

IN THE HIGH COURT OF JHARKHAND AT RANCHI

F.A. No. 223 of 2023

Mr. Pawan Kumar Das, aged about 42 years, son of Sri Bulaki Rabi Das, resident of Purana Dumka, Hizla Road, P.O.-Dumka, P.S.-Dumka (T), District-Dumka (Jharkhand), presently residing at Anand Nagar Colony Matiasahi Hakim Para, Angul, P.O. & P.S. Angul, District-Angul (Orisa).

... .. Appellant/Defendant

Versus

Mrs. Fulmuni Marandi, wife of Pawan Kumar Das, d/o Sukhalal Marandi, resident of Village-Sukbari, P.O. Bhotokoria, P.S. Jama, District-Dumka (Jharkhand), presently residing at Sriram Keshri Road, Karharbil, P.O. Dumka, P.S. Dumka Town, District-Dumka (Jharkhand).

... .. Respondent/Plaintiff

With

F.A. No. 175 of 2023

Mr. Pawan Kumar Das, aged about 42 years, son of Sri Bulaki Rabi Das, resident of Purana Dumka, Hizla Road, P.O.-Dumka, P.S.-Dumka (T), District-Dumka (Jharkhand), presently residing at Anand Nagar Colony Matiasahi Hakim Para, Angul, P.O. & P.S. Angul, District-Angul (Orisa).

... .. Appellant/Plaintiff

Versus

Mrs. Fulmuni Marandi, wife of Pawan Kumar Das, resident of Village-Sukbari, P.O. Bhotokori, P.S. Jama, District-Dumka (Jharkhand), presently residing at Karharbil Johar Tola, P.O. Sheo Pahar, P.S. Dumka Town, District-Dumka (Jharkhand).

... .. Respondent/Defendant

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

For the Appellant	: Mr. Rajeeva Sharma, Advocate Mr. Om Prakash, Advocate Mr. Ritesh Kumar, Advocate
For the Respondent	: Mr. Aman Ali, Advocate

CAV/Reserved on 26.03.2026

Pronounced on: 10.04.2026

Per Sujit Narayan Prasad, J.

1. The appeal being F.A. No. 223 of 2023 filed on behalf of the appellant-husband under Section 19 of the Family Courts Act, 1984 is directed against

the order/judgment dated 12.05.2023 (decree signed on 20.05.2023) passed by the learned Principal Judge, Family Court, Dumka in Original Suit No. 135 of 2019, whereby and whereunder, the learned court has allowed the suit filed on behalf of the wife under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights.

2. The appeal being F.A. No. 175 of 2023 filed on behalf of the appellant-husband under Section 19 of the Family Courts Act, 1984 is directed against the order/judgment dated 12.05.2023 (decree signed on 20.05.2023) passed by the learned Principal Judge, Family Court, Dumka in Original Suit No. 118 of 2019, whereby and whereunder, the learned court has dismissed the suit filed on behalf of the appellant-husband under Section 13(1)(i-a) & (1-A)(ii) of the Hindu Marriage Act, 1955 for dissolution of marriage between the parties.
3. The brief facts of the case as per the original matrimonial suit needs to be referred herein, which is as under:

Facts of F.A. No. 223 of 2023:

4. The original suit being Original Suit No. 135 of 2019 was filed on behalf of the wife before the family court wherein it is the case of the wife that both the parties are Hindu and their marriage was solemnized on 18.12.2011 at Jagannathpur Mandir at Ranchi and their marriage has been registered at District Registry Office, Dumka on 04.08.2012 and after marriage both the parties lived together as husband and wife at the house of Pane Marandi, the cousin brother of the plaintiff-wife at Ranchi thereafter both of them shifted from Ranchi to Dumka in a rental house of Anup Kumar at Shiv

Pahar, PS. Dumka Town, District- Dumka and out of the wedlock, the couple was not blessed with any child.

5. The marriage of the wife with the appellant-husband was love marriage against the will of their parents so the father of Pawan Kumar Das never allowed her to reside in his house at Dumka. Further, on 28.01.2015 she got Government Job in Jharkhand State and she helped her family members by providing money and other amenities who are poor and are not in a position to maintain themselves on their own resources but the husband-Pawan Kumar Das was not happy with her helping attitude and used to object on many occasion which led to cause serious disputes. Since the month of February 2016 two family members started to reside with the plaintiff-wife against the will of the appellant-husband, so the behaviour of appellant-husband towards his wife changed and the appellant-husband did not want to reside with her. On 22.11.2016 appellant-husband came to Dumka and stayed with plaintiff-wife till 08.12.2016. The appellant-husband lodged Matrimonial Suit No. 113/2016 in the Court of Principal Judge, Family Court, Dumka and vide his judgment and order dated 12.07.2018 directed her to join her husband at his place of posting on permanent basis and lead conjugal life with her husband. She being aggrieved and dissatisfied challenged the said order before the High Court being First Appeal No.510 of 2018 and the matter is still subjudice before the High Court at Ranchi and after the decision of O.S. 113/2016 the plaintiff-wife went to Angul on 12.11.2018 where the husband Pawan Kumar Das resides and lived together as wife and husband till 20.11.2018 and cohabited there with full satisfaction. She returned back to Dumka on 21.11.2018 with the consent of her husband. In the year 2019 the plaintiff on many occasions used to

visit the appellant-husband at Angul where he was posted and resided with him as wife and husband and cohabited there.

