IN THE HIGH COURT OF JHARKHAND AT RANCHI

F.A. No. 292 of 2023

Anshuman Sharma, aged about 29 years, son of Ashok Sharma, Present address at 12th Battalion Sashantra Seema Bal, P.O. + P.S.+District-Kishanganj (Bihar) and permanent addres of village-Bilbera, P.O.-Sonardih, P.S.-Madhuban, District-Dhanbad (Jharkhand).

Appellant/Plaintiff

Versus

Sathi Bhandari, aged about 32 years, wife of Anshuman Sharma, daughter of Nabin Bhandari resident of Kamalpur, P.O.-Maithan, P.S. –Maithan, District-Dhanbad (Jharkhand).

... **Respondent/Respondent**

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

For the Appellant : Mr. Birendra Kumar, Adv.
For the Respondent : Mr. Saibal Kumar Laik, Advocate

CAV/Reserved on 17.08.2026 **Pronounced on 11/09/2026**

Per Sujit Narayan Prasad, J.

Prayer:

1. The instant appeal, under Section 19(1) of the Family Court Act, 1984, is directed against order/judgment dated 11.08.2023 and decree dated 24.08.2023, passed by the learned Principal Judge, Family Court, Dhanbad in Original Suit No. 22 of 2022, whereby and whereunder suit preferred by the appellant for dissolution of marriage on the ground of cruelty and desertion has been dismissed.

Brief facts of the case:

2. The brief facts of the case, as taken note in the impugned order, needs to be referred herein as under:

3. The case of the appellant in nut-shell is that his marriage was solemnized on 11-06-2016 with the respondent Sathi Bhandari of Kamalpur, P.O.-Maithan, P.S. Maithan, District- Dhanhad, (Jharkhand) and their marriage was registered before the Sub-Registrar at Govindpur. After marriage, she went to his house at Bilbera, PS-Madhuban, District- Dhanbad and started leading their conjugal life till 17-08-2017. He has further asserted that during their coverture, she delivered a child namely, Ranveer Sharma, aged about 3 years. He has further asserted that on 17-08-2017 the defendant left her matrimonial house with her own will and without his permission and since then she has been living at her maika.

4. He has further asserted that the defendant deserted him for the last five years, therefore, he has filed this suit under section **27 (1)(b)(d) of Special Marriage Act** to get a decree of divorce passed in his favour against the defendant. The cause of action arose on date of marriage i.e. on 11-06-2016 and thereafter on several occasions and also when the respondent and her family members committed cruelty and torture. Finally he has prayed that by dissolving his marriage a decree of divorce may be granted in his favour against the respondent (his wife).

5. On being noticed, the respondent-wife appeared before the Court and filed written statement stating therein that the suit filed by the plaintiff/appellant against her is not maintainable either on fact or in law. She has further asserted that after marriage she went to her Sasural and after some days her husband left her at her Maika. She has further asserted that during their coverture she delivered a child who is now aged about 5 years. After birth of her son she made request to take her back with him, but he assured that after some days he would take her with him, but he did not take her with him. She has further asserted that she filed a case of maintenance before the family Court Dhanbad vide O.M. No.265/2018 in which the court passed an order and directed the plaintiff to pay a sum of Rs.10,000/- per month for their maintenance. She has further asserted that on 19-09-2019 the plaintiff took her with him after executing a bond before the court on promise that he would keep her and his child with full dignity and honour, but on the next day he went to his duty after leaving them, thereafter she went to her Maika and since then they have been living at her Maika. Lastly, she has stated that she is ready to live with her husband.

6. The learned family court, on the basis of pleading available on record, framed the issues, and evidences were led on behalf of parties.

7. The learned Family Court, upon due consideration of the pleading available on record, dismissed the suit, against which the instant appeal has been filed.

Submission of learned counsel for the appellant:

8. The learned counsel for the appellant, has submitted that the impugned judgment is bad both on law as well as on facts

9. Submission has been made that the learned family court did not consider the fact that the respondent-his wife has deserted the appellant-husband since 17-08-2017, inasmuch as, on 17-08-2017, while the appellant was "Sashastra Seema Bal" posted and working in Batallion No.2, Border Security Force in Jammu Kasmir, she left his company without his permission and also without the permission of his parents.

10. Further submission has been made that in spite of his request made on several occasions, she did return back to join his company and society. But even after some compromise, though she started living together, but used to flee away after fight and argument.

