IN THE HIGH COURT OF JHARKHAND AT RANCHI

First Appeal No.177 of 2024

Rajesh Kumar Swarnkar, aged about 60 years, son of Ganpat Swarnkar, resident of Kapil Nagar, Lane No.3, Sarkanda, P.O-Sarkanda, P.S-Sarkanda, District-Bilaspur (Chhattisgarh)

.....… Petitioner/Appellant

Versus

Girja Swarnkar, wife of Rajesh Kumar Swarnkar, daughter of late Basant Kumar Soni, aged about 47 years, resident of Flat No.5274, Vijaya Garden, PO +PS-Birsanagar, District-East Singbhum, and permanent resident of 177, Sonar Para, Janigir, P.O Janigir, P.S Janigir, District-Champa (Chhattisgarh). …. ... **Respondent/ Respondent**

With

First Appeal No.178 of 2024

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Versus

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

For the Appellant(s) : Mr. Indrajit Sinha, Advocate
Ms. Ashwini Priya, Advocate
Ms. Sanjana Shreshtha, Advocate
Mr. Kaushik Chakraborty, Advocate
(**in both the appeals**)

For the Respondent(s): Ms. Tejaswi, Advocate
(in F.A No.177/2024)
Ms. Puja Agarwal, Advocate
(in F.A No.178/2024)

C.A.V on 27.08.2026 **Pronounced on 08/10/2026**

Per Sujit Narayan Prasad, J.

1. Both these appeals are directed under section 19(1) of the Family Courts Act, 1984 by the appellant-husband.

F.A No.177 of 2024

2. First Appeal No.177 of 2024 is directed against the judgment dated 13.06.2024 and the decree signed on 20.06.2024 passed in Original Suit No.584 of 2019 by the learned Addl. Principal Judge, Addl. Family Court-2, Jamshedpur whereby and whereunder the petition filed under section 13(1) (i-a), (i-b) of the Hindu Marriage Act, 1955 by the appellant-husband against the respondent-wife has been dismissed.

Factual Matrix (in F.A No.177 of 2024)

3. 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 case of the petitioner/appellant is that the petitioner and the respondent are by faith Hindus and the marriage between the petitioner and the respondent was solemnized on 05.05.2009 at Janjgir, Champa, Chhattisgarh in accordance with Hindu rites and customs,

(ii) After the marriage, the respondent came to her matrimonial house at Kapil Nagar, Bilaspur, Chhattisgarh to lead conjugal life with the petitioner and there is no issue out of the said wedlock.

(iii) It is the case of the petitioner that sometimes in the middle of July, 2009 the respondent expressed her desire to go to her parental house during "Raksha Bandhan", the petitioner assured that he would take her to Champa two days earlier to the said festival to be held on 05.08.2009, but she expressed her intention to go to her parental house much earlier insisting the petitioner all the time and

ultimately the petitioner had to take her to Champa on 23.07.2009 and left her there.

(iv) As per the understanding between the parties, the petitioner went to Champa on 07.08.2009 to bring her back but the respondent did not return with him stating that she would stay for another10 to 15 days.

(v) Thereafter, the petitioner after more than a fortnight went to Champa to bring the respondent back but she refused to return stating that she would accompany the petitioner only when the petitioner would arrange a separate accommodation for her without his family members.

(vi) The petitioner was very much shocked on hearing such a decision and the petitioner tried his level best to make her understand that it was his moral duty to look after his parents who are old and ailing but all such approaches of the petitioner were negated by the respondent.

(vii) Thereafter, the petitioner attended his mother-in-law's, 'Shradh' ceremony at Champa and there also requests were made for reunion but the same were turned down by the respondent.

(viii) Since then, lot of endeavors were made to bring her back for leading conjugal life with him but the respondent refused and to the contrary she threatened the petitioner number of times that if separate arrangement was not made for her, the petitioner would be entangled in false cases and in this way, the respondent deserted the petitioner by refusing to stay with him on the above said plea. The petitioner being the elder son, is duty bond to take care of his parents.

(ix) Moreover, the sister of the petitioner was married to the brother of the respondent and his sister Bijay Laxmi and her daughter have been deserted by the brother of the respondent namely Saligram Soni and consequently she has been living with her daughter with the petitioner, who is duty bound to take care of his deserted sister and her daughter also. It is not possible for the petitioner to live separately with the respondent as per her illegal demand which is unreasonable too.

(x) It is further case of the petitioner that in lieu of joining the petitioner and to lead a happy conjugal life, the respondent preferred an application U/s 125 Cr.P.C vide Misc. Case No. 238/2011 on in the court of Principal Judge, Family Court at Jamshedpur But the learned Family Court vide its order dated 25.01.2017 dismissed her application U/s 125(4) Cr.P.C against the said order she had preferred Revision being Cr. Revision No. 1011/2017 before the Jharkhand High Court but vide order dated 25.08.2018, the same has been dismissed.

(xi) The respondent deserted the petitioner on 23.07.2009 with oblique motive that she would not join with him if separate accommodation is not arranged for her and she was strict to her decision and finally refused to come with the petitioner to the petitioner's place of abode at Bilaspur.

(xii) When the respondent's mother was hospitalized in Apollo Hospital, Bilaspur the petitioner went to see his mother-in-law and at that time, the petitioner approached the respondent to lead conjugal life with him but she refused.

(xiii) Thereafter, the petitioner made several endeavors for reunion, but she refused to join the petitioner and by such act, the respondent treated the petitioner with cruelties.

(xiv) The respondent has developed aversion towards the petitioner and all such acts of the respondent caused untold mental pain and sufferings to the petitioner after deserting the petitioner, the attitude of the respondent remained unchanged and her total abrogation of conjugal relationship with the petitioner has become a source of severe mental affliction towards the petitioner.

(xv) The life of the petitioner had become extremely painful due the cruelties rendered upon him and since the date of desertion the respondent never cared to show good gesture for reunion.

(xvi) On behalf of the petitioner endeavors were made for reunion but the respondent refused to live with the petitioner and as such, matrimonial tie broke down and the gap has been widened to such an extent that there was no chance of reconciliation, the petitioner is not in a position to bear the mental pain any longer and he feels that the only way available to him is to end this miserable marriage tie between him and the respondent.

4. On the aforesaid ground of cruelty and desertion, the appellant-husband has prayed for a decree of dissolution of the marriage between him and the respondent-wife.

5. It needs to mention herein that in Original Suit No. 584 of 2019, upon issuance of the notices, the respondent-wife has appeared and filed a written statement denying all the allegations levelled against her by the appellant-husband.

6. In the written statement, the respondent-wife admitted about her marriage with the petitioner/appellant but has denied the other allegations contained in the plaint. It is averred in the written statement that after the marriage the respondent started to lead the conjugal life with her husband (petitioner/appellant) at her matrimonial house. It is stated that the petitioner's sister was married with the brother of the respondent/wife, which is called the *golat* marriage and this is the bone of contention. It is stated that the petitioner's sister Vijay Laxmi was not having good relation with her husband (Shaligram Soni) and for taking revenge, the petitioner (appellant herein) hatched a story to humiliate the respondent (respondent herein).

7. It is stated that the petitioner sent the respondent to her parental house on the eve of Sawan Purnima and told that he shall come after a week to bring her back, the respondent waited for long but the petitioner never came to bring back the respondent on some or the other pretext. The respondent tried her best over the telephone for resumption of marital tie, but the petitioner is very much reluctant in this regard. The respondent and her family members also tried to bring normalcy in relation but all went in vain and with the help of Swarna Samaj the respondent tried to resolve the dispute but of no avail.

8. Thereafter, the respondent sent a legal notice to the petitioner to lead the conjugal life, but the petitioner paid no heed in this regard. The petitioner has totally deserted the respondent without any cogent reason and even not bothered to maintain the family decorum. The parents of the respondent had died and she is living with her brother Jai Gopal Soni at Jamshedpur.

9. It is admitted in the written statement that the respondent had filed the Misc. Case No. 238 of 2011 against the petitioner U/s 125 Cr.P.C at Jamshedpur but the same has been dismissed and after that she preferred the Criminal Revision No. 1011 of 2017 before the High Court of Jharkhand, but the same was also dismissed on 25.08.2018.

10. The respondent has no source of income for that she is in search of free legal aid for further proceedings. On 24.09.2018 the respondent voluntarily went to her matrimonial house at Sarkanda, Bilaspur but she was not allowed by the petitioner to enter into the house and after that the respondent filed an application before the Pariwar Pramarsh Kendra, Police Line, Bilaspur, and in the Nyaya Sadan, Jamshedpur for restitution of conjugal right, but all went in vain.

11. The petitioner has deserted the respondent since 23.07.2009, after that the respondent had no option but to reside with her brother at Jamshedpur since 13.10.2010.

12. The respondent is always eager and tried to maintain marital relation but the petitioner filed this suit for divorce on fancy and flimsy grounds. The petitioner is not entitled for any relief or reliefs as sought for; hence, the suit is required to be dismissed.

13. Learned Family Judge, after institution of the said case, taking into consideration of the pleadings of the plaintiff/appellant and the respondent/defendant has formulated the issues and has decided the *lis* by refusing to grant divorce to the plaintiff/appellant.

14. The aforesaid judgment by which divorce has not been granted is under challenge by filing the instant appeal.

Submission of behalf of the appellant-husband:

15. The learned counsel appearing for the appellant-husband has taken the following grounds:

(i) There is an error in the impugned judgment, since, each and every aspect of the matter has not been taken into consideration based upon the documentary evidences as well as ocular evidences.