6. The appellant-husband also used to visit plaintiff-wife at Dumka and lived together as husband and wife. On 12th day of May, 2019, the appellant-husband came to Dumka and during stay with her, the appellant-husband always shown his arrogance and paid no heed to the request of the plaintiff-wife and misbehaved with her by calling her 'lame' as the plaintiff-wife is physically handicapped.
7. On 08.07.2019 when she went to Angul, the appellant-husband did not allow her to enter into the house and she ultimately stayed in a Santi Guest house at Angul.

Facts of F.A. No. 175 of 2023:

8. The original suit being Original Suit No. 118 of 2019 was filed on behalf of the appellant-husband before the family court for dissolution of marriage wherein it is the case of the appellant-husband that he and defendant are legally wedded wife and husband and their marriage was solemnized on 18.12.2011 at Jagannath Puri Mandir Nayas Samity according to Hindu rites and customs and got their marriage registered at Registry Office, Dumka on 04.08.2012.
9. Although the husband and wife are legally married couple but the wife never lived together with the husband as husband and wife. The husband tried several times and requested the wife to live together with the husband as husband and wife but the wife always on some pretext or the other refused to live with the husband as husband and wife and to lead conjugal life.

10. On 10.10.2016, the husband again requested the defendant to live with him as husband and wife and lead conjugal life but she again refused to live together with him as husband and wife and lead conjugal life. The wife without any reasonable excuse withdrew herself from the society of the husband and the husband filed a suit u/s 9 of the Hindu Marriage Act, 1955 for restitution of conjugal right before the Court bearing O.S. No.113/2016 and the wife appeared and contested the suit and vide judgment dated 12th July, 2018 the learned Principal Judge, Family Court, Dumka passed decree for restitution of conjugal rights in favour of the husband. Post judgment the husband again requested the wife asking her to come to her matrimonial home but instead of rejoining the matrimonial life the wife refused to go back with him. The wife is a Govt. employee and working as a Supervisor in Bal Bikas Pariyojna and posted at Mohanpur Block, getting handsome salary and she never resided with the husband and living separately for more than six years but she has not cared to join matrimonial conjugal relationship with him as she has completely deserted him for the last six years. This act of the wife established the fact that the wife has treated the husband with cruelty and after passing of decree dated 12.07.2018 there has been no restitution of conjugal rights in between them and the wife is still residing separately with the husband having no relationship of husband and wife nor any cohabitation and refused to cohabit with the husband and live as husband and wife with the husband.
11. It is evident from the factual aspect of F.A. No. 223 of 2023 that the wife, plaintiff of Original Suit No. 135 of 2019, had a motion by filing a petition under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights.

12. The learned Family Judge, thereafter, had issued notice upon the husband for his appearance and settlement of issues in which the appellant-husband appeared and filed written statement wherein it has been stated by him that the proceeding u/s 9 of the Hindu Marriage Act is not maintainable both in facts and in law.
13. It has also been stated by the appellant-husband that the wife has filed the petition u/s 9 of the Hindu Marriage Act after filing of petition by the husband before the Court u/s 13 (1) (i-a) 1 A-ii of Hindu Marriage Act for dissolution of marriage which is numbered as original suit no.118/2019. It has also been stated that the petitioner is a Govt. Employee and working as Supervisor in Bal Bikas Pariyojana, posted at Mohanpur Block getting handsome salary and she never resided with the husband and used to live separately for more than six years and there is no cohabitation in between them since more than six years. After passing of the decree for restitution of conjugal rights in O.S. 113/2016 filed by the husband, vide it's judgment dated 12th July 2018, the husband tried his best to live together with the wife as husband and wife and to reconstitute conjugal rights but she refused to live together with the husband as husband and wife. The appellant-husband is not feeling safe at the hands of the wife and there is always apprehension in the mind of the husband that he may be killed by the wife at any moment and now it is not safe for the husband to reside with the plaintiff.
14. It has also been stated by the husband that the wife has got no locus standi to institute petition u/s 9 of the Hindu Marriage Act, especially when on previous occasion the husband had preferred petition u/s 9 of the Hindu Marriage Act against the wife bearing no. O.S. 113/2016 and the same was

decreed in favour of the husband vide Judgment dated 12.07.2018 and against the said judgment as per assertions made by the wife First Appeal no. 510/2018 has been preferred by her before the High Court of Jharkhand which is subjudice before the High Court then another petition for restitution of conjugal rights is unwarranted in law and beyond the jurisdiction of the Court.

15. Thereafter, the learned Family Judge, after considering the aforesaid facts, has framed the following issues for its consideration:

- (i) Is the suit maintainable in its present form?
- (ii) Has the Plaintiff got valid cause of action for the suit?
- (iii) Whether the defendant/husband has been withdrawn himself from the company and society of the Plaintiff/wife without any reasonable cause and refused to live with the Plaintiff as husband and wife?
- (iv) Whether the plaintiff/wife is entitled for grant of a decree for restitution of conjugal rights against the defendant/husband?

16. It is evident from the factual aspect of F.A. No. 175 of 2023 that the appellant-husband, plaintiff of Original Suit No. 118 of 2019, had a motion by filing a petition under Section 13(1) (i-a) & (1-A) (ii) of the Hindu Marriage Act, 1955 for dissolution of marriage between the parties.

