IN THE HIGH COURT OF JHARKHAND AT RANCHI

First Appeal No.331 of 2026

Seema Devi aged about 40 years D/o Dayanand Singh R/O Shivajinagar Booty under P.O. and P.S Sadar District Ranchi (Jharkhand).

… … Plaintiff/Appellant

Versus

1. Badri Prasad S/O Lilo Mahto R/O Village Mandai Khurd P.O Reformatory School and P.S Sadar District Hazaribag Jharkhand.

2. Sunita Hembrom W/O Badri Prasad D/O Kushal Ekka R/O village Dipugarha under P.O and P.S Sadar District Hazaribag, Jharkhand.

3. The State of Jharkhand through Superintendent of Police, Hazaribag having its office under P.O. and P.S Hazaribag, Distt. Hazaribag Jharkhand.

… … Defendants/Respondents

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

For the Appellant : Mr. Ashok Kr. Pandey, Advocate
For the Respondent : Mr. Arwind Kumar, Advocate
Mr. Rakesh Kr. Shahi, AC to SC(L&C)-I

CAV on 05.10.2026 ***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 21.11.2025 and decree signed on 01.12.2025 passed by the learned Addl. Principal Judge, Addl. Family Court-I at Ranchi in Original Suit No.165 of 2024, whereby and whereunder, the petition filed by the plaintiff-wife (appellant herein) under Section 13(1)(i) (i-a) & (i-b) of the Hindu Marriage Act, 1955 for dissolution of marriage, has been dismissed.

Facts

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

3. It is the case of the plaintiff, appellant herein that marriage of plaintiff was solemnized with defendant no.1(respondent no.1 herein) on 10.07.2000 as per Hindu rites and rituals and the marriage was an ideal arranged marriage done with the sweet will of the parties in presence of respectable members of both the families and after solemnization of marriage, the plaintiff, appellant herein went to her matrimonial home and started living there but since beginning, this marriage has been a nightmare for the plaintiff, appellant herein as her life, has become hell through tortures, threats, intimidations, humiliations, social disgrace and inhuman behaviour of the defendant no.1, respondent no.1 herein and just after a week, plaintiff noticed that her husband is an alcoholic who was very cruel towards the plaintiff, not only this, the plaintiff realized that defendant no.1 has connection with different girl and whenever plaintiff objected his act and he used to torture the plaintiff, both mentally and physically, initially plaintiff tried her level best to make him understand to leave such bad habits as her future was on stake but defendant no.1 never cared, rather, assaulted her in drunken condition.

4. It is the further case of the plaintiff, appellant herein that the fact about the drinking habits of defendant no.1 as well as his adulterous nature was well within the knowledge of his family but same was intentionally suppressed and during the period of cohabitation, the plaintiff learnt that

defendant no.1 had illicit relation with a lady, namely, Sunita Hembrom (respondent no.2 herein).

5. It is the further case that when plaintiff came to know about this, she enquired from her husband about Defendant No.2 (respondent no.2 herein) on which defendant no.1, mercilessly assaulted and threatened her not to interfere in his life, else he will perform second marriage and asked her to bring Rs.3 lakhs as promised by her parents else he will do second marriage and subsequently, the plaintiff noticed that the fact about extra marital affairs of the defendant no.1 was within the knowledge of her in-laws but they in collusion with each other, suppressed this fact from the plaintiff and her family and all such things made the life of plaintiff miserable as her all dreams got ruined and gradually, she got depressed but defendant no.1 did nothing, rather, her parents had took her back to home and gave necessary treatment and plaintiff due to fear and social prestige tolerated all cruel and inhuman act of the defendant no.1 which escalated with the passage of time causing immense mental pain and agony to the plaintiff. The plaintiff tolerated all such inhuman acts of defendant no.1 and their family and was blessed with two children one daughter Rani Kumari aged about 20 years and a son Guddu Kumar aged about 18 years and during the birth of above two children, defendant no.1 did not provide any medical support/expenses to the plaintiff and entire expenses were borne by the parents of the plaintiff and both the children are being looked after and educated by the parents of the plaintiff at Ranchi and the defendant no.1 has no any connection with them nor he ever asked about their well-being.

