

IN THE HIGH COURT OF JHARKHAND AT RANCHI

F.A. No.178 of 2023

Sanjeev Kumar Pandey, aged about 47 years, son of late Gopal Pandey, resident of 4/23/2A, Satyam Nagar Colony, PO and Ps Lanka, District Varanasi, Uttar Pradesh.Petitioner/Appellant

Versus

Vibharani Pandey, daughter of Sudarshan Singh, resident of Mohalla-Shah Colony, Quartr No. HG 222 PTPS, PO and PS Patratu, District Ramgarh, Jharkhand.Respondent/Respondent

**CORAM: HON'BLEMR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE SANJAY PRASAD**

For theAppellant : Mr.Ganga Kewat, Advocate;
Mr. Shiwam Kumar, Advocate;
Mr.Vibhore Mayank, Advocate
For the Respondent : Mr. Shailesh Kumar Singh, Advocate

C.A.V. On: 26.3.2026

PRONOUNCED ON: 16.04.2026

Prayer

1. The instant appeal under Section 19(1) of the Family Courts Act, 1984is directed against the judgment dated 30.5.2023 and decree dated 15.6.2023 passed by the learned Principal Judge, Family Court, Hazaribagh in Original Suit No. 279 of 2018, whereby and whereunder, the Suit filed by the appellant under Sections 13 (1) (i-a) and (i-b) of the Hindu Marriage Act, 1955, has been dismissed.

Factual Matrix

2. The brief facts of the case, leading to filing of the petition filed under Section 13(1) (i-a) and (i-b) of the Hindu Marriage Act, 1955, by the petitioner/appellant, needs to be referred herein which are as under:

(i)The petitioner's [the appellant herein] case, in brief, is that marriage of appellant and respondent was solemnized in Hazaribagh on 27.04.2008, as per Hindu rites and customs. After

the marriage the appellant and the respondent led a conjugal life at Varanashi and out of their wedlock they were blessed with a son, namely, Archit on 04.10.2010.

(ii) It is stated that the respondent-wife and her family have been constantly pressurizing the appellant to live separately from his widowed mother and sister due to which the appellant had to suffer through high stress. The appellant is doing a government job on compassionate ground after death of his father on condition to maintain his widowed mother and younger siblings.

(iii) The further case is that the respondent-wife and her family were putting undue pressure upon the appellant to live separately from his old and widowed mother and younger siblings, due to which, cohabitating together became challenge for the appellant and when the appellant refused to live separately from his family, the respondent wife started threatening the appellant that she would implicate him and his family in a false dowry case.

(iv) It has been alleged that after constant failed attempts to make the appellant live separately from his family, the respondent-wife started misbehaving with the appellant and his family, which made really difficult for the appellant to live peacefully with the respondent-wife.

(v) The respondent/wife started threatening to commit suicide if he did not leave his family. When the appellant refused to leave his family, the respondent/wife called her father on 20.2.2013 and left to her parental home with all cash, articles and ornaments. Many efforts were made by the appellant to

reconcile, but in spite of that, the respondent did not return.

Thereafter, they are living separately since 20.2.2013.

(vi) The appellant again made an attempt to reconcile the marriage, but the respondent flatly refused for resumption of conjugal life. After several attempts to reconcile, the Suit was instituted on 07.05.2013 by the appellant under sections 13(i)(i-a)(i-b) of the Hindu Marriage Act, 1955 for a decree of divorce on the ground of cruelty and desertion.

3. The learned Family Judge has issued notice upon the respondent-wife, who appeared and filed written statement admitting the factum of marriage with the petitioner-appellant.
4. After taking into consideration the pleadings of the both the parties the learned Family Court have framed altogether six issues which are as follows:-

- (i) *Whether the Suit is maintainable in its present form?*
- (ii) *Whether the petitioner was treated with cruelty after marriage by the respondent?*
- (iii) *Whether respondent voluntarily deserted the petitioner and on this ground petitioner is entitled of divorce?*
- (iv) *Whether the petitioner is entitled for the relief of divorce as prayed for on the grounds of cruelty and desertion as contained u/s 13 (i) (i-a) and (i-b) of the Hindu Marriage Act, 1955?*
- (v) *Whether petitioner is entitled to get relief or reliefs as prayed for?*

5. The evidences have been laid on behalf of both the parties. Thereafter, vide order dated 30.05.2023, the judgment has been passed dismissing the Suit by holding that petitioner/husband is not entitled to get the relief as claimed.
6. Against the aforesaid order, the present appeal has been filed.

