IN THE HIGH COURT OF JHARKHAND AT RANCHI
F.A. No.73 of 2025

Sadaf Humaira, Aged about 26 years, Wife of Faisal Hasan, Daughter of Md. Mahtab, Resident of Daroga House, Near Noor Public School, P.O. & P.S.-Sadar, District-Hazaribagh.
... ... Opposite Party/Appellant

Versus

Faisal Hasan, Son of Anjahul Hasan, Resident of Village-Edalhatu, Morabadi, P.O.-Ranchi University, P.S.-Bariatu, District-Ranchi **... .... Petitioner/Respondent**

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

.....

For the Appellant : Mr. Aman Kumar, Advocate
For the Respondent : Md. Faruque Ansari, Advocate
Ms. Shabana Parween, Advocate
Mr. Vishal Kr. Gupta, Advocate

.....

C.A.V. on 14.09.2026 **Pronounced on 13/10/2026**

Per Sujit Narayan Prasad, J.

Prayer:

1. The instant appeal under section 19(1) of the Family Courts Act, 1984 is directed against the judgment dated 24.01.2025 and decree sealed and signed dated 12.02.2025, passed in Original Suit No.173 of 2023 by the learned Principal Judge, Family Court, Hazaribagh, whereby and whereunder the petition filed by the petitioner-husband (respondent herein) under Section 281 of the Mohammedan Law (by Mulla) against his respondent/wife (appellant herein) for restitution of conjugal rights, has been allowed.

Factual Matrix

2. The brief facts of the case of the petitioner-husband

(respondent herein) as narrated before the learned Family Court, is that petitioner/husband (respondent herein) and Opposite Party(O.P)/wife (appellant herein) are legally wedded husband and wife and their marriage was solemnized on 05.03.2020 at the house of the O.P. as per Muslim rites and rituals and after the marriage, O.P. came to her sasural at Edalhatu, Morabadi, P.S. Bariyatu, Ranchi and the couple lead a peaceful conjugal life.

3. It is further stated that at the time of marriage, he has not taken any type of dowry from the O.P. or her parents. He has been living in his fuwa's house at Edalhatu, Morabadi for the last 25 years and after marriage, his wife was also living with her fuwa and the parents of petitioner live in Hamdard Nagar -D, P.S. Jamalpur, Distt. Aligarh, U.P.

4. It is the further case that after two days of marriage, his wife used to quarrel with him and his family members and she said to her father over phone that she does not want to live there, she used filthy language against the parents of petitioner. On 08.03.2020, the elder brother of the O.P., Md. Ashique and others came to Ranchi on the occasion of Chauthi and they took the O.P. with them to her maike at Hazaribag and petitioner brought back his wife at Edalhatu, Ranchi, but after few days, she pressurized him for going to her makie and she went back to her maike.

5. Thereafter, he went to his in-laws' house on 17.04.2020 to bring back his wife but his wife suddenly slapped him on 22.04.2020 and used abusive language in the presence of her in-laws and on 10.05.2020, the petitioner brought his wife back with him to Ranchi but after sometime, his wife started ill-treating him and other family members and on 06.06.2020, O.P.'s father came, brought his wife in the house of her brother-in-law at Bariyatu, Ranchi with all the articles and on 18.01.2021, his wife gave birth to a female child and during said period, he used to visit his sasural and bear all the expenses towards the birth of said child and thereafter, O.P. again came in her in-laws house on 26.07.2021 where she started behaving roughly with the petitioner and on the pressure of his wife, he left his aunty's house and started to live with his wife in Sattar Colony, Bariyatu, Road No.6, Ranchi in a rented house of one Md. Rahmatullah where his wife also started ill behaving with him saying that she will lodge a false case against him and since 26.07.2022, his wife is living in her maike without any plausible reason due to misguidance of her parents.

6. The petitioner, respondent herein had further stated before the Family Court that he wants to keep his wife and minor child with full love and dignity with him and also wants to fulfill all the necessary desires for their

maintenance.

7. Thus, the petitioner (respondent herein) has filed the suit before the court with a prayer to pass a decree of restitution of conjugal rights directing the O.P.-wife to live with him and discharge her marital obligation and cohabit with him as legally married wife.

8. In pursuant to notice, opposite party-wife (appellant herein) appeared and thereafter, the case was fixed for reconciliation and the matter was referred for mediation to Mediation Centre, Ranchi but the mediation was unsuccessful.

