IN THE HIGH COURT OF JHARKHAND AT RANCHI

First Appeal No. 133 of 2022

Stuti Sarah, aged about 27 years, w/o Johnson Kachhap, d/o Sandeep Stephen Lal, resident of Qrs. No.2116, Sector-IV/D, P.O & P.S-Sector-IV, Bokaro Steel City, District-Bokaro, Jharkhand.

.....…Respondent/Appellant

Versus

Johnson Kachhap, S/o Dr. Simon Peter Kachhap, resident of Qrs. No.31, Sector-1/C, P.O-Sector-I, P.S-B.S City, District-Bokaro, Jharkhand.

..... **Petitioner/ Respondent**

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

For the Appellant : Mr. Mukesh Kumar, Advocate
For the Respondent : Ms. Sarweshwari Kumari, Advocate

C.A.V on 17.08.2026 **Pronounced on 23/09/2026**

Per Sujit Narayan Prasad, J.

1. The instant appeal under section 19(1) of the Family Courts Act, 1984 is directed against the judgment dated 14.09.2022 and the decree signed on 21.09.2022 passed in Original Suit No.546 of 2019 by the learned Principal Judge, Family Court, Bokaro (in short, learned Family Judge) whereby and whereunder the petition filed under section 32 of Divorce Act, 1869 for restitution of conjugal rights by the respondent-husband against the appellant-wife, has been allowed.

Factual Matrix

2. The brief facts of the case as pleaded in the plaint having been recorded by the learned Family Judge, needs to be referred herein as:

(i) The respondent-wife (appellant herein) and petitioner-husband (respondent herein) got married with each other on 28.12.2018 as per Christian rites and custom at Bokaro.

(ii) After marriage, they lived together as husband and wife. After three (03) months of their marriage, the respondent/ appellant herein started quarreling with him saying that she does not want to live with him and she wants to live at her parents' home.

(iii) It is alleged that the appellant-wife frequented to her parents' home without any information. She went to her parents' home on 31.08.2019 without any information. At that time, she was pregnant of five (05) months.

(iv) Thereafter, petitioner-husband (respondent herein), his mother and his sister went to bring her back, but she refused rather stated abusing and insulting them and threatened them of dire consequences. Further, her father stated that he will get his daughter (appellant herein) married again with another, so he will not send his daughter (appellant herein) with them.

(v) In spite of that, several times petitioner/husband went to bring respondent/appellant wife back but could not succeed. He also tried to contact with her on phone, but he found her mobile number switched off.

(vi) After that on 27.11.2019 petitioner/husband had given a written application before the Officer-in-Charge, Mahila P.S., Sector-I, Bokaro and the Police tried to settle their disputes but in vain.

(vii) Thereafter, finding no option, petitioner/husband has filed the case for restitution of conjugal rights before the learned Family Court wherein prayer has been made to direct the

respondent/wife (appellant herein) to join the society of the petitioner and lead their conjugal life.

3. In pursuance to issuance of notice by the learned Family Court, the appellant-wife appeared in the Original Suit before the learned Family Court and filed written statement stating therein that the instant suit of the Petitioner/husband is not maintainable either in law or in facts. The same has been filed on false and fabricated grounds. After two days of marriage, the Petitioner and his father started torturing her for demand of additional dowry. Moreover, when she was pregnant, was tortured by the Petitioner and his parents. Due to non-fulfillment of demand of dowry, she was left in her matrimonial home in the month of August 2019, when she was pregnant of 05 months. Thereafter, she had filed a complaint on 03.01.2020 against the Petitioner and his father for demand of dowry, which was sent by the C.J.M., Bokaro to B.S. City Police Station for lodging FIR. The Petitioner only with a view to save his skin, in anticipation, has filed the suit of restitution of conjugal right before the learned Family Court. It has further been stated that before institution of B.S. City P.S. Case No. 23 of 2020, her father had already made complaint to Superintendent of Police, Bokaro on 05.12.2019. After obtaining anticipatory bail, the Petitioner started threatening her, her parents and witnesses. He started abusing and giving threats through mobile phone, whatsApp and facebook, which has been reported through online complaint being Cyber Crime Incident dated 24.08.2020. She also lodged an online FIR on 03.09.2020 being Complaint Number 112651. The Petitioner started sending threatening and abusive messages through one BR-CALERT, which is used for sending bulk SMS and the same is purchased by subscriber from his service provider. The Petitioner/respondent herein came to her house, threatened her grand-

father of dire consequences and fled away and entire incident is recorded in CCTV. So, it is not safe for her and her 15 months baby to live with the Petitioner and his family members.

On the aforesaid ground, the appellant-wife has prayed that the original suit being Original Suit No.546 of 2019 for restitution of conjugal rights is fit to be dismissed.

