expenses, five lakh rupees in various valuables as gifts, and also gifted his daughter various gold and silver jewelry. After the marriage, his daughter went to her in-laws' house, but she was harassed because she did not bring sufficient dowry. Whenever his son-in-law visited his home, he was treated with utmost respect and honor, and they treated him with respect. No member of his family ever treated him with disrespect. Whenever his son-in-law came to see off his daughter, his wife and he readily agreed to bid her farewell, and his daughter always agreed to go to her in-laws' house. However, Ashwini Kumar was reluctant to take her home. This witness also deposed that while his daughter Roma

Kumari lived with her in-laws, she treated her husband, mother-in-law, father-in-law, and other family members with utmost respect and never did anything without their permission. He does not own a four-wheeler at home, but only have a bike. When his daughter attended Chhath Puja, her in-laws publicly rebuked her, saying, "Your daughter from a low, poor community and a low-income family has come running." They pressured her to send her back to her parents' home. However, despite our repeated requests, the applicant and his family members demanded five lakh rupees in cash and a four-wheeler as dowry. They mentally and physically tortured his daughter and threatened to kill her if she did not pay the five lakh rupees and a four-wheeler. If she does not buy a wheeled motor car, then a false, wrong and fabricated divorce case will be filed against her and she will be divorced and the applicant will marry someone else after taking more dowry. His daughter has never demanded any money from her father-in-law and she is a very well behaved and simple Indian woman and she respects and honours her husband, mother-in-law, father-in-law and other family members and is ready to live in her in-laws' house under all circumstances.

During his cross-examination, he has deposed that after her marriage, her daughter went to her in-laws' house for fifteen days and then returned to her house. After six months, she returned to her in-laws' house and stayed there for approximately two months. After that, her daughter returned to her house. His son-in-law was working in Udaipur, Rajasthan at that time. Then, on the occasion of Chhath Puja in 2020, he took my daughter back to her in-laws' house, and this time, she stayed there for two months. After this, he took his daughter back home because she was still studying. He gave sixty thousand rupees to her father-in-law for her daughter's education. Later, his

daughter's father-in-law returned fifty thousand rupees to him. Furthermore, this witness denied the suggestive statement that her daughter pressured her father-in-law to give half of his retirement money to her husband.

D.W.-3, Roma Kumari (the respondent herself) has deposed that after her marriage, when she went to her in-laws' house, her in-laws treated her well for only a few days, and then they began harassing her for more dowry and taunting her that Ashwini Kumar had received less dowry. They claimed that she was from a poor family and began torturing her mentally and physically to demand dowry. Yet, she was willing to endure all these things and live happily. She treated her father-in-law and others with great respect and honor, and whenever her husband visited her parents' home, they always treated him with due respect. She has futher deposed that whenever her husband visited her parents' home for *bidai,* she readily agreed to go to her in-laws' home, but her husband would only pretend to bid her farewell and refuse to keep her with him. She had never left her in-laws' home without the permission of her husband, mother-in-law, and father-in-law. Instead, her husband would leave her there under false pretenses. She doesn't have a four-wheeler at her parents' home, and only have one motorcycle. When she learned of the Chhath Puja celebrations at her in-laws' house, she went to stand as a *Sindoorhaar* and to wish her husband and in-laws well. Her mother-in-law and others began taunting her, saying, "she came running uninvited, like a low, poor child begging." They treated her badly and sent her back to my parents' home. They began making false accusations to get rid of her, and they never came to see or bring her back, even though she was willing to stay at her in-laws' place under any circumstances. Despite her parents' repeated requests, the applicant and his family demanded a

dowry of five lakh rupees in cash and a four-wheeler. They threatened to file a divorce case against her on false and fabricated grounds, and the applicant would marry another woman, taking a larger dowry. She had never asked her father-in-law for any money. On demand of dowry by her husband and in-laws, she filed a complaint case against them at Dhanwar Police Station being Case No. 235/22 under Sections 498, 323, 406, 420,109, 506/34 of the Indian Penal Code and 3/4 of the Dowry Prohibition Act, which is currently pending in the Giridih Court. She lived as a well-mannered and simple Indian woman, respecting her husband, mother-in-law, father-in-law, and others with full respect and honor, and prepared to live with her in-laws under any circumstances.

25. Now adverting to the contention of the learned counsel for the parties**.** The learned counsel for the appellant has emphatically 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.

26. While on the other hand, argument has been advanced on behalf of the respondent-wife that the judgment has well been considered and only to get rid of the respondent-wife by making false allegations, the suit for divorce has been filed.

27. 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.*
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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.""

