

IN THE HIGH COURT OF JHARKHAND AT RANCHI

First Appeal No.145 of 2024

 Neha Kumari, Aged about 34 years, W/O-Kunal Kumar, D/O-Goutam
 Prasad Chourasiya, R/O-Jasidih Bazar, Station Road, P.O.+P.S-Jasidih,
 District-Deoghar. Presently R/O-Lahbani Dhaiya, Near Kali Mandir,
 Kalyanpur, P.O+P.S-Dhanbad, District-Dhanbad.

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Respondent/Appellant**Versus**

Kunal Kumar, S/O-Late Kedar Prasad Sah, R/O-Jasidih Bazar, Station
 Road, P.O+P.S-Jasidih, District-Deoghar.

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Petitioner/Respondent

**CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
 HON'BLE MR. JUSTICE ARUN KUMAR RAI**

 For the Appellant : Mr. Pratiush Lala, Advocate

For the Respondent : Mr. Ashutosh Pd. Joshi, Advocate

C.A.V on 20.01.2026**Pronounced on 28/01/2026****Per Sujit Narayan Prasad, J.****Prayer**

The instant appeal under section 19(1) of the Family Courts Act, 1984 is directed against the judgment dated 10.05.2024 and decree dated 20.05.2024 passed in Original Suit No.459 of 2022 by the learned Addl. Principal Judge, Addl. Family Court No.II, Dhanbad, whereby and whereunder, the petition filed by the petitioner-husband (respondent herein) under Section 9 of the Hindu Marriage Act, 1955, has been allowed.

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 petitioner (respondent herein) and the respondent (appellant herein) are legally married husband and wife.

- (ii) Their marriage was solemnized on 12-12-2013 at Baiju Batika Deoghar, according to Hindu Rites and Customs. After marriage, both the petitioner and respondent had been lived together as husband and wife. Out of the wedlock, the couple was blessed with two children. After the birth of her son, her behavior was changed and she always started quarreling with the petitioner and his family members without any cogent reason and she always left the house of the petitioner. The respondent put pressure upon the petitioner to live at her father's house but the petitioner refused to live at in-laws' house. On 30-04-2018 the respondent has withdrawn from the society of the petitioner and she left the house of the petitioner without any cogent reason.
- (iii) It is the further case that the petitioner made several attempts to bring the respondent but she always refused to come and join the society of the petitioner.
- (iv) Cause of action of the suit arose on 30-04-2018 when the respondent withdrew from the society of the petitioner and finally arose on 07-02-2021 when the respondent flatly refused to come and live with him. On the aforesaid pleadings, petitioner has sought relief to pass a decree for restitution of conjugal rights.
- (v) Consequent to issue of notice, wife/respondent (appellant herein) had filed written statement wherein she had stated that the present suit is not maintainable either in law or on facts and circumstances of the suit. The case for restitution of conjugal rights has been filed against the respondent (appellant herein) without any rhyme and reason and just only to take benefit in the C.P. Case No.1119/21,

under Section 498A IPC which is pending in the Civil Court, Dhanbad. The entire allegation made in the plaint are totally denied by the respondent. It is further stated that the petitioner is a criminal minded person and he has on several times beaten the respondent mercilessly.

(vi) On the basis of pleadings of the parties, following issues have been framed by the learned Family Judge for just and final decision of the case.

(I) Whether the respondent has sufficient cause to live separately from the petitioner?

(II) Whether the petitioner is entitled to a decree of Restitution of Conjugal Rights u/s 9 of Hindu Marriage Act?

3. In order to substantiate the case his case, the petitioner (respondent herein) has produced and examined altogether two witnesses, i.e., P.W.1, Kunal Kumar and P.W.2, Sanjay Chourasiya.

4. Further, the documentary evidence has been produced on behalf of the petitioner, i.e.,

Exhibit No.	Description of documents
Mark-X to X/15	Copy of cash deposit receipt in the bank account of respondent.