4. Learned Family Judge, after institution of the said case taking into consideration of the pleadings of the parties, after scrutinizing the evidence adduced on behalf of both the parties, oral as well as documentary, has allowed the suit for restitution of conjugal rights which is under challenge by the appellant-wife by filing the instant appeal.

Submission of behalf of the appellant-wife:

5. Mr. Mukesh Kumar, the learned counsel appearing for the appellant-wife has taken the following grounds:

(i) There is an error in the impugned judgment, since, each and every aspect of the matter has not been taken into consideration based upon the evidences produced by the appellant-wife.

(ii) The appellant-wife has been treated with cruelty by the respondent-husband which has also come in the evidence of the appellant-wife during trial, but the learned Family Judge has not taken into consideration of the factum of cruelty and has passed the order impugned for restitution of conjugal rights in favour of petitioner husband/ respondent herein, as such impugned order is perverse in nature.

(iii) It has been contended that the appellant-wife has been meted out with cruelty as also she has been compelled to leave the matrimonial house due to cruel behaviour of the respondent-husband and his family members when she was pregnant, but the same has not been taken into consideration by the learned Family Judge.

(iv) It has been contended that the learned Family Judge has failed to appreciate the evidences adduced on behalf of the appellant-wife as in the trial, the evidence has come that it was the respondent-husband who has treated the appellant-wife with mental torture and demand of dowry and even neglected her even by knowing the fact that she was pregnant, but this fact has not been considered by the learned Family Judge.

(v) The learned Family Judge has not appreciated the fact that the appellant-wife wanted to lead a happy conjugal life with the respondent-husband but it was the respondent-husband who has treated the appellant-wife with cruelty and tortured her for demand of dowry and thus, compelled her to leave her matrimonial home.

(vi) The learned Family Judge has not appreciated the fact that the respondent-husband who treated the appellant-wife with mental torture has instituted the suit for restitution of conjugal rights in anticipation only to save his skin in the criminal case lodged against him

under the Dowry Prohibition Act by the appellant-wife and not to restitute the conjugal right.

(vii) It has further been submitted that the respondent-husband filed the suit for restitution of conjugal rights solely to protect himself from the criminal case lodged by the appellant-wife against him and his family members. This is evident from the fact that after obtaining the decree for restitution of conjugal rights, the respondent-husband made no attempt to execute it in his favour, and has already solemnized a second marriage.

(viii) It has further been submitted, on the strength of the supplementary affidavit filed on behalf of the appellant, that the respondent-husband has already solemnized a second marriage and that a male child has also been born out of the said wedlock. According to the appellant, the aforesaid circumstances clearly demonstrate that the respondent-husband instituted the suit for restitution of conjugal rights merely as an eyewash and without any genuine intention of resuming matrimonial cohabitation.

6. The learned counsel, based upon the aforesaid grounds, has submitted that the impugned judgment and decree said to be perverse, therefore, needs interference.

Submission of behalf of the respondent-husband:

7. Per contra, the learned counsel appearing for the respondent-husband has taken the following grounds:

(i) There is no error in the impugned judgement as the learned Family Judge has considered the entire issue

and on the basis of evidence laid by both the parties has passed the order impugned.

(ii) The allegation against the respondent-husband is that he had treated the appellant-wife with cruelty due to non-fulfillment of demand of dowry and driven her out of the matrimonial home but the learned Family Court, after taking into consideration the oral and documentary evidence, has found that the appellant-wife has failed to prove the said allegation and has rightly allowed the suit for restitution of conjugal rights.

(iii) The learned counsel for the respondent-husband has further submitted that while passing the judgment for restitution of conjugal rights the learned Family Judge has taken into consideration that the respondent-husband has tried his level best to lead a happy conjugal life with the respondent-wife but it was the appellant-wife who had filed a false criminal against him and his family members under the dowry prohibition Act which she has failed to prove by adducing evidence.

(iv) It has also been submitted that the learned Family Court after taking into consideration the material available on record has found that the conduct of the respondent-husband has been towards salvaging the institution of marriage and for the said purpose he has instituted the suit for restitution of conjugal

rights, therefore, the impugned judgment requires no interference.

(v) It has been contended that the learned Family Judge after taking into consideration the evidence adduced on behalf of the parties has come to a conclusion that there is nothing on record to show that the appellant-wife feels unsafe in the company of her husband and on the pretext of the aforesaid categorical finding of the Family Court, the impugned judgment requires no interference.

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

Analysis:

9. We have heard the learned counsel appearing for the parties, gone through the impugned judgment, as also the testimony of the witnesses, the materials available on record and the documents exhibited therein.