28. Thus, a perverse verdict may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence. Further "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.

29. Herein 'cruelty' has also been taken as ground for divorce by the appellant/petitioner, therefore it would be apt to refer herein the meaning of the cruelty.

30. 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.

31. 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.

32. 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."

33. 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."

34. 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.

35. 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".

36. 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.

37. 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.

38. Further in the case of ***Vishwanath Agrawal*** **v.** ***Sarla Vishwanath Agrawal*****, (2012) 7 SCC 288,** the Hon'ble Apex Court has held as follows:—

> *22. The expression "cruelty" has an inseparable nexus with human conduct or human behaviour. It is always dependent upon the social strata or the milieu to which the parties belong, their ways of life, relationship, temperaments and emotions that have been conditioned by their social status.*
>
> *25. After so stating, this Court observed in* Shobha Rani case *about the marked change in life in modern times and the sea change in matrimonial duties and responsibilities. It has been observed that : (SCC p. 108, para 5)*
> *"5. ... when a spouse makes a complaint about the treatment of cruelty by the partner in life or relations, the court should not search for standard in life. A set of facts stigmatised as cruelty in one case may not be so in another case. The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions. It may also depend upon their culture and human values to which they attach importance."*
>
> *26. Their Lordships in* Shobha Rani case *referred to the observations made in* Sheldon *v.* Sheldon wherein Lord Denning *stated, "the categories of cruelty are not closed". Thereafter, the Bench proceeded to state thus:* (Shobha Rani case, *SCC p. 109, paras 5-6)*
> *"5. ... Each case may be different. We deal with the conduct of human beings who are not generally similar. Among the human beings there is no limit to the kind of conduct which may constitute cruelty. New type of cruelty may crop up in any case depending upon the human behaviour, capacity or incapability to tolerate the conduct complained of. Such is the wonderful (sic) realm of cruelty.*
>
> *1. These preliminary observations are intended to emphasise that the court in matrimonial cases is not concerned with ideals in family life. The court has only to understand the spouses concerned as nature made them, and consider their particular grievance. As Lord Reid observed in* Gollins *v.* Gollins : *(All ER p. 972 G-H)*
> *'... In matrimonial affairs we are not dealing with objective standards, it is not a matrimonial offence to fall below the standard of*

the reasonable man (or the reasonable woman). We are dealing with this man or this woman.'"

39. In the case of ***Samar Ghosh v. Jaya Ghosh, (2007) 4 SCC 511*** it has been held by the Hon'ble Apex Court as follows:—

99. Human mind is extremely complex and human behaviour is equally complicated. Similarly human ingenuity has no bound, therefore, to assimilate the entire human behaviour in one definition is almost impossible. What is cruelty in one case may not amount to cruelty in other case. The concept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and their value system.

100. Apart from this, the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system, etc. What may be mental cruelty now may not remain a mental cruelty after a passage of time or vice versa. There can never be any straitjacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances while taking aforementioned factors in consideration.

40. Thus, from the aforesaid settled position of law it is evident that "Cruelty" under matrimonial law consists of conduct so grave and weighty as to lead one to the conclusion that one of the spouses cannot reasonably be expected to live with the other spouse. It must be more serious than the ordinary wear and tear of married life.

41. Thus, Cruelty must be of such a type which will satisfy the conscience of the Court that the relationship between the parties has deteriorated to such an extent that it has become impossible for them to live together without mental agony. The cruelty practiced may be in many forms and it must be productive of an apprehension in the mind of the other spouse that it is

dangerous to live with the erring party.

42. Since desertion has also been taken as ground, therefore, 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.

43. ***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.

44. 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.

45. 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.

46. 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.

47. 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."*

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

49. This Court, upon consideration of the rival submissions advanced on behalf of the parties and upon scrutiny of the evidence available on record, and the settled position of law as discussed and referred hereinabove in the preceding paragraphs finds that the principal question which arises for consideration in the present appeal is as to *whether the appellant-husband has been able to establish the grounds of cruelty and desertion, as envisaged under Section 13(1)(i-a) and Section 13(1)(i-b) of the Hindu Marriage Act, 1955, so as to warrant interference with the judgment and decree passed by the learned Principal Judge, Family Court, Deoghar.*

50. At this juncture, it is necessary to reiterate that the burden of establishing the grounds for dissolution of marriage rests upon the spouse seeking such relief. The mere fact that the parties have been living separately for a considerable period, or that their matrimonial relationship has become strained, would not, by itself, entitle either party to a decree of divorce unless the statutory requirements for the relief sought are established by cogent and reliable evidence.