5. On the other hand, respondent (appellant herein) has produced and examined altogether two witnesses on her behalf, i.e., D.W.-1, Gautam Chourasiya and D.W.-2, Neha Kumari (appellant herself)

6. The respondent-wife (appellant herein) has also filed documentary evidence on her behalf, i.e.,

Exhibit No.	Description of documents
Ext.1	Injury report of respondent dated 02.05.2018.
Mark-Y	Copy of order dated 06.05.2022 of this Court to Trf. Petition (Civil No.) 41/2001
Mark-Y/1	Copy of plaint petition of CP 1119/21
Mark-Y/2	Copy of C.C. of deposition of Neha Kumari in OM case no-202/21.
Mark-Y/3	Downloaded print out of bank account details of Neha Kumari of Bank of India

7. Learned Family Judge, after institution of the said case, taking into consideration the pleadings of the parties have decided the *lis* by granting a decree for restitution of conjugal rights in favour of the petitioner-husband (respondent herein).

8. The aforesaid judgment by which the decree for restitution of conjugal rights has been granted in favour of the petitioner-husband (respondent herein) is under challenge by filing the instant appeal.

Submission advanced on behalf of the appellant-wife:

9. Learned counsel appearing for the appellant-wife has taken the following grounds in assailing the impugned judgment:

(i) There is an apparent error in the impugned judgment, since, each and every aspect of the matter has not been taken into consideration and the learned trial Court has failed to take into consideration the evidences available on record.

(ii) It has been contended by the learned counsel for the appellant-wife that the learned Family Judge has committed serious illegality in passing the impugned judgment.

(iii) It has been contended that the respondent-husband has not taken sincere steps to restore his married life, rather, committed his wife with torture and cruelty leading to filing of criminal case being C.P. Case No.1119 of 2021.

(iv) It has further been contended that the respondent-husband has ousted his wife for demand of dowry. The respondent-husband has neglected his wife by all means. He is a person of very rude nature.

(v) The learned Family Judge ought to have considered the filing of maintenance case by the wife and criminal case itself show that the respondent-husband is not maintaining his wife.

(vi) It has been submitted that learned Family Judge ought to have considered the deposition of D.W.1, namely, Goutam Prasad Chourasiya, who happens to be the father of the appellant/wife. In his entire testimony, he has deposed that he has made sincere efforts and requested the respondent/husband to keep his daughter(appellant) in a dignified manner.

(vii) It has been contended that the learned trial Court has not taken into consideration the fact of adducing the evidence on her behalf. Therefore, the appellant has been deprived to adduce evidence on her behalf which is contrary to law.

10. The learned counsel, based upon the aforesaid grounds, has submitted that the impugned judgment and decree, therefore, requires interference.

Submission advanced on behalf of the respondent-husband:

11. Learned counsel appearing for the respondent-husband has taken the following grounds in defending the impugned judgment:

- (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 as led by the respondent-wife (appellant herein) has passed the order impugned, as such, same may not be interfered with.
- (ii) It has been contended by the learned counsel for the respondent-husband that after the birth of his son, her behaviour was changed and she was always quarreling with the husband and his family members without any cogent reason. She left the house of her husband always.
- (iii) The respondent-wife (appellant herein) put pressure upon the husband (respondent herein) to live at her father's house but the petitioner-husband (respondent herein) refused to live at his in-laws' house.
- (iv) It has also been contended that the respondent-wife (appellant herein) was withdrawn from the society of the petitioner-husband (respondent herein) and she left the house of the petitioner-husband without any cogent reason.
- (v) It has been submitted that the petitioner-husband (respondent herein) had made several attempts to bring the

respondent-wife but she always refused to come and join the society of the petitioner-husband (respondent herein).

(vi) 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 appellant-wife has never been towards salvaging the institution of marriage as it is she who has refused to come and join the society of the respondent-husband (respondent herein) and, therefore on the pretext of the aforesaid categorical finding of the Family Court, the impugned order requires no interference.

12. Learned counsel, based upon the aforesaid grounds, has submitted that the learned Family Judge has rightly recorded its finding that the respondent-husband is bonafidely since beginning always tried his best to lead a happy conjugal life but it is the appellant-wife who at every moment of time avoided him, hence, the impugned judgment cannot be said to suffer from an error.

Analysis:

13. We have heard the learned counsel appearing for the parties and gone through the impugned judgment as well as the Trial Court Records, as also the testimonies of the witnesses and evidences available on record.