6. It is the further case that in the year 2012, plaintiff came to know that the defendant no.1 has not only illicit connection with different girls but he has married also with Sunita Hemrom, respondent no.2 herein and kept her in a different place and he has children also from her. It has been stated that after coming to know about this fact, plaintiff's all expectation got ruined and she became frustrated and got severely ill but her in-laws consoled her that they would not allow said lady to her home, thus, she has to face the challenge causing her immense mental pain. It has been stated that on 08.03.2013 all of a sudden, plaintiff was mercilessly assaulted by the defendant no.1 and asked her to bring Rs. Three lakhs from her parents and kicked her out, then, she somehow took shelter to nearby house and saved her life.

7. Thereafter, on the next morning, plaintiff along with her children managed to shift to her parental home at Ranchi and since 08.03.2013 plaintiff is living separately from the defendant no.1 having no connection at all with the defendant no.1 and quite surprisingly, after coming back home, defendant no.1 never attempted to take her back or asked about the well-being of his children but left them at their fate.

8. It is the further case of the plaintiff that defendant no.1 in spite of taking her back brought back his second wife and started living as husband and wife, from whom, he has four children. It has been stated that since 2013, plaintiff has no any connection with the defendant no.1 nor any possibility of reunion between them. There has been irretrievable breakdown between the parties and for more than decade, there was no contact between the parties and plaintiff has no any option but to dissolve

her marriage with the defendant no.1 and prayed to dissolve marriage through a decree of divorce.

9. The cause action for the suit arose on 10.07.2000 when the marriage was solemnized and on 08.03.2013 when plaintiff was mercilessly beaten and kicked out by the defendant no.1 and several other dates when the defendant no.1 started living with her illegal wife and left the plaintiff.

10. The defendants (respondent nos.1 and 2 respectively) did not appear before the Court in spite of substituted service of notice by way of paper publication, therefore, the matter was proceeded *ex-parte*.

11. On the basis of the pleadings, the main point for consideration before the learned Family Judge is whether the plaintiff was subjected to cruelty by the defendant and whether the marriage between the plaintiff and defendant no.1 is liable to be dissolved on the ground of cruelty and desertion.

12. The evidences have been made on behalf of the plaintiff, appellant herein. Thereafter, the judgment has been passed dismissing the suit filed under Section 13(1)(i) (i-a) & (i-b) of the Hindu Marriage Act, 1955 for a decree of divorce by the plaintiff, appellant herein, which is the subject matter of the present appeal.

Submission of the learned counsel for the appellant-wife:

13. It has been contended on behalf of the appellant that the factual aspect which was available before the learned Family Judge 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.

14. It has been submitted that the learned Family Judge has miserably failed to consider the fact that defendants have not appeared in spite of sincere endeavour made by the plaintiff.

15. It has further been submitted that the learned Family Judge has failed to take into consideration the factum of desertion since 2013 by the husband (respondent no.1 herein) of the appellant.

16. It has been contended that the learned Family Judge has not considered the allegation of cruelty which stands proved in view of the settled proposition of law of the Hon'ble Apex Court.

17. It has also been contended that the appellant has been leading separate life since more than a decade without getting any contact or assistance by her husband, therefore, no fruitful purpose will be served for not granting decree of divorce.

18. It has further been submitted that since the issue of cruelty and desertion has not been taken into consideration in right perspective by the learned Family Court and as such, the judgment impugned is not sustainable in the eye of law.

19. 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-husband

20. *Per contra*, learned counsel for the respondent-husband, while defending the impugned judgment, has submitted that there is no error in the impugned judgement. The learned Family Judge has well considered the issue of cruelty and desertion and have come to the conclusive finding

to establish the issue of cruelty and desertion and has dismissed the petition.

21. It has been contended that it is incorrect on the part of the appellant to take the ground that the appellant-wife has been leading separate life since more than a decade without getting any contact or assistance by her husband.

22. It has further been contended that since the beginning, the appellant-wife has threatened and humiliated the respondent no.1-husband to divorce him and live separately.

23. Learned counsel, based upon the aforesaid grounds, has submitted that the impugned judgment cannot be said to suffer from an error.

Analysis:

24. 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.

25. 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, whether the marriage between plaintiff and defendant no.1 is liable to be dissolved on the ground of cruelty and desertion.