17. The learned Family Judge, thereafter, had issued notice upon the wife for her appearance and settlement of issues in which the wife appeared and filed written statement wherein it has been stated by her that all the material allegations made by the husband in the petition are false. The application

for divorce as filed u/s 13 (1A) ii of H.M. Act filed by the plaintiff is hit by section 23 (1) (a) of H M Act and he has no cause of action for the present application which has filed under a conspiracy just to get an unwarranted and wrongful gain and it is a tricky effort. Although the marriage in between the plaintiff and defendant was solemnized on 18th of December 2011 as per the Hindi custom and rites at Jagannathpur Mandir at Ranchi and the marriage was registered on 04.08.2012 at Dumka registry office but both the parties were acquainted with each other since long back and they were having visiting terms since 2009 itself and in October 2009 the appellant-husband Pawan Kumar Das exploited the defendant Fulmuni Marandi physically on pretext of marriage. On 22.10.2009 the appellant-husband has raped her and then continued physical relationship on pretext of marriage resulting into pregnancy of the defendant-wife but against the will and desire of the defendant-wife, the appellant-husband Pawan Kumar Das had caused abortion in May 2010 and assured her for marriage and even an agreement was entered on 09.08 2011 in relation to solemnizing marriage in which it was agreed that he will marry her till 2013 and in the meantime, the plaintiff secured Government Job in 2010 and even after joining, time to time he visits the O.P. and on pretext of marriage used to exploit her physically and later on he denied from marriage and the O.P. had filed Dumka Town P.S. Case no. 188 of 2011 dated 02.12 2011 for the offence under section 376 and 493 I.P.C. and after institution of the F.I.R., matter has been compromised between the parties and plaintiff Pawan Kumar Das solemnized marriage on 18.12.2011 and on the basis of compromise plaintiff has been acquitted from the offence u/s 376 and 493 I.P.C. by order dated 02.08.2014 passed by the Learned Sessions Judge, Dumka in Sessions

Trial No. 211 of 2013. After marriage both the plaintiff and defendant lived together as husband and wife at the house of Pane Marandi, the Cousin broth of the defendant, at Ranchi and thereafter shifted from Ranchi to Dumka in a rental house of Anup Kumar Gupta at Shiv Pahar Dumka as the father of the plaintiff never accepted the defendant as his daughter-in-law and thus never allowed the defendant to appear and reside in his house at Dumka. Since 08.12.2016 they lead their conjugal life happily and during this period the plaintiff Pawan Kumar Das always used to pay Rs. 5000/ per month to the defendant as her maintenance and during this period the plaintiff always used to visit the defendant time to time and stated at Dumka and consummated their marital life with full satisfaction. As the financial condition of the family was very poor so the plaintiff instigated the defendant for a job and thus upon the instigation of the Maintiff, the defendant obtained a Government Job on 28.01.2015 as Supervisor in Bal Bikas Pariyojna. The parents of the defendant are very poor so the defendant used to provide money, food and other amenities to them from her own salary but the plaintiff was not happy with the attitude of the defendant and thus objected on many occasion of times which caused a disagreement in between both the parties which gradually accelerated in January/February 2016 when two family members of the defendant started residing with defendant at Dumka. Further, on 22.11.2016, the plaintiff Pawan Kumar Das, in mutually reciprocal basis, came to Dumka, stayed with the defendant till 08.12.2016 and enjoyed happy married conjugal life with the defendant and during its continuation, the plaintiff cunningly instituted a Matrimonial Suit on 30.112016 against the defendant u/s 9 of the Hindu Marriage Act for restitution of Conjugal Right. In the Court of

Principal Judge, Family Court, Dumka bearing no. O.S. 113/2016 and in the said suit defendant appeared and submitted her statement but the learned Principal Judge, Family Court, Dumka vide order dated 12.07.2018 directed the defendant to join her husband at his place of posting on permanent basis and lead conjugal life with her husband and the defendant preferred an appeal u/s 19 (1) of the Family Court Act 1984 before the High Court of Jharkhand at Ranchi which is numbered as F.A. no. 510/2018 and the said F.A. No 510/2018 is still subjudice before the High Court. In obedience of the order dated 12.07.2018 passed in Original Suit no.113/2016 the defendant went to Angul (Orissa), the place of posting of the plaintiff Pawan Kumar Das on 12.11.2018 where she lived together as wife and husband with the plaintiff till 20.11.2018 and after leading the conjugal life, she returned to Dumka with the consent of the plaintiff on 21.11.2018. Further, the plaintiff while visiting at Dumka on May 2019, the plaintiff ill-treated her and abused her by saying "Lame". After returning from Dumka to Angul the plaintiff blocked his mobile number and this was the reason on 08.07.2019 when the defendant again went to Angul (Orissa) to reside with the plaintiff, he refused to lead conjugal life and did not allow this defendant to enter into his house at Angul and thereafter returned to Dumka.

18. It has further been stated by the defendant-wife that in case the plaintiff Pawan Kumar Das gets himself transferred from State of Odisha to the State of Jharkhand as he is a Central Govt. employee, the defendant will certainly get her transfer at the place of posting of this plaintiff in Jharkhand and thereafter there will be no hardship for this defendant to reside and lead conjugal life with the plaintiff on permanent basis at place of posting of the plaintiff and there is no impediment for the plaintiff for getting his posting

transferred in the State of Jharkhand because he is posted in the department of Intelligence Bureau and one of its office is lying at Dumka.