10. It needs to mention herein that while hearing the matter, it has been informed by the learned counsel appearing for the appellant-wife that the respondent-husband has solemnized a second marriage. This Court, considering the situation to be irreversible after solemnization of second marriage by the respondent-husband, has decided to adjudicate the issue involved by passing the judgment of dissolution of marriage on the issue of alimony and, therefore, a direction was passed vide order dated

19.02.2026 upon both the parties to file affidavit showing the details of the income and other properties.

11. It appears from the record that the appellant-wife has filed affidavit in pursuance to the order dated 19.02.2026 but no affidavit has been filed by the respondent-husband in terms thereof.

12. This Court in absence of any individual affidavit filed on behalf of the respondent-husband thought it proper to decide the matter on the point of restitution of conjugal rights only and, accordingly, the judgment has been reserved after concluding argument on behalf of the parties vide order dated 17.08.2026 and today the same is being delivered by way of this judgment.

13. This Court, before entering into the illegality and propriety of the impugned judgment, first needs to refer herein the purport and intent of the provision of Section 19 of the Family Courts Act. 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 catena of judgments.

14. 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."*

15. 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.

16. 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.

17. 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.

18. 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.

19. It needs to refer herein that 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 so 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."*

20. From the aforesaid, it is evident that if any order made in conscious violation of pleading and law then it will come under the purview of perverse order. Further "perverse verdict" may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence.

21. 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.

22. 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.***

23. In the backdrop of the aforesaid settled position of law this Court is now adverting to the impugned judgment wherefrom it is evident that the learned Family Judge while deciding the *lis* has formulated altogether four issues, for ready reference the same are being quoted hereinbelow:

> *(i) Is this suit maintainable in its present form?*
> *(ii) Whether the petitioner has valid cause of action for the suit?*
> *(iii) Whether the petitioner has been able to prove that the respondent has withdrawn herself from the society of the petitioner without any reasonable cause?*
> *(iv) Whether the petitioner is entitled to get the relief as prayed for?*

24. This Court is now adverting to the impugned order/judgment by which prayer for restitution of conjugal rights has been allowed by the learned Family Court.

25. The petitioner/husband (respondent herein) in support of his case, has examined four witnesses including himself as P.W1. In addition to that the following documentary evidences have been adduced on behalf of the petitioner-husband:

(i) Ext. 1-Certified copy of plaint of Cr. Misc. Case No.3943 of 2019.

(ii) Ext.1/1-Certified copy of order sheet dated 02.12.2019 of Cr. Misc. Case No.3943 of 2019.

(iii) Marked X- Photo copy of application dated 27.11.2019 given to Officer-in-charge, Sector-I City P.S, B.S. City, and

(iv) Marked X/1- Xerox copy of medical certificate of S.P Kachhap dated 12.09.2021 issued by BGH.

26. On the other hand, the appellant-wife has examined three witnesses including herself as RW1 in support of her contention. She has also adduced the following documentary evidence:

(i) Marked Y-Three sheet computer generated credit card statement of HDFC Bank.

27. The learned Family Judge has taken into consideration the issue nos. (iii) & (iv) as the main issues, i.e., Whether the petitioner/husband has been able to prove that the respondent/wife has withdrawn herself from the society of the petitioner without any reasonable cause and whether the petitioner is entitled to get the relief as prayed for as these are the crux of the litigation.

28. Thereafter, the learned Family Judge has considered the evidence adduced on behalf of the parties for deciding the issues involved in Original Suit No.546 of 2019.

29. This Court in order to appreciate the aforesaid rival submission before entering into the legality and propriety of the impugned judgment needs to discuss herein the relevant part of the evidences adduced on behalf of the appellant-wife and the respondent-husband wherein the learned Family Judge had arrived at a conclusion to pass the decree for restitution of conjugal rights.

30. During the trial, the respondent-husband himself has been examined as PW1 before learned Family Court. PW-1 has stated that his marriage with the respondent was solemnized on 28.12.2018 as per Christian rites and custom at Bokaro. He has further stated that out of their wedlock, one female baby child was born on 03.12.2019, who is presently living with the respondent. After marriage, they lived together peacefully for 2-3 months as husband and wife. Thereafter, the respondent started quarrelling with him by saying that she does not want to live with him, rather she wants to live at her parents' home. PW1 has stated that without informing him, the respondent used to go to her parents' home. PW1 has further stated that even mother of the respondent always used to come to his house and took the respondent with her without his consent or the consent of his parents. He has stated that on 29.08.2019 his father was admitted in BGH and on 31.08.2019 without informing them, his wife (respondent) went to her parents' home. At that time, she was pregnant for five months.