14. Before entering into merits of the case, it would be apt to refer herein that under Section 7 of the Family Courts Act, the Family Court shall have and exercise all the jurisdiction exercisable by any District Court or any Sub-ordinate Civil Court under any law for the time being in force in respect of suits and proceedings of the nature which are described in the explanation to Section 7(1).

15. 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*.

16. 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."

17. Now, we are proceeding to the factual aspects of the case. The admitted fact herein is that the suit has been filed by the respondent husband under Section 9 of the Hindu Marriage Act, 1955 for a decree of restitution of conjugal rights, wherein, altogether two issues have been

framed by the learned Family Court, for ready reference, the same are being quoted hereinbelow:

- (I) *Whether the respondent (appellant herein) has sufficient cause to live separately from the petitioner (respondent herein)?*
- (II) *Whether the petitioner is entitled to a decree of Restitution of Conjugal Rights u/s 9 of Hindu Marriage Act?*

15. The learned Family Judge has taken into consideration the foremost issue, i.e., issue no.(II);

“Whether the petitioner (husband) is entitled to a decree of Restitution of Conjugal Rights u/s 9 of Hindu Marriage Act?”

16. The learned Family Judge has considered the evidence adduced on behalf of the parties for deciding the issues involved in the said suit.

17. During the trial, two witnesses have been examined on behalf of the petitioner-husband (respondent herein) who himself has been examined as P.W.1. P.W.2-Sanjay Chourasiya is the brother-in-law of the petitioner-husband (respondent herein).

19. The petitioner-husband (respondent herein) as P.W.1, namely, Kunal Kumar, in his examination-in-chief has deposed that he has filed the case for Restitution of Conjugal Rights against his wife, with whom, he solemnized marriage on 12.12.2013 with Hindu Rites and Customs in Deoghar. Out of the wedlock, two children were born. After birth of their son, respondent-wife (appellant herein) started quarreling with him on very trivial ground for no reason. She used to go from the house without giving information to him and on being protested by him, she starts abusing him. She put pressure upon him to live in Dhanbad in her *maika* and he has denied the same and upon which, she got annoyed and started residing in her *maika*. Thereafter, he requested her several times to reside in Deoghar, but she refused his request in spite of that in regular interval

he has been coming in Dhanbad to meet his wife and children. He also provides money to respondent for her maintenance and he has given Rs.85,800/- to his wife till 20-04-2022. In the year 2021 he again had gone along with his kith and kin to bring his wife back her matrimonial house but she flatly refused to join the company of petitioner/husband (respondent herein) and after three years she(appellant/wife) has filed a case bearing C.P. Case No.1119/21 for demand of dowry and cruelty against him. Petitioner/husband has further deposed that he wants to keep his wife and children with full dignity and honor.

In his cross-examination, he has deposed that this case was filed by him in Civil Court, Deoghar. It is not true that when his wife appeared in Civil Court, Dhanbad he had beaten her. His wife has filed transfer petition before this Court to transfer the case. It is not true that due to demand of dowry he tortured his wife. It is not true that in OM case no-202/21 he has given false evidence. It is false to say that he and his family members had brutally beaten his wife due to demand of dowry. He is not providing litigation cost to his wife in the case.

20. P.W.-2 is brother-in-law of the petitioner who has supported the evidence of P.W.-1 in examination-in-chief.

21. In his cross-examination, he has deposed that his house is situated 60 Km away from the house of petitioner. Respondent has filed a case u/s 498A of IPC against petitioner-husband. Petitioner (respondent herein) runs a general store in Jasidih whose annual income is Rs.60-70 thousand. He has no knowledge that respondent was beaten by the petitioner-husband and his family members due to demand of dowry.

22. During the trial, two witnesses have been examined on behalf of the respondent-wife (appellant herein) who herself has been examined as D.W.2. D.W.1-Gautam Chourasiya is the father of the petitioner-husband (respondent herein).