26. The evidence has been led on behalf of the plaintiff/appellant herein. For ready reference, the evidences led on behalf of the plaintiff/appellant herein are being referred as under:

List of petitioner(s) witness(s)

P.W.1, Dayanand Singh, father of plaintiff

P.W.2, Krishna Kumar Paswan

P.W.3, Seema Devi (plaintiff herself)

P.W.4, Pankaj Kumar

P.W.1, Dayanand Singh, (father of plaintiff), has deposed in his examination-in-chief that he is father of the plaintiff Seema Devi and this suit has been filed by his daughter for divorce from defendant no.1 Badri Prasad. He has stated that he had married his daughter to the defendant no.1 Badri Prasad on 10.07.2000 at Rajrappa Temple, Ramgarh as per Hindu customs. His daughter's life became hell/painful since her marriage, she had to go through various kinds of torture, humiliation and inhuman treatment, because his son-in-law is a drug addict and his behaviour towards his daughter was always cruel and only after a few months of marriage, they came to know that the character of the defendant no.1 is also not good and he also has illicit relations with other women. The defendant no.1 family was fully aware of his drinking habits and they deliberately concealed all these facts from them, despite this, his daughter endured everything out of social prestige. Meanwhile, they came to know that his son-in-law has an illicit relationship with the defendant no.2 Sunita Hembrom and he also has children from her. His daughter came to know about this for the first time in the year 2012 from the second wife of the defendant no.1 and when she asked the reason for doing so, his daughter was

badly assaulted and was thrown out of the house demanding Rs. 3 lakhs, then his daughter somehow took shelter in the neighbour's house and came back to him on 08.03.13. His daughter is living with him since 08.03.2013 and the defendant no.1 has no relation with his daughter nor is the defendant no.1 having any interest in his children. He has stated that defendant no.1 is still living with Sunita Hembrom and her children and he has no relation with his daughter and in such a situation when Badri Prasad has no relationship with his daughter for the last 11 years and there is no possibility of both of them living together or living a married life, the marriage between them should be dissolved.

P.W.2, Krishna Kumar Paswan has deposed in his examination-in-chief that he knows both the parties of this proceeding. He has stated that the plaintiff Seema Devi was married to the defendant no.1 Badri Prasad deceitfully because the defendant no.1 was already married to Sunita Hembrom, yet they hid this fact and married Seema Devi for the second time. He knows the family of defendant no.1. The defendant no.1 is still living with his second wife Sunita Hembrom and their four children and Badri Prasad has no relationship with the plaintiff Seema Devi for the last ten years and she is living with her parents. The matter of the first marriage was kept hidden from the plaintiff by Badri Prasad and his family members because Badri Prasad kept his first wife separately in a rented house. The plaintiff came to know about the distance marriage for the first time in the year 2012 and when she protested against it, she was beaten badly and after coming to know about the second

marriage, health of the plaintiff had deteriorated a lot and she started living under mental stress but the defendant no.1 never took care of her, instead used to beat her. In March 2013 plaintiff was forced to come to her parental house and since then she started living there and there is no marital relationship between them nor is there any possibility of it and their marriage should be dissolved.

P.W.3, Seema Devi (plaintiff herself) has reiterated her plaint in her examination-in-chief and has deposed that she filed the case for decree of divorce by dissolution of her marriage with defendant no.1. She has stated that her marriage was solemnized with Badri Prasad on 10.07.2010 at Rajrappa temple and after marriage when she went to her in-law's house and within a few days, she came to know that her husband is addicted to intoxication and he has relations with other women and whenever she protested against his bad habits, he would beat her and subjected her to physical and mental torture. Her in-laws were already aware of her husband's bad habits but by concealing this fact from her and got her married. She was somehow living her life with him, meanwhile she came to know that he was having an illicit relationship with defendant no.2 Sunita Hembrom and when she protested against it, he beat her badly and threatened her to bring three lakh rupees otherwise he will marry someone else. She has stated that everyone in her in-laws' house was aware of illicit relationship of her husband with Sunita Hembrom, but they concealed this fact from her due to which she started feeling suffocated inside and her health started deteriorating. She tolerated all his misbehaviour out of fear and social shame, but with time his misbehaviour only increased. She has