11. It has been submitted that the learned family court did not consider that since 17-08-2017, respondent-wife has completely deserted her husband and this desertion is continuous since 17-08-2017 and, therefore, at the time of filing suit, the parties are also living separately since last more than 6 years.

12. It has been submitted that Mukhiya of Tundu Gram Panchyat, vide letter dated 23-07-2023, which is marked as Ext. 1, certified that respondent wife has lived with the appellant only for six months in her matrimonial house and thereafter left his company, but this fact has not been taken into consideration by learned family court.

13. Further pointing out the erroneous finding arrived at learned family court, submission has been made neither in the plaint nor in the written statement, statement has been made with respect to the fact of compromising position of wife with other person but the same has been discussed at paragraph 12 of the impugned judgment, which it beyond the pleading available on record.

14. Learned counsel for the appellant has submitted that since desertion has abundantly been proved, as such the appellant is entitled for decree of divorce, but the learned family has completely lost sight of this fact, therefore, the

impugned order passed by the learned family court requires interference.

Submission of learned counsel for the respondent:

15. Per contra, learned counsel for the respondent-wife has submitted that so far as the issue of desertion is concerned, it was not at the option of the respondent-wife, rather the desertion was due to act of the petitioner-appellant.

16. Submission has been made that the respondent-wife has all along taken stand that she is willing to live with her husband and tried her best to lead happy conjugal life but it is husband-appellant who forced her wife-respondent to live separately.

17. Further submission has been made that the learned family court taking note of the aforesaid fact since has dismissed the suit filed by the appellant, which requires no interference.

Analysis

18. We have heard learned counsel for the parties and gone through the pleading available on record as also the finding recorded by learned family court.

19. This Court, before going into the legality and propriety of the impugned order needs to refer herein the evidence adduced by the parties.

20. On behalf of petitioner-appellant four witnesses, namely; P.W.1-Ansuman Sharma (plaintiff/appellant himself); P.W. 2-Ashok Sharma (Father of the appellant); P.W. 3-Sharban Sharma; and P.W. 4-Dilip Goswami were examined.

21. P.W. 1-Ansuman Sharma, the appellant, has deposed in the examination-in-chief filed on affidavit that he and his wife Sathi Bhandari got married and also got their marriage registered on 11.06.2016 in accordance with the provision of Special Marriage Act. After marriage she went to his ancestral/parental village and started leading their conjugal life and they were blessed with a son namely Ranveer Sharma who is now aged about 5. He has further testified that after pregnancy of his wife she became hostile towards him and she started misbehaving with his parents. On 17.08.2017 when he was posted as BSF Batalian No. 2 in Jamu & Kashmir, she went to her Maika Kamalpur without his permission and never returned to his house. She has been living separately and independently since 17.08.2017 and has been working as a private tutor in Dhanbad itself. He has further testified that the respondent has treated him with cruelty and has deserted her for the last five years, therefore, he has filed this suit U/s 27 (1 (b) (d) of Special Marriage Act for a decree of divorce in his favour against the respondent. He

has been paying a sum of Rs. 10,000- per month to his wife as maintenance.

22. During his cross-examination he has stated that he was selected in a job in the year 2013 and just after 3 to 4 months of his marriage dispute cropped up between them and during the last seven years he has admitted to have taken back his wife with him on 4 to 5 occasions. He has disclosed that the case filed by his wife for maintenance monthly allowance to Rs. 6000/- in favour of his wife and monthly allowance of Rs. 4000/- in favour of his son for their maintenance have been allowed by the court and revision petition filed by him for altering the amount of monthly allowance preferred before the Hon'ble High Court has already been dismissed. He admitted that he cannot show any document regarding the employment of his wife as a teacher and has further stated that on some occasions after holding compromise his wife was taken to his house, but she did not live there and left her matrimonial house, but in support of these allegations he has failed to file any document.

23. **PW 2 Ashok Sharma,** father of the plaintiff, **PW 3 Sharban Sharma** and **PW 4 Dilip Goswami** have stated nothing new in their evidence and has simply reproduced the evidence that has been given by the PW 1.

24. On behalf of respondent-wife, three witnesses have been examined. D.W. 1-Sathi Bhandari (the defendant/respondent herself); D.W. 2-Navin Bhandari (father of the defendant) and D.W. 3-Dinesh Prasad Pandit.