7. The matter was taken up by this Court on 18.07.2024 and in order to explore the possibility of settlement of the dispute, the parties were directed to appear before the, JHALSA, Ranchi for mediation. But the said mediation has remained a non-starter as would be evident from order dated 24.09.2024, for ready reference order dated 24.09.2024 passed by this Court is being referred herein which reads as under:

“The report of the Member Secretary, JHALSA reveals that mediation has remained a non-starter.

Respondent has put in appearance through learned counsel Mr. Rahul Kumar. Admit.

Call for the trial court record.

List this case under the heading “For Hearing” after the receipt of the trial court record.”

Arguments advanced on behalf of the petitioner/appellant:

7. It has been contended on behalf of the appellant that the impugned judgment passed by the learned Court below is contrary to Law, against the weight of evidences and the materials on record and as such the same is perverse and liable to be set aside.
8. It is further contended that the learned Court below ought to have appreciated the fact that the appellant was subjected to mental cruelty by the respondent and her family members by pressurizing the appellant to desert his widowed mother and sister.
9. The learned Court below had not appreciated the fact that the appellant (PW-1), PW-2 and PW-3 adduced substantial evidence during their examination-in-chief regarding acts of cruelty and desertion. Notably, the defendant failed to produce any witness to challenge these claims.

10. The learned Court below had not appreciated the fact that the respondent not only treated the appellant with cruelty, but also deserted the appellant without any reasonable cause and consent since 20.2.2013.
11. Learned counsel for the appellant, based upon the aforesaid grounds, has submitted that the judgment impugned suffers from perversity, as such, not sustainable in the eyes of law.

Arguments advanced on behalf of the respondent-wife:

12. Per contra, learned counsel for the respondent-wife, while defending the impugned judgment, has submitted that there is no error in the impugned judgment. The learned Family Judge has considered the issue of cruelty and desertion and having come to the conclusion that appellant-husband has not been able to prove the fact of cruelty and desertion against the defendant-wife dismissed the petition.
13. It has been stated that in the marriage sufficient dowry etc. were given and Rs. 6 lac was transferred into the bank account of family members of the appellant/petitioner-husband and there was further demand of dowry and consequent cruelty at matrimonial house. She further stated that inspite of court's order the appellant is not paying maintenance.
14. Learned counsel, based upon the aforesaid grounds, has submitted that if on that pretext, the factum of cruelty and desertion having not been found to be established, based upon which the decree of divorce has been refused to be granted, the impugned judgment cannot be said to suffer from an error.

Analysis:

15. This Court has heard the learned counsel for the parties and had gone through the findings recorded by the learned Family Judge in the impugned judgment.

16. The admitted fact herein is that the Suit has been filed under Sections 13(1) (i-a) and (i-b) of the Hindu Marriage Act, 1955 for a decree of divorce on the ground of cruelty and desertion.
17. It is evident from impugned order that no evidence, oral or documentary, has been filed on behalf of the respondent-wife.
18. The evidence has been laid on behalf of the appellant-husband. For ready reference, the evidences laid on behalf of the appellant- husband are being referred as under:
19. PW-1 is the petitioner-husband, in his examination-in-chief has reiterated his pleadings.
20. In his cross-examination, he has stated that he did not pay maintenance allowance @ Rs. 17,000/- per month to the respondent-wife since bank account number was not provided. It is also deposed that his son aged about 13 years has been living with mother at Bangalore and he does not know the detail of school of his son. He was granted bail in dowry cruelty case by this Court on condition to return the money transacted in his bank account. He has already deposited the same with Civil Courts, Nazarat. He did not take steps for restitution of conjugal rights or custody of his son. He further deposed that he would consider to resume conjugal life if respondent-wife admits her guilt and undertakes reform.
21. P.W.-2 is Ravi Ranjan Pandey (brother of petitioner), who in his examination-in-chief on affidavit, has supported the case of petitioner.
22. In his cross-examination, he has stated that before marriage father of the respondent-wife transferred amount in the bank account of the petitioner-husband. The said money was returned as per order of this Court. No case has been lodged for restitution of conjugal rights and custody of son. He

has further deposed that maintenance allowance @ Rs. 17,000/- per month is not being paid since bank account number has not been provided.