stated that she had two children, a son Guddu Kumar aged 18 years and a daughter Rani Kumari aged 20 years, but there has been no change in his behaviour and neither does he have any affection or love for the children. Both her children are being brought up by her parents only. their father has no relation with them. In the year 2012 she came to know that her husband not only had an illicit relationship with Sunita Hembrom but also that he had children from her. She became disheartened and disappointed after knowing that he has kept defendant no.2 hidden from her at some other place, then her in-laws assured her that they will not allow defendant no.2 to the house and after a few months on 18.03.2013, her husband assaulted her badly and ousted her from his house after which she somehow took shelter at her neighbour's house and saved her life and somehow reached her parental house the very next day and in this way, since March 2013 she is living with her parents and her children are also studying under their care, but till date her husband has not taken any care of her and instead he is living with Sunita Hembrom. She has no longer any relationship with her husband nor is there any possibility of it. She has stated that she has no dealings with her husband since the year 2013 and neither have they ever met nor is there any possibility of meeting. There is no possibility of her continuing her marital relationship with her husband nor is there any possibility of them being together in the near future. Her husband has treated her inhumanely from the very beginning and has ruined her life and she wishes to end her marital relationship with her husband forever and there is no possibility of restoration of her marital relationship.

P.W.4, Pankaj Kumar, has deposed in his examination-in-chief that he knows the plaintiff's family well. Defendant no.1 is still living with his second wife and their four children and has deserted the plaintiff who is living with her parents for last twelve years. The matter of the first marriage was kept hidden by Badri Prasad and his family from the plaintiff and her family. The plaintiff came to know about the first marriage for the first time in the year 2012 and when he protested against it, he assaulted her badly and driven out of the house. He has stated that after coming to know about the second marriage, the plaintiff's health deteriorated and he was under mental stress but she was never taken care of by the defendant no.1 instead he used to beat her. The plaintiff was forced to come to her parental house in March 2013 and started living there since then. The plaintiff is living with her father in Ranchi since 2013 and she has no contact with defendant no.1 nor is there any possibility of it.

27. The learned counsel for the appellant/plaintiff 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.

28. While on the other hand, argument has been advanced on behalf of the respondent-husband that the judgment has well been passed and the issue of cruelty and desertion has been properly considered by the learned Family Judge.

29. It needs to refer herein that since appellate jurisdiction has been invoked herein, therefore, before entering into merit of the case, at this

juncture it would be purposeful to discuss the appellate jurisdiction of the High Court.

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

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

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

> *"It is no doubt true that the High Court was exercising power as the first appellate court and hence it was open to the Court to enter into*

> *not only questions of law but questions of fact as well. It is settled law that an appeal is a continuation of suit. An appeal thus is a rehearing of the main matter and the appellate court can reappraise, reappreciate and review the entire evidence--oral as well as documentary--and can come to its own conclusion."*

33. Further, it needs to refer herein that under section 3 of the Indian Evidence Act a fact is said to be proved when the Court either believes it to exist or considers its existence so probable that a prudent man under the circumstances would proceed on the supposition that such fact really exists. Therefore, the normal rule of preponderance of probability is the rule which governs the civil proceedings like this.

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

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

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

37. At this juncture, it 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.

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.""

38. Thus, from the aforesaid, it is evident that any order said to be perverse if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality.

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

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

41. In the instant case, the ground for divorce has been taken on the ground of cruelty, therefore, it would be apt for this Court to discuss the element of cruelty in order to appreciate the claim of the husband that whether he has been subjected to cruelty by his wife.

42. The word “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 charged 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.

43. 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.

44. 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."

45. 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."

46. 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.

47. 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".

48. 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.

49. 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.

50. 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.*
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> *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)*
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> *"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."*
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> *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.'"

51. 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.

52. 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.

53. 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.

54. Since desertion has also been taken as a ground, therefore, the definition of "desertion" is required to be referred herein as defined under explanation part of Section 13 of the Act 1955 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.

55. ***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.

56. 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.

57. 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.

58. 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.

59. 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."*

60. 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.