25. The DW 1 Sathi Bhandari the defendant-respondent [wife] has stated completely against the evidence of her husband and in her affidavit she has admitted the facts of marriage, birth of child and their living separately. She has further testified that complaint petition No. 952/2018, dated 27.03.2018 filed by her husband in the court of Ritu Kujur has been dismissed. She has further testified that the petitioner Ansuman Sharma went to her Maika and talked to her and her son on telephone, but he is not ready to keep with him on the pretext that in the place of his posting there is no facility of keeping her. She has further testified that it is the family members of the petitioner who are ready to let her Sasural and she has always been ready to share the company of her husband and to live with him.

26. During her cross-examination, she has admitted that after her marriage she has been living in her Sasural for about one and half a year and she delivered her son on 19.02.2017 at Kamla Nursing Home, Kulti. She is a B.Sc and B.Ed. but she is jobless and at present she cannot get employment and has admitted that she is getting a sum of Rs. 10,000/-. She has denied that she has deserted her

husband and also denied tht she has met in cruel behavior with parents-in-laws.

27. D.W. 2-Navin Bhandari [father of the defendant-respondent] and D.W. 3 Dinesh Prasad Pandit have supported the case of the defendant/respondent-wife.

28. The appellant-husband had filed the suit seeking decree of divorce taking aid of Section 27 of the Special Marriage Act, in particular Section 27(1)(b)(d). Therefore, this Court, before proceeding further requires to refer herein the provision of Section 27 of the Special Marriage Act, 1954, which reads as under:

> *"**27. Divorce**.— [(1)] Subject to the provisions of this Act and to the rules made thereunder, a petition for divorce may be presented to the district court either by the husband or the wife on the ground that the respondent—*
> *[(a) has, after the solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse; or*
> ***(b) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or]***
>
> *(c) is undergoing a sentence of imprisonment for seven years or more for an offence as defined in the Indian Penal Code (45 of 1860);*
>
> ***(d) has since the solemnization of the marriage treated the petitioner with cruelty; or***
>
> *[(e) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.*

Explanation.—In this clause,—

(a) the expression "mental disorder" means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia;

(b) the expression "psychopathic disorder" means a persistent disorder or disability of mind (whether or not including sub-normality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the respondent, and whether or not it requires or is susceptible to medical treatment; or

(f) has been suffering from venereal disease in a communicable form; or]

*(g) has 3 * * * been suffering from leprosy, the disease not having been contacted from the petitioner; or*

(h) has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of the respondent if the respondent had been alive;

[Explanation.—In this sub-section, the expression "desertion" means 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;]

[(1A) A wife may also present a petition for divorce to the district court on the ground,—

(i) that her husband has, since the solemnization of the marriage, been guilty of rape, sodomy or bestiality;

(ii) that in a suit under section 18 of the Hindu Adoptions and Maintenance Act, 1956 (78 of 1956), or in a proceeding under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) (or under the corresponding section 488 of the Code of Criminal Procedure, 1898) (5 of 1898), a decree or order, as the case may be, has been passed against the husband awarding maintenance

to the wife notwithstanding that she was living apart and that since the passing of such decree or order, cohabitation between the parties has not been resumed for one year or upwards.]

[(2) Subject to the provisions of this Act and to the rules made thereunder, either party to a marriage, whether solemnized before or after the commencement of the Special Marriage (Amendment) Act, 1970 (29 of 1970), may present a petition for divorce to the district court on the ground

(i) that there has been no resumption of cohabitation as between the parties to the marriage for a period of one year or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties; or

(ii) that there has been no restitution of conjugal rights as between the parties to the marriage for a period of one year or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.]

29. So far as the case laws with respect to issue of cruelty is concerned, the Hon'ble Apex Court in the case of ***Samar Ghosh Vs. Jaya Ghosh [(2007) 4 SCC 511]*** has laid down the instances of cruelty:

> ***"101.*** *No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of "mental cruelty". The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive:*
>
> *(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.*
>
> *(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot*

reasonably be asked to put up with such conduct and continue to live with other party.

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day-to-day life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it

extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilisation without medical reasons and without the consent or knowledge of his wife and similarly, if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty."

30. The cruelty has also been defined in the case of ***Shobha Rani Vs. 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.

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

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

33. 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.

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

35. In ***Vijay Kumar 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.

36. 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.