9. The opposite party-wife has filed her written statement on 20.12.2023, wherein, she had stated that her marriage with the petitioner was solemnized on 05.03.2020 at her father's house as per Muslim rites and rituals and after the marriage, she went to her *sasural* situated at Edalhatu, Morabadi, P.S. Bariatu, Ranchi along with her husband and the couple is living a peaceful marital life.

10. But, in the written statement she denied that the petitioner had not taken any dowry at the time of marriage and claimed that at the time of marriage, her parents had given cash, jewellery and other valuable gifts to the tune of Rs.10,00,000/- (Ten Lakhs). She also stated that the ancestral house of her husband is situated at Hamdard Nagar-D, Aligarh, Uttar Pradesh and her husband has been

living in his aunt's house at Edalhatu Morabadi for 25 years and she had come to this aunt's house after marriage but she further denied that just after two days of marriage she started quarrelling with her husband and his family members and she told her father over phone that she did not want to live there, or that she used abusive language against the parents of the petitioner.

11. The O.P./wife (appellant herein) further stated that it is true that on 08.03.2020, her elder brother Mohd. Aashiq and others came to Ranchi on the occasion of Chauthi and they took her with them to her maternal home at Hazaribagh and on 09.03.2020, the petitioner brought her back to Edalhatu, Ranchi but it is wrong to say that after some days, she pressurized her husband to go to her maternal home and she returned to her maternal home. The O.P. further stated that it is not correct to state that the petitioner/husband (respondent herein) came to his in-law's house on 17.04.2020 to bring back his wife and on 22.04.2020, his wife suddenly slapped him and used abusive language in presence of her in-laws and on 10.05.2020, when the petitioner brought back his wife with him to Ranchi, after sometime, his wife started ill-treating him and other family members and on 06.06.2020, father of O.P. came and brought her along with all the belongings to her brother-in-law's house at Bariatu, Ranchi.

12. The O.P. further stated that it is true that she gave birth to a girl child on 18.01.2021 but it is not correct that the petitioner has borne all the expenses of birth of the said child, in fact all the expenses were borne by her father. O.P. has further stated that she is a respectable woman, so she does not want to live in the house of *fuwa* of petitioner because she is hot feeling safe there on account of bad intention of Jija of petitioner towards her and she further stated that the petitioner has filed the suit to save his skin because petitioner is not willing to maintain her as well as her minor child.

13. On the basis of pleadings of the parties, following issues have been framed by the learned Family Judge for proper adjudication of the suit :-

(i) Whether the suit as framed, is maintainable in the present form?

(ii) Whether the petitioner Faisal Hasan has been willing to perform his part of marital obligation but the O.P. Sadaf Humaira, wife of petitioner Faisal Hasan has without reasonable excuse withdrawn from the society of her husband?

(iii) Whether the petitioner is entitled to the relief of a decree for the restitution of conjugal rights?

(iv) Whether the petitioner is entitled for any other relief/reliefs?

14. In order to substantiate his case, the petitioner-husband (respondent herein) has produced and examined the following oral as well as documentary evidence.

Oral evidence: -

P.W.	Name of witness
1.	Faisal Hasan, petitioner himself

Documentary evidence: -

Exhibit	Documents
1	Signature of petitioner on Nikahnama
1/1	Signature of opposite party on Nikahnama
Marked as "X" for identification	Nikahnama

15. In order to defeat the claim of petitioner/husband, the opposite party (appellant herein) has examined herself as O.P.W.1. She has also produced and exhibited list of Fehrist (articles in 16 sheets) which has been marked as Ext. A.

16. Learned Family Judge, after institution of the said case, taking into consideration the pleadings of the parties have decided the *lis* by allowing the prayer for restitution of conjugal rights in favour of the petitioner/husband (respondent herein).

17. The aforesaid judgment by which the prayer for restitution of conjugal rights has been allowed against the opposite party-wife (appellant herein) is under challenge by filing the instant appeal.

Submission advanced on behalf of the appellant-wife

18. Learned counsel appearing for the appellant 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) The learned Family Court has no valid reason to disbelieve the evidence adduced by the appellant/wife in the suit.

(iv) It is not correct that the petitioner came to his in-law's house on 17.04.2020 to bring back his wife and on 22.04.2020, his wife slapped him and used abusive language in presence of her in-laws.

(v) It has also been contended that the appellant-wife is always ready to reside with her husband/respondent herein in any other house where Jija of the respondent/husband is not residing.