19. Thereafter, the learned Family Judge, after considering the aforesaid facts, has framed the following issues for its consideration:

- (i) Is the suit as framed in maintainable?
- (ii) Has there valid cause of action to the plaintiff in the present suit?
- (iii) Whether there was cohabitation in between plaintiff and defendant and they lead conjugal life as husband and wife after passing of decree for restitution of conjugal rights dated 12.07.2018 in O.S. 113/2016?
- (iv) Whether on 08.07.2019 when the defendant went to Angul (Orissa) to join the conjugal life with the plaintiff she was not allowed by plaintiff to enter into his house at Angul to join him and resume cohabitation?
- (v) Whether on 08.07.2019 the plaintiff drove the defendant away from the house at Angul (Orissa) showing no internet in their marital obligation and thus it has made impossible for the plaintiff to resume cohabitation after passing of decree for restitution of conjugal rights on 12.07.2018 in O.S. No. 113 of 2016?
- (vi) Whether the conduct on the part of the defendant as alleged by plaintiff in his main plaintiff proves cruelty as mentioned u/s 13 (i-a) of Hindu Marriage Act by not allowing the plaintiff to cohabited and to lead happy conjugal life as husband and wife even after passing of

a decree of restitution of conjugal life filed by the plaintiff in O.S. 113/2016 which was decreed on 12.07.2018?

(vii) Whether plaintiff/husband is entitled to get a decree of divorce on two grounds i.e. u/s 13 1 (i-a) and 13 1-A(ii) of Hindu Marriage Act, 1955?

20. The evidences have been made on behalf of the parties in both the cases. Thereafter, the judgment has been passed in Original Suit No. 135 of 2019 (subject matter of F.A. No. 223 of 2023) by allowing the suit filed for restitution of conjugal right in favour of the wife while the Original Suit No. 118 of 2019 (subject matter of F.A. no. 175 of 2023) has been dismissed filed for dissolution of marriage by holding that the appellant-husband has not been able to prove the allegation of cruelty committed on the part of his wife against him either mental or physical.

Submission of the learned counsel for the appellant/petitioner:

21. It has been contended on behalf of the appellant/petitioner that the factual aspect which was available before the learned court supported by the evidences adduced on behalf of the appellant/plaintiff has not properly been considered and as such, the judgment impugned is perverse, hence, not sustainable in the eyes of law.

22. It has further been submitted that the case of the petitioner and his family members have suffered cruelty by the respondent. It has been submitted that the issue of cruelty has not been taken into consideration in right perspective even though the fact about the same as also the fact of living separately has well been established.

23. Learned counsel for the appellant based upon the aforesaid grounds, has submitted that the judgment impugned suffers from perversity, as such, not sustainable in the eyes of law.

Analysis:

24. It needs to refer herein that this Court had issued notice upon the sole respondent vide order dated 23.04.2024 and 03.10.2024 respectively. Thereafter, the respondent has appeared and contested both the appeals.
25. This Court has heard the learned counsel for the parties and gone through the finding recorded by the learned Family Judge in both the impugned judgments.
26. It is evident from record that the Original Suit No. 135 of 2019 (subject matter of F.A. No. 223 of 2023) was filed on behalf of the wife, namely, Mrs. Fulmuni Marandi for restitution of conjugal right under Section 9 of the Hindu Marriage Act, 1955.
27. The evidence has been led on behalf of both the parties before the Family Court. For better appreciation, the evidences led on behalf of the wife are being referred as under:
- (i) P.W.-1, Fulmuni Marandi, the plaintiff of the said original suit filed by her has herself supported her own case in his examination in chief as mentioned in his plaint, on all material particulars and in addition she has proved the factum of marriage between herself with defendant Pawan Kumar Das according to Hindu customs and tradition on 18.12.2011 at Jagannathpur Mandir, Ranchi. After marriage, both of them lived together as husband and wife at the house of Pane Marandi at Ranchi thereafter both of them shifted from

Ranchi to Dumka in a rental house at Shiv Pahar, PS. Dumka Town, District- Dumka and out of the wedlock couple was not blessed with any child. After marriage, the father of Pawan Kumar Das never allowed her to reside in his house at Dumka. Further, she has deposed that on 28.01.2015 she got Government Job in Jharkhand State and she helped her Family members by providing money and other amenities who are poor and are not in a position to maintain themselves on their own resources but her husband Pawan Kumar Das was not happy with her helping attitude and used to object on many occasions which lead to cause serious disputes. Since the month of February 2016 and onwards the behaviour of her husband towards her changed and he did not want to reside with her. On 22.11.2016 her husband came to Dumka and stayed with her till 08.12.2016. Her husband lodged Matrimonial Suit No. 113/2016 in the Court of Principal Judge, Family Court, Dumka u/s 9 of Hindu Marriage Act against her while he was living with her and the O.S. 113/2016 allowed on contest and the learned Principal Judge, Family Court, Dumka vide his judgment and order dated 12.07.2018 directed her to join her husband at his place of posting on permanent basis and lead conjugal life with her husband. She being aggrieved and dissatisfied challenging the said order before the High Court and the matter is still subjudice before the High Court and after the decision of O.S. 113/2016 she went to Angul on 12.11.2018 where her husband Pawan Kumar Das resides and lived together as wife and husband till 20.11.2018 and cohabited there with full satisfaction. She returned back to Dumka on 21.11.2018 with the consent of her

husband. On 12th day of May 2019 her husband came to Dumka and during stay with her, Pawan Kumar Das always shown his arrogance and paid no heed to the request of the plaintiff and misbehaved her by calling her 'lame'. On 08.07.2019, when she went to Angul her husband did not allow her to enter into the house and she ultimately stayed in a Santi Guest house at Angul.