PW-1 has further stated that on 03.09.2019, he along with his mother, namely, Renuka Kachhap and sister, namely, Filomina Kachhap went to his in-laws' house, where the respondent and her family members abused them and even, she was not ready to return to her matrimonial home. The father of the respondent said that they would arrange second marriage of the respondent with another person. On several occasions, he tried to bring her back but all went in vain. Even she denied to talk with him and kept her mobile phone switched off. He has further stated that during pregnancy of his wife (respondent), he used to take her to Sidhi Maternity Clinic, Sector-IV, Bokaro. He has stated that on 27.11.2019, he gave a written complaint to Mahila P.S., Bokaro, where Police tried to

reconcile the matter, but the respondent did not appear, rather her parents appeared and denied to send the respondent to her matrimonial home. He has also given an information vide petition No. 3943 of 2019 on 02.12.2019 before learned C.J.M., Bokaro. He has stated that he is ready to keep his wife with him and due to that reason, he has filed the suit for restitution of conjugal rights. There is no case pending between them, apart from this case.

During his cross-examination, he denied that he used to abuse parents of the respondent or used to assault the respondent. He has stated that at the time of marriage, he was working in a private company on contract but at present he is unemployed. He denied the suggestion that in lieu of demand of dowry, he had subjected the respondent with cruelty and torture and in August 2019, he left her to her parents' home. He also denied that he used to threaten the respondent and her parents over phone. He has admitted that after delivery of baby girl, his wife has filed a criminal case against him and his family members for mental torture. He has further denied the suggestion that the respondent does not want to live with him as he used to torture her.

31. PW-2 Simon Peter Kachhap is the father of the petitioner. PW2 has stated the same facts as stated by PW-1 (Petitioner) in his examination-in-chief filed on oath. PW2 has stated that nothing was given at the time of marriage by the parents of the respondent. He has denied that when the respondent was pregnant, the petitioner has left her to her parents' home. He has admitted that he is one of the accused in a case filed u/s 498A IPC by his daughter-in-law (respondent) after birth of baby child. He denied the case of the respondent.

32. PW-3 Renuka Kachhap is the mother of the petitioner. She has stated the same facts as stated by PWs 1 and 2 in their respective examination-in-chief filed on oath. PW3 has stated that the respondent has not filed any case against them. She has stated that when the respondent was pregnant of five months, she has left her matrimonial home. She has denied that to screen themselves from criminal case threatened to be filed by the respondent, her son (Petitioner) has filed this case.

33. PW-4 Tuhin Shekhar knows both the parties. PW4 has also stated the same facts as stated by PWs 1, 2 and 3 in their respective examination-in-chief filed on oath. PW4 has stated that he has attended marriage ceremony of the parties.

During his cross-examination, PW4 has stated that he does not know whether this case was filed after or before birth of baby child of the parties. He has admitted that he along with the petitioner went in September 2019 to the house of the respondent for her *bidai.* He has stated that he studied with the petitioner (respondent herein) in Pentacostal Assembly School. At present, the petitioner is unemployed. He denied the suggestion that the petitioner used to torture the respondent for dowry demand. He has denied that he was not aware that Stuti (appellant herein) had told Johnson (respondent herein) that they would file a case regarding the torture inflicted by them after the delivery.

34. Per contra, the respondent while examining herself as RW 1 has stated that her marriage was solemnized with the petitioner (respondent herein) on 28.12.2018 as per Christian rites and custom and at the time of marriage, her parents had given gold jewelleries worth Rs.15,00,000/-. RW1 has further stated that their engagement ceremony was held on 03.06.2018. Even at that time, her parents had given gold jewelleries and

a diamond right was gifted to the petitioner. She has stated that just after 2-3 days of marriage, her husband and father-in-law started teasing her for dowry. When she was pregnant, her husband and father-in-law were demanding Rs.10,00,000/- for starting a school in Purulia. As she cannot fulfill the said demand, her husband had left her in her parents' home on 31.08.2019. She has stated that she told to her husband that after delivery of baby, she will made a complaint against him. On 03.12.2010, she gave birth to a female child. She has stated that her husband used to threaten her on phone and her father-in-law demanded Rs.10 lakh from her parents over phone. On 02.12.2019, her husband has filed this case to screen himself from any criminal case, which would be filed against them by her. RW1 has stated that she had filed a complaint case against the petitioner in which he was granted bail by Hon'ble High Court and thereafter he used to threaten her and her parents over phone. RW1 stated that due to the cruel acts of the petitioner and his parents, she apprehends danger to her life at their hands.