(vi) It has been submitted that the appellant-wife is respectable woman so she does not want to live in the house of fuwa of petitioner-husband because she was not feeling safe there on account of bad intention of Jija of petitioner.

(vii) It has also been submitted that the learned Family

Judge has failed to consider that as per Section 281 of the Mohammedan Law essential facts which a husband is required to establish is that his wife has "without a lawful cause refused to cohabit with him" and here the wife has lawful cause to refuse to cohabit.

(viii) It has also been submitted that the appellant-wife has not withdrawn herself from the society of the respondent-husband without any reasonable cause.

(ix) 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

19. Learned counsel appearing for the respondent-wife 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 parties has passed the order/judgment impugned, as such, the same may not be interfered with.

(ii) It has been contended by the learned counsel for the respondent-husband that after the marriage, the respondent has performed his full obligation of conjugal life and during his marital life he has given all respect and regard to everyone including in-laws and her wife.

(iii) It has been submitted that at the time of marriage, he has not taken any type of dowry from the opposite party or her parents.

(iv) It has also been submitted that after two days of marriage, his wife used to quarrel with him and his family members and she said to her father over phone that she does not want to live there. She always used filthy language against the parents of petitioner-husband.

(v) It has been contended that since 26.07.2022, his wife is living in her maike without any plausible reason due to misguidance of her parents.

(vi) It has been contended that the appellant-wife, without any reasonable cause, has withdrawn herself from the society of the respondent-husband she left the house of the petitioner-husband (respondent herein) without any cogent reason.

(vii) It has also been contended that the respondent-husband wants to keep his wife and minor child with full love and dignity with him and also wants to fulfill all necessary desires for their maintenance.

20. It has also been submitted that the learned Family Court after taking into consideration the material available on record has found that the respondent wife (appellant herein) has deserted the petitioner/husband (respondent

herein) without any reasonable excuse and, therefore the impugned order requires no interference.

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

Analysis:

22. We have heard the learned counsel 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.

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

24. 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.

25. 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."*

26. Now, we are proceeding to the factual aspects of the case.

27. The marriage between the parties was solemnized on 05.03.2020 according to Muslim rites, and initially they resided at the house of the respondent's aunt (fuwa) in Ranchi. The respondent alleged that the appellant soon began quarrelling, left for her parental home on several occasions, and even slapped him on 22.04.2020. He further claimed that despite his efforts to bring her back, she continued to ill-treat him and ultimately left on 06.06.2020

with her father.

28. The respondent admitted that a female child was born on 18.01.2021 and asserted that he bore the expenses of delivery. He stated that the appellant returned on 26.07.2021, after which they shifted to a rented house at Bariyatu, Ranchi, but she allegedly continued her improper conduct and threatened false criminal proceedings. According to him, since 26.07.2022 she had been residing at her parental home without reasonable cause. He therefore sought restitution of conjugal rights, asserting his willingness to maintain the appellant and their minor daughter with dignity and affection.

29. In her written statement filed on 20.12.2023, the appellant-wife admitted the marriage and the child's birth but denied the allegations of quarrelling, slapping, or unjustified withdrawal. She asserted that her parents had given cash, jewellery, and valuables worth about ₹10,00,000 at marriage, and that her father bore the delivery expenses. Her principal defence was that she felt unsafe in the respondent's aunt's house due to the alleged improper conduct of the respondent's jija, though she was willing to live with her husband elsewhere. She alleged that the suit was filed to evade maintenance obligations.

30. On the basis of pleadings, the Family Court framed issues regarding maintainability, withdrawal without

reasonable excuse, and entitlement to restitution, and after considering evidence including the Nikahnama and list of articles, decreed restitution in favour of the husband, prompting the present appeal.

31. The admitted fact herein is that the suit before learned Family Court has been filed by the respondent-husband for a decree of restitution of conjugal rights wherein altogether four issues have been framed by the learned Family Court, for ready reference, the same are being quoted hereinbelow:-

(i) Whether the suit as framed, is maintainable in the present form?

(ii) Whether the petitioner Faisal Hasan has been willing to perform his part of marital obligation but the O.P. Sadaf Humaira, wife of petitioner Faisal Hasan has without reasonable excuse withdrawn from the society of her husband?

(iii) Whether the petitioner is entitled to the relief of a decree for the restitution of conjugal rights?

(iv) Whether the petitioner is entitled for any other relief/reliefs?