51. So far as the ground of cruelty under Section 13(1)(i-a) of the Hindu Marriage Act, 1955 is concerned, cruelty may be physical or mental and must be assessed in the light of the facts and circumstances of each case, having regard to the nature of the allegations, the conduct of the parties, the surrounding circumstances and the cumulative effect of the conduct complained of. However, ordinary wear and tear of matrimonial life, trivial

disagreements and unsubstantiated allegations cannot, by themselves, constitute a sufficient basis for dissolution of marriage.

52. In the present case, the appellant-husband has alleged that the respondent-wife did not stay in her matrimonial home for a substantial period after the marriage, refused to accompany him to Udaipur, Rajasthan, and subsequently declined his requests to reside with him at Deoghar. It has further been alleged that the respondent-wife insulted the appellant and his parents, demanded a sum of Rs. 50,00,000/- from his father out of his retirement benefits and threatened to implicate the appellant and his family members in criminal cases.

53. This Court has carefully examined the depositions of P.W.-1, Duti Krishn Rai, P.W.-2, Jamni Bhushan Rai, P.W.-3, Ashok Kumar Rai, and P.W.-4, Ashwini Kumar, the appellant himself. Although the witnesses examined on behalf of the appellant have supported his case in their examination-in-chief, their evidence has to be assessed in its entirety, including the admissions elicited during cross-examination.

54. From the deposition of P.W.-1, it appears that the said witness had not visited the matrimonial home of the appellant at the respondent's parental place and had spoken to the respondent only once over the telephone. His knowledge regarding several alleged acts of misconduct was substantially derived from what had been narrated to him by the appellant. Similarly, P.W.-2, Jamni Bhushan Rai, admitted that he had never visited the respondent's parental home and that the facts stated by him in his affidavit had been communicated to him by the appellant from time to time.

55. The aforesaid circumstances do not, by themselves, render the testimony of the said witnesses inadmissible. Nevertheless, insofar as the alleged incidents at the respondent's parental home and the alleged demand for money are concerned, the absence of direct personal knowledge materially affects the weight to be attached to their testimony. Their evidence, therefore, requires careful scrutiny and corroboration from the other materials available on record.

56. P.W.-3, Ashok Rai, the father of the appellant, has supported the allegation that the respondent-wife demanded Rs. 50,00,000/- from his retirement benefits and behaved disrespectfully towards him and his wife. However, the respondent-wife, in her deposition as D.W.-3, has categorically denied having made any such demand and has asserted that she was subjected to harassment and dowry-related demands by the appellant and his family members.

57. It is evident from the record that the parties have levelled serious and mutually contradictory allegations against each other. While the appellant attributes the breakdown of the matrimonial relationship to the alleged misconduct of the respondent-wife, the latter asserts that she was subjected to physical and mental harassment on account of demands for dowry and that she has throughout been willing to resume cohabitation with her husband.

58. In such circumstances, the Court is required to determine whether the appellant has discharged the burden of proving the specific acts of cruelty alleged by him. The mere repetition of allegations in pleadings or examination-in-chief cannot substitute proof of the material facts constituting the statutory ground. The evidence must be assessed

cumulatively, with due regard to the contradictions, admissions and surrounding circumstances emerging from the record.

59. Of particular significance is the deposition of the appellant himself, P.W.-4. During cross-examination, he admitted that he had neither convened a panchayat nor lodged any complaint before the police or instituted any proceeding before filing the divorce suit before the learned family court in respect of the alleged abusive conduct of the respondent-wife.

60. More importantly, the appellant categorically stated during cross-examination that even if the respondent-wife were to furnish a written undertaking before the Court assuring that she would live peacefully and behave properly at her matrimonial home, he would not be willing to keep her with him.

61. The aforesaid admission assumes significance in the context of the respondent-wife's consistent stand that she is willing to resume her matrimonial life with the appellant. Though the appellant's unwillingness to resume cohabitation cannot, by itself, conclusively determine whether cruelty had occurred in the past, it casts considerable doubt upon his assertion that the present proceedings are primarily intended to restore peace in the matrimonial relationship and that the respondent-wife alone is responsible for the failure of cohabitation.

62. This Court is conscious of the fact that a spouse who has genuinely suffered cruelty cannot be compelled to resume cohabitation merely because the other spouse subsequently expresses willingness to return. Equally, however, the Court cannot grant a decree of divorce solely on the basis of

the appellant's unwillingness to continue the marriage. The statutory grounds must independently be established by the party seeking dissolution.