(ii) It has been contended that the element of cruelty has been found to be there as it has come during the evidence that respondent-wife has willfully left her matrimonial home and deserted the appellant-husband without any cogent reason and in spite of endeavors made by the appellant-husband she did not want to come back to lead a happy conjugal life which caused mental pain and trauma to the appellant-husband, but without appreciating the same properly, the learned Family Judge has come to the finding by holding that no element of cruelty is there and, as such, the impugned judgment and decree suffers from an error.

(iii) It has been contended that the appellant-husband has been meted out with cruelty at the hands of the respondent-wife as it has come during the evidence that it was the respondent-wife who made an illegal demand to return back only when the appellant-husband provides a separate accommodation for her which was not possible due to old aged parents of the appellant as the appellant has to look after her ailing and old aged parents, but the same has not been taken into consideration by the learned Family Judge.

(iv) It has been contended that though the learned Family Judge has proceeded the matter and dismissed the original suit, but he has failed to appreciate the evidences adduced on behalf of the appellant-husband as in the trial, the evidence has come that it was the respondent-wife who has committed cruelty upon him by her cruel behaviour and act and deserted the petitioner by leaving her matrimonial house.

(v) It has been contended that if the respondent-wife intends to come back to the appellant to lead a happy conjugal life, then she did not file a maintenance case; however, when the maintenance case was dismissed by the learned Family Judge and thereafter the Criminal Revision preferred against the said order was also dismissed by the Hon'ble High Court, then she filed a case for restitution of conjugal rights.

16. The learned counsel, based upon the aforesaid ground, has submitted that the impugned judgment and decree, therefore, needs interference on the ground of perversity.

Submission of behalf of the respondent-wife:

17. On the contrary, the learned counsel appearing for the respondent-wife has taken the following grounds:

(i) There is no error in the impugned judgements. The learned Family Judge has considered the entire issue and on the basis of evidence as led by the parties and has passed the order impugned as such same may not be interfered with.

(ii) The appellant has sought divorce on the ground that the behaviour of the respondent-wife is cruel and she has

deserted the appellant without any valid ground but the learned Family Court, after taking into consideration the oral and documentary evidence, has held that the entire allegations levelled in the plaint for divorce suit are absolutely illegal, uncalled for and has rightly dismissed the suit.

(iii) 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-husband has never been towards salvaging the institution of marriage as it is he who has come for the dissolution of the marriage and never tried to restitute the conjugal rights, therefore, on the pretext of the aforesaid categorical finding of the Family Court, the impugned order requires no interference.

(iv) It has been contended that although the maintenance case was dismissed by the learned Family Court and the subsequent Criminal Revision was also dismissed by the Hon'ble High Court, but it was the appellant-husband who compelled the respondent-wife to file maintenance case by neglecting to maintain her and failing to provide even a single penny for her livelihood. Presently, the respondent-wife is surviving under the shelter and support of her brother.

(v) It has been contended that despite the direction passed by the learned Family Judge in the judgment and decree for

the restitution of conjugal rights, the appellant-husband never attempted to comply with the direction; instead, he challenged the impugned judgment and decree by filing the instant appeal being F.A. No. 178 of 2024, which demonstrates his negligent conduct.

18. Learned counsel, based upon the aforesaid grounds, has submitted that if on that pretext, the factum of cruelty and desertion has not been found to be established, hence, the impugned judgments cannot be said to suffer from an error.

Analysis:

19. We have heard the learned counsel appearing for the parties, gone through the impugned judgment as well as the Trial Court Records, as also the testimonies of the witnesses and the documents exhibited therein.

20. From the impugned judgment dated 13.06.2024, out of which First Appeal being F.A. No.177 of 2024 arises, it is manifest that the learned Family Judge has formulated altogether five issues for adjudication. For ready reference, the same are extracted hereinbelow:

(*I*) *Whether the suit is maintainable in its present form?*

(II) Whether the plaintiff has got valid cause of action for the suit?

(III) Whether the marriage of the plaintiff and defendant is fit to be dissolved on the ground of cruelty allegedly administered by defendant?

(IV)Whether the marriage of the plaintiff and defendant is fit to be dissolved on the ground of desertion?

(V) Whether the plaintiff is entitled for the relief claimed?

21. The learned Family Judge has considered the evidence adduced on behalf of the parties for deciding the issues involved in Original Suit No.584 of 2019 and first of all has taken up the issue nos. III, IV and V as they are interconnected.

22. This Court in order to appreciate the aforesaid rival submission before entering into the legality and propriety of the impugned judgment needs to discuss herein the relevant part of the evidences adduced on behalf of the parties wherein the element of cruelty and desertion has been shown by the petitioner-husband.

23. During the trial, two witnesses have been examined on behalf of the appellant-husband who himself has been examined as PW1 and exhibited some documents.

24. The appellant has filed the following documents:

(i) Certified copy of deposition of Girija Swarnkar in Misc. Case No.238/2011 which has been marked as Ext.1;

(ii) Certified copy of order dated 25.01.2017 passed in Misc. Case No.238/2011 which has been marked as Ext.2;

(iii) Certified copy of Order of Hon'ble Jharkhand High Court, Ranchi dated 25.08.2018 passed in Criminal Revision No.1011/2017.

25. The respondent-wife has also examined two witnesses including herself as RW1 and RW2 is his brother.

26. In his examination on oath as PW1, the petitioner-husband has stated that he has filed the case for dissolution of marriage by a decree of divorce on the grounds of cruelty and desertion. He has deposed that the marriage between him and the respondent was solemnized on 05.05.2009

at Janjgir, Champa, Chattishgarh in accordance with Hindu rites and customs. After the marriage, the respondent came to her matrimonial house at Kapil Nagar, Bilaspur, Chattisgarh to lead conjugal life with him and there is no issue out of such wedlock.

27. He has further deposed that sometimes in the middle of July, 2009 the respondent expressed her desire to go to her parental house during "Raksha Bandhan" Festival, and he assured that he would take her to Champa two days earlier to the said festival to be held on 05.08.2009, but the respondent expressed her intention to go to her parental house much earlier insisting the petitioner all the time for the same and ultimately, he had to take her to Champa on 23.07.2009 and left her there.

28. He has further deposed that as per their understanding he went to Champa on 07.08.2009 to bring her back but the respondent did not return with him stating that she would stay further for another 10 to 15 days. Accordingly, he after more than a fortnight again went to Champa to bring her back but she refused to return stating that she would accompany him only when he would arrange a separate accommodation for her without his family members. He was very much shocked hearing such decision of his wife and he tried his level best to make her understand that it was his moral duty to look after his parents who are old and ailing but all his approaches were negated by her and she was strict to her decision and finally refused to come with him to his place at Bilaspur.

29. PW1 has further deposed that when the respondent's mother was hospitalized in Apollo Hospital, Bilaspur he went to see his mother-in-law and at that time too, he approached her to lead conjugal life with him but such approach was refused by the respondent. He has stated that after

death of respondent's mother, he attended the 'Shradh' ceremony of his mother-in-law held at Champa and there also requests were made for reunion but the same were turned down by the respondent and such facts were herself stated by the respondent as revealed in the deposition of respondent in Misc. Case No. 238/2011 filed by the respondent.

30. PW1 has deposed that since then, lot of endeavors were made to bring her back requesting her to join him for leading conjugal life with him but the respondent refused and to the contrary, the respondent threatened him number of times that if separate arrangement was not made for her, he would be implicated in false cases. He has further deposed that the respondent deserted him by refusing to stay with him on the plea as aforementioned which cannot be accepted by any prudent man and he being the elder son, is duty bound to take care of his parents. He has further deposed that his sister namely, Vijaya Laxmi, was married to the brother of the respondent and his sister and her daughter have been deserted by the brother of the respondent, namely, Saligram Soni and consequently, his said sister has been living with her daughter with him because he is duty bound to take care of his deserted sister and her daughter and his old and ailing parents and, as such, it is not possible for him to live separately with the respondent from his family as per her unreasonable demand.

31. PW1 has further deposed that instead of joining with him to lead a happy conjugal life, the respondent preferred an application under section 125 Cr.P.C vide Misc. Case No. 238/2011 on 20.12.2011 in the court of Principal Judge, Family Court at Jamshedpur against him claiming for maintenance of Rs. 15,000/- per month from him. But the

learned Court of Principal Judge, Family Court at Jamshedpur vide its order dated 25.01.2017 dismissed the case in terms of the bar created under section 125(4) CR.P.C. He has further deposed that against the dismissal order dated 25.01.2017 of the Misc. Case No. 238/2011, the respondent preferred Cr. Revision No. 1011/2017 before the Hon'ble Jharkhand High Court at Ranchi but the same was also dismissed vide order dated 25.08.2018 by the Hon'ble Jharkhand High Court. He has deposed that thus, the respondent deserted him on 23.07.2009 with oblique motive that she would not join him if separate accommodation is not arranged for her and since then despite several endeavors made, she refused to join with him and by such act, the respondent treated him with cruelties.

32. PW1 has further deposed that the respondent developed aversion towards him and all such acts of the respondent caused untold mental pain and sufferings to him after deserting him, the attitude of the respondent remained unchanged and her total abnegation of conjugal relationship with him has become a source of severe mental affliction to him. He has stated that his life has become extremely painful for the cruelties rendered upon him by the respondent. On his behalf endeavors were made for reunion but the respondent refused to live with him and, as such, matrimonial tie broke down and the gap has been widened to such an extent that there is no chance of reconciliation, he is not in a position to bear the mental pain any longer and he feels that the only way available to him to end this miserable tie to have the marriage between him and the respondent dissolved by a decree of divorce.