32. The learned Family Judge has taken into consideration the foremost issue, i.e., issue no.(ii) and (iii)-

> "(ii) Whether the petitioner Faisal Hasan has been willing to perform his part of marital obligation but the O.P. Sadaf Humaira, wife of petitioner Faisal Hasan has without reasonable excuse withdrawn from the society of her husband?
>
> (iii) Whether the petitioner is entitled to the relief of a decree for the restitution of conjugal life?

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

34. During the trial, on behalf of the petitioner/husband, respondent herein, one witness, i.e., P.W.1, namely, Faisal Hasan, has been examined. For ready reference, the evidences led on behalf of the petitioner-husband, respondent herein, are being referred as under:

35. **P.W.-1 Faisal Hasan (respondent himself)** in his examination-in-chief has deposed that his marriage with O.P. was solemnized on 05.03.2020, according to Muslim rites and after the marriage, the O.P. started living happily with him at his aunt's house in Village Edalhatu, Police Station Bariatu, District Ranchi and during the said marriage there was no dowry demand. He has further deposed that he is a junior advocate in civil court, Ranchi and is practicing for the last four years under the senior advocate, and he was brought up by his aunt Sarvari Kahtun aged about 80 years and he is still living in his eighty-year-old aunt's house. After two days of marriage, his wife used to quarrel with him and his family presence of her family members slapped and abused him but again on 10.05.2020, he took the O.P. with him at his house. He further deposed that on 06.06.2020, his wife called her father and taking all the belongings went to the house of her

brother-in-law situated at Bariyatu, Ranchi. He further deposed that he tried several times to bring his wife but his wife kept refusing to come and she kept saying/ asking him to stay in Hazaribagh. He further deposed that he is still ready to keep his wife.

36. During cross examination, this witness has deposed that Sarvari Khatoon is his Fuwa, who has only one daughter namely, Shabnam Khatoon and her marriage was solemnized with one Dr. Arun Kumar Paswan, who is a doctor by profession. He has further deposed that he does not want to live away from his aunt's house and he also denied that his brother-in-law Dr. Arun Kumar Paswan has an evil eye on his wife, so the O.P. does not want to live with him. He also denied that he is not ready to keep his wife.

37. Thus, from the aforesaid it appears that the respondent described himself as a junior advocate practicing in Ranchi, raised by his elderly aunt, and alleged that after two days of marriage his wife (appellant herein) began quarrelling, even slapping and abusing him and on 06.06.2020 she left with her father, taking her belongings, and despite his repeated attempts she refused to return, insisting instead that he live in Hazaribagh.

38. In cross-examination, respondent stated that his aunt Sarvari Khatoon has one daughter, Shabnam Khatoon, married to Dr. Arun Kumar Paswan. He categorically denied

the allegation that his brother-in-law had an evil eye on his wife, which was the reason for her unwillingness to stay at his aunt’s house.

39. On behalf of respondent/wife (appellant herein) the appellant herself was examined as OPW 1. In her examination-in-chief has deposed that her marriage was solemnised with petitioner on 05.03.2020 as per Muslim rites and at the time of her Nikah, her father gave her goods as per the list of items including gold, silver jewellery, utensils, furniture, scooty etc. worth Rs. 15,00,000/-. She further deposed that after marriage, she started living peacefully with the petitioner at her husband's fufi's house and after some time of marriage, the petitioner's brother-in-law, Dr. Arun Paswan who also lives there, started having bad intentions towards her, about which she informed the petitioner but her husband did not pay any attention to it, so, she was not feeling safe to live in the said house, thereafter, she left the house and started living in a rented house situated at Bariyatu Ranchi but her husband left her and again went back to his fufi's house. Thereafter, on 10.07.2022, she and her minor daughter came back to Hazaribagh and since then her husband did not take care of her and her minor daughter and lastly stated that a false case has been lodged by her husband. During cross-examination, this witness deposed that prior to her

marriage, she had knowledge that her husband- petitioner lives in Ranchi and further stated that the brother-in-law of petitioner cast evil eye on her but she has not filed any complaint against him and she further deposed that she can live with her husband but she cannot live in the house where he lives with his fufi. She further deposed that her husband wanted to take her away but he wanted to take her to the same house so she did not want to go. During cross-examination, when the applicant's bank account statements were shown to the O.P., she admitted that money had been transferred from her husband's bank account to her bank account.