63. On an overall assessment of the evidence, this Court finds that the allegations concerning the respondent-wife's alleged demand for Rs. 50,00,000/-, her alleged threats of criminal prosecution, and her alleged persistent humiliation of the appellant and his parents have not been established with such cogent and convincing evidence as would justify a decree of divorce on the ground of cruelty. The evidence of the appellant's witnesses, when examined in the light of their cross-examinations and the respondent's categorical denial, does not establish the requisite factual foundation for the relief claimed.

64. The institution of a criminal case i.e. Dhanwar P.S. Case No. 235 of 2022 arising out of matrimonial disputes does not, by itself, establish either the truth or the falsity of the allegations made therein. In the absence of a finding based on the relevant record that the proceedings were knowingly false or malicious, no adverse inference of cruelty can be drawn against the respondent-wife merely on account of the institution of the said case.

65. This Court, therefore, finds no sufficient ground to hold that the learned Family Court committed any perversity in its appreciation of the evidence relating to the allegation of cruelty. The finding recorded by the learned Family Court on this issue does not warrant interference in the present appeal.

66. Thus, on the factual aspect aforesaid, it is evident that appellant/husband has failed to produce any material evidence in order to substantiate his claim of cruelty against the respondent wife.

67. The desertion has also been taken as a ground 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. But no such evidence has been produced by the appellant/petitioner to prove the element of desertion showing that the respondent-wife has left her matrimonial house without any reasonable cause.

68. At this juncture, reference of Section 23(1)(a) of the Hindu Marriage Act needs to be referred herein wherein it has been provided that one cannot be allowed to take advantage of its own wrong. For ready reference, Section 23(1) reads as under:

> *"23.* ***Decree in proceedings****.—(1) In any proceeding under this Act, whether defended or not, if the court is satisfied that*
>
> *(a) any of the grounds for granting relief exists and the petitioner 2 [except in cases where the relief is sought by him on the ground specified in sub-clause (a), sub-clause (b) or sub-clause (c) of clause (ii) of section 5] is not in any way taking advantage of his or her own wrong or disability for the purpose of such relief, and*
>
> *(b) where the ground of the petition is the ground specified in clause (i) of sub-section (1) of section 13, the petitioner has not in any manner been accessory to or connived at or condoned the act or acts complained of, or where the ground of the petition is cruelty the petitioner has not in any manner condoned the cruelty, and*
>
> *[(bb) when a divorce is sought on the ground of mutual consent, such consent has not been obtained by force, fraud or undue influence, and]*
>
> *(c) 4 [the petition (not being a petition presented under section 11)] is not presented or prosecuted in collusion with the respondent, and*
>
> *(d) there has not been any unnecessary or improper delay in instituting the proceeding, and*

(e) there is no other legal ground why relief should not be granted, then, and in such a case, but not otherwise, the court shall decree such relief accordingly.

(2) Before proceeding to grant any relief under this Act, it shall be the duty of the court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about reconciliation between the parties:

[Provided that nothing contained in this sub-section shall apply to any proceeding wherein relief is sought on any of the grounds specified in clause (ii), clause (iii), clause (iv), clause (v), clause (vi) or clause (vii) of sub-section (1) of section 13.]

[(3) For the purpose of aiding the court in bringing about such reconciliation, the court may, if the parties so desire or if the court thinks it just and proper so to do, adjourn the proceedings for a reasonable period not exceeding fifteen days and refer the matter to any person named by the parties in this behalf or to any person nominated by the court if the parties fail to name any person, with directions to report to the court as to whether reconciliation can be and has been, effected and the court shall in disposing of the proceeding have due regard to the report.

(4) In every case where a marriage is dissolved by a decree of divorce, the court passing the decree shall give a copy thereof free of cost to each of the parties.]"

69. For proving desertion, it is onus upon the party who is taking the ground for seeking dissolution of marriage is to substantiate that the party has left the house on her own. Contrary to that, if the party has been compelled to leave the house on the basis of cruelty which has been meted out to her/him then the same will not come under the fold of desertion and in

that view of the matter, Section 23(1)(a) of Hindu Marriage Act is to be made applicable that if either of spouse is at wrong, he or she cannot be allowed to take advantage of his or her own wrong.

70. Further, it is necessary to bear in mind that desertion, in its legal sense, involves the factum of separation and the intention to bring cohabitation permanently to an end, without reasonable cause and without the consent, or against the wish, of the spouse seeking relief. The statutory period of not less than two years must also be established immediately preceding the presentation of the petition.

71. The concept of desertion is not confined to the physical act of living separately. It is necessary to establish that the separation is accompanied by the requisite intention on the part of the deserting spouse to terminate matrimonial cohabitation. Further, the spouse seeking a decree on this ground must establish that the separation is without reasonable cause and that the petitioner has not consented to, or brought about, the separation in the legally relevant sense.