In cross examination she admits that she has been alone after 8th December 2016. She spent six years in matrimonial relationship with her husband at her rented house in Dumka where her husband used to visit her. She has stated in her cross-examination in Para 18 that she has lodged the case under section 9 for restitution of conjugal rights and under this section a case filed by her husband Pawan Kumar Das against her bearing no. O.S. 113/2016 which was decreed and she was directed to go to her husband and reside with him on permanent basis and in obedience to the order of the Court she had gone to her husband to reside with him but her husband switched off his mobile and his address was not traceable. Further, she has stated that on 21st November 2018 she returned from Bhubneshwar and next day reached at Ranchi. She went there after granting casual leave. In Para 22 of her cross-examination, she had stated that prior to filing of the original suit by her, her husband had filed a divorce case against her on the ground that she never lived with him. She appeared in that case and filed her written statement and the case was referred to mediation Centre, DLSA Dumka. Further in Para 23 she has stated that she has filed an Appeal against the decree passed in O.S. 113/2016. In Para 25 she has stated that she

has no knowledge that whether Pawan Kumar Das had gone to his Aunt's house on 8th July 2019 to attend marriage ceremony of his maternal cousin brother and he had taken leave from 24.06.2019 to 19.07.2019. Further in Para 27 she has stated that she had gone to Bhubneshwar and had returned regarding the matter she filed papers and she gave information at P.S. Angul, Orissa.

- (ii) P.W.-2, Sebadhan Marandi, the brother of the plaintiff-wife has supported the case of the wife in same and similar style as stated by P.W.1. In his cross-examination in Para 12 stated that he had not gone to Orissa with his sister so he is unable to say on which date and month Phulmuni reside with Pawan Kumar Das. In Para-13 he has stated that another case was already decreed by the Court in between Pawan Kumar Das and Fulmuni, directing Fulmuni to reside with her husband on permanent basis but Fulmuni did not obey the order.

28. The evidences led on behalf of the appellant-husband are being referred as under:

- (i) D.W.-1, Bulaki Ravi Das is father of the appellant-husband who has stated that after the marriage the couple had never lived together as husband and wife. He further mentions that his son Pawan is presently posted at Intelligence Bureau, Bhubneshwar whereas the plaintiff-wife is Supervisor in Child Development Project, Mohanpur, Deoghar. He further adds that whenever Pawan came to home on leave after 2-3 months period and requested Fulmuni to accompany him to his place of posting, she categorically denies that she would not leave or resign her job to go with him. Out of

frustration with no sign of any solution his son filed O.S. 113/2016 which was decreed in his favour directing the plaintiff to go to her husband and reside with him on permanent basis but the plaintiff Fulmuni Marandi did not obey the order of the Court and reside separately from her husband since last 10 years. In his cross examination he has categorically mentioned that he did not want to take plaintiff to his house at Dumka as daughter-in-law.

- (ii) D.W.-2, Pawan Kumar Das, the defendant himself has fully supported his case including his marriage with the plaintiff at Jagannathpur Temple, Ranchi on 18.12.2011 and subsequently their registered marriage at Registry office, Dumka on 4.8.2012. He further adds that despite repeated asking, Fulmuni (the wife) never got ready to accompany him to his place of posting. He has further stated that on 10.10.2016 he had requested Fulmuni to accompany him and lead conjugal life with him but she refused and Fulmuni is a Supervisor in Children Development Project at Mohanpur and after passing decree in O.S. 113/2016 she did not lead her conjugal life with him and since last 10 years she is residing separately from her husband (the appellant-husband herein). Further, he has deposed that it is false to say by Fulmuni that after passing of decree on 12.11 2018 she went to Angul and resided there with O.P. as husband and wife till 20.112018 and it is also false to say by Fulmuni that in the month of May 2019 he came to Dumka and reside with Fulmuni at her house and cohabited with her and he also denied the statement of Fulmuni that on 08.07.2019 she went to Angul and he did not allow her to enter into his house.

In his cross examination he admits that he is a Central Government employee and he can take transfer anywhere in the country and he works at Intelligence Bureau and a branch of his office is situated at Dumka also and his wife Fulmuni is an employee of Jharkhand State and she cannot be transferred out of Jharkhand State. Further, he has also stated that he tried for his transfer at Jharkhand which was rejected by his department. He has denied that on 22.10.2009 he raped with Fulmuni due to which she became pregnant and he forcibly got her aborted. In Para 22 he admitted that Fulmuni Marandi filed a criminal Case bearing no. Dumka (T) P.S. Case no. 188/2011 u/s 376, 493 I.P.C. and Fulmuni is unable to prove her case and he was acquitted and discharged from the liabilities of his bail bond and this case was filed on 02.12.2011 against him and on dated 18.11.2012 he was married with Fulmuni and on dated 02.08.2014 this case was disposed off. Further, he has also stated that he used to give Rs. 5000/ to his wife when she was unemployed and also gave her Rs.10,000/ whenever he came to Dumka and in the year 2015 Fulmuni got her job and she started to keep his brother's son namely James with her and denied that which was not liked by him.

