IN THE HIGH COURT OF JHARKHAND AT RANCHI
First Appeal No. 139 of 2022

Shobha Singh Parihar, aged about 34 years, W/o Sanjay Singh, D/o Dhani Singh Parihar, Resident of Qr. No. B.R.R.L. B.T./61, Railway Colony, Ward No.6, Dhanpuri No.3, Near Hanuman Mandir, P.O. Dhanpuri, P.S. Amlai, District Shahdol (Madhya Pradesh) & PIN-484114. ... ... Appellant

Versus

Sanjay Singh, aged about 35 years, S/o Udaybhan Singh, R/o Qr. No. B-71, Ashok Vihar Colony, Dhamdhamia, Village Tumang, P.O. Nawadih, P.S. Khelari, District Ranchi, resident of House No.206, Ward No.18, Village Salaiya via Chandia Road, P.O. Koria, P.S. Chandiya, District Umariya (Madhya Pradesh) & PIN-484660.

….. … ... Respondent

CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MANOJ PRASAD

For the Appellant : Mr Chanchal Jain, Advocate
For the Respondent : Mr Dharmendra Kumar Maltiyar, Advocate

Reserved On : 06/10/2026 **Pronounced On: 03/11/2026**

***Per*: Manoj Prasad, J.**

1. Heard Mr Chanchal Jain, for the appellant and Mr Dharmendra Kumar Maltiyar, for the respondent.

2. The present appeal has been filed by the opposite party-appellant Shobha Singh Parihar, impleading the petitioner as respondent namely Sanjay Singh, aggrieved by the judgment and decree dated 29.07.2019 and 01.08.2019 respectively passed in Original Suit No. 624 of 2018 by the Court of the learned Additional Principal Judge, Additional Family Court, Ranchi,

whereby and whereunder, the suit filed by the present respondent for restitution of conjugal rights was allowed.

3. Briefly stated the facts of the case are hereunder: -

The Original Suit No.624 of 2018 was instituted by the present respondent under Section 9 of the Hindu Marriage Act against the present appellant for restitution of conjugal rights, alleging *inter*-alia that the present appellant and respondent were legally married husband and wife, which marriage was solemnized as per Hindu rituals on 25.04.2016. It is stated that within a couple of days of marriage, the Appellant requested to return to her parental home and expressed her desire that she did not want to live with the present respondent as husband and wife, making complaints on the complexion of the present respondent. It is further alleged that in course of time, despite several efforts and despite occasional restitution of conjugal rights between the parties, the parties even lived together at the workplace of the present respondent at Khelari, Ranchi, but the present appellant perpetually neglected the respondent and frequently returned to her parental home. In course of time, the present appellant became pregnant, and she returned to her parental home but even did not inform about the birth of a male child, who was born sometimes in the month of February 2018. In March 2018, when the respondent along-with his family went to his in-laws' house to meet his wife and the newborn child, he was neglected and was

not allowed to meet his child. The respondent even instituted a pre-litigation case before the D.L.S.A. for restitution of conjugal rights where even the present appellant appeared but to no effect. It is alleged that since June 2017, the present appellant has left the society of the respondent without any reasonable excuse and hence, the suit for restitution of conjugal rights.

4. Despite valid service of notice and even appearance of the present appellant before the Court of the Additional Family Judge, Additional Family Court, Ranchi, and despite granting several adjournments for filing written statement, no written statement was filed, and the suit proceeded for *ex-parte* hearing.

5. Three witnesses were examined on behalf of the present respondent, and by the impugned Judgment, the suit for restitution of conjugal rights was decreed, directing the present appellant to restore conjugal life within three months of the date of the judgment and decree.

6. Aggrieved by this judgment, the present appeal has been filed, predominantly alleging that the present respondent committed fraud on her. She had appeared before the Trial Court, and the matter was referred to the D.L.S.A for settlement, where the husband had proposed to restore conjugal life, to which the appellant had also agreed. She was convinced to wait in her parental home and was under the impression that the suit for restitution of conjugal rights had been withdrawn. However,

despite waiting for a sufficiently long time, the respondent did not come to bring her back to their company, nor did the respondent bother to take care of the present appellant or her minor son, and an *ex parte* decree for restitution of conjugal rights was obtained. It is also alleged that she had filed an application for maintenance, a case under the Domestic Violence Act, and a suit for restitution of conjugal rights in the District of Shahdol, Madhya Pradesh. She alleges that in September 2019, the appellant, along with her father, came to her matrimonial home but was not allowed access, and that she had filed a complaint case, being MJCR No. 86 of 2019, as has been stated. It is also stated that the learned Additional Principal Judge, Additional Family Court, Ranchi, did not consider these aspects of the case while passing the impugned judgment, and for these reasons, the passing of the impugned judgment and decree has been challenged.