23. P.W.-3 is Mahendra Prasad Nishad, (co-villager of the petitioner) in his cross-examination has stated that he was present in marriage.
24. Apart from the above witnesses, the appellant has also produced a certified copy of Patratu PS case no. 116 of 2013 dated 10.6.2013 under section 498 A of the Indian Penal Code filed by the respondent-wife against the petitioner and his family members which is marked as Ext.-1.
25. It is also submitted that the appellant was granted anticipatory bail in the above case by this Court on condition of returning Rs. 6,00,000/- which was received by him through a bank transaction before marriage from parental relationship of the respondent-wife. The same amount was deposited by the husband in the Civil Court Nazarat.
26. On the basis of the pleading of the parties, the learned Principal Judge, Family Court had framed issues for proper determination of the lis, and after due appreciation of the evidence had negated the claim of the husband/appellant and observed that the petitioner-husband has totally failed to prove and establish the allegation of cruelty and desertion on the part of wife for dissolution of marriage.
27. Herein, the learned counsel for the appellant/husband has argued that the evidence of desertion and cruelty has not properly been considered and as such, the judgment suffers from perversity, hence, not sustainable in the eyes of law.
28. While on the other hand, argument has been advanced on behalf of the respondent-wife that the judgment is well considered one and the learned family court has rightly come to the conclusion by denying the decree of

suit of divorce in favour of petitioner-husband and accordingly, dismissed the suit which requires no interference by this Court.

29. From the pleadings available on record and the arguments advanced on behalf of parties, the issue which requires consideration is as to: *“Whether the judgment and decree passed by the learned family court denying the decree of divorce on the ground of cruelty under Section 13(1)(ia) of the Hindu Marriage Act and/or on the ground of desertion under Section 13(1)(ib) requires interference?”*
30. This Court, while appreciating the argument advanced on behalf of the parties 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. 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, from the aforesaid it is evident that if any order made in conscious violation of pleading and law then it will come under the purview of perverse order. Further "perverse verdict" may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence.
32. It requires to refer herein that since appellate jurisdiction has been invoked herein, therefore, before entering into merit of the case, at this juncture it would be purposeful to discuss the appellate jurisdiction of the High Court.
33. It needs 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).
34. 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 series of judgments.
35. 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.”

36. Further, it requires to refer herein that under section 3 of the Indian Evidence Act fact is said to be proved when the Court either believes it to exist or considers its existence so probable that a prudent man under the circumstances would proceed on the supposition that such fact really exists. Therefore, the normal rule of preponderance of probability is the rule which governs the civil proceedings but herein since grave allegation of extra-marital affair has been alleged therefore cogent evidence is required to be laid by the plaintiff/appellant.
37. The expression “preponderance of probability” is not capable of exact definition nor can there be any strait-jacket formula or a weighing machine to find out which side the balance is tilted. The preponderance of probability would imply a positive element about possibility of existence of a fact. This means a higher degree of probability of happening of something and existence of a fact.
38. In “*A. Jayachandrav. Aneel Kaur*” (2005) 2 SCC 22 the Hon'ble Apex Court has observed that the concept, a proof beyond the

shadow of doubt, is to be applied to criminal trials and not to civil matters and certainly not to matters of such delicate personal relationship as those of husband and wife. Therefore, the Court has to see what are the probabilities in the case and legal cruelty has to be found out, not merely as a matter of fact, but as the effect on the mind of the complainant spouse caused by the acts or omissions of the other.

39. Since this Court are exercising the power of appeal as referred hereinabove and as per the settled position of law which require the consideration of the appellate Court is that the order/judgment passed by the appropriate Forum, if suffers from perversity, the same is to be taken as a ground for its reversal.
40. In the backdrop of the aforesaid settled position of law this Court is now adverting to examine that whether the prayer of the appellant for dissolution of marriage is fit to be allowed on the ground of cruelty and desertion alleged to be committed by the respondent wife.