29. It is evident from record that the Original Suit No. 118 of 2019 (subject matter of F.A. No. 175 of 2023) was filed on behalf of the appellant-husband, for dissolution of marriage under Section 13(1)(i-a)&(1-A)(ii) of the Hindu Marriage Act, 1955.

30. The evidence has been led on behalf of both the parties before the Family Court. For better appreciation, the evidences led on behalf of the appellant-husband are being referred as under:

- (i) P.W.-1, Pawan Kumar Das, the plaintiff himself has fully supported his own case as mentioned in his plaint. Although the plaintiff and defendant are legally married husband and wife but the defendant never lived together with the plaintiff as husband and wife. The plaintiff several times tried and requested the defendant to live together with the plaintiff as husband and wife but the defendant always on some pretext and other refused to live with the plaintiff as husband and wife and to lead conjugal life. On 10.10.2016 the plaintiff again requested the defendant to live with him as husband and wife and lead conjugal life but the defendant again refused to live together with the plaintiff as husband and wife and lead conjugal life. The defendant without any reasonable excuse withdrawn herself from the society of the plaintiff and the plaintiff filed a suit u/s 9 of the Hindu Marriage Act, 1955 for restitution of conjugal right before the learned Court bearing No. O.S. 113 of 2016 and the defendant appeared and contested the suit and vide judgment dated 12th July, 2018 the learned Principal Judge, Family Court, Dumka passed decree for restitution of conjugal rights in favour of the plaintiff. Post judgment the plaintiff again requested the defendant asking her to come to her matrimonial home but instead of rejoining the matrimonial life the defendant refused to go back with him. The defendant is Govt. employee and working as Supervisor in Bal Bikas

Pariyojna and posted at Mohanpur Block, getting handsome salary and she never resided with the plaintiff and living separately for more than six years but she has not cared to join matrimonial conjugal relationship with him as she has completely deserted him for the last six years. This act of the defendant established the fact that the defendant has treated the plaintiff with cruelty and after passing of decree dated 12.07.2018 there has been no restitution of conjugal rights in between them and the defendant is still residing separately with the plaintiff having no relationship of husband and wife nor any cohabitation and refused to cohabit with the plaintiff and live as husband and wife with the plaintiff.

In his cross examination he admits that whenever he visited Dumka in course of his leave he used to spent time with Fulmuni but his father did not allow his wife in his house as they have not accepted their relationship. He has denied suggestion that the defendant ever lodged rape case against him. He further adds that after his marriage he went to his place of posting at Kerala but despite his request the defendant clearly refused to accompany him.

- (ii) P.W.-2, Shiv Prasad Mistry is neighbour of Pawan Kumar Das who in his examination in chief after mentioning about plaintiff's marriage with Fulmuni at Jagannathpur temple, Ranchi as well as Dumka Registry office in the year 2011 and 2012 respectively has stated that the couple had never lived together and despite repeated efforts by plaintiff, his wife did not accompany him to his place of posting. Whenever Pawan visited Dumka on leave he used to go to Fulmuni

at her rented house and requested her to accompany him to his place of posting but Fulmuni always refused on one or other excuse.

In the cross-examination, he mentions that he does not have any idea as to where Pawan was posted at the time of his marriage. He does not talk with Pawan's wife nor he know her house. The plaintiff Pawan used to visit her wife's house. Pawan is Schedule caste while the defendant is Schedule Tribe. He is deposing that as Pawan told him. He showed his ignorance when suggested that Pawan used to reside with his wife at her Shiv Pahar residence.

- (iii) P.W.-3, Bulaki Ravi Das is father of the plaintiff (appellant-husband) who supported the plaintiff's case on the point of marriage between the parties at Jagannathpur Temple, Ranchi on 18.12.2011 and subsequently their registered marriage at Registry office, Dumka on 4.8.2012. He however adds that after the marriage the couple had never lived together as husband and wife. He further mentions that his son Pawan is presently posted at Intelligence Bureau, Bhubneshwar whereas defendant is a Supervisor in Child Development Project, Mohanpur, Deoghar. He further adds that whenever Pawan came to home on leave after 2-3 months period and requested Fulmuni to accompany him to his place of posting, she categorically denies that she will not leave or resign her job to go with him.

In cross-examination, he admits that he has been posted in various places as he was a teacher and is now retired. He further

admits that though Pawan married without his consent, he was present in the marriage and also witness of the marriage. The Court marriage materialized six months after the marriage at temple. The couple had never lived in his house as husband and wife. He had never talked to the defendant and has never been to her place at Dumka. He categorically mentioned that he did not want to take defendant to his house at Dumka as daughter-in-law. He further admits that it is true that post marriage he has not permitted defendant to enter into the house.