In his cross-examination, PW1 has stated that he has been living separately from his wife since 23.07.2009. He has stated that he filed the case for divorce for the reason that her wife has treated with cruelty and deserted him. He has admitted that on 23.09.2009 at the occasion of Shrawan Purnima he went to his inlaws' house with his wife and after two days, he again went to bring her back but she refused to come with him by stating that she wants to live there some more days. After a fortnight, he again went to his inlaws' house to bring his wife back but she told that she would go back only when separate accommodation is made for her as she does not want to live with his parents. He has further stated that he tried to resolve the matter with the help of Swarnakar Samaj and well-wishers in which Ashok Soni, Gore Lal Soni, Arun Kumar, late Bhagwan Das Soni, and the President of Swarnkar Samaj, namely, Santosh Kumar Soni as also the maternal uncle of the respondent, namely, Manharan Lal Soni and his maternal uncle, namely, Ram Gopal Soni were present but due to adamant behaviour of his brother-in-law, who is the husband of his sister the same could not be resolved. He has denied the suggestion that since his brother-in-law do not want to the sister of PW1 and, as such, due to revenge he also does not want to keep the respondent with him.

In paragraph 2 of his cross examination, PW2 admitted that he seeks to dissolve his marriage because the respondent (his wife) subjected him to cruelty by demanding that they live separately from his parents; however, he had never disclosed this fact anywhere else. He has further stated that after Rakshabandhan festival when he went to bring the respondent back, she refused to come back with him unless her demand to live separately from the parents is not fulfilled and thereafter, he never

went to bring her back. He has further admitted that when his wife (the respondent) has denied to live with him then he never sent her any legal notice. He has further admitted that he had not filed any suit/case in the Court to bring the respondent back in her matrimonial house. He has further stated that the respondent is teaching in a school at Chattisgarh on temporary basis since September, 2020. PW1 has admitted that it is true that marriage of his sister was solemnized with the brother of the respondent, namely, Shaligram. He has further admitted that an attempt was made with the brother of the respondent to get the dispute settled but the same failed.

33. P.W.2 Ram Gopal Soni is the maternal uncle of the appellant. He has stated that the petitioner is his nephew (own sister's son) and, as such, he is well acquainted with the applicant and the respondent. He has stated that the marriage between the appellant and the respondent- Girja Swarnakar was solemnized on 05.05.2009 at Sonar Mohalla, Janjgir, Champa, P.S Champa, Chattisgarh, according to Hindu rites and religion. He attended the marriage ceremony of his nephew and after the solemnization of the marriage the respondent came to her matrimonial house to live with her husband and other family members of the Sasural at Kapil Nagar, Sarkanda, P.S Sarkanda, Bilaspur, Chattisgarh. On 23.07.2009, on the occasion of Raksha Bandhan at the request of the respondent the petitioner accompanied her to the parental house but even after the said Raksha Bandhan, i.e, on 05.08.2009 as per the assurance given by the respondent the petitioner went to bring her back on 07.08.2009, but she refused to come back with the plea to stay at her parental house for few days more but even thereafter she failed to return

to her matrimonial house to join the petitioner. He has deposed that in spite of several attempts made by the petitioner, the respondent did not return to her matrimonial house to live with her husband because she wanted a house to live separately from her inlaws. Later on, he came to know from the petitioner that instead of joining the petitioner, the respondent filed a maintenance case in the Court of Principal Judge, Family Court at Jamshedpur against the petitioner which was dismissed. Subsequently, the revision against the said order has also been dismissed by the Hon'ble High Court of Jharkhand, Ranchi.

34. He has further deposed that on getting information from the petitioner he along with some other members of Swarnakar Samaj tried his level best to persuade the respondent as well as her other family members and requested her to come back to her inlaws' house but she refused to live under one roof along with the petitioner and his parents and told that she would go back only if the petitioner arranges separate house for her. He has further deposed that the respondent threatened that she would implicate the petitioner's entire family in criminal cases if she is compelled to stay with them. He has deposed that the respondent was never subjected to mental cruelty, humiliation and torture by the petitioner or other family members, rather the respondent herself was adamant not to live with the petitioner due to the causes referred above. Since the petitioner takes care of his old and ailing parents and other members of the family and, as such, he could not fulfill the said illegal demand of the respondent. It is also a fact that the sister of the petitioner was married to the brother of the respondent who deserted her and the child and being driven out they took shelter at the house of the petitioner who maintain

them as well. He has deposed that he knows that the petitioner during the pendency of the Matrimonial Suit went to see her ailing mother-in-law at Bilaspur Hospital as well as he had attended the Shradh Ceremony of the mother of the respondent and at that time also, he requested the respondent to come back to her matrimonial house but she refused to come back with the petitioner. He has deposed that several efforts were made by the petitioner and other inmates to bring the respondent back, but she refused all the request and told that she would return only if the petitioner arranges a separate house for her. He has further deposed that there is no negligence or refusal on the part of the petitioner, rather the respondent herself has left her matrimonial house and, thus, deserted her husband without any cogent reason.

35. In the cross-examination, PW2 has stated that there was mediation between both the parties in March, 2010 and 2017 and he was present in the said meditations. He has stated that some dispute arose between the petitioner and the respondent. He has admitted that Rajesh Swarnkar (the petitioner) told him that Girja Swarnkar (the respondent) threatened him that she will lodge criminal case against him but personally she did not say any such things to him. PW2 further stated that Girja Swarnkar (the respondent) has not lodged any criminal case against the petitioner or on her in-laws.

36. PW2 has stated that when Girja Swarnkar (the respondent) went to her parental house during Raksha Bandhan and her husband (the petitioner) went to take her back twice but he does not remember the dates. He has admitted that it is true that wife Girja Swarnkar is ready to live with him but Rajesh Swarnkar is not willing to keep his wife.

37. On the other hand, R.W.1 Girja Swarnkar who is the respondent herself has stated in her examination-in-chief on oath that she got married to the petitioner on 05.05.2009 in Chhatisgarh as per Hindu rites and customs. After her marriage she went to her matrimonial home in Bilaspur along with her husband and they started their conjugal life. She has further deposed that her elder brother Shaligram Soni was married to the sister of the petitioner whose name is Vijay Laxmi Swarnkar on 07.05.2009. She has stated that her bhabhi always went to Bilaspur on the pretest of treatment and due to which dispute started between her brother and her *bhabhi* and thereafter her inlaws' started taunting her. But she kept on bearing all these things thinking that everything will be alright in future. RW1 has deposed that her husband pressurized her to try for a settlement between her brother and *bhabhi* and due to which she was taken to her parental house on the eve of Raksha Bandhan on 23.07.2009 and he never came back after leaving her there and thereafter neither her husband, nor friends nor any of his family members came to take her.

38. RW1 has deposed that her husband (PW1), his family and friends only came for effecting a settlement between her brother Shaligram Soni and her husband's sister Vijaya Laxmi. She has deposed that she is having no dispute with her husband and due to dispute of his sister and her brother she was left by the petitioner at Champa. RW1 has stated that she never asked the petitioner to keep her separately. She has further deposed that she continued to talk with the petitioner over phone and requested him to take her back but he did not take her on one or the other pretext. She has deposed that due to negligent behaviour of the petitioner later on she felt that her husband deserted. RW1 has deposed that she at her family level

as well society level tried best so that her husband takes her back to her matrimonial house, but it was not successful and again she tried several times through her mother, family, friends and President of Swarnkar Samaj, namely, Santosh Soni but the applicant neither got ready to keep her.

39. RW1 has further deposed that whenever her brother and people of the society went to her in-laws' place at Bilaspur and requested her husband to take her back but each time he put a condition that he will keep her if she redresses the strained relation of her brother and sister of her husband (*Nanad*). RW1 has deposed that her husband is not maintaining her but she kept waiting for her husband in Champa and thereafter came to Jamshedpur to her younger brother Jaigopal Soni's house who is working in Tata Power since 2007 in Jamshedpur and since then she is staying in Jamshedpur.

40. RW1 has further deposed that on 29.09.2011 she sent legal notice to her husband requesting him to take her to her inlaws' place but he neither took her nor gave any reply. When the petitioner started neglecting her, she was compelled to file a Misc. Case 238/11 for maintenance allowance. During the pendency of the said Misc. Case, she had to go Chattisgarh to look after her mother and elder brother Shaligram as they were not keeping good health. She has deposed that on giving information by his brother Jaigopal, her husband and *Bhabhi*-Vijay Laxmi used to come to see her mother and brother but he never took her with him. RW1 has stated that her mother died on 10.10.2012 in hospital at Bilaspur whereafter her husband (PW1) attended the last rituals in Champa, but neither her husband nor any of his family members tried to take her back.

41. RW1 has further deposed that her husband after paper publication in the said Misc. Case (Maintenance Case), has appeared thereafter efforts were taken by the learned Family Court for amicable settlement which remained unsuccessful. She has deposed that Misc. Case 238/11 was dismissed on 25.01.2017 against which Criminal Revision No. 1017/11 was preferred against the said order of dismissal which was also dismissed by the Hon'ble High Court, Ranchi.

42. RW1 has stated that she has no source of income and she is dependent on her brother Jaigopal Soni and presently she is working in Chattisgarh State Electricity Production Company under contract. She has further stated that she tried on personal level, family level and society level but she remained unsuccessful and her husband without any cogent reason is not taking her and he himself has said that he will not keep her. She has further stated that her husband has filed this case leveling false allegations to get divorce on the ground that she tortured her.

In her cross-examination, RW1 has stated that she is residing at her *maike* since 23.07.2009 as her husband never came there to bring her back to her matrimonial home, however, she has requested several times from her husband in this regard. She has stated that she wants to go to her matrimonial home but her husband (PW1) denied to bring her back. She in her evidence in Misc. Case no. 238/11 has stated that on 07.08.2009 her husband had come to her parental house but he had come to leave his sister there. She has stated that it is true that her husband never demanded any dowry but her *Nanad* and father- in- law used to taunt her for dowry but she did not file any case for torture for dowry against them. RW1 has stated that she is earning Rs. 8,000/- PM but it is temporary. Further she

has denied that without any reason 13 days prior to Raksha Bandhan she went to her parental house along with her husband and thereafter inspite of efforts of her husband she did not come to her inlaws' house.