23. D.W.-2 is respondent (appellant herein) herself and she has deposed in her examination-in-chief that her husband has filed a false case against her. At the time of marriage, it was falsely stated by her in laws that petitioner is software engineer and he is doing job in Delhi and after marriage she came to know that he has Jarda Factory and he is not a software engineer. At the time of statement of this case in Civil Court, Deoghar, the petitioner and his brother had beaten her in Deoghar Civil Court premises and thereafter, she has filed transfer petition before this Court and the case was transferred to Civil Court Dhanbad. Due to demand of dowry of Rs. three lakhs she was beaten by the respondent and his family members. She was threatened on 31-05-2023 that if she did not give her evidence in his favour, she along with her children will be killed. She was brutally beaten and she was treated on 02-05-2018 in the clinic of Dr. M. Prasad. She has filed a criminal case no-1119/21. The petitioner in drunken condition tried to kill her daughter.

24. In her cross-examination, she has stated that she has not made any complaint when she was assaulted by the respondent in Civil court premises as mentioned by her at para-4 of her evidence. In transfer petition, she had not mentioned that due to fear of assault by her husband she has filed transfer petition before this Court rather she had mentioned that her children were minor and there is some financial problem also so she has filed the transfer petition to transfer the case. Her father had not

made any complaint regarding the incident occurred on 31-05-2023. In the prescription of Dr. M. Prasad neither name of doctor nor his place of sitting has been mentioned. She does not remember as to whether she has mentioned or not that petitioner tried to kill her daughter in drunken state as it has been stated by her in her evidence. Her husband has provided her maintenance only two times after passing of the order by the Family Court.

25. D.W-1 is father of the respondent(appellant/wife) who has supported the evidence of D.W.-2 in examination-in-chief.

26. In his cross-examination, he has stated that there is no dispute between him, and his son-in-law (Damad). He wishes that his daughter and children reside along with his son-in-law with love and affection and he will have no objection if her daughter resides with her husband. Her daughter has gone two times in the clinic of Dr. M. Prasad. First time, she visited on 30-05-2018 and he does not remember when her daughter had visited to clinic of Dr. M. Prasad several times. His son-in-law had come to meet his wife and children two to three times since 2018.

27. In the backdrop of the aforesaid factual aspect, now the questions arise for determination in this appeal are; “whether prayer of respondent husband for restitution of conjugal rights is just and proper and; whether allegations levelled by the appellant-wife about mental and physical torture meted out to her and demand of dowry is true.”

28. The learned counsel for the appellant wife has emphatically contended that since the learned family judge has not taken into consideration the entire factual aspect in right prospective, as such, the impugned order/judgment is perverse and not sustainable in eye of law.

29. This Court, while appreciating the argument advanced on behalf of the appellant on the issue of perversity needs to refer herein the interpretation of the word “perverse” as has been interpreted by the Hon'ble Apex Court which means that there is no evidence or erroneous consideration of the evidence.

30. 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.

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.

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.”*

31. Thus, 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. A perverse verdict may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence.

32. In backdrop of the aforesaid factual aspect and legal position, 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 9 was to preserve the marriage. For ready reference Section 9 of the Hindu Marriage Act is being referred as under:

9. Restitution of conjugal rights.— *When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other aggrieved party 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.*

[Explanation.—Where a question arises whether there has been reasonable excuse for withdrawal from the society, the burden of proving reasonable excuse shall be on the person who has withdrawn from the society.]

33. 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.

34. Further, in explanation part of the said provision, it has been prescribed that when a question arises whether there has been “reasonable excuse” for withdrawal from the society, the burden of proving “reasonable excuse” shall be on the person who has withdrawn from the society.

35. 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).

36. 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)".

37. 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.

35. The Hon'ble Apex Court in the case of ***Suman Singh v. Sanjay Singh, (2017) 4 SCC 85*** has categorically observed that when there is evidence establishing that it was respondent husband who withdrew from appellant's company without any reasonable cause, appellant is entitled to decree for restitution of conjugal rights. For ready reference, the relevant paragraphs are being quoted as under:

“24. In our considered view, as it appears to us from perusal of the evidence that it is the respondent who withdrew from the appellant's company without there being any reasonable cause to do so. Now that we have held on facts that the respondent failed to make out any case of cruelty against the appellant, it is clear to us that it was the respondent who withdrew from the company of the appellant without reasonable cause and not the vice versa.