31. The evidence led on behalf of the defendant-wife is being referred as under:

- (i) D.W.-1, Fulmuni Marandi, in her examination in chief supported the factum of marriage between her and Pawan Kumar Das, further adds that presently she is posted as Supervisor in Child Development Project, Mohanpur Block, Deoghar and she is fit to discharge all duties despite being physically challenged from one of her legs. She categorically stated that she had always been ready and willing to accompany the plaintiff-husband and reside with him as husband and wife but her husband never-ever took him to his matrimonial home and has always been giving excuses. She further adds that on leave Pawan and she resides in her rented house in Shiv Pahar mohalla as husband and wife in fact on the last occasion both of them resided at her rented house till 08.12.2016 as husband and wife. Meanwhile on 30.11.2016 on the direction of his father the plaintiff-husband has lodged this case. Her husband always used to pressurize her to resign her job mentioning that thereafter he would be able to keep her with

him. She further adds that she joined the Government job after her marriage with permission of her husband. She does not want to resign the said job. She further denies the allegation that she used to take Rs. 5000/ from her husband Pawan Kumar and mentions that she had always been very supporting to her husband and whenever he has asked for money she herself handed over money to

In cross-examination, she admits that she has been alone after 8th December 2016. She spent six years in matrimonial relationship with her husband at her rented house in Dumka where her husband used to visit her. In course of her leave, she categorically asserts that she wants to continue her relationship with her husband Pawan Kumar Das and also cohabit with him but simultaneously asserts that she wants to do so while continuing her job and without resigning from it.

32. This Court, after going through the facts and evidences lead on behalf of both the parties in both the cases, is of the view that the appeal being F.A. No. 175 of 2023 arising out of Original Suit No. 118 of 2019, which was filed on behalf of the appellant-husband for dissolution of marriage, is to be dealt with first. Reason being that if the said appeal challenging the judgment passed by the learned Family Court is dismissed then the Original Suit No. 135 of 2019 (subject matter of F.A. No. 223 of 2023) which had been allowed filed for restitution of conjugal rights will be sustained and if the appeal being F.A. No. 175 of 2023 is allowed resulting in grant of divorce in between the parties, then, the Original Suit No. 135 of 2019 (subject matter of F.A. No. 223 of 2023) which had been allowed by the

learned Family Court filed for restitution of conjugal rights will lost its force.

33. Thereby, the appeal being F.A. No. 175 of 2023 is taken up first.
34. In the said appeal, the appellant-husband has taken the ground of cruelty for grant of decree of divorce in his favour.
35. The learned Family Judge has gone into the interpretation of the word “cruelty” and assessing the same from the evidences led on behalf of the appellant-husband as also the submission made in the pleading, i.e., plaint and written statement, has found that the element of cruelty could not have been established.
36. The learned counsel for the appellant-husband has argued that the evidence of cruelty has not properly been considered and as such, the judgment suffers from perversity, hence, not sustainable in the eyes of law.
37. This Court while appreciating the argument advanced on behalf of the parties on the issue of perversity needs to refer herein the interpretation of the word “perverse” as has been interpreted by the Hon'ble Apex Court which means that there is no evidence or erroneous consideration of the evidence. The Hon'ble Apex Court in *Arulvelu and Anr. vs. State [Represented by the Public Prosecutor] and Anr., (2009) 10 SCC 206* while elaborately discussing the word perverse has held that it is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm

in law. Relevant paragraphs, i.e., paras-24, 25, 26 and 27 of the said judgment reads as under:

“24. The expression “perverse” has been dealt with in a number of cases. In Gaya Din v. Hanuman Prasad [(2001) 1 SCC 501] this Court observed that the expression “perverse” means that the findings of the subordinate authority are not supported by the evidence brought on record or they are against the law or suffer from the vice of procedural irregularity.

25. In Parry's (Calcutta) Employees' Union v. Parry & Co. Ltd. [AIR 1966 Cal 31] the Court observed that “perverse finding” means a finding which is not only against the weight of evidence but is altogether against the evidence itself. In Triveni Rubber & Plastics v. CCE [1994 Supp (3) SCC 665 : AIR 1994 SC 1341] the Court observed that this is not a case where it can be said that the findings of the authorities are based on no evidence or that they are so perverse that no reasonable person would have arrived at those findings.

26. In M.S. Narayanagouda v. Girijamma [AIR 1977 Kant 58] the Court observed that any order made in conscious violation of pleading and law is a perverse order. In Moffett v. Gough [(1878) 1 LR 1r 331] the Court observed that a “perverse verdict” may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence. In Godfrey v. Godfrey [106 NW 814] the Court defined “perverse” as turned the wrong way, not right; distorted from the right; turned away or deviating from what is right, proper, correct, etc.

27. The expression “perverse” has been defined by various dictionaries in the following manner:

1. Oxford Advanced Learner's Dictionary of Current English, 6th Edn.

“Perverse.—Showing deliberate determination to behave in a way that most people think is wrong, unacceptable or unreasonable.”

2. Longman Dictionary of Contemporary English, International Edn.

Perverse.—Deliberately departing from what is normal and reasonable.

3. The New Oxford Dictionary of English, 1998 Edn.

Perverse.—Law (of a verdict) against the weight of evidence or the direction of the judge on a point of law.

4. *The New Lexicon Webster's Dictionary of the English Language (Deluxe Encyclopedic Edn.)*

Perverse.—Purposely deviating from accepted or expected behavior or opinion; wicked or wayward; stubborn; cross or petulant.