43. R.W.2 Jaigopal Soni is the younger brother of the respondent. He has stated in his examination in chief given by way of affidavit dated 05.08.2023 that his sister Girja Swarnkar got married to Rajesh Swarnkar on 05.05.2009 and his elder brother Shaligram Soni got married to Vijaya Laxmi Swarnkar who is the sister of the applicant. He has stated that marital life between his *bhabhi* and brother was not sweet and due to which respondent Rajesh Swarnkar taunted his sister Girja Swarnkara. He has stated that his sister Girja Swankar (RW1) was taken to her parental home by the applicant on 23.07.2009 on the eve of Sawan Purnima for effecting settlement between Vijaya Laxmi Swankar and his brother Shaligram Soni. The applicant (PW1) left her there and came back with an assurance that he will come after Raksha Bandhan and will take his sister Girja Swarnkar but he never took her. He has further deposed that his sister requested the petitioner (PW1) on phone to take her back, but he did not take her on one pretext or the other. RW2 has further deposed that Vijaya Laxmi is staying separately from her husband Shaligram Soni and does not want to live with him. He has stated that first time when his sister on 24.09.2011 sent a notice to her husband for restitution of conjugal rights and then being influenced by that, sister of the petitioner-husband sent a legal notice which was replied by his brother Shaligram Soni and due to which his sister Girja Swarnkar has been deserted by the petitioner although she is ready to live with him. He and his family members on personal level as well as society level tried to amicably settle the matter

but the petitioner (PW1) did not get ready to keep his sister nor got ready to send his sister to her inlaws' house. He has stated that his sister (RW1) was staying with him since 13.10.2010 but now she is staying in Champa for her livelihood. He has stated that when his sister was admitted in T.M.H, then the petitioner who had come in the maintenance case only came to meet her but did not give her any financial help. When his mother and brother were admitted in hospital, petitioner and his family used to come there but only to see them and they did not try to bring his sister back with them. He has stated that when Shaligram Soni was ill and was admitted in hospital he asked Vijaya Laxmi and the petitioner to accompany him to hospital but they refused and they also refused to take care of Shaligram after he was discharged from the hospital. RW2 has stated that his sister (RW1) is ready to stay with her husband in any condition but he is not keeping her on the pressure of his family. He has further stated that from the beginning his sister Girja Swarnkar (RW1) is ready to live with the petitioner on any condition but she never put any condition to take separate accommodation. As per desire of the petitioner, his sister is staying in Champa and even tried for amicable settlement between her brother Shaligram Soni and Vijaya Laxmi. He has stated that maintenance case of his sister has been dismissed but till date his sister never filed any false case against her husband nor tortured him in any way, rather for restitution of conjugal life and maintenance her sister (RW1) has filed case in the court. He has stated that his sister is working as Data Entry Operator in Chattisgarh and she is waiting since 23.07.2009 to stay with her husband but her husband (PW1) is not keeping her without any cogent reason.

44. RW2 has stated that in spite of passage of so much time, his sister is still ready to live with her husband. He has stated that the petitioner is a govt. employee in NTPC, he has deserted his sister and compelled her to file a case for restitution of conjugal rights.

In the cross-examination, RW2 he has stated that it is true that on 23.07.2009 on the eve of Sawan Purnima the applicant left his sister at her parental house saying that he would come and take her after Raksha Bandhan but he never came to take his sister. He has denied the suggestion that it is wrong to say that when his brother-in-law (PW1) came to take his sister she made a demand for staying separately and refused to go. He has admitted that as his brother-in-law (PW1) had left his sister, so an application was given in Mahila PS Bilaspur and settlement talks was held but he refused to keep his sister. He has denied the suggestion that his sister (RW1) left her matrimonial home of her own free will, which caused the petitioner and his family significant trouble in society and tarnished their reputation.

45. The fact about filing of suit by taking plea of cruelty and desertion is admitted one as per the evidences adduced on behalf of the appellant-husband.

46. The petitioner/appellant-husband all along has alleged the issue of cruelty, and desertion which he was subjecting to by his wife and in order to establish the same the evidences has been laid as has been referred hereinabove.

47. It needs 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.

48. 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).

49. 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.

50. 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."

51. Further, it needs to refer herein that under section 3 of the Indian Evidence Act a 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 like this.

52. 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.

53. In ***"A. Jayachandra v. 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.

54. Since this Court is 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.

55. Further, while assailing the impugned judgments ground of perversity has also been pleaded on behalf of the appellant-husband

therefore, 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.

56. 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."*

57. 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.

58. Thus, "perversity" refers to a finding or decision so unreasonable or irrational that no reasonable person acting judicially could have reached it. It signifies a gross and unreasonable assessment of evidence or law by a court.

59. Further Perversity is a high threshold for intervention, distinguishing it from a mere error of fact or law. The "safest approach on perversity is the classic approach on the reasonable man's inference on the facts but inadequacy of evidence or a different reading of evidence is not perversity, reference in this regard be made to the judgment rendered by the Hon'ble Apex Court in the case of ***Damodar Lal v. Sohan Devi, (2016) 14 SCC 197.***

60. On the basis of the aforesaid factual aspect and settled position of law, the question which primarily arises for consideration in the present appeal is *whether the appellant has been able to establish, on the basis of the evidence brought on record, that the respondent treated him with cruelty within the meaning of Section 13(1) (i-a) (i-b) of the Hindu Marriage Act, 1955 so as to entitle him to a decree of divorce.*

61. Since in the present appeal a submission has been advanced on behalf of the appellant-husband that the respondent-wife subjected him to mental cruelty, it becomes necessary to advert to the statutory element of cruelty as contemplated under Section 13(1) (i-a) of Hindu Marriage Act 1955.

62. The “cruelty” has been interpreted by the Hon’ble Apex Court in the case of ***Dr. N.G. Dastane vs. Mrs. S. Dastana, (1975) 2 SCC 326*** wherein it has been laid down that the Court has to enquire, as to whether, the conduct 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.

63. This Court deems it fit and proper to take into consideration the meaning of ‘cruelty’ as has been held by the Hon’ble Apex Court in

Shobha Rani v. Madhukar Reddi, (1988)1 SCC 105 wherein the wife alleged that the appellant-husband and his parents demanded dowry. The Hon'ble Apex Court emphasized that "cruelty" can have no fixed definition.

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

65. 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."

66. The nature of allegations need not only be illegal conduct such as asking for dowry. Making allegations against the spouse in the written statement filed before the court in judicial proceedings may also be held to constitute cruelty.

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

68. In ***Vijaykumar 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.

69. The Hon'ble Apex Court in ***Joydeep Majumdar v. Bharti Jaiswal Majumdar, (2021) 3 SCC 742***, has observed that while judging whether the conduct is cruel or not, what has to be seen is whether that conduct, which is sustained over a period of time, renders the life of the spouse so miserable as to make it unreasonable to make one live with the other. The conduct may take the form of abusive or humiliating treatment, causing mental pain and anguish, torturing the spouse, etc. The conduct complained of must be "grave" and "weighty" and trivial irritations and normal wear and tear of marriage would not constitute mental cruelty as a ground for divorce.

70. "Cruelty" has an inseparable nexus with human conduct and is always dependent on social strata or milieu to which parties belong, their ways of life, relationship, temperaments and emotions that are conditioned by their social status, reference be made to the judgment rendered by the Hon'ble Apex Court in the case ***Vishwanath Agrawal*** **v.** ***Sarla Vishwanath Agrawal*****, (2012) 7 SCC 288**.

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

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

73. For considering dissolution of marriage at instance of a spouse who alleges mental cruelty, result of such mental cruelty must be such that it is not possible to continue with matrimonial relationship reference may be taken from the judgment rendered by the Hon'ble Apex Court in the case of ***Joydeep Majumdar v. Bharti Jaiswal Majumdar, (supra).***

74. Further, the word 'cruelty' is used relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct and one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. There may be cases where the conduct complained of itself is bad enough and per se unlawful or illegal.

Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted, reference in this regard be made to the judgment rendered by the Hon'ble Apex Court in the case of Vinita ***Saxena* v. *Pankaj Pandit*, (2006) 3 SCC 778.**

75. Further, in the case of ***Manish Tyagi* v. *Deepak Kumar*, (2010) 4 SCC 339** the Hon'ble Apex Court has categorically observed that to constitute 'cruelty', it is enough that conduct of one of parties is so abnormal and below accepted norm that another spouse could not reasonable be expected to put up with it. Conduct is no longer required to be so atrociously abominable which would cause reasonable apprehension that it would be harmful of injurious to continue cohabitation with another spouse. Hence, it is not necessary to establish physical violence. Continued ill-treatment, cessation of marital intercourse, studied neglect, indifference may lead to inference of cruelty.

76. The word "cruelty" under Section 13(1) (i-a) of the Act has got no static connotation, and therefore, gives a very wide discretion to the Court to apply it liberally and contextually. What is cruelty in one case may not be the same for another and has to be applied from person to person while taking note of the attending circumstances. Harm or injury to health, reputation, the working-career or the like, would-be important considerations in determining whether the conduct of the defending spouse amounts to cruelty. It has to be shown that the defending spouse has treated him with cruelty to cause reasonable apprehension in his/her mind that it will be harmful or injurious to live with the contesting spouse.

77. Further, the ground of desertion has also been pleaded therefore, it would be apt to discuss herein the element of "desertion" .

78. The definition of desertion as defined under explanation part of Section 13 which 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.

79. Further, it requires 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.

80. 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 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.

81. ***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."

82. 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.

83. 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. The fact that a husband makes an allowance to a wife whom he has abandoned is no answer to a charge of desertion.