Issue of cruelty

41. So far the allegation of cruelty is concerned, it requires to refer herein the definition of “cruelty” as has been defined by Hon’ble Apex in the judgment rendered in ***Dr. N.G. Dastane Vs. Mrs. S. Dastane [(1975) 2 SCC 326]***, wherein it has been held that the Court is to enquire as to whether the charge as cruelty, is of such a character, as to cause in the mind of the petitioner, a reasonable apprehension that, it will be harmful or injurious for him to live with the respondent.
42. The cruelty has also been defined in the case of ***Shobha Rani Vs. Madhukar Reddi [(1988) 1 SCC 105]***, wherein the wife alleged that the

husband and his parents demanded dowry. The Hon'ble Apex Court emphasized that "cruelty" can have no fixed definition.

43. According to the Hon'ble Apex Court, "cruelty" is the "conduct in relation to or in respect of matrimonial conduct in respect of matrimonial duties and obligations". It is the conduct which adversely affects the spouse. Such cruelty can be either "mental" or "physical", intentional or unintentional. For example, unintentionally waking your spouse up in the middle of the night may be mental cruelty; intention is not an essential element of cruelty but it may be present. Physical cruelty is less ambiguous and more "a question of fact and degree."
44. The Hon'ble Apex Court has further observed therein that while dealing with such complaints of cruelty that it is important for the Court to not search for a standard in life, since cruelty in one case may not be cruelty in another case. What must be considered include the kind of life the parties are used to, "their economic and social conditions", and the "culture and human values to which they attach importance."
45. In *V. Bhagat vs. D. Bhagat (Mrs.)*, (1994)1 SCC 337, the wife alleged in her written statement that her husband was suffering from "mental problems and paranoid disorder". The wife's lawyer also levelled allegations of "lunacy" and "insanity" against the husband and his family while he was conducting cross-examination. The Hon'ble Apex Court held these allegations against the husband to constitute "cruelty".
46. In *Vijay kumar Ramchandra Bhate v. Neela Vijay Kumar Bhate*, (2003)6 SCC 334 the Hon'ble Apex Court has observed by taking into consideration the allegations levelled by the husband in his written statement that his wife was "unchaste" and had indecent familiarity with a

person outside wedlock and that his wife was having an extramarital affair. These allegations, given the context of an educated Indian woman, were held to constitute “cruelty” itself.

47. The Hon’ble Apex Court in *Joydeep Majumdar v. Bharti Jaiswal Majumdar*, (2021) 3 SCC 742, has been pleased to observe that while judging whether the conduct is cruel or not, what has to be seen is whether that conduct, which issue stained over a period of time, renders the life of the spouse so miserable as to make it unreasonable to make one live with the other. The conduct may take the form of abusive or humiliating treatment, causing mental pain and anguish, torturing the spouse, etc. The conduct complained of must be “grave” and “weighty” and trivial irritations and normal wear and tear of marriage would not constitute mental cruelty as a ground for divorce.
48. Further in the case of *Vishwanath Agrawal v. Sarla Vishwanath Agrawal*, (2012) 7 SCC 288, the Hon’ble Apex Court has held as follows:—

22. The expression “cruelty” has an inseparable nexus with human conduct or human behaviour. It is always dependent upon the social strata or the milieu to which the parties belong, their ways of life, relationship, temperaments and emotions that have been conditioned by their social status.

25. After so stating, this Court observed in Shobha Rani case about the marked change in life in modern times and the sea change in matrimonial duties and responsibilities. It has been observed that : (SCC p. 108, para 5)

“5. ... when a spouse makes a complaint about the treatment of cruelty by the partner in life or relations, the court should not search for standard in life. A set of facts stigmatised as cruelty in one case may not be so in another case. The cruelty alleged may largely depend

upon the type of life the parties are accustomed to or their economic and social conditions. It may also depend upon their culture and human values to which they attach importance.”

26. *Their Lordships in Shobha Rani case referred to the observations made in Sheldon v. Sheldon wherein Lord Denning stated, “the categories of cruelty are not closed”. Thereafter, the Bench proceeded to state thus: (Shobha Rani case, SCC p. 109, paras 5-6)*

“5. ... Each case may be different. We deal with the conduct of human beings who are not generally similar. Among the human beings there is no limit to the kind of conduct which may constitute cruelty. New type of cruelty may crop up in any case depending upon the human behaviour, capacity or incapability to tolerate the conduct complained of. Such is the wonderful (sic) realm of cruelty.