40. Thus, from the aforesaid in essence, the appellant-wife’s deposition conveys that although she initially lived peacefully with her husband at his aunt’s house, she soon felt unsafe due to the alleged improper conduct of the petitioner’s brother-in-law, Dr. Arun Paswan. Despite informing her husband, she claimed that he ignored her concerns, compelling her to leave the said matrimonial house and started living in a rented house situated at Bariyatu Ranchi but her husband left her and again went back to his fufi's house. Thereafter, on 10.07.2022, she and her minor daughter came back to Hazaribagh and since then her husband did not take care of her and her minor daughter and lastly stated that a false case has been lodged

by her husband. She further deposed that her husband wanted to take her away but he wanted to take her to the same house so she did not want to go.

41. In the backdrop of the aforesaid factual aspect, it needs to refer herein that Section 281 of the Mulla's Principles of Mohammedan Law deals with the aspect of the restitution of conjugal rights but does not throw any light as to in what circumstances, a decree for restitution of conjugal rights can be granted or declined and there is only mention that if wife without lawful cause ceases to co-habit with her husband, the husband may sue the wife for restitution of conjugal rights , for ready reference Section 281 from the ***Principles of Mohammedan Law by Mulla 20th edition at page 367*** which reads as under: -

> *"Where a wife without lawful cause ceases to cohabit with her husband, the husband may sue the wife for restitution of conjugal rights."*

42. It is not in dispute that the parties are governed by the principles of Hanafi school of Mahomedan Law. Section 281 (as described by Mulla-in principles of Mohamedan Law) which is expressly been applied purports that the suit for restitution of conjugal rights can be filed by husband where a wife without lawful cause ceases to cohabit with her husband, the husband may sue the wife for restitution of conjugal rights. Sub-section (2) of Section 281 gives defence to a wife that when it is of such a character as to render it

unsafe for the wife to return to her husband's dominion it would be a valid defence.

43. It needs to refer herein that a marriage between Mohammedans is a civil contract and a suit for restitution of conjugal rights is nothing more than an enforcement of the right to consortium under this contract.

44. It is equitable proposition of law that in a suit for restitution of conjugal rights by a husband against his wife, if the Court after a review of the evidence feels that the circumstances reveal that the husband had been guilty of unnecessary harassment caused to his wife or of such conduct as to make it inequitable for the Court to compel his wife to live with him, it will refuse the relief.

45. It has been contended by the appellant-wife that she cannot live in the house where the respondent-husband lives with his fufi as respondent’s brother-in-law allegedly cast an evil eye upon her.

46. *Per contra*, the respondent-husband has contended that after the said marriage, she has performed his full obligation of conjugal life and during his marital life, he has given all respect and regard to all including in-laws and his wife. It has further been stated that his wife gave birth to a female child and during said period, he used to visit his sasural and bear all the expenses towards the birth

of the said child.

47. At this juncture in the aforesaid context, it would be apt to refer Section 14 of the Family Courts Act, 1984. Section 14 reads thus;

> *"14. Application of Indian Evidence Act, 1872-*
>
> *A Family Court may receive as evidence any report, statement, documents, information or matter that may, in its opinion, assist it to deal effectually with a dispute, whether or not the same would be otherwise relevant or admissible under the Indian Evidence Act, 1872."*

48. Thus, from the aforesaid, it is evident that the consideration of evidence by a Court in the matrimonial matter is not restricted by the rules of relevancy or admissibility provided under the Evidence Act. The Court is left free to receive any evidence or material which assists it to deal effectually with a dispute and the provisions of the Evidence Act would not be applicable in toto. Further the Court deals with disputes concerning the family and should adopt an approach different from that adopted in any ordinary civil proceedings.

49. Thus, it is considered view of this Court that in the cases of the present type, more particularly, matrimonial disputes, the Family Court owes a duty to read something in between the lines so as to try to understand the root cause of the discord between the parties rather than going by the strict rules of evidence.

50. Admittedly as discussed hereinabove the appellant-wife has alleged about the unsafe environment in her matrimonial house as the respondent's brother-in-law allegedly cast an evil eye upon her.

51. A perusal of the facts set out in the pleadings indicates that the respondent-husband attributed the separation to the appellant's quarrelsome conduct and alleged that she had repeatedly left the matrimonial home without justification. The appellant, on the other hand, specifically denied the allegations of assault and abusive behaviour and explained that she did not feel safe in the household of the respondent's aunt because of the alleged improper intentions of the respondent's jija.