84. 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. Desertion as a ground of divorce differs from the statutory grounds of adultery and cruelty in that the offence founding the cause of action of

desertion is not complete, but is inchoate, until the suit is constituted. desertion is a continuing offence.

85. It is, thus, evident from the aforesaid reference of meaning of desertion that the quality of permanence is one of the essential elements which differentiates desertion from wilful separation. If a spouse abandons the other spouse in a state of temporary passion, for example, anger or disgust, without intending permanently to cease cohabitation, it will not amount to desertion. For the offence of desertion, so far as the deserting spouse is concerned, two essential conditions must be there, namely, *(1)* the factum of separation, and *(2)* the intention to bring cohabitation permanently to an end.

86. 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 form the necessary intention aforesaid. In such a situation, the party who is filing for divorce will have the burden of proving those elements.

87. The Hon'ble Apex Court in ***Debananda Tamuli vs. Kakumoni Kataky, (2022) 5 SCC 459*** has considered the definition of ‘desertion’ on the basis of the judgment rendered by the Hon'ble Apex Court in ***Lachman Utamchand Kirpalani v. Meena, AIR 1964 SC 40*** .

88. It has been observed 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. The view taken by the Hon'ble Apex Court has been incorporated in the Explanation added to sub-section (1) of Section 13 by Act 68 of 1976. The said Explanation reads thus:

> *"**13. Divorce**.—(1) ...*
>
> *Explanation.—In this sub-section, 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 wilful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly."*

89. Adverting now to the factual matrix, it is evident from the impugned order that the allegations pressed into service pertain specifically to the grounds of alleged cruelty and desertion, as pleaded by the petitioner/appellant-husband.

90. In the instant case, the pleadings of both parties unmistakably establish that the marriage between them, solemnized according to Hindu rites and customs, is an admitted fact. It is further an admitted position that no issue has been born out of the wedlock of the couple.

91. The petition before the learned Family Court was instituted by the plaintiff/appellant-husband seeking a decree of divorce under Section 13 of the Hindu Marriage Act, 1955 on the grounds of cruelty and desertion. In support thereof, he levelled allegations against the defendant-wife (respondent herein), asserting that he had been subjected to cruelty at her hands.

92. In Para-1 of his cross examination, plaintiff/appellant has stated that he has been living separately from his wife (the respondent herein) since 23.07.2009 because his wife has harassed him and she lodged a case under section 125 Cr.P.C and after its dismissal, she again filed a suit for restitution of conjugal rights against him. He has further submitted that when he went to bring the respondent with him after Raksha Bandhan she said that she would come with a condition if a separate accommodation would be provided to her but thereafter, he never went to his in-laws' house to bring her back. At para-2 of his cross examination, the appellant has admitted that it is true that he has filed the suit for divorce as his wife (respondent herein) has used to harass him by saying that to live separately from his parents. He has further admitted the fact that he has not made any complaint to any one or anywhere in this regard. He has further admitted that when his wife had refused to live with him, he had not sent any legal notice to her nor filed a suit for restitution of conjugal rights.

93. The allegation levelled by the plaintiff/appellant in the plaint is that the defendant/respondent used to live very few days with him and she was regularly living at her parental home. It is also alleged that the defendant/respondent put a condition to the plaintiff/appellant to live separately from his parents and on its refusal by the plaintiff the dispute cropped up in between both the parties and thereafter bitterness of matrimonial relationship of husband and wife started deteriorating severely by litigating attitude. However, in the cross examination the appellant has admitted that he never went to his in-laws' house to bring back the respondent nor he filed any suit for restitution of conjugal rights.

94. The respondent-Girija Swarankar has stated in paragraph-4 of her examination-in-chief that her husband had pressured her to resolve the dispute between her *Nanad* (sister-in-law) and her brother-who is married to her *Nanad*. She further stated that for this purpose, he left her at her *maike* (maternal home) on the eve of the Rakshabandhan festival on 23.07.2009, promising to take her back after the festival; however, he or his family members never returned to bring her back to her matrimonial home. At para-7 the respondent has stated that she made requests to the appellant over phone to bring her back but he refused to do so on one pretest or the other. At para-10 the respondent has stated that when her brother and well-wishers tried to understand the appellant to keep her, he would always put a condition that she could only stay if the relationship between his brother and sister-in-law was mended first. At para-11, the respondent has stated that the appellant has neglected to maintain her. At para-19 the respondent has stated that in his evidence in Maintenance Case, the appellant himself has admitted that he does not want to keep her with him.

95. Further, in her cross-examination at para-1, the respondent has stated that she requested to her husband several times to bring her back but he refused. She has admitted that she wants to go to her matrimonial home but her husband (the appellant) has refused to do so. At para-2 of her cross examination, the respondent has stated the petitioner -husband came to see respondent-wife's mother when she was ill but he never took her to the matrimonial home. At para-3 of her cross-examination, the respondent has admitted that her husband (the appellant) has never demanded any dowry from her and she had also not lodged any case for the same.

96. Thus, upon consideration of the aforesaid evidence of the parties, it has come that the appellant has neglected to maintain the respondent and never tried to bring her back as there was a matrimonial dispute between his sister and brother-in-law, who is the brother of the respondent. It also comes in the evidence that the respondent still wants to reside with the appellant but it was the appellant who neglected her and never tried to reconcile the matter. It also comes in the evidence that the appellant instead of filing a suit for restitution of conjugal rights has straightway filed a suit for divorce whereas the respondent did not file any criminal case against the appellant though she has been neglected by the appellant who never cared to maintain her. This shows the conduct of the respondent who still wants to resolve the matter and live with his husband, i.e, the appellant.

97. The respondent has categorically stated that she does not desire divorce, as she wants to lead a happy conjugal life with the appellant. She has denied ever treating the appellant with cruelty, asserting that she has consistently endeavored to continue her marital life. She has alleged that the appellant exerted pressure upon her to first resolve the matrimonial dispute that arose between his sister and his brother-in-law (who is the respondent's own brother), after which he would keep her; unfortunately, the same could not be resolved. She has further stated that since the appellant has neglected her and, as such, she was compelled to file maintenance case against him, however, the same was dismissed.

98. The learned Family Court has considered the entire factual aspect as well as settled position of law and after going through the evidence on record has explained in detail about absence of element of cruelty and

desertion. For ready reference, the relevant paragraph of the impugned judgment (OS NO. 584/2019) is being quoted herein which reads as under:

> *"10. And, from careful scrutiny, appreciation and marshaling of the oral evidence of the petitioner and his uncle & the documentary evidence and the evidence of the respondent and her younger brother, it is very much clear that it is an admitted position that the respondent is the legally married wife of the petitioner as they got married on 05.05.2009 in Chhatsigarh and it is also admitted that after the marriage she went to her matrimonial home in Bilaspur and started conjugal life with the petitioner. And it is also an admitted position that on 23.07.2009 the respondent came to her parental house along with her husband and since then she is staying separately from her husband. Further the petitioner and P.W.2 has corroborated the averments and allegations made in the plaint that as respondent expressed her desire to go to her parental house during Raksha Bandhan, so the petitioner took her to her parental house in Champa on 23.07.2009 and left her there and again he went on 07.08.2009 and again after a fortnight petitioner went to bring back his wife but she refused to come rather stated that she will accompany him if he arranges separate accommodation to which he refused. And thereafter also he made several efforts to bring back his wife but she refused to come with him. And even he went to see his mother in law when she was hospitalized in Bilaspur and there also he approached the respondent to lead conjugal life with him but she refused and even in the Shradh Ceremony of his mother in law he again requested the respondent to accompany him but there also she turned down the request. And she even threatened him number of times that if separate arrangement was not made for her she would entangle him in false cases, but he refused his request as he being the son is duty bound to take care of his parents. And further admittedly the respondent filed a case U/s 125 Cr.P.C in Jamshedpur which was dismissed on 25.01.2017 and the criminal revision No. 1011/17 preferred by the respondent against the said dismissal order before the Hon'ble Jharkhand High Court was also dismissed on 25.08.2011. So, she has deserted him since 23.07.2009 with oblique motive that she would get separate accommodation and as she refused to join, so she treated him with cruelties and she has developed aversion against him causing untold pain and suffering to the petitioner. And the respondent and her other witness has denied the allegations made by the petitioner that after she went to her matrimonial home on 23.07.2009 in spite of several efforts made by the petitioner she did not come back to the house and society of the petitioner on the ground that*

she wanted to live in a separate accommodation away from her inlaws and she has also denied that she pressurized him to take her to her parental house on 23.07.2009 & it is the plea of the respondent that as the marital relation between her elder brother and sister of the petitioner was in trouble and the said marriage is an admitted fact, so her husband took her to her parental house in order to amicably resolve the dispute between her brother and sister of the petitioner. Further she has categorically stated that she is ready and willing to stay with the petitioner in any circumstances. On the other hand, the respondent/petitioner has refused to keep her.