61. This Court has carefully considered the depositions of the witnesses as reproduced in the material placed before it. P.W.3, the appellant herself, has narrated the circumstances in which she allegedly suffered physical and mental cruelty during the subsistence of the marriage. She has also described the alleged demand for Rs. 3,00,000/-, the threats extended by respondent no. 1, and the incident which, according to her, compelled her to leave the matrimonial home.

62. The testimony of P.W.1, the appellant's father, lends support to her account concerning the circumstances in which she returned to her parental home and the fact that she has continued to reside there since March 2013. P.W.2 and P.W.4 have also supported material aspects of her

case concerning the alleged matrimonial discord and the prolonged separation.

63. It is true that the evidence of a parent or a relative must be assessed with due care. Nevertheless, the relationship of a witness with a party does not, by itself, render the testimony inadmissible or unworthy of consideration. The relevant question is whether the testimony, considered in its entirety, inspires confidence and is consistent with the other material on record.

64. In the present case, the depositions of the witnesses, as placed before this Court, substantially support the appellant's account of the circumstances leading to the separation. The central features of the appellant's case the alleged physical mistreatment, the demand for money, the incident resulting in her departure from the matrimonial home, and her continued residence at Ranchi find support in the testimony of the witnesses examined on her behalf.

65. It is settled position of law as discussed hereinabove in preceding paragraphs that matrimonial court is required to examine the evidence on the standard of preponderance of probabilities. The allegations are not required to be established beyond reasonable doubt, as in a criminal proceeding; however, the burden of proving the statutory grounds continues to rest upon the spouse seeking dissolution.

66. Applying the aforesaid principles, and subject to the consistency of the depositions with the original deposition sheets and the remaining record, the evidence described above supports the appellant's case that the matrimonial relationship was marked by serious discord and that she was

subjected to treatment which, if accepted as proved, goes beyond the ordinary wear and tear of married life.

67. The alleged repeated physical assaults, threats and demand for money, considered cumulatively rather than in isolation, are material circumstances in determining whether the appellant could reasonably be expected to continue to reside with respondent/husband.

68. The appellant's evidence must also be considered in the context of the subsequent course of the matrimonial relationship. According to the evidence, she has remained separated from respondent no. 1 for more than twelve years, and no resumption of cohabitation has taken place during this period.

69. The cumulative effect of the conduct alleged and the prolonged cessation of the marital relationship lends support to the appellant's claim that the matrimonial relationship has been rendered untenable.

70. It needs to refer herein that the Explanation to Section 13(1) defines desertion as the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of the petitioner. It also includes wilful neglect. The statutory ground requires the court to consider both the factum of separation and the intention to bring cohabitation permanently to an end, along with the absence of reasonable cause and the other statutory requirements.

71. It is settled connotation of law that the question of desertion must be determined from the conduct of the parties and the surrounding

circumstances rather than from the mere fact that they have been living apart.

72. In the present case, the appellant's consistent case is that she was compelled to leave the matrimonial home following the alleged assault and that she has resided at her parental home since March 2013. P.W.1 has supported her account concerning her return to Ranchi, while P.Ws. 2 and 4 have also deposed regarding the prolonged separation and the absence of a subsisting marital relationship.

73. The evidence, as described above, indicates that the separation was not a temporary arrangement arising from an isolated disagreement. Rather, the appellant's case is that the separation followed serious matrimonial discord and that respondent no. 1 thereafter failed to take meaningful steps towards restoring the marital relationship.

74. An important distinction must, however, be maintained between a spouse who leaves the matrimonial home without reasonable cause and a spouse who is compelled to leave because of cruelty. The mere fact that the appellant has resided separately since March 2013 cannot, by itself, establish that she deserted respondent no. 1. The Court must determine who withdrew from cohabitation, the circumstances in which separation occurred, and whether the statutory ingredients of desertion are satisfied.

75. As per the appellant's pleaded case, the initial separation occurred after she was allegedly assaulted and driven out of the matrimonial home. If that account is accepted, her departure cannot be treated as voluntary desertion merely because she thereafter continued to reside with her parents. The alleged circumstances of her departure are relevant to the

question of reasonable cause and the responsibility for the breakdown of cohabitation.