7. When the case was taken up before this Bench, it appeared that both the parties had proposed to restore the conjugal life, for which instructions were sought to be taken by the concerned parties, but subsequently such effort appears to have failed, and the arguments were heard, and the case was reserved for judgment.

8. Learned counsel appearing on behalf of the appellant submits that, although the suit for restitution of conjugal rights was instituted, the respondent never intended to restore conjugal

life, and the suit was brought only to create grounds for dissolution of marriage for non-compliance with the order for restitution of conjugal rights. Learned counsel also submits that the appellant was forced to leave her matrimonial home because the respondent subjected her to cruelty and came to the house in a drunken condition. The respondent's conduct is apparent from the fact that, despite the birth of a child, he never came to meet his wife or child, and the suit for restitution of conjugal rights was merely a farce in the process of law. Considering these aspects, the prayer is made to set aside the impugned judgment and decree. It was repeatedly argued that the respondent was ready and willing to restore conjugal life. It was also argued that the recording of evidence under Order XVIII Rule 4 and the filing of an affidavit were not in accordance with law, as the impugned judgment is an appealable judgment and the evidence ought to have been recorded under Order XVIII Rule 5. The Trial Court record has been referred to, showing that the witnesses' affidavits were filed and the witnesses were discharged by the Pleader Commissioner, as is also apparent from the orders passed by the learned Trial Court. Thus, there is a procedural illegality in passing the impugned judgment, and reliance is placed on the matter of **Ameer Trading Corporation Ltd. Vs. Shapoorji Data Processing Ltd., reported in (2004) 1 SCC, 702.**

9. *Per contra*, learned counsel appearing on behalf of the respondent submits that the impugned judgment and decree do not suffer from any illegality. The impugned judgment was passed in 2019, and despite the lapse of about eight years, instead of restoring conjugal life, the present appeal has been filed, challenging the correctness of the impugned judgment. Learned counsel submits that after the impugned judgment was passed, when a copy of the same was communicated to the appellant through registered post, instead of complying with the said judgment, the appellant chose to file a complaint under the Prevention of Domestic Violence Act, 2005. So far as the passing of the impugned judgment is concerned, the appellant had put in appearance in person and by filing *a Vakalatnama,* and despite sufficient opportunity, when the written statement was not filed, the appellant was prevented from filing the same by an order debarring the filing of the written statement. Learned counsel, therefore, submits that the impugned judgment does not suffer from any illegality and the prayer is made to dismiss the appeal.

FINDINGS

10. Heard the parties and perused the records.

11. On perusal of the record, it appears that the appeal was instituted after a long delay, but a Coordinate Bench of this Court has condoned the delay and in course of hearing, a Coordinate Bench of this Court, while hearing this appeal, appears to have

passed an order of stay of the proceedings of the divorce case, pending before the Court of learned Additional Principal Judge, Additional Family Court, Ranchi being Original Suit No. 160 of 2021 which was instituted for a decree of divorce on account of non-compliance of the order of restitution of conjugal rights.

12. On hearing the rival contentions of the parties, the following points for determination fall for our consideration:

(i) Whether the examination of the witnesses by filing of an affidavit, as required under Order XVIII Rule 4, constituted a breach of the procedure established under Order XVIII Rule 4 and Rule 5 of the C.P.C.

(ii) Whether the respondent was entitled to a decree for restitution of conjugal rights on account of the appellant refusing to live in the company of her husband.

13. The first point for determination is based on the contention that, because the impugned judgment was appealable, the procedure prescribed under Order XVIII Rule 5 ought to have been followed, i.e., the witnesses were required to be examined before the Court, not by the Pleader Commissioner.

14. Reliance has been placed on the judgment reported in **(2004) 1 SCC 702**, in which the Hon'ble Supreme Court has very categorically laid down the law that there is no conflict between the provisions under Rule 4 and Rule 5 of Order XVIII. In

appealable or non-appealable cases, the examination-in-chief on affidavit can be taken, and witnesses are not required to step into the witness box to prove their examination-in-chief. Reiterating the same view, the Hon'ble Supreme Court, in yet another judgment **in the matter of Rasiklal Manikchand Dhariwal and Anr. Vs. M/s M.S.S. Food Products,** reported in **(2011) Supreme SC 1101 (2012) 2 SCC 196**, again placed reliance on the judgment of ***Ameer Trading Corporation Ltd. (Supra)*** and reiterated the law, discussing the principles of harmonious construction, observing that in both appealable and non-appealable cases, the examination-in-chief on affidavit can be taken on record. Such examination-in-chief is sworn before the Oath Commissioner, and only if the witnesses are to be cross-examined would the provisions of Rule 5 of Order XVIII come into play. Order XVIII Rule 5 states that in cases in which the appeal is allowed, the evidence of each witness shall be taken down in the language of the Court in writing by or ***in the presence and under the personal direction and superintendence of the Judge.***