And even otherwise from the evidence of the petitioner and his other witness it is not at all established that which overt and wrong act of the respondent caused harassment and caused cruelty and mental pain to the petitioner. And as per the petitioner as the respondent deserted him and refused to join him caused cruelty to him. But that would in itself not constitute cruelty in any form & even she is ready to live with him, rather as per para-3 of his cross-examination, he had given evidence in the maintenance case filed by his wife that he will not keep his wife. And the allegation that the respondent wanted a separate accommodation from her inlaws even if taken to be true will also not constitute cruelty. And even otherwise the respondent is very much ready and willing to go with the petitioner and lead conjugal life and her said statement gets strengthened from the fact that she has also filed a case U/s 9 of the H.M.Act for restitution of conjugal rights and prior to that she also sent legal notice to her petitioner husband requesting him to take her. So from the entire evidence of the petitioner's side, it cannot be gathered that which overt act and wrong act of the petitioner caused mental pain and cruelty to the petitioner. And in the suit filed by the respondent of this case u/s-9 of the H.M.A, the petitioner, who is respondent in the said case in his cross-examination in para-1 has categorically stated that during his stay with his wife, she did not do any such misbehaviour & she only argued with him. And his said evidence, admission can be considered here as both the cases are connected & intertwined & has bearing on each other. So his said evidence further brush aside his case that his wife was cruel to him & only that she argued with him will not fall in the category of cruelty as having arguments between a husband & wife is a normal phenomenon in life. And even otherwise from the evidence on the record as discussed above also do not establish that his wife extended cruelty to him. So from the above made discussion of the evidence, it clearly appears that the petitioner has failed to bring any evidence to show any overt act on the part of the respondent which caused mental or

physical cruelty to him or both. The petitioner has failed to bring any specific date or instance when the respondent was cruel towards him mentally or physically and simply by making assertion and allegation of causing cruelty would not attract cruelty. And if she was extending cruelty to him, then what restrained him from making any complain either in his society or any other authority & if she was cruel than why he went to bring his wife. So the petitioner has failed to show any overt acts on the part of the respondent towards him which would attract cruelty as envisaged U/s 13(1)(ia) and as defined and interpreted by the Hon'ble Supreme Court in the above referred cases. And further the facts & circumstances of the cases relied upon by the petitioner as mentioned above is different from this case. And further as per decision of the Hon'ble Supreme Court in the case of A. Jaichandra Vs. Aneel Kumar, cruelty' may be defined as willful and unjustifiable conduct of such character as to cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger. But as discussed above petitioner has failed to establish that the conduct of his wife was willful & unjustifiable of such character as to cause danger to his life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger to him. So, in view of the above discussed evidence, facts & circumstances, it can be safely concluded that the petitioner has not been able to establish that he suffered cruelty at the hands of the respondent and the acts complained against the respondent would not constitute cruelty.

And now coming to the ground of desertion. And from the above made discussions of the evidence of the petitioner and the respondent side it appears that it is an admitted fact that since 23.07.2009 the respondent is at her parental place and it is also an admitted fact that the petitioner took her to her parental house on the said date as she was willing to go to her parental place on the occasion of Raksha Bandhan but as per the respondent her husband took her there to amicably resolve the marital discord between the sister of the petitioner and elder brother of the respondent. Further as per the petitioner and his witness, the petitioner went to bring back the respondent on 07.08.2009 and again after 15 days he went to bring her back his wife but he has not stated the date. And further as per his cross-examination he went to bring back his wife after two days but there he has not stated the date. And thereafter he did not go to bring back his wife, which shows that somewhere after August 2009 he did not go to bring back his wife. Further she has denied that on any of the occasions her petitioner husband came to take her back and further as per her evidence and evidence of her brother, she is still ready and

willing to stay with her petitioner husband and as per para-3 of the cross-examination of the petitioner on 25.07.09 ,he went to his in-laws place & stayed there for one night. So although it is established that the parties are staying separately since 23.07.2009 but from the evidence of the petitioner it is not clearly established that she has deserted him as she is still willing to stay with him, rather it is the petitioner who is not willing to keep his wife & in his cross-examination in para-3 he has categorically stated that in the maintenance case filed by his wife he had given evidence that he will not keep his wife. So it appears that it is the petitioner who is responsible for constructive desertion. And thereafter he has not taken any step to take back the respondent either by coming and taking his wife or by filing case U/s 9 of the H.M.Act, rather he filed this case for divorce. And it is the respondent who filed a case U/s 9 of the H.M. Act and even prior to that she also sent legal notice to the petitioner requesting him to take her back, which further shows that the respondent is still ready and willing to stay with her petitioner husband, so it cannot be said that the respondent has been compelled by her husband to stay away from her matrimonial home & his society since 23.07.2009. And the fact that he has filed this case for divorce also shows his intention that he wants to bring an end to his marital ties with the respondent. So the petitioner has also not succeeded in establishing that his respondent wife deserted him since 23.07.2009. And the above discussed evidence shows that it is not the intention of the respondent to bring cohabitation permanently to an end (animus deserendi) as she is still willing to stay with her husband, rather the petitioner wants to sever his marital ties with the respondent. And the admission of the petitioner in para-3 of his cross-examination that strained relation between his sister & brother-in-law, who is the brother of his wife & that his sister is staying at he parental home with him also speaks volumes. So the petitioner has also not succeeded in satisfying the ingredients of desertion."

99. The evidence establishes that the petitioner (appellant herein) and respondent were married on 05.05.2009 and initially lived together in Bilaspur. On 23.07.2009, the respondent returned to her parental home and thereafter remained apart. The petitioner claims repeated efforts to bring her back were refused unless he arranged separate accommodation, and alleges threats of false cases. He relies on her filing of proceedings

under Section 125 Cr.P.C., which were dismissed, to argue desertion and cruelty.

100. The respondent, however, denies pressuring for separate residence and asserts that she was taken to her parental home due to family disputes. She consistently expressed willingness to resume conjugal life, even filing a petition under Section 9 of the Hindu Marriage Act for restitution of conjugal rights. Evidence shows the petitioner himself admitted that he would not keep his wife, and no specific acts of cruelty were proved. Mere arguments or desire for separate accommodation do not amount to cruelty under Section 13(1)(i-a) of the HIndu Marriage Act.

101. Thus, from the aforesaid it is evident that the learned Family Judge has considered the fact that the appellant-husband has miserably failed to establish the allegation of cruelty against the respondent-wife, rather it has come on record that the appellant-husband has admitted that he does not want to keep the respondent with him.

102. After discussing in detail on the point of cruelty and desertion, the learned Family Judge at para-11 and 12 of the impugned judgment has held as under:

> *"11. So, from the above discussed evidence, facts and circumstances, 1 find that the petitioner has not succeeded in establishing that the respondent treated him with cruelty & also deserted him as envisaged U/s 13(1)(ia)(ib) of H.M.Act. So the petitioner is not entitled to the relief of getting divorce from his respondent wife on the ground of cruelty & desertion or any of the said grounds. So Issue No. III, IV & V which are the main issues stands decided against the petitioner. But nothing has been brought on record by the respondent to show that suit is barred by any act & law & is not maintainable & hence the suit is maintainable in its present form. And further in the light of the above made discussions, it can be safely concluded that the petitioner had valid*

cause of action to file this suit as the plaint consists of bundle of facts for enforcing the legal inquiry, so issue so issue no-1 & no-II stands decided in favour of the petitioner. But as the main issues are decided against the petitioner, so the petitioner is not entitled for divorce from the respondent on the ground of cruelty and desertion or any of the said grounds. And accordingly, it is hereby

ORDERED

12. That the suit of the petitioner Rajesh Kumar Swarnkar be and the same is dismissed on contest. The parties will bear their own cost. Office to prepare the decree accordingly."

103. Thus, on the basis of discussion made hereinabove it is evident that the appellant-husband although has taken the ground of cruelty meted to him by his wife but, in course of trial he has failed to establish the element of cruelty meted out to him at the hands of the respondent-wife.

104. The desertion while, on the other hand, has been defined that if either of the parties on its own has left the house without any compulsion or coercion, then only such type of separation will come under the fold of desertion. But what we have seen from the evidence of the appellant and the witness adduced on his behalf during the trial that the appellant has himself left the respondent/wife and further it has been categorically stated by the respondent/wife that she does not desire divorce, as she still wants to live with the appellant to lead a happy conjugal life. She has denied ever treating the plaintiff with cruelty, asserting that she has consistently endeavored to continue her marital life.

105. She has alleged that the appellant has exerted pressure upon her first to resolve the matrimonial dispute that arose between his sister and his brother-in-law (who is the respondent's own brother), after which he would keep her; unfortunately, the same could not be resolved. It has also come on record that it was the appellant who himself had left the

respondent at her *maike* on the eve of Rakshabandhan and even thereafter he never went to bring her back, however, he went to the respondent's *maike* on several occasions, i.e., on the *shradh* of wife's mother and thereafter in a Panchayati which was held in presence of the well-wishers and family members to resolve the dispute which arose in between the sister of the appellant and his husband, i.e., own brother of the respondent.

106. Thus, on the basis of discussion made hereinabove, it clearly emerges that the appellant/husband has failed to establish the essential ingredients of *desertion* under Section 13(1)(i-b) of the Hindu Marriage Act. Desertion requires voluntary abandonment of the matrimonial home without reasonable cause, but here the evidence shows that the appellant himself left the respondent at her parental home and thereafter exerted pressure upon her to first resolve disputes between his sister and her husband (the respondent's brother).

107. The respondent, on the other hand, consistently expressed her willingness to continue the marital relationship and denied any intention to sever cohabitation. She never sought divorce and even endeavored to resume conjugal life. Thus, the factum of desertion has not been proved, and the appellant cannot take advantage of his own conduct. The conclusion is that the plea of desertion raised by the appellant is unsustainable in law and on facts.

108. Upon careful consideration of the factual matrix and the legal position, this Court finds that the learned Family Judge has rightly appreciated the evidence and concluded that the appellant-husband failed to establish the grounds of cruelty and desertion against the respondent-wife. The dismissal of the suit was based on conscious

evaluation of both oral and documentary evidence, and accordingly, the learned Family Judge has come to conclusion that the appellant-husband has miserably failed to establish the ground of cruelty and desertion against the respondent-wife. The aforesaid reason has led the learned Family Judge to dismiss the suit.

109. This Court, upon due consideration of the findings recorded by the learned Family Judge and in the light of the foregoing discussion, is of the opinion that the judgment and decree passed in ***Original Suit No. 584 of 2019*** do not fall within the ambit of perversity, since the learned Family Judge has consciously evaluated the evidence, both ocular and documentary, as is manifest from the impugned judgment.