During her cross examination, RW1 has stated that she could not produce any document in the Court in support of her claim that gift worth Rs.15,00,000/- were given by her parents to the petitioner and his family members. She could not recall whether she has filed any document in support of giving gold jewelleries to the petitioner by them. Neither she could recall about job of her father-in-law nor she can say about living standard of her in- laws. She has stated that she stayed in her matrimonial home for about 08 months. She has admitted that at the time of her pregnancy, her treatment was going on when she was staying in her matrimonial home but she could not remember the name of the doctor who treated her. She has admitted that she is well educated and she has

completed her graduation. She has stated that lastly, she returned to her parents' home on 31.08.2019. She cannot recall whether her father-in-law was admitted in BGH on 29.08.2019 and on 31.08.2019. She has admitted that they have not paid Rs. 10,00,000/- as demanded by her husband and father-in-law for running a school. She has stated that she is having no knowledge whether her father-in-law is running a School at Purulia. She has filed a petition for cancellation of bail of her husband, which was disposed of by the Hon'ble High Court. She has denied the suggestion that she came to her parents' house on 31.08.2019 when her father-in-law was admitted in B.G.H and her husband and in-laws were there to look after him. She has denied the suggestion that from 31.08.2019 till date of evidence, her husband tried his level best to keep her with him but she does not want to live with him.

35. RW-2 Sandeep Stephen Lal is the father of the respondent/wife (appellant herein). RW2 has stated the same facts as stated by RW-1 in her examination-in-chief filed on oath and further states that at the time of engagement of the parties, there were about 100 guests. At the time of marriage, he was informed that the petitioner is an Engineer and working in a private company. He has stated that once the petitioner had pressed neck of the respondent. RW2 has stated that on 03.12.2019 her daughter (the appellant herein) gave birth to a female child and all the expenses for their maintenance were incurred by him. He has stated that the petitioner has demanded Rs.10 lakhs from him and his sister-in-law over phone. RW2 has stated that her daughter apprehends danger to her life as well life of her female child at the hands of the petitioner.

During his cross-examination, RW2 has stated that he could not say in detail what was purchased from jewellery shop and cloth shop. He

cannot file any document in support of gold jewelleries given by them to the petitioner. They have not filed any case regarding demand of Rs.10,00,000/-. His *Samdhi* retired from the post of General Manager, perhaps in the year 2019-20. He does not know that his *Samdhi* is having a School in Purulia. He has denied that he had given Rs.10 lakhs to the father of the petitioner for opening a school. He has stated that he has no objection, if his daughter wants to return to her in-law's house. He has stated that there is no criminal case filed against the petitioner and his father earlier to this case. He denied the suggestion that when his *Samdhi* was admitted in BGH, his wife (mother of the respondent) brought her back to their house. He has denied the suggestion that during pregnancy of his daughter, her inlaws had cared her and treated her regularly. He has denied the suggestion that the petitioner wants to keep her daughter with him but they have not wanted to do so.

36. RW-3 Shrila Lal is the mother of the respondent. RW3 has stated the same facts as stated by RWs' 1 and 2 in their respective examination-in-chief filed on oath. RW3 has stated that she is Principal of D.Y. Patil International School. At the time of marriage, father of the petitioner was General Manager in BSL. Gold and silver jewelleries worth Rs.15,00,000/- were given but she has not filed any document in support of the claim. She has speculated that price of gold and silver jewelleries is Rs.15,00,000/-. She has not filed any document in support of her claim that they had given Diamond Ring at the time of engagement to the petitioner.

During her cross-examination, RW3 has denied the suggestion that she does not know whether Holy Christ School belongs to father of the petitioner is running in Purulia or not. She has admitted that she went to

her daughter's matrimonial home in August 2019, when the respondent was carrying her five months pregnancy. She was informed by her daughter that she is going for regular medical checkup. Her son-in-law (petitioner) never visited to see the respondent or female child. She has admitted that on 27.11.2019 the petitioner had filed a petition before Mahila P.S., Bokaro whereafter she and her husband went to Mahila P.S. but she cannot say whether petition filed by her daughter under the provision of Dowry Prohibition Act was dismissed or not. She has admitted that after getting permission from the Hon'ble High Court, the petitioner (respondent herein) once visited her house to meet his wife and female child. She has denied the suggestion that the petitioner wants to keep his wife and daughter with all dignity. She has denied the suggestion that the petitioner ever visited to her house with his mother and sister but she did not open the door of the house and they never wanted to send the respondent back to her matrimonial home. She has denied the suggestion that on 31.08.2019 when the father of the petitioner was admitted at BGH and the petitioner and his family members were there to look after him, in absence of them the respondent came to her *maike.*

37. Thus, from the aforesaid factual aspect it is evident that the marriage between the appellant-wife and the respondent-husband was solemnized on 28.12.2018 according to Christian rites. Out of the wedlock, a female child was born on 03.12.2019.