15. For the sake of convenience, Rule 5 of Order XVIII of the C.P.C is quoted hereunder: -

> ***5. How evidence shall be taken in appealable cases.*** *- In cases in which an appeal is allowed, the evidence of each witness shall be, -*
>
> *(a) taken down in the language of the Court, -*

(i) in writing by, or in the presence and under the personal direction and superintendence of, the Judge, or

(ii) from the dictation of the Judge directly on a typewriter; or

(b) if the Judge, for reasons to be recorded, so directs, recorded mechanically in the language of the Court in the presence of the Judge.

16. The Hon'ble Apex Court therefore held that filing an examination-in-chief on affidavit, even in cases where the appeal lies against the judgment, does not suffer from any illegality, and that cross-examination under the Court's supervision, if not directly conducted by the Court, is also sufficient compliance with Order XVIII Rule 5 of the C.P.C.

17. In the facts of the case before the Hon'ble Apex Court, the proceedings were also *ex parte* against the appellant, as in the present case, and the Hon'ble Supreme Court held that, in such cases where there was no one to cross-examine the witnesses, the application of Rule 5 of Order XVIII does not come into play.

18. In view of the principles of law discussed above, we are of the considered view that the recording of evidence by the Trial Court in the manner so done does not suffer from any procedural irregularity or illegality and thus, **this point for determination as raised by the present appellant is answered against the appellant and in favour of the respondent**.

19. Considering the second point for determining whether a decree for restitution of conjugal rights could have been passed

in favour of the respondent. In the facts of the present case, it is not in dispute that the parties were legally married husband and wife. It is also not in dispute that the parties were living separately, i.e., the wife was residing separately from her husband. For restitution of conjugal rights under Section 9 of the Hindu Marriage Act, desertion need not be proved. What is required to be proved is that the other spouse, without reasonable excuse, has withdrawn from the society of the other. Allegations that there was a reasonable excuse for withdrawing from the society of the present respondent, i.e., that cruelty was being meted out to her and that she was ousted from her matrimonial home, remain unsubstantiated, both for want of any pleading and for want of any evidence, and even for want of any cross-examination of the respondent's witnesses, including the respondent himself, who has been examined as a witness. The appellant appeared before the Trial Court and, despite the appearance, did not contest the suit by not filing the written statement, and the Court could have proceeded in terms of Order VIII Rule 10 of the CPC. However, the Court called upon the present respondent to prove his case by adducing evidence. In the absence of any valid contest before the Trial Court, as the case of the respondent remains undefended and the witnesses of the respondent support the case of the respondent, we do not find any illegality in passing the decree for restitution of conjugal rights.

20. We, therefore, are of the considered view that the respondent was entitled to a decree for restitution of conjugal rights and the impugned judgment and decree do not suffer from any illegality.

21. In the course of the arguments, it was impressed that the decree was obtained solely for the purpose of subsequently obtaining a decree for divorce, for which a suit has been instituted and which has presently been stayed by the orders of this Court, vide order dated 09th July, 2025.

22. We are also of the considered view that, since the said question is not open for determination before this Court, no observation can be made on the merits of the claim or the objections. Such questions will be open for adjudication before the Trial Judge when deciding the question of divorce.

23. We are constrained to observe that, although there was a decree for restitution of conjugal rights, it has come up in the course of argument that the present appellant had also instituted a suit for restitution of conjugal rights, and even in this appeal before this Court, the appellant seeks restitution of conjugal rights but still challenges the judgment and decree for restitution of conjugal rights. It would not be proper for us to make any observation as to how and under what circumstances the decree for restitution of conjugal rights was not executed. Such questions are left open for determination in the suit seeking

dissolution of marriage for non-compliance with the decree for restitution of conjugal rights.

24. We are therefore of the considered view on answering the points for determination as formulated by us that the learned Trial Court has not committed any error in law or fact in passing impugned judgment and decree. The appeal is, therefore, dismissed.

25. Pending I.As, if any, do not survive and accordingly stand disposed of.

(M. S. Sonak, C.J.)

(Manoj Prasad, J.)

November, 3rd, 2026
BS/-
A.F.R.