52. The appellant's defence was not merely a general denial of the respondent's allegations. She also asserted that she was willing to reside with the respondent-husband in suitable alternative accommodation where the person concerned would not be residing. This aspect bears directly upon whether the appellant intended to withdraw from the marital relationship itself or objected to the conditions of residence in a particular household.

53. It is true that an allegation of improper intention, by itself, cannot automatically be treated as established merely because it has been pleaded. Such an allegation must be

assessed in the light of the evidence and surrounding circumstances. Equally, however, the allegation cannot be disregarded without examining the appellant's testimony and the basis of her stated apprehension.

54. The question before the Family Court was not simply whether the appellant was residing at her parental home. It was whether she had ceased to cohabit with her husband without lawful cause. That question required an assessment of her explanation for refusing to reside in the existing household, the respondent's response to that explanation and the feasibility of the alternative arrangement proposed by her.

55. From the testimony of appellant who has been examined as O.P.W.-1 before the learned Family Court, it is evident that she has categorically asserted that after marriage, the appellant initially resided peacefully with her husband at his aunt's house. However, she soon felt unsafe due to the alleged improper conduct of the respondent's brother-in-law. Despite informing her husband of this, he paid no heed to her concerns, which compelled her to leave the matrimonial home and shift to a rented house at Bariyatu, Ranchi. The respondent thereafter abandoned her and returned to his aunt's residence. On 10.07.2022, she, along with her minor daughter, moved back to Hazaribagh, where she stated that her husband ceased to provide care or

support. She further alleged that the respondent instituted a false case against her. While she acknowledged that her husband attempted to take her back, she clarified that his intention was to bring her again to the same house where she felt unsafe, and therefore she refused to go.

56. Thus, it is evident from the testimony of the appellant wife that she has reasonable apprehension about her dignity and safety and further she does not want to go to the same house where she felt unsafe, but the respondent did not redress her cause.

57. The respondent-husband alleged that the appellant had slapped him, abused his family members and threatened to institute a false criminal case. The appellant denied the material allegations. In adjudicating a claim for restitution of conjugal rights, the Court must distinguish between allegations contained in the pleadings and facts established by evidence. The existence of a matrimonial dispute cannot, without further evaluation, be treated as proof that one spouse alone was responsible for the separation.

58. The appellant's stated willingness to reside with the respondent-husband in alternative accommodation is of particular significance. It indicates that her objection, as pleaded, was directed towards residing in the existing

household rather than an unequivocal refusal to continue the marital relationship.

59. If the appellant was genuinely apprehensive about residing in a household shared with the person against whom she had raised an objection, the Court was required to examine whether that apprehension had a factual basis and whether a separate residence could reasonably address the dispute.

60. The learned Family Court was, therefore, required to assess the appellant's defence in its entirety and to record reasons for accepting or rejecting it. The mere fact that the appellant was residing at her parental home did not dispense with the need to determine whether the separation was justified. Similarly, the respondent's willingness to resume cohabitation did not, without examination of the appellant's defence, necessarily entitle him to the decree sought.

61. It is settled position of law that Matrimonial adjudication requires the Court to consider the substance of the dispute rather than merely the formal assertion of a right. Where a wife raises a specific apprehension concerning her dignity and safety in the proposed place of residence and expresses willingness to resume cohabitation in alternative accommodation, the Court must examine that defence with due care.

62. Thus, it is evident from evidences that this is not a case in which it could be said that the appellant wife left her matrimonial home along with her own will and without any compulsion. It is more than clear having regard to the evidence on record that the wife was not comfortable at her home on account of her safety and dignity. If on account of such circumstances, one fine day if she decided to walk out of her matrimonial home, could it be said that the husband straightway is entitled to have a decree for restitution of conjugal rights.

63. It has to be borne in mind that the decision in a suit for the restitution of conjugal rights does not entirely depend upon the right of the husband. The Family Court should also consider whether it would make it inequitable for it to compel the wife to live with her husband. Our ideas of law in that regard have to be altered in such a way as to bring them in conformity with the modern social conditions. Nothing has been shown before this Court in the form of any rule or otherwise which compel the Courts to always pass a decree in a suit for restitution of conjugal rights in favour of the claiming party.

64. It is settled position of law that *if* circumstances in a degree rendering it unsafe for the wife to return to her husband's dominion were established, the Court might refuse to send her back.