38. The appellant-wife alleged that soon after marriage she was subjected to mental torture and harassment for dowry demand. When she was five months pregnant, she was compelled to leave her matrimonial home. She lodged complaints under Section 498A IPC, and also reported threats and abuse through electronic communication.

39. The respondent-husband, on the other hand, instituted the suit for restitution of conjugal rights, asserting that the appellant had withdrawn from his society without reasonable cause.

40. The learned Family Judge framed four issues, the core being whether the appellant-wife had withdrawn from the society of the respondent-husband without reasonable cause, and whether the respondent was entitled to restitution of conjugal rights.

41. Upon appreciation of evidence, the Family Court decreed restitution in favour of the husband, holding that no evidence regarding the alleged dowry demands by the petitioner/husband were proved by the respondent/appellant/wife.

42. Against the aforesaid finding of the learned Family Court, the instant appeal has been preferred by the respondent/appellant-wife, inter alia, on the ground that the learned Family Court failed to properly appreciate the evidence relating to the mental torture allegedly inflicted upon the appellant on account of the unlawful demand for dowry made by the respondent-husband and his father. It has further been urged that the appellant was compelled to leave her matrimonial home during pregnancy owing to the harassment and cruelty meted out to her. It is also the case of the appellant that the suit was instituted only in anticipation by the respondent husband solely with a view to shielding himself from the future criminal prosecution initiated by her under Section 498-A of the Indian Penal Code. Further ground has been taken about subsequent conduct of the husband, including solemnization of his second marriage, which demonstrates absence of his bona fide intention to resume conjugal life.

43. Per contra, the respondent-husband has contended that the appellant-wife had withdrawn from his society without any reasonable

cause and that no demand for dowry was ever made by him. It has, therefore, been submitted that, upon consideration of the aforesaid facts and circumstances, the learned Family Court rightly adjudicated the *lis* and passed a decree for restitution of conjugal rights against the appellant-wife.

44. In the backdrop of the aforesaid factual aspects, the following issues arise for consideration by this Court in the instant appeal:

(i) Whether the appellant-wife withdrew from the society of the respondent-husband without reasonable cause.

(ii) Whether the decree of restitution of conjugal rights was justified in law and on facts.

(iii) Whether the impugned judgment suffers from perversity warranting interference.

45. Since all the aforesaid issues are intrinsically interconnected and interrelated, they are being taken up together for adjudication.

46. At this juncture, it would be apt to discuss herein the object and scope of decree of restitution. The object of restitution decree was to bring about cohabitation between the estranged parties so that they could live together in the matrimonial home in amity. The leading idea of Section 32 of the **Indian Divorce Act, 1869** was to preserve the marriage. For ready reference, Section 32 of the Act 1869 is being referred as under:

> ***32. Petition for restitution of conjugal rights.—***
> *When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, either wife, or husband may apply, by petition to the District Court for restitution of conjugal rights, and the Court, on being satisfied of the truth of the statements made in such petition, and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.*

47. From perusal of the aforesaid provision, it is evident that if either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply, before the court concerned, for restitution of conjugal rights and the court, on being satisfied of the truth of the statements made in such petition and further taking into consideration the legal ground that why the application should not be granted, may decree restitution of conjugal rights accordingly.

48. It needs to refer herein that conjugal rights may be viewed in its proper perspective by keeping in mind the dictionary meaning of the expression "Conjugal" wherein the meaning of 'Conjugal' as "of or pertaining to marriage or to husband and wife in their relations to each other" is given (Shorter Oxford English Dictionary, 3rd Edn. Vol. I page 371).

49. In the Dictionary of English Law, 1959 Edn. at page 453, Earl Jowitt defines 'conjugal rights' thus:

> *"The right which husband and wife have to each other's society and marital intercourse. The suit for restitution of conjugal rights is a matrimonial suit, cognizable in the Divorce Court, which is brought whenever either the husband or the wife lives separate from the other without any sufficient reason, in which case the court will decree restitution of conjugal rights (Matrimonial Causes Act, 1950, s. 15), but will not enforce it by attachment, substituting however for attachment, if the wife be the petitioner, an order for periodical payments by the husband to the wife (s.22). Conjugal rights cannot be enforced by the act of either party, and a husband cannot seize and detain his wife by force (R.V. Jackson [1891] 1 Q.B. 671)".*

50. In India it may be borne in mind that conjugal rights, i.e., right of the husband or the wife to the society of the other spouse is not merely creature of the statute. Such a right is inherent in the very institution of marriage itself. Thus, the restitution of conjugal rights is often regarded as a matrimonial remedy. The remedy of restitution of conjugal rights is

a positive remedy that requires both parties to the marriage to live together and cohabit. Thus, the requirements of the provision of restitution of conjugal rights are the following:

(i) The withdrawal by the respondent from the society of the petitioner.