76. The appellant's evidence that respondent no. 1 made no genuine effort to resume cohabitation, coupled with the prolonged separation and the alleged wilful neglect of the appellant, is relevant to determining whether Appellant withdrew from the marital relationship and continued to do so without reasonable cause.

77. The testimony of the appellant and her witnesses, as reproduced in the record, supports her assertion that the parties have remained apart since March 2013 and in these circumstances, the evidence of prolonged separation must be read together with the evidence concerning the alleged compulsive expulsion of the appellant from the matrimonial home.

78. On the factual account placed before this Court through the material available on record, the appellant's case of prolonged separation is also consistent with the appellant's assertion that the marital relationship has not been restored since March 2013.

79. Having considered the pleadings, the submissions advanced on behalf of the parties, and the evidence described in the material placed before this Court, it is evident that the appellant's case was supported by her own testimony and the depositions of three additional witnesses. Their evidence, as reproduced in the material supplied, substantially concerns the alleged physical and mental cruelty, the circumstances in which the appellant left the matrimonial home, and the prolonged separation of the parties.

80. The learned Family Court was required to assess these circumstances cumulatively, distinguish between ordinary matrimonial discord and conduct amounting to cruelty, and determine whether the essential elements of desertion had been proved. A conclusion that does not adequately account for material evidence bearing upon these questions would not represent a proper assessment of the appellant's claim.

81. Further, the plaintiff, appellant herein has herself deposed in her examination-in-chief that she no longer has any relationship with her husband nor is there any possibility to lead conjugal life. She has also deposed that she has no dealings with her husband since the year 2013 and neither have they ever met nor is there any possibility of meeting.

82. Thus, on the factual aspect aforesaid, it is evident that the learned Family Judge has failed to appreciate the testimony of witnesses in order to substantiate the claim of cruelty.

83. 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 ample evidence has been produced by the appellant to prove the element of desertion showing that the respondent-has left the appellant-wife without any reasonable cause.

84. 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: 5

[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.]"

85. For proving desertion, onus is upon the party, who is taking the ground for seeking dissolution of marriage to substantiate that the Opposite party has left the house on its 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 the party is at wrong, he/she cannot be allowed to take advantage of its own wrong.

86. This Court, after considering the aforesaid factual aspects along with the legal position and adverting to the consideration made by the learned Family Judge in the impugned judgment has found therefrom that the issue of element of cruelty and desertion has not well been considered by the learned Family Judge.

87. On the basis of the discussions made hereinabove, this Court is of the considered view that the conduct of the respondent-husband has showed that it is the mental cruelty caused by him and has forced appellant-wife to live separately as it was almost impossible for the appellant-wife to live with the respondent-husband where the thread of trust has already been broken. Relationship of wife and husband is based on the trust and respect to have upon each other and if it is broken it is non- repairable as the trust is the foundation of marriage. Marriage is a relationship built on mutual trust, companionship and shared experiences.

88. Thus, based upon the evidence available in complete trial record it is considered view of this Court that the impugned judgment would warrant interference, and the appellant would be entitled to a decree of divorce under Section 13(1)(i-a) and (i-b) of the Hindu Marriage Act, 1955.

89. This Court, in the entirety of the facts and circumstances, is of the considered view that the finding as has been recorded by the learned Family Judge, is not based upon proper appreciation of the evidence led

by the parties, therefore, element of perversity in the impugned judgment has been found, hence, the impugned judgment requires interference.

90. Consequent thereto the judgment dated 21.11.2025 and decree signed on 01.12.2025 passed by the learned Additional Principal Judge, Addl. Family Court-I, Ranchi, in Original Suit No. 165 of 2024 is hereby quashed and set aside and the marriage solemnized between the appellant, Seema Devi, and respondent no. 1, Badri Prasad, on 10.07.2000 is liable to be dissolved by a decree of divorce.

91. Accordingly, the instant appeal stands allowed.

92. Office to proceed accordingly.

93. Liberty is being reserved to the appellant-wife to approach the learned Family Court on the point of alimony under Section 25 of the Hindu Marriage Act, 1955, by instituting appropriate proceedings and leading evidence in support thereof.

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

(Sujit Narayan Prasad, J.)

I Agree.

(Akhil Kumar, J.)

(Akhil Kumar, J.)

29/10/2026

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

Uploaded on 02.11.2026