65. In ***Anis Begum* v. *Muhammad Istafa Wali Khan*, 1933 SCC OnLine All 138 : (AIR 1933 All 634)** **Sulaiman, C.J**., observed as follows:

> *"Their Lordships of the Privy Council in the case of Moonshee Buzloor Ruheem v. Shumsoonnissa Begum, 11 Moo IA 551 (PC) observed that* ***a suit for restitution of conjugal rights, though in the nature of a suit for specific performance is in reality a suit to enforce a right under the Muhammadan law and the Courts should have regard to the principles of Muhammadan law****. The observation of their Lordships was directed to emphasising the point that Courts should not exercise their discretion in complete supersession of the Muhammadan Law, but that in exercise of their discretion they should refer to that law. But the principle was fully recognised that in passing a decree for the restitution of conjugal rights, the Court has power to take into account all the circumstances of the case and impose terms which it considers to be fair and reasonable."*

66. Thus, on a cumulative reading of the circumstances and the evidence, it emerges that the appellant-wife's refusal to reside in the respondent's aunt's household was not arbitrary but stemmed from a genuine apprehension regarding her safety, honour, and dignity. Her consistent allegation that the respondent's brother-in-law cast an evil eye upon her, coupled with the respondent's insistence on continuing residence in that same house, substantiates her defence.

67. Accordingly, the Court finds that the wife's stand is

not a case of desertion or unjustified withdrawal from the marital relationship, but a reasonable and valid defence grounded in her apprehension of insecurity. The plea raised by her is therefore accepted as justified.

68. It is considered view of this Court based upon the aforesaid discussion and also from perusal of the impugned judgment that the learned family Court has not taken into consideration the entire factual aspect and evidences available on record in right perspective and further the evidence laid by respondent-wife wherein it has been alleged that she has apprehension about her dignity has also not been taken in to consideration in right manner.

69. Upon an overall consideration of the material and the rival submissions, this Court is of the view that the decree for restitution of conjugal rights cannot be sustained merely on the basis of the respondent-husband's willingness to resume cohabitation and the appellant-wife's separate residence. The decisive requirement under Section 281 is that the cessation of cohabitation must be without lawful cause. The appellant's specific defence concerning her safety and her stated willingness to live with the respondent in alternative accommodation required substantive consideration but the same has not been appreciated by the learned Family Court. Thus, in the absence of a satisfactory determination of the material defence raised by the

appellant, the decree directing restitution of conjugal rights cannot be upheld.

70. It needs to refer herein the interpretation of the word “perverse” as has been interpreted by the Hon'ble Apex Court which means that there is no evidence or erroneous consideration of the evidence.

71. 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."*

72. 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.

73. On careful scrutiny of the impugned judgment, this Court is of the considered view that the learned Family Court failed to appreciate the entire gamut of the case. The Court below confined its reasoning merely to the aspect of withdrawal of the appellant-wife from the society of the respondent-husband, without adequately considering her specific plea regarding apprehension for her safety, honour, and dignity, as well as her willingness to reside with her husband in alternative accommodation.

74. 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 and further without applying the test of reasonableness, has passed the order of restitution of conjugal rights.

75. Accordingly, the impugned judgment and decree fall within the fold of perversity, as defined in the preceding paragraph, since the learned Family Court ignored vital aspects of the defence of the appellant/wife and thereby rendered a finding that cannot be sustained in law.

76. Thus, on the basis of discussions made hereinabove, this Court is of the considered view that it is a case where it cannot be said that the findings of the learned Family Court are based on evidence and has been passed with 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 passed by the learned Family Court.

77. The upshot of the whole discussions, therefore, is that this appeal succeeds and the impugned judgment dated 24.01.2025 and decree sealed and signed dated 12.02.2025, passed in Original Suit No.173 of 2023 by the learned Principal Judge, Family Court, Hazaribagh, is hereby quashed and set aside.

78. Accordingly, the instant appeal stands allowed, as such, disposed of.

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

80. It is clarified that the findings recorded herein are confined to the respondent-husband's claim for restitution of conjugal rights. They shall not be construed as a determination of any independent claim relating to maintenance, custody of the minor child, return of matrimonial articles or any other relief that may be available to either party in accordance with law.

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

(Pradeep Kumar Srivastava, J.)

(Pradeep Kumar Srivastava, J.)

13/10/2026
Rohit /**N.A.F.R.**
Uploaded on 14.10.2026