(ii) The withdrawal is without any reasonable cause or excuse or lawful ground.

(iii) There should be no other legal ground for refusal of the relief.

(iv) The court should be satisfied about the truth of the statement made in the petition.

51. Thus, the Court will grant a decree for restitution of conjugal rights when one spouse has withdrawn from the other's society without reasonable excuse. This means if a husband or wife leaves the marital home or refuses to live with their spouse without a justifiable reason, the other spouse can petition the court for this remedy. The Court, if satisfied with the truth of the petition and finding no legal barrier, may order the withdrawing spouse to return and resume cohabitation.

52. In the backdrop of the settled position, this Court is now re-adverting to the factual aspect of the instant case wherefrom it is evident from the testimony and evidence available on record that the respondent husband had alleged that the appellant/wife has withdrawn herself from the marital obligation without any reasonable excuse.

53. In contrary to the aforesaid, R.W.-1 is the respondent (appellant herein) herself deposed in her examination-in-chief that just after 2-3 days of marriage, her husband and father-in-law started teasing her for dowry. When she was pregnant, her husband and father-in-law were demanding Rs.10,00,000/- for starting a school in Purulia. As she cannot fulfill the said demand, her husband had left her in her parents' home on

31.08.2019. She has stated that she told to her husband that after delivery of baby, she will made a complaint against him. On 03.12.2019 she gave birth to a female child. She has stated that her husband used to threaten her on phone and her father-in-law demanded Rs.10 lakh from her parents over phone. On 02.12.2019, her husband (*respondent herein*) has filed the case in anticipation to screen himself from any criminal case, which would be filed against them by this witness.

She has denied the suggestion that she came to her parents' house on 31.08.2019 when her father-in-law was admitted in B.G.H and her husband and in-laws were there to look after him. She has denied the suggestion that from 31.08.2019 till date of evidence, her husband tried his level best to keep her with him but she does not want to live with him.

54. The aforesaid testimony of R.W.1 has fully been substantiated by the statement of RW.2, i.e., father of the appellant wherein he has stated that once the petitioner had pressed neck of the respondent and on 03.12.2019 her daughter (the appellant herein) gave birth to a female child and all the expenses for their maintenance were incurred by him. This witness has categorically substantiated the fact that the petitioner/ husband has demanded Rs.10 lakhs from him and his sister-in-law over phone. Further he denied the suggestion that when his *Samdhi* was admitted in BGH, his wife (mother of the respondent) brought her back to their house.

55. From the evidence of RW-1 (the appellant-wife) and RW-2 (her father), a consistent and credible narrative emerges. The appellant-wife was subjected to harassment and repeated demands of Rs.10,00,000/- by her husband and father-in-law, even during her pregnancy. She was abandoned at her parental home on 31.08.2019 and thereafter threatened

over phone calls. Her testimony that the restitution suit was filed merely to shield the husband from impending criminal proceedings is corroborated by her father, who further confirmed physical assault and the dowry demand.

56. Further, P.W.2 father of the petitioner/husband has admitted that he is one of the accused in a case filed u/s 498A IPC by his daughter-in-law (respondent) after birth of baby child. Thus, filing of the case by the appellant under Section 498-A has already been admitted. Further during pendency of the instant appeal by way of filing supplementary affidavit the appellant has put forth the factum of solemnization of second marriage by the respondent/husband with another lady and from said wedlock one male child is born. It needs to refer herein that in rebuttal of the aforesaid factual aspect no affidavit has been filed by the respondent/ husband.

57. Taken together, these depositions it appears that the appellant-wife's withdrawal from the matrimonial home was not voluntary but compelled by cruelty, mental torture and unlawful dowry demands. The evidence demonstrates that she had reasonable cause to live apart, and the husband's suit for restitution of conjugal rights lacks the genuine intent to resume conjugal life.

58. Now this Court is adverting to impugned judgment in order to find out that 'whether the impugned judgment is suffering from the element of perversity or not'.

59. From the impugned judgment, it appears that the learned Family Court has not properly considered the entire aspect, rather the reliance has been placed upon the selective part of the deposition of witnesses and has picked the part of deposition in isolation and accordingly the learned

Family Court had passed the order of restitution of the conjugal rights in favour of the respondent-husband.

60. At this juncture, it needs to refer herein that a husband can file a petition for restitution of conjugal rights if his wife has withdrawn from his society without reasonable excuse, seeking a court order for her to resume living with him. The court may grant the decree if it is satisfied the petition's claims are true and there is no legal ground to refuse it. This remedy serves as a way for the aggrieved spouse to seek the restoration of the right to cohabit with the other spouse.