1. These preliminary observations are intended to emphasise that the court in matrimonial cases is not concerned with ideals in family life. The court has only to understand the spouses concerned as nature made them, and consider their particular grievance .As Lord Reid observed in Gollins v. Gollins :(All ER p. 972 G-H)

‘... In matrimonial affairs we are not dealing with objective standards, it is not a matrimonial offence to fall below the standard of the reasonable man (or the reasonable woman). We are dealing with this man or this woman.’”

49. In the case of ***Samar Ghoshv. Jaya Ghosh,(2007) 4 SCC 511*** it has been held by the Hon’ble Apex Court as follows: —

99. Human mind is extremely complex and human behaviour is equally complicated. Similarly human ingenuity has no bound, therefore, to assimilate the entire human behaviour in one definition is almost impossible. What is cruelty in one case may not amount to cruelty in other case. The concept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and their value system.

100. Apart from this, the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system, etc. What may be mental cruelty now may not remain a mental cruelty

after a passage of time or vice versa. There can never be any straitjacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances while taking aforementioned factors in consideration.

50. Thus, from the aforesaid settled position of law it is evident that “Cruelty” under matrimonial law consists of conduct so grave and weighty as to lead one to the conclusion that one of the spouses cannot reasonably be expected to live with the other spouse. It must be more serious than the ordinary wear and tear of married life.
51. Cruelty must be of such a type which will satisfy the conscience of the Court that the relationship between the parties has deteriorated to such an extent that it has become impossible for them to live together without mental agony. The cruelty practiced may be in many forms and it must be productive of an apprehension in the mind of the other spouse that it is dangerous to live with the erring party. Simple trivialities which can truly be described as a reasonable wear and tear of married life cannot amount to cruelty. In many marriages each party can, if it so wills, discover many a cause for complaint but such grievances arise mostly from temperamental disharmony. Such disharmony or incompatibility is not cruelty and will not furnish a cause for the dissolution of marriage.
52. Herein allegations of cruelty have been specifically made by plaintiff/appellant wherein it has been stated that the differences arose between him and respondent (wife) due to misconduct and misdeed of the respondent as respondent used to flee from appellant’s house without informing the appellant or his family members.
53. Now coming to the merit of the instant appeal. As per evidence of petitioner, it appears that admittedly petitioner and respondent are legally

wedded husband and wife whose marriage was solemnized on 27.04.2008 and after wedding they starting living as husband and wife and out of their wedlock one son was born.

54. It is alleged that respondent-wife, the respondent herein, and her family have been constantly pressurizing the appellant to live separately from his widowed mother and sister.
55. It is further alleged that due to which, cohabitating together became challenge for the appellant and when the appellant refused to live separately from his family, the respondent wife started threatening the appellant that she would implicate him and his family in a false dowry case.
56. The respondent started threatening to commit suicide if he did not leave his family. When the appellant refused to leave his family, the respondent called her father on 20.2.2013 and left to her parental home with all cash, articles and ornaments. Many efforts were made by the appellant to reconcile, but in spite of that, the respondent did not return and as such they are living separately since 20.2.2013.
57. The averment of appellant has been denied by the respondent-wife. It has been stated that in the marriage sufficient dowry etc. were given. Rs. 6 lac was transferred into the bank account of family members of the petitioner-husband and there was further demand of dowry and consequent cruelty at matrimonial house. She further stated that in-spite of court's order the appellant is not paying maintenance.
58. It was alleged that the respondent-wife, along with her parents, exerted pressure on the petitioner-appellant to live separately from his widowed mother and sister. However, upon examining the impugned judgment, it is clear that no cogent evidence was presented before the learned Family

Court to substantiate this claim. The allegation was made without sufficient particulars such as date, time, or specific incidents. Moreover, neither the pleadings nor the evidence discloses any act of mischief to property or any instance of physical harm attributable to the respondent-wife.