72. In the present case, the appellant has asserted that the respondent-wife left the matrimonial home on several occasions and, ultimately, left on 06.06.2020, whereafter she did not return. The petition for divorce was instituted in the year 2022. However, the respondent-wife has consistently denied that she voluntarily deserted the appellant. Her specific case is that she was subjected to harassment and dowry-related demands and that the appellant and his family members were unwilling to permit her to live peacefully in the matrimonial home.

73. The evidence of D.W.-2, Ajay Kumar Singh, the father of the respondent-wife, indicates that the respondent had resided at her matrimonial home on different occasions and that she had returned to her parental home in connection with her education. He has also deposed that he provided money towards her educational expenses. Although the appellant disputes the explanation furnished by the respondent's side, the evidence demonstrates that the parties have given materially different accounts of the circumstances in which the respondent came to reside at her parental home.

74. The respondent-wife, as D.W.-3, has categorically deposed that she was willing to live with the appellant and that it was the appellant who was unwilling to take her back. This assertion receives material support from the admission of P.W.-4 that he would not accept the respondent-wife even if she furnished a written undertaking assuring proper conduct at the matrimonial home.

75. The aforesaid evidence assumes relevance because the essential ingredients of desertion cannot be inferred merely from the fact that the respondent-wife has been residing at her parental home. The Court must examine the cause of separation, the intention accompanying it and the conduct of both parties. Where the evidence discloses a serious dispute as to whether the wife left voluntarily or was compelled to reside separately by reason of matrimonial discord, the burden remains upon the husband to establish the ingredients of desertion.

76. The appellant has not been able to establish, by cogent and reliable evidence, that the respondent-wife left the matrimonial home without

reasonable cause and with the intention of permanently abandoning the matrimonial relationship for the statutory period. The mere fact that the respondent did not return to the matrimonial home despite the alleged requests of the appellant and his family members is not, in the facts of the present case, sufficient to establish desertion, particularly when the respondent has consistently asserted her willingness to resume cohabitation and the appellant himself has expressed an unequivocal unwillingness to accept her back.

77. It is further relevant that the appellant has alleged that the respondent's absence from the matrimonial home was attributable to her own volition, whereas the respondent attributes the separation to the alleged harassment and the appellant's unwillingness to maintain the matrimonial relationship. In the absence of reliable evidence conclusively establishing the necessary elements of desertion against the respondent, the statutory ground cannot be held to have been made out.

78. This Court is, therefore, of the considered view that the appellant has failed to establish the essential ingredients of desertion under Section 13(1)(i-b) of the Hindu Marriage Act, 1955. The finding of the learned Family Court on this issue does not suffer from any illegality or perversity warranting interference by this Court.

79. It is well settled that an appellate court is empowered to reappreciate the evidence and examine the correctness of the findings recorded by the court of first instance. However, where the trial court has considered the pleadings, assessed the oral evidence and arrived at a conclusion supported by the material available on record, interference is warranted

only where the findings are shown to be contrary to the evidence, based on an erroneous application of law, or otherwise perverse.

80. In the present case, the appellant has not been able to demonstrate that the learned Family Court ignored any material evidence of decisive significance or that its conclusions are such as no reasonable court could have reached on the evidence available. The arguments advanced on behalf of the appellant substantially seek a different appreciation of the same evidence, without establishing any material error in the reasoning adopted by the learned Family Court.

81. It is also necessary to observe that the Court is not required to determine which spouse is exclusively responsible for the deterioration of the matrimonial relationship in the abstract. The limited question in the present proceedings is whether the appellant has proved the statutory grounds on which he seeks dissolution of marriage. Matrimonial discord, however serious, cannot be treated as an independent ground for divorce where the grounds specified by the statute remain unproved.

82. The learned Family Court after due appreciation of all the evidences available on record has come with the finding that there is non-availability of the ground for dissolution of marriage and therefore, dismissed the suit.

83. In view of the foregoing discussion, this Court finds that the appellant has failed to establish either cruelty under Section 13(1)(i-a) or desertion under Section 13(1)(i-b) of the Hindu Marriage Act, 1955. Consequently, no ground has been made out for setting aside the judgment dated 29.01.2024 and the decree signed on 12.02.2024 passed by the learned Principal Judge, Family Court, Deoghar, in Original Suit No. 183 of 2022.

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

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

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

(Sujit Narayan Prasad, J.)

I Agree.

(Pradeep Kumar Srivastava, J.)
29/10/2026

(Pradeep Kumar Srivastava, J.)

Rohit/**A.F.R.**

Uploaded on 30.10.2026