37. "Cruelty" has an inseparable nexus with human conduct and is always dependent on social strata or milieu to which parties belong, their ways of life,

relationship, temperaments and emotions that are conditioned by their social status, reference be made to the judgment rendered by the Hon'ble Apex Court in the case ***Vishwanath Agrawal* v. *Sarla Vishwanath Agrawal*, (2012) 7 SCC 288**.

38. The Hon'ble Apex Court in the case of ***K. Srinivas Rao* v. *D.A. Deepa*, (2013) 5 SCC 226** has observed that cruelty is evident where one spouse so treats other and manifests such feelings in other, as to cause reasonable apprehension in mind of other that it would be harmful or injurious to reside with other spouse and cruelty may be physical or mental. It has further been observed that staying together under the same roof is not a precondition for mental cruelty. Spouse can cause mental cruelty by his or her conduct even while he or she is not staying under the same roof.

39. In matrimonial relationship cruelty mean absence of mutual respect and understanding between spouses which embitters relationship. Sometimes it may take form of violence, or at times may just be an attitude or approach. Silence in some situations may also amount to cruelty reference be made to the case of ***Ravi Kumar v. Julmidevi, (2010) 4 SCC 476.***

40. For considering dissolution of marriage at instance of a spouse who alleges mental cruelty, result of

such mental cruelty must be such that it is not possible to continue with matrimonial relationship reference may be taken from the judgment rendered by the Hon'ble Apex Court in the case of ***Joydeep Majumdar v. Bharti Jaiswal Majumdar, (supra).***

41. Further the word 'cruelty' is used relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct and one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. There may be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted, reference in this regard be made to the judgment rendered by the Hon'ble Apex Court in the case of Vinita ***Saxena* v. *Pankaj Pandit*, (2006) 3 SCC 778.**

42. Further, in the case of ***Manish Tyagi* v. *Deepak Kumar*, (2010) 4 SCC 339 the** Hon'ble Apex Court has categorically observed that to constitute 'cruelty', it is enough that conduct of one of parties is so abnormal and below accepted norm that other spouse could not reasonable be expected to put up with it. Conduct is no

longer required to be so atrociously abominable which would cause reasonable apprehension that it would be harmful of injurious to continue cohabitation with another spouse. Hence, it is not necessary to establish physical violence. Continued ill-treatment, cessation of marital intercourse, studied neglect, indifference may lead to inference of cruelty.

43. So far as the issue of desertion is concerned, it is pertinent to note that the word '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 willful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly.

44. *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."*

45. 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.*

46. 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.

47. The offence of desertion is a course of conduct which exists independently of its duration, but as a ground for divorce it must exist for a period of at least two years immediately preceding the presentation of the petition or, where the offence appears as a cross-charge, of the answer.

48. 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.

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

50. 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 from the necessary intention aforesaid.

51. 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.

52. Further mere separate residence by wife would not amount to desertion. Husband needs to prove animus deserendi. He is required to prove that without any reasonable cause and without his consent and against his wish, the wife has permanently deserted him. In case the wife proves that there was reasonable cause or justifiable reason to leave the company of the husband, then it cannot be said that she has deserted the husband

53. The law consistently has been laid down by this Court 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.

54. This Court in the backdrop of aforesaid facts, testimonies available on record, and judicial pronouncements, as also the provision of law as enunciated under Section 27 of the Special Marriage Act, 1954, has to see whether there was element of cruelty and desertion, as enunciated under Section 27 (1)(b)(d) of the Special Marriage Act 1954, for grant of decree of divorce.

55. Since the learned counsel for the appellant has raised the plea of *perversity*, this Court, before embarking upon the merits of the appeal, deems it appropriate to first examine and elucidate the legal import of the expression *"perversity"*.

56. The word "perverse" has been interpreted by the Hon'ble Apex Court which means that there is no evidence or erroneous consideration of the evidence. The Hon'ble Apex Court in ***Arulvelu and Anr. vs. State [Represented by the Public Prosecutor] and Anr., (2009) 10 SCC 206*** while elaborately discussing the word perverse has held that it is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law. Relevant paragraphs,

i.e., paras-24, 25, 26 and 27 of the said judgment reads as under:

> ***"24."*** *The expression "perverse" has been dealt with in a number of cases. In Gaya Din v. Hanuman Prasad [(2001) 1 SCC 501] this Court observed that the expression "perverse" means that the findings of the subordinate authority are not supported by the evidence brought on record or they are against the law or suffer from the vice of procedural irregularity.*
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> ***25.*** *In Parry's (Calcutta) Employees' Union v. Parry & Co. Ltd. [AIR 1966 Cal 31] the Court observed that "perverse finding" means a finding which is not only against the weight of evidence but is altogether against the evidence itself. In Triveni Rubber & Plastics v. CCE [1994 Supp (3) SCC 665 : AIR 1994 SC 1341] the Court observed that this is not a case where it can be said that the findings of the authorities are based on no evidence or that they are so perverse that no reasonable person would have arrived at those findings.*
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> ***26.*** *In M.S. Narayanagouda v. Girijamma [AIR 1977 Kant 58] the Court observed that any order made in conscious violation of pleading and law is a perverse order. In Moffett v. Gough [(1878) 1 LR 1r 331] the Court observed that a "perverse verdict" may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence. In Godfrey v. Godfrey [106 NW 814] the Court defined "perverse" as turned the wrong way, not right; distorted from the right; turned away or deviating from what is right, proper, correct, etc.*
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> ***27.*** *The expression "perverse" has been defined by various dictionaries in the following manner:*
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> *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.""

57. Thus, 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. 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.

58. 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.***

59. It is thus evident from the interpretation of the word "perverse" that the erroneous finding without consideration of the fact will be said to be perverse order.

60. In the backdrop of the aforesaid factual aspect this Court has gone through the factual aspect of the case. From the evidence adduced by the parties, it is abundantly clear that no element, as mentioned in the provision of law and/or the judgment pronounced by Hon'ble Apex Court has been found so as to attract the element of cruelty for grant of decree of divorce in favour of appellant-husband.

61. In the testimony of appellant as P.W. 1 he has only made a bald statement that the respondent-wife had committed cruelty towards him but not a single occasion has been cited either in the testimony of appellant or other witnesses produced on his behalf.

62. In such view of the matter, the learned Family Court has come to the conclusion that the petitioner, appellant

herein, has failed to prove that the respondent-wife has behaved in a cruel manner, which in our considered view cannot be faulted with.

63. So far as the ground of desertion is concerned, submission has been advanced on behalf of appellant-husband that the respondent wife had deserted the appellant-husband since 17-08-2017, inasmuch as, on 17-08-2017, while the appellant was posted in "Sashastra Seema Bal" and working in Batallion No.2, in Jammu Kasmir, she left his company without his permission and also without the permission of his parents. Further submission has been made that in spite of his request made on several occasions, she did return back to join his company and society. But even after some compromise, though she started living together, but used to flee away after fight and argument.

64. Whereas, it is the case of the respondent that it is the appellant-husband who forced her to leave her matrimonial house and she has time and again shown her desire to lead conjugal life but the appellant-husband despite having been agreed to keep with dignity as given in the maintenance case no. 265 of 2018 intends to throw her away from his life.

65. This Court find force in the submission of learned counsel for the respondent as it appears from the pleadings

and testimonies available on record that the respondent-wife has always shown her desire to lead conjugal life with the appellant and even in course of hearing, learned counsel for the respondent-wife on instruction has submitted that the respondent-wife is ready to lead conjugal life with her husband even though the mediation failed.

66. For the discussions made hereinabove, this Court is of the view that the desertion by the wife of her husband is under compelling circumstances and not the voluntary one.

67. The learned Family Court taking these facts into consideration has come to the conclusion that the appellant-petitioner is not entitled for a decree of divorce, even on the ground of desertion.

68. This Court, upon a comprehensive discussion of the factual aspects in conjunction with the settled legal position, has adverted to the consideration undertaken by the learned Family Judge in the impugned judgment. From the analysis so made, it is evident that the issues pertaining to cruelty and desertion alleged by the appellant-husband have been duly and properly examined by the learned Family Judge. The findings so recorded are based on a conscious appreciation of the evidence and cannot be faulted either on law or on fact.

69. In view thereof, this Court is of the view that the impugned order/judgment dated 11.08.2023 and decree dated 24.08.2023, passed by the learned Principal Judge, Family Court, Dhanbad in Original Suit No. 22 of 2022 required no interference by this Court.

70. Accordingly, the instant appeal stands dismissed.

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

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

(Pradeep Kumar Srivastava, J.) **(Pradeep Kumar Srivastava, J.)**

11th September, 2026

*Alankar***/ N.A.F.R.**

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