59. Another ground raised by the petitioner-husband on the issue of cruelty is that the respondent-wife allegedly threatened to implicate him in a false dowry-cruelty case. However, from a perusal of the impugned judgment, it is evident that the dowry-cruelty proceedings are still pending adjudication. Consequently, there is nothing on record to establish that the said case is false or that it was instituted with malice.
60. It is pertinent to note that the mere filing of a case by the respondent-wife alleging torture on account of dowry demand cannot, by itself, amount to cruelty. Seeking legal remedy is a right available to her, and such action can only be treated as cruelty if it is established that the proceedings were instituted maliciously and without any basis in fact.
61. Another allegation of cruelty raised by the petitioner-husband is that the respondent-wife was not behaving properly and spent most of her time watching television. This Court finds such a contention to be wholly evasive and, by no stretch of imagination, can it be regarded as cruelty within the meaning of the Hindu Marriage Act so as to justify dissolution of marriage. The petitioner-husband has further alleged that the respondent-wife was pressurizing him to transfer the residential house at Varanasi, which stands in the name of his mother, in her favour. However, it is significant to note that the mother of the appellant-husband herself did not come forward to support this allegation.

62. The petitioner-husband has further alleged cruelty on the ground that the respondent-wife was threatening to commit suicide. However, there is neither any specific pleading nor any evidence on record to show that the respondent-wife ever indulged in any overt act in pursuance of such alleged threats. In the absence of concrete material, this allegation remains unsubstantiated.
63. The appellant has claimed that the respondent was subjecting him with cruelty. But, in his entire evidence the appellant has not disclosed any such specific incident from which it can be even remotely inferred that the conduct of the respondent was so cruel that it has become impossible for the appellant to live with her. Further, in the instant case whatever assertions have been made by the appellant against the respondent are quite non-specific and of quite omnibus nature and further, the appellant has not been able to prove the same.
64. The appellant has not asserted any such act which can be said to be so grave as to enable the appellant for seeking a decree of divorce on the said ground. Further, none of these documents goes to show that the respondent had committed such cruelty upon the appellant which has made it impossible for the petitioner to live with the respondent.
65. Thus, on the basis of the pleading and evidence on the record, this Court is of the view that the ground of cruelty has not been substantiated by the appellant and further it has also not been proved that the extent of cruelty is so much that it appears absolutely not possible and safe for the petitioner-husband to live together with respondent-wife and continue with their married life.
66. Thus, on the basis of the discussion made hereinabove this Court is of the

view that the appellant has failed to substantiate the commission of alleged cruelty of respondent upon him and since the learned Family Court while negating the claim of cruelty has duly appreciated the evidences brought on record, therefore the finding of the learned Court on the alleged act of cruelty, is not perverse.

Issue of desertion

67. So far desertion is concerned it needs to refer herein that the word ‘desertion’ has been given in Explanation to Section 13 (1) wherein it has been stated that “the expression desertion means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the willful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly.”

68. It is pertinent to note that the word ‘desertion’, as has been defined in Explanation part of Section 13 of the Act, 1955, means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wishes of such party, and includes the willful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly.

69. Rayden on Divorce, which is a standard work on the subject at p. 128 (6th Edn.), has summarised the case-law on the subject in these terms:

“Desertion is the separation of one spouse from the other, with an intention on the part of the deserting spouse of bringing cohabitation permanently to an end without reasonable cause and without the consent of the other spouse; but the physical act of departure by one spouse does not necessarily make that spouse the deserting party.”

70. The legal position has been admirably summarised in paras-453 and 454 at pp. 241 to 243 of Halsbury's Laws of England (3rd Edn.), Vol. 12, in the following words:

“In its essence desertion means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent, and without reasonable cause. It is a total repudiation of the obligations of marriage. In view of the large variety of circumstances and of modes of life involved, the Court has discouraged attempts at defining desertion, there being no general principle applicable to all cases.”

71. Desertion is not the withdrawal from a place but from a state of things, for what the law seeks to enforce is the recognition and discharge of the common obligations of the married state; the state of things may usually be termed, for short, ‘the home’. There can be desertion without previous cohabitation by the parties, or without the marriage having been consummated. The person who actually withdraws from cohabitation is not necessarily the deserting party.
72. The offence of desertion is a course of conduct which exists independently of its duration, but as a ground for divorce it must exist for a period of at least two years immediately preceding the presentation of the petition or, where the offence appears as a cross-charge, of the answer.
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74. It is, thus, evident from the aforesaid reference of meaning of desertion that the quality of permanence is one of the essential elements which differentiate desertion from willful separation. If a spouse abandons the

other spouse in a state of temporary passion, for example, anger or disgust, without intending permanently to cease cohabitation, it will not amount to desertion. For the offence of desertion, so far as the deserting spouse is concerned, two essential conditions must be there, namely, (1) the factum of separation, and (2) the intention to bring cohabitation permanently to an end.