110. This Court, therefore, holds that the judgment dated 13.06.2024 and the decree dated 20.06.2024 passed in *Original Suit No. 584 of 2019* by the learned Family Judge warrant no interference.

111. Consequently, the instant appeal being F.A No.177 of 2024 is devoid of merit and stands dismissed.

112. Pending I.As, if any, stands disposed of.

FA No.178 of 2024

113. The present appeal challenges the judgment dated 10.06.2024 and the decree dated 14.06.2024 in *Original Suit No. 313 of 2019*, whereby the learned Additional Principal Judge, Family Court-II, Jamshedpur allowed the petition under Section 9 of the Hindu Marriage Act, 1955 filed by the wife (respondent herein) and directed the husband (appellant herein) to restore conjugal life with her within three months.

Factual Matrix (In FA No.178 of 2024):

114. The present case has been filed by petitioner/wife (respondent herein) namely Girja Swarnkar against her husband Rajesh Swarnkar (appellant herein), for restitution of her conjugal rights under section 9 of the Hindu Marriage Act.

115. The petitioner married the respondent on 05.05.2009 in Champa, Chhattisgarh, and began conjugal life in Bilaspur. Soon after, disputes arose between her brother and the respondent's sister, which led the respondent to leave the petitioner at her parental home on 23.07.2009, promising to return but never doing so. It is the case of the petitioner/respondent/wife that despite repeated requests and mediation efforts by family members and community leaders, the respondent refused to take her back or provide maintenance.

116. The petitioner/wife remained at her parental home until 13.10.2010, thereafter residing with her younger brother in Jamshedpur. She sent a legal notice in 2011, filed a maintenance case (Misc. Case No. 238/2011), and pursued mediation, but all efforts failed. The maintenance case and subsequent revision were dismissed. Even when she personally approached her husband in 2018, he refused to keep her.

117. Thus, the petitioner/wife asserts that she has consistently sought restitution of conjugal rights, but the respondent has neglected and deserted her. She prays for a decree directing the respondent to take her back to the matrimonial home and resume marital life.

118. The respondent/O.P,(husband) in his written statement dated 22.02.2020, challenged the maintainability of the petition under Section 9 of the Hindu Marriage Act, 1955, both on law and facts. He contended that the suit was beyond the civil jurisdiction of the Jamshedpur Family

Court since the marriage was solemnized at Champa, Bilaspur, and the parties never resided together at Jamshedpur. He further argued that the petition was barred by limitation, waiver, and estoppel, and alleged that the petitioner fabricated false stories with oblique motives. While admitting the marriage on 05.05.2009 and cohabitation until 23.07.2009, he denied leaving the petitioner at her parental home permanently, asserting instead that she voluntarily refused to return unless provided separate accommodation.

119. The O.P claimed that he made repeated efforts for reunion, including visiting the petitioner's parental home and attending her mother's funeral, but she refused to accompany him. He emphasized that the petitioner had withdrawn herself from his society since July 2009 without reasonable cause, and instead filed a maintenance case (Misc. Case No. 238/2011), which was dismissed on 25.01.2017. The dismissal order, affirmed by the Hon'ble Jharkhand High Court in Criminal Revision No. 1011/2017, recorded that the petitioner left her matrimonial home voluntarily and without cruelty or ouster by the husband, thereby disentitling her to maintenance under Section 125(4) Cr.P.C. The O.P argued that these findings demonstrated her lack of genuine intent to resume conjugal life.

120. Finally, the O.P highlighted that the instant restitution petition was filed belatedly in 2019, nearly a decade after separation, and only after her maintenance claim failed. He pointed out that he himself had filed Matrimonial Suit No. 584/2019 seeking divorce under Section 13(1)(ia)(ib) of the Hindu Marriage Act, which rendered the restitution petition untenable. He alleged that the petitioner's demand for separate

accommodation was unreasonable, and her threats of false cases amounted to desertion.

121. On the aforesaid grounds, respondent/husband had submitted before the learned Family Court that the petition under Section 9 was filed by the petitioner wife with oblique motive, lacked cogent reasons, and was liable to be dismissed.

122. Based on the aforesaid pleadings of the parties following issues were framed by the learned Family Court:

(*i) Whether the suit as framed is maintainable?*

(ii) Whether the plaintiff has got a valid cause of action for the suit ?

(iii)Whether the plaintiff is entitled to a decree of restitution of conjugal rights?

(iv)Whether the defendant has reasonable cause for withdrawal from the society of plaintiff?

(v)Whether plaintiff is entitled to any other relief or reliefs?

123. The Learned Family Judge, after institution of the said case, taking into consideration of the pleadings of the parties has formulated the issues aforesaid and has decided the *lis* by granting a decree for restitution of conjugal rights in favour of the plaintiff-wife.

124. The aforesaid judgment by which the decree for restitution of conjugal rights has been granted in favour of the petitioner/ plaintiff-wife is under challenge by filing the instant appeal.

125. This Court in order to appreciate the rival submission before entering into the legality and propriety of the impugned judgment needs to discuss herein the relevant part of the evidences adduced on behalf of the

petitioner-wife (respondent herein) and respondent/husband before the learned Family Court.

126. First of all, the learned Family Judge has taken into consideration the issue no.(iii) and (iv) i.e *Whether the plaintiff is entitled to a decree of restitution of conjugal rights* and *Whether the defendant has reasonable cause for withdrawal from the society of plaintiff?*

127. The petitioner/wife examined as A.W.1 in her examination in chief given by way of affidavit has stated that the petitioner got married to the respondent/husband (appellant herein) as per Hindu customs in Champa, Chattisgarh on 05.05.2009 in the presence of relatives and after the marriage they started living in Bilaspur and started their conjugal life. And the elder brother of the petitioner namely Shaligram Soni got married to the sister of the respondent Vijaya Laxmi Swarnkar on 07.05.2009 as per Hindu customs in Bilaspur and nd Bhabhi of the petitioner making false excuse of treatment used to come to Bilaspur with her husband whenever she felt like and due to which dispute started between them and due to which her in-laws used to taunt her.

128. It is stated that the respondent/husband started pressurizing her for effecting a compromise between them and the respondent left the petitioner at her parental house on 23.07.2009 prior to Raksha Bandhan saying that he will come shortly and will take her but she kept on waiting for her husband but he never came to take her. When she requested him to take her to her in-laws place but he kept on making excuses. Several times her mother, brother and other relatives and President of Swankar Samaj, Santosh Soni tried to make settlement but the respondent neither got ready to keep the petitioner nor got ready to send his sister to her in-laws place.

129. Since the petitioner was not having any alternative for her maintenance, so on13.10.2010 she along with her widow mother came to the place of her younger brother Jaigopal Soni at Jamshedpur, who has been working in Tata Power Company, Jamshedpur as an Engineer and thereafter she sent a legal notice 29.09.2011 to the respondent for restitution of their marital relation but it went futile and although she wants to stay with her husband but he is not willing to keep her and has neglected her, therefore she has filed this case for restitution of conjugal rights.

130. In her cross-examination, the petitioner stated that before filing the present case she had sent a legal notice to her husband in 2010 requesting to stay with him. She alleged harassment at the hands of her husband, mother-in-law, and sister-in-law, which compelled her to return to her parental home. She denied the suggestion that she had voluntarily asked her husband to take her to her parental home or that she promised to return after a few days. She also refuted claims that her husband repeatedly visited her parental home and that she conditioned her return on being provided separate accommodation. She admitted that on 23.07.2009 she had gone to her parental home at Champa with her husband for Raksha Bandhan. She further admitted that in the earlier maintenance case she had stated her husband never demanded dowry. While acknowledging that her husband attended her mother's last rites, she denied that he requested her to return on that occasion or at any other time.

131. Further A.W.2 Jaigopal Soni, who is the brother of the petitioner in his examination in chief given by way of affidavit has stated that his sister Girja Swarnkar got married to the respondent as per Hindu customs

on 05.05.2009 and his elder brother Shaligram Soni got married to sister of the O.P namely Vijaya Laxmi. The relation between his Bhabhi Vijaya Laxmi and her husband was not sweet and due to which respondent used to taunt his sister Girja Swarnkar. For effecting a compromise, the respondent brought his sister to her parental house on 23.07.2009 prior to Sawan Purnima and left her there and went away saying that he will come after Raksha Bandhan to take her but the O.P/husband did not come to take his sister and his sister kept on requesting the O.P on phone for taking her but O.P did not come to take her.

132. He has further stated that sister of the respondent/husband namely Vijaya Laxmi is also staying separately from her husband Shaligram Soni and she does not want to stay with his brother and because of this O.P/husband has deserted his sister Girja Swarnkar and he and his family on personal level and also at society level tried a lot for settlement but the O.P did not get ready to keep his sister nor got ready to send his sister to her in-laws place. He has further deposed that his sister is a household lady and she is not having source of income and her parents have died and she is waiting to stay with her husband since 23.07.2009 but the O.P/husband is not ready to have marital ties with his sister without any cogent reason and he is also not giving any maintenance allowance to his sister and presently his sister is working in State Electricity Production Company in Contract as Date Entry Operator for her livelihood. He has further deposed that in spite of passage of so many years his sister is ready to cohabit with her husband who is a Government Employee in NTPC and from all angle he is competent to maintain his sister but he has deserted her.

133. In his cross-examination, this witness admitted that before filing the maintenance case, his sister had sent a legal notice to the O.P./husband and that several settlement efforts were made at the society level but failed, causing delay in filing the present case. He confirmed that a complaint was lodged at Bilaspur Mahila P.S. and that, being employed at Tata Power Company since 2007, he has been supporting his sister and mother, who have resided with him at Jamshedpur since 13.10.2012. He also acknowledged that his sister earns Rs. 8–10 thousand per month and had stayed at her matrimonial home for about two months before being left at her parental house on 23.07.2009.