25. In view of the foregoing discussion, the appeals succeed and are allowed. The impugned judgment [Suman Singh v. Sanjay Singh, 2013 SCC OnLine Del 2138 : (2013) 136 DRJ 107] is set aside. As a result, the petition filed by the respondent (husband) under Section 13(1) of the Act seeking dissolution of marriage is dismissed. As a consequence thereof, the marriage between the parties is held to subsist whereas the petition filed by the appellant against the respondent under Section 9 of the Act seeking restitution of conjugal rights is allowed. A decree for restitution of conjugal rights is, accordingly, passed against the respondent.

26. We hope and trust that the parties would now realise their duties and obligations against each other as also would realise their joint obligations as mother and father towards their grown up daughters. Both should, therefore, give a quiet burial to their past deeds/acts and bitter experiences and start living together and see that their daughters

are well settled in their respective lives. Such reunion, we feel, would be in the interest of all family members in the long run and will bring peace, harmony and happiness. We find that the respondent is working as a "Caretaker" in the Government Department (see Para 4 of his petition). He must, therefore, be the "Caretaker" of his own family that being his first obligation and at the same time attend to his government duties to maintain his family."

36. Thus, on the basis of aforesaid settled position of law, it is evident that 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.

37. In the backdrop of the settled position, this Court is now reverting 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. It has further been alleged by the petitioner/ respondent/husband before learned family court that respondent/appellant/wife put pressure upon him to live in Dhanbad in her maika and he has denied the same and upon which, she got annoyed and started residing in her maika. Thereafter, he requested her several times to reside in Deoghar, but she refused his request and after three years she(appellant/wife) has filed a case bearing C.P. Case No.1119/21 for demand of dowry and cruelty against him.

38. In contrary to the aforesaid, D.W.-2 is the respondent (appellant herein) herself deposed in her examination-in-chief that at the time of

marriage, it was falsely stated by her in-laws that petitioner is software engineer and he is doing job in Delhi and after marriage, she came to know that he has Jarda Factory and he is not a software engineer and due to demand of dowry of rupees three lakhs, she was beaten by the respondent and his family members. She was threatened on 31-05-2023 that if she did not give her evidence in his favour, she along with her children will be killed. She was brutally beaten and she was treated on 02-05-2018 in the clinic of Dr. M. Prasad. She has filed a criminal case no-1119/21. It has further been stated that the petitioner in drunken condition tried to kill her daughter.

39. D.W-1 is father of the respondent(appellant/wife) who has supported the evidence of D.W.-2 in examination-in-chief.

40. In his cross-examination, he has stated that her daughter has gone two times in the clinic of Dr. M. Prasad. First time, she visited on 30-05-2018 and he does not remember when her daughter had visited to clinic of Dr. M. Prasad several times. His son-in-law had come to meet his wife and children two to three times since 2018.

41. Thus, from the aforesaid it is evident that parties have been living separately since 2018 and the appellant/wife has specifically stated that due to demand of dowry of Rs. three lakhs she was beaten by the respondent and his family members. She was brutally beaten and she was treated on 02-05-2018 in the clinic of Dr. M. Prasad thereafter She has filed a criminal case no-1119/21. Further, she had deposed in her examination-in-chief that at the time of marriage, it was falsely stated by her in laws that petitioner is software engineer and he is doing job in Delhi

but after marriage she came to know that he has Jarda Factory and he is not a software engineer.

42. Thus, from the aforesaid, it is evident that appellant-wife due to mental and physical torture in marital life does not want to continue the same and she had been compelled to leave the house of the respondent husband.

43. 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'.

44. From the impugned judgment, it appears that the learned Family Court has not given any cogent finding with regard to the issues framed in the matrimonial suit rather the only reliance has been placed upon the selective part of the deposition of DW.1 (father of the appellant wife) and has picked the part of deposition in isolation, particularly, the part of the statement of DW.1, wherein, he has stated that he has no complaint against his son-in-law and based upon the said statement of DW.1, the learned Family Court had passed the order of restitution of the conjugal rights in favour of the respondent-husband, for ready reference, the relevant part of the impugned judgment is being quoted as under:

"24. This case was filed by the petitioner/husband for restitution of conjugal rights against his wife and he has stated that for no any reason she left her company and since year 2018 she is residing in her maika. Thereafter petitioner had gone several times to bring his wife back but on one or other pretext she refused to return back to her sasural. Dw-1 is father of respondent who has admitted the pleadings of petitioner that ever since his daughter is residing in her maika his son in law had come 2-3 times to meet his wife and children. This witness has further deposed that there is not any dispute between he and his son in law and he has love and affection with his son in law and he

desires that his daughter and her husband resolve their dispute and reside together. So as per evidence of this witness who is father of respondent himself has admitted that he has no any complaint with her husband which finds support the version of receipt has been filed marked as X series. As per these bank receipt he has been regularly paying money to respondent since year 2019 till now and as per petitioner he has paid Rs. 85,000/- and he is always ready to keep his wife with full dignity and honour. But it appears from the evidence of witness that it is respondent who has withdrawn herself from the society of petitioner without any reasonable excuse.

25. Thus in the instant suit as discussed above it transpires that the petitioner wants to keep his wife with full dignity and honour but it is a respondent/wife of petitioner who without any reasonable excuse has withdrawn herself from the society of the petitioner.”

45. At this juncture, it requires 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.

46. 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 DW.1 in isolation, which is contrary to settled position of law that evidence should be taken as whole and not in piecemeal.

47. There is no dispute that Sub-section (1) of section 9 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.

48. Several decisions of Indian High Courts too have expressed view more or less similar to it. In *Anjani Dei v. Krushna Chandra AIR 1954 Ori 117*, it has been observed that “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”.

49. Similarly, in *Mst. Gurdev Kaur v. Sarwan Singh, AIR 1959 Punjab 162* it has been observed that where the husband is guilty of conduct which falls short of legal cruelty in the sense that it is not cruelty of the kind mentioned the Hindu Marriage Act, but his misbehaviour or misconduct is such that the wife is fully justified in separating herself from him, the husband cannot succeed in his petition under section 9 as it will not be possible for the Court to say that the wife has withdrawn herself from his society without reasonable excuse. In a case of this nature, the petition shall fail not because of any defence set up by the wife under section 9(2) but it cannot succeed on account of the non-fulfillment of one of the essential ingredients of sub-section (1) of section 9. Apart from the provisions of section 9(1) even if a proceeding is undefended, it is obligatory on the Court to be satisfied under section 23(l)(a) that the petitioner is not in any way taking advantage of his or her own wrong or

disability for the purpose of such relief. This makes the position clearer that the Court is bound to take into consideration the conduct of the petitioner. If the petitioner by his own misdeeds forced his spouse to leave him, he cannot be allowed to take advantage of his own wrong and ask for the assistance of the Court of perpetuate his own wrong doing.

50. 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 wife as to whether she intends to live with the husband or not, peacefully and with all dignity. If the wife utters that she cannot live with the husband due to the reason as stated by the wife in her evidence, the Court cannot compel such party to live together with the husband compromising with the dignity and subjected to cruelty, as is being reflected from the evidence of the wife.

51. Further, the appellant wife cannot therefore be compelled to resume matrimonial life with the respondent husband, in the face of such cruel treatment. Moreover, herein the couple have been living separately since 2018 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.

52. Thus, from the perusal of the impugned order, it is evident that the learned family Judge while allowing the appeal in favour of the plaintiff/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.

53. Thus, on the basis of discussion made hereinabove, this Court is of the considered view that it is a case where it can be said that the findings of the learned Family Court are based on no evidence and the order of restitution of conjugal rights has been passed without due deliberation of the entire factual aspects along with the proper appreciation of evidences laid by both the parties and therefore, there is perversity in the order/judgment of the learned Family Court.

54. The upshot of the whole discussion, therefore, is that this appeal succeeds and the impugned judgment dated 10.05.2024 and the decree dated 20.05.2024 passed by the learned Addl. Principal Judge, Addl. Family Court No. II, Dhanbad in connection with Original Suit No. 459 of 2022 are, hereby, quashed and set aside.

55. Accordingly, the instant appeal stands allowed.

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

(Sujit Narayan Prasad, J.)

I Agree

(Arun Kumar Rai, J.)

(Arun Kumar Rai, J.)

*Dated: 28/01/2026
 Jharkhand High Court, Ranchi
 Rohit/-A.F.R.
 Uploaded on 29.01.2026*