75. Similarly, two elements are essential so far as the deserted spouse is concerned: (1) the absence of consent, and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to from the necessary intention aforesaid.
76. The Hon'ble Apex Court in *Debananda Tamuli vs. Kakumoni Katakya*, (2022) 5 SCC 459 has considered the definition of 'desertion' on the basis of the judgment rendered by the Hon'ble Apex Court in *Lachman Utamchand Kirpalani v. Meena*, AIR 1964 SC 40 which has been consistently followed in several decisions of the Court.
77. The law consistently has been laid down by the Hon'ble Apex Court that desertion means the intentional abandonment of one spouse by the other without the consent of the other and without a reasonable cause. The deserted spouse must prove that there is a factum of separation and there is an intention on the part of deserting spouse to bring the cohabitation to a permanent end. In other words, there should be animus deserendi on the part of the deserting spouse. There must be an absence of consent on the part of the deserted spouse and the conduct of the deserted spouse should not give a reasonable cause to the deserting spouse to leave the matrimonial home.

78. Here in this case, it has been stated by the appellant that in the year 2013 the respondent left his house and since then she has no relationship with him. The plaintiff/petitioner in his testimony as PW1 has stated that respondent left her sasural on her own volition in year 2013 and since then she never came back.
79. Per contra, it is the case of respondent, that she had never left her matrimonial home at her own will rather it was the petitioner/appellant who was always subjecting her with cruelty for the fulfillment of illegal demand of dowry, for which the respondent had filed a Case against the petitioner/appellant in the court concerned.
80. It is further the case of the appellant-husband that on 20.02.2013 the respondent-wife left for her parental home. However, the record reveals that within less than three months, on 07.05.2013, the appellant-husband instituted a suit for divorce. Significantly, he did not initiate proceedings for restitution of conjugal rights, which casts doubt on the bona fides of his intention. This Court is inclined to observe that the conduct of the petitioner-husband appears directed towards severing the marital bond with some ulterior motive best known to him.
81. On the other hand, the respondent-wife filed a contested written statement wherein she raised defences. Apart from admitting the undisputed facts, she denied the remaining allegations of the petitioner-husband and further categorically submitted, inter alia, that sufficient dowry was given at the time of marriage. She also alleged that there were subsequent demands of dowry and that she was subjected to cruelty at her matrimonial home.
82. From the impugned order as well as material available on record, it is evident that admittedly the parties are living separately from one another

since long and it has come on record from the oral as well as the documentary evidence of the parties that there was litigations between the parties but the petitioner/appellant has not shown anywhere in his entire evidence that he had ever taken serious steps to bring his respondent/wife back.

83. Thus, from the aforesaid it appears that respondent wife was compelled to leave her matrimonial wife and she has not left her matrimonial house on her own will therefore, it is considered view of this Court that finding of the learned Family Court on the issue of desertion requires no interference.
84. This Court, based upon the aforesaid discussions is of considered view that the issue of cruelty and desertion as has been alleged by the appellant-husband against his wife could not be proved because no cogent evidence to that effect has been produced by the appellant and, as such, this Court has no reason to take different view that has been taken by the learned Family Court observing that the petitioner has not been able to prove the willful desertion by the respondent wife and neither prove that respondent subjected him with cruelty to the extent required by law.
85. On the perusal of the impugned judgment, it is considered view of this court that learned Family Court after due deliberation of factual aspect as well as evidence led by both the parties has recorded its finding, therefore, the contention of learned counsel for the appellant that impugned judgment is suffering from perversity, is not fit to be accepted, hence rejected.
86. This Court, on the basis of discussions made hereinabove, is of the view that the judgment dated 30.5.2023 and decree dated 15.6.2023 passed by the learned Principal Judge, Family Court, Hazaribagh in Original Suit No. 279 of 2018, whereby and whereunder, the Suit filed by the appellant under

Sections 13 (1) (i-a) and (i-b) of the Hindu Marriage Act, 1955, has been dismissed, requires no interference by this Court.

87. Accordingly, the instant appeal fails and is dismissed.

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

I Agree

(Sujit Narayan Prasad, J.)

(Sanjay Prasad, J.)

(Sanjay Prasad, J.)

Jharkhand High Court

Dated:

KNR/A.F.R.

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