134. He denied suggestions that the husband had returned after two days or ten days to take his sister back, or that she conditioned her return on separate accommodation. He admitted that the O.P./husband attended the last rites of his mother while the maintenance case was pending, but denied that the O.P. ever requested him to persuade his sister to return. He also confirmed that his brother had filed a case in Bilaspur for reunion with his wife.

135. The learned Family Court has also taken into consideration the evidence of respondent/husband side and the respondent/husband Rajesh Kumar Swarnkar examined as R.W.1 in his examination in chief given by way of affidavit has deposed that the instant case is not maintainable because the matter in issue of the case is beyond the jurisdiction of this court. The marriage in between the applicant and him was solemnized on 05.05.2009 at Champa, Chattisgarh, and in the past he and the applicant lived together at Kapil Nagar, Sarkanda, Bilaspur, Chattisgarh. Applicant permanently resides at her parental house at Sonar Mohalla Janjgir,

Champa, Chattisgarh and the applicant/wife never lived with him at Jamshedpur nor he accompanied the applicant to Jamshedpur in the past. Further no cause of action arose for this case at Jamshedpur.

136. It has further been deposed that for the purpose of harassing him the instant case has been filed before this court and he never accompanied the applicant to Jamshedpur either on 24.07.2009 or any other date whatsoever. As a matter of fact, in the middle of July 2009, the applicant expressed her desire to go to her parental house at Champa during Raksha Bandhan festival. He assured her that he would take her to Champa two days earlier before the said festival on 05.08.2009, but being pressurized by his wife, he ultimately took her to his *sasural* at Champa, Bilaspur on 23.07.2009 and he went to Champa, Bilaspur on 07.08.2009 to bring his wife back, but she did not return with him stating that she would live with him only when he would arrange for separate accommodation for her.

137. He has stated that he tried his level best to make her understand that he has the moral duty to look after his old ailing parents and other but his all attempts went in vain and finally his wife refused to return to his house at Bilaspur. It has been stated that the applicant never tried for peaceful settlement, rather she was adamant not to live with him at his house, further there had never been any demand made by him of any kind whatsoever. The applicant/wife has deserted him by refusing to stay with him, without any cogent reason and he was duty bound to take care of his old ailing parents and other members of the family, and he can't leave his parents' house and inmates of the family for the satisfaction of the whims and illegal demands of the applicant.

138. He has stated that his sister was married to the applicant's brother and in due course of time, applicant's brother drove his sister and her child and they took shelter in his house and he has to maintain them and under such circumstances, the demand of the applicant for separate living is unreasonable. He had stated that the applicant's mother was hospitalized in Apollo Hospital, Bilaspur, he went to see his mother-in-law and at that time too he approached her to lead conjugal life with him but it was refused by the applicant and he also attended the "Shradh" ceremony of his mother-in-law at Champa, Chattisgarh and there also requests were made for reunion but the same were turned down by the applicant/wife.

139. In his cross-examination, the husband admitted that he is employed as a Technician in NTPC, drawing a gross salary of about Rs. 1,25,000/- with Rs. 70–75 thousand in hand. He acknowledged that he has been living separately from his wife since 23.07.2009, though he claimed to have made 4-5 attempts to bring her back, including visits on 25.07.2009, 07.08.2009, and again after 15 days, as well as in January 2010 with his mother and friends. He stated that on 07.08.2009 his wife asked for 10-15 more days, and on 25.08.2009 she for the first time insisted on separate accommodation away from his parents. He admitted that discussions were held regarding separate residence, but when she refused to stay with his parents, he did not issue any legal notice to her.

140. He further admitted that his wife had stayed with him for about 2½ months and during that period she did not misbehave. He also acknowledged that in the maintenance case filed by his wife, he himself gave evidence that he did not want to keep her, as she insisted on living

separately from his parents. He denied the suggestion that his wife was willing to live with his parents.

141. Finally, he stated that he no longer wishes to keep her as his wife, as a long time has passed and bitterness has developed between them. His testimony thus reveals that while he admits the absence of misbehaviour on her part, his refusal to accept her condition of separate residence and his own admission in the maintenance case demonstrate that the separation was not solely due to her conduct but also due to his unwillingness to reconcile.

142. In backdrop of the aforesaid factual aspect, it would be apt to discuss 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.]*

143. 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.

144. 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.

145. 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).

146. 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)"*

147. 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.

148. 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

149. 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 paragraph is 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.*

150. 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.

151. Now adverting to the factual aspect of the instant case wherefrom it is evident from the testimony and evidence available on record that the petitioner and respondent are legally wedded wife and husband. The petitioner/wife (respondent herein) and her witnesses have consistently corroborated the averments in the plaint, with no material variation inter se. Their testimony establishes that the petitioner was subjected to taunts

by her in-laws owing to the marital discord between her brother and the respondent's sister.

152. It further emerges that, in the backdrop of such discord, the respondent took the petitioner to her parental home on 23.07.2009, assuring her return after Raksha Bandhan, but thereafter failed to bring her back despite repeated requests. The petitioner's family and community leaders attempted reconciliation, but the respondent neither agreed to take her back nor to send his sister to her matrimonial home. Consequently, the petitioner remained at Champa until 13.10.2010, thereafter residing with her younger brother at Jamshedpur, as neither her husband nor other relatives provided maintenance.

153. The record also shows that the petitioner issued a legal notice on 29.09.2011 requesting reunion, which was ignored by the respondent/husband, compelling her to file Misc. Case No. 238/2011 for maintenance, which was dismissed. Despite this, she has consistently expressed willingness to resume conjugal life, whereas the respondent has refused and neglected her.

154. Per contra, respondent/husband in his evidence, denied leaving the petitioner/wife at her parental home due to marital discord between their respective siblings, asserting instead that she went there on her own request before Raksha Bandhan. He claimed to have made several attempts to bring her back, but alleged that she refused unless provided separate accommodation.

155. However, his testimony suffers from inconsistencies, as in his examination-in-chief he did not specify the date when such demand was made, though in cross-examination he stated it was on 25.08.2009.

Moreover, his evidence lacked corroboration from his mother or friends who allegedly accompanied him, thereby weakening his version.

156. On the other hand, the petitioner's evidence, supported by her witnesses, consistently shows that she made repeated efforts through family, society, and even by issuing a legal notice dated 29.09.2011, to resume conjugal life, but the respondent refused. Her willingness to live with her husband is further corroborated by her statements in the maintenance case, whereas the respondent himself admitted in cross-examination that his wife never misbehaved with him and that he no longer wishes to keep her due to the passage of time and bitterness. This clearly reflects his intention to end the marital relationship, further evidenced by his filing of a divorce suit.

157. It is settled position of law that the burden of proving reasonable cause for withdrawal from the society of the spouse lies upon the party withdrawing.

158. In the present case, the respondent has failed to discharge this burden, having produced no cogent evidence to justify his refusal. His categorical statement that he will not keep his wife now, despite her willingness to resume conjugal life, establishes that he has withdrawn from her society without reasonable excuse. The petitioner/wife has thus succeeded in proving her case for restitution of conjugal rights.

159. Thus, it is considered view of this Court that the plaintiff/wife (respondent herein) since beginning always tried her best to lead happy, conjugal life and she has shown her willingness to come in the matrimonial home, which would be evident from the pleading as made in plaint. But from the testimony of the appellant /husband, it is evident that from

beginning he has avoided his wife (respondent herein) without any reasonable excuse.

160. Further, from the perusal of the impugned order, it is evident that the learned family Judge while allowing the appeal in favour of the plaintiff/wife (respondent herein) has also taken into consideration the aforesaid factual aspect as well as settled proposition of law related to the restitution of conjugal right, which would be evident from the paragraph - 11 of the impugned judgment, for ready reference the paragraph 11 is being quoted as under:

> *11. So in view of the above discussed evidence, facts, circumstances & law laid down in the above referred case, I find that the ingredients of section 9 of the H.M.Act has been satisfied and the petitioner has been able to establish her case. And hence she is entitled for the relief U/s 9 of the H.M.Act by restitution of her conjugal rights. And accordingly issue no. III and IV are decided in favour of the petitioner & against the respondent. And the suit as framed is also maintainable as respondent has not brought any material to show the suit as framed is not maintainable and barred by any law. And further in view of the above made discussions, it can be safely concluded that the petitioner had valid cause of action to file this suit as the plaint consists of bundle of facts for enforcing the legal inquiry and also in view of the above said finding with regard to the above said main issues, so issue so issue no-1 & no-II also stands decided in favour of the petitioner. So Issue no. I and II also stands decided in favour of the petitioner. And hence there is no legal impediment in granting the petitioner the relief of decree of restitution of conjugal rights U/s 9 of the H.M.Act by decreeing her suit. But she is not entitled to any other relief, accordingly issue No.V also stands decided---"*

161. Thus, upon consideration of the foregoing discussion, this Court holds that the judgment dated 10.06.2024 and the decree dated 14.06.2024 passed in *Original Suit No. 313 of 2019* by the learned Additional Principal Judge, Family Court-II, Jamshedpur warrant no interference.

162. Accordingly, the instant appeal being F.A. No.178 of 2024 stands dismissed.

163. Pending I.A(s) if any stands disposed of.

164. In view of the foregoing discussions, both the appeals being F.A. No.177 of 2024 and F.A No. 178 of 2024 stand dismissed.

(Sujit Narayan Prasad, J.)

I Agree.

(Pradeep Kumar Srivastava, J.)

(Pradeep Kumar Srivastava, J.)

Sudhir
Dated:08/10/2026
Jharkhand High Court, Ranchi
AFR

Uploaded on 09/10/2026.