61. But, in the instant case, it is apparent from the impugned judgment that the learned Family Court has not given proper finding on the issue that whether the appellant wife has withdrawn from society of the respondent husband without reasonable excuse or she was compelled to withdrawn from the society of the husband, rather, the learned Family Court has placed its reliance on the part of the deposition of PW.1 in isolation, which is contrary to settled position of law that evidence should be taken as whole and not in piecemeal.

62. There is no dispute that section 32 of the Act entitles a spouse to restitution of conjugal rights if the other spouse without reasonable cause withdraws from his or her society but where conduct of a spouse falls short of cruelty or any other matrimonial offence but it is harsh and unbearable, it may justify a spouse in leaving the other. Further apart from the question of physical cruelty, torture or assault by any member of the family if the circumstances are such that it is not possible for the wife to live as a wife with self-respect and dignity in the house of the husband. Indeed, she is entitled to separate maintenance and residence

63. Thus, it appears from the materials on record and, more particularly, the case put up by the appellant-wife before this Court that she was being compelled to leave her matrimonial house. It is evident from oral evidences that this is not a case in which it could be said that the appellant wife left her matrimonial home on her own will and without any compulsion. It is more than clear having regard to the evidence on record that the wife was not comfortable at her matrimonial home on account of various instances of mental torture and dowry demand. If on account of all such problems, one fine day if she decided to walk out of her matrimonial home, could it be said that the husband straightway is entitled to have a decree for restitution of conjugal rights.

64. Thus, the requirement under the law in the case of adjudication of the issue is that the adjudication is to be based upon the consideration of the evidence and, particularly, in the case of restitution of conjugal rights, it is primary duty of the learned Family Judge to look into the evidence of the spouse as to whether she or he intends to live with the partners or not, peacefully and with all dignity. If one of the spouses utters that she or he cannot live together due to the reason as stated by the spouse in his/her evidence, the Court cannot compel such party to live together compromising with the dignity and subjected to mental torture.

65. In the present case, it is manifest that the learned Family Court failed to undertake a holistic appraisal of the evidence adduced by the appellant-wife. The testimony of RW-1, the appellant corroborated by RW-2, clearly establishes repeated demands of dowry ₹10,00,000, acts of mental torture and abandonment of appellant during pregnancy. These depositions demonstrate that the appellant-wife had reasonable cause to withdraw from the society of the respondent-husband. By disregarding

these material aspects and focusing narrowly on the husband's assertions, the Family Court overlooked these vital aspects. Further, the Family Court erred in discarding this evidence merely on the ground of absence of documentary proof of dowry articles. In matrimonial disputes, direct oral testimony of the victim carries substantial evidentiary weight, particularly when corroborated by family members.

66. Further, the appellant wife cannot, therefore, be compelled to resume matrimonial life with the respondent/husband, in the face of such mental torture and demand of dowry. Moreover, herein the couple have been living separately since 2019 and, thereafter, restitution would not be justified or feasible. Further, as referred and discussed hereinabove, the severe allegation has been alleged by the appellant/wife against the respondent/husband.

67. Thus, upon careful consideration of the pleadings, testimonies, and documentary evidence, this Court finds that the decree of restitution of conjugal rights was passed without due deliberation of the factual matrix and without fair evaluation of the allegations of mental torture and dowry demand. In view of the foregoing discussion, this Court is of the considered opinion that the appellant-wife had sufficient and reasonable cause to withdraw from the society of the respondent-husband. The decree of restitution of conjugal rights passed by the Family Court suffers from perversity and illegality.

68. Thus, from the perusal of the impugned order, it is evident that the learned Family Judge while allowing the appeal in favour of the husband/petitioner (respondent herein) has not appreciated properly the factual aspect as well as settled proposition of law related to the restitution of conjugal right and further without applying the test of reasonableness,

has passed the order of restitution of conjugal rights, the impugned judgment, therefore, suffers from perversity and non-consideration of vital evidence, and necessarily warrants interference by this Court.

69. The upshot of the whole discussion, therefore, is that this appeal succeeds and the impugned judgment dated 14.09.2022 and the decree signed on 21.09.2022 passed in Original Suit No.546 of 2019 by the learned Principal Judge, Family Court, Bokaro are, hereby, quashed and set aside.

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

(Sujit Narayan Prasad, J.)

I Agree.

(Pradeep Kumar Srivastava, J.)

(Pradeep Kumar Srivastava, J.)

Sudhir
Dated:23/09/2026
Jharkhand High Court, Ranchi
AFR

Uploaded on 24/09/2026.