5. *Stroud's Judicial Dictionary of Words & Phrases, 4th Edn.*

“Perverse.—A perverse verdict may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence.””

38. Thus, from the aforesaid it is evident that if any order made in conscious violation of pleading and law then it will come under the purview of perverse order. Further “perverse verdict” may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence.
39. Herein the ground for divorce has been taken of cruelty. 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.
40. 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 husband and his parents demanded dowry. The Hon’ble Apex Court emphasized that “cruelty” can have no fixed definition.

41. 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."
42. The Hon'ble Apex Court has further observed therein that while dealing with such complaints of cruelty 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."
43. 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.
44. 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".

45. 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.
46. Further, in the case of *Vishwanath Agrawal v. Sarla Vishwanath Agrawal*, (2012) 7 SCC 288, the Hon'ble Apex Court has held as follows:

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

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

"5. ... when a spouse makes a complaint about the treatment of cruelty by the partner in life or relations, the court should not search for standard in life. A set of facts stigmatised as cruelty in one case may not be so in another case. The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions. It may also depend upon their culture and human values to which they attach importance."

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

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

of. Such is the wonderful (sic) realm of cruelty. 1. These preliminary observations are intended to emphasise that the court in matrimonial cases is not concerned with ideals in family life. The court has only to understand the spouses concerned as nature made them, and consider their particular grievance. As Lord Reid Gollins v. Gollins : (All ER p. 972 G-H) observed in „... In matrimonial affairs we are not dealing with objective standards, it is not a matrimonial offence to fall below the standard of the reasonable man (or the reasonable woman). We are dealing with this man or this woman.”

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

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

100. Apart from this, the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system, etc. What may be mental cruelty now may not remain a mental cruelty after a passage of time or vice versa. There can never be any straitjacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances while taking aforementioned factors in consideration.”

48. The Hon’ble Apex Court in ***Joydeep Majumdar v. Bharti Jaiswal Majumdar, (2021) 3 SCC 742***, has been pleased to observe that while judging whether the conduct is cruel or not, what has to be seen is whether that conduct, which 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.

49. It is, thus, evident 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.
50. Thus, from the aforesaid settled position of law it is evident that “Cruelty” under matrimonial law consists of conduct so grave and weighty as to lead one to the conclusion that one of the spouses cannot reasonably be expected to live with the other spouse. It must be more serious than the ordinary wear and tear of married life.
51. Cruelty must be of such a type which will satisfy the conscience of the Court that the relationship between the parties has deteriorated to such an extent that it has become impossible for them to live together without mental agony. The cruelty practiced may be in many forms and it must be productive of an apprehension in the mind of the other spouse that it is dangerous to live with the erring party. Simple trivialities which can truly be described as a reasonable wear and tear of married life cannot amount to cruelty. In many marriages each party can, if it so wills, discover many a cause for complaint but such grievances arise mostly from temperamental

disharmony. Such disharmony or incompatibility is not cruelty and will not furnish a cause for the dissolution of marriage.

52. In the backdrop of the aforesaid settled legal position this Court is now advertent to the factual aspect of the case as well as finding of the learned Family Court.
53. It is evident therefrom that the main ground of cruelty has been taken of not residing together with the appellant-husband as husband and wife and on one pretext or the other, she has always refused to lead conjugal life and without any reasonable cause, the wife withdrew herself from the society of the appellant-husband for which the appellant-husband had also filed a suit under Section 9 of the Hindu Marriage Act for restitution of conjugal right being Original Suit No. 113 of 2016 which was allowed vide judgment dated 12.07.2018. In the said judgment, the learned Family Court directed the wife to rejoin the matrimonial life with the appellant-husband but the wife outrightly refused to lead conjugal life with the appellant-husband.
54. It is also evident therefrom that the appellant-husband has stated that his wife is a govt. employee in the State of Jharkhand working as Supervisor in Bal Bikas Pariyojna and posted at Mohanpur Block and she never resided with the appellant-husband and even after passing of the judgment dated 12.07.2018 in Original Suit No. 113 of 2016, the wife did not paid any heed to reside and lead conjugal life with the appellant-husband and lived separately and deserted the appellant-husband for more than six years.
55. The learned Family Court considering the submission advanced on behalf of the appellant-husband on the issue of cruelty had also taken into consideration the submission advanced on behalf of the wife wherein she

has stated that it is not that she was not willing to go with the appellant-husband and lead conjugal life rather it was the appellant-husband who never took the wife along with him to his place of posting. After the wife got the govt. job in the State of Jharkhand, the appellant-husband always asked the wife to resign his job only thereafter, he will keep her with him.

56. The learned Family Court, after considering the submissions and arguments advanced on behalf of both the parties has taken note in the impugned judgment that the appellant-husband has taken one of the grounds of cruelty of lodging of a criminal case against the appellant-husband under Section 376 and 493 of IPC in which the appellant-husband got acquitted but the said fact has not been mentioned in the plaint, hence, the family court held that the said ground is beyond pleading.

57. The learned Family Court has also taken into consideration the main ground of cruelty raised on behalf of the appellant-husband that they never resided together as husband and wife. It has been taken note in the impugned judgment which is admitted on the part of the appellant-husband that he is a central govt. employee and can take transfer as also one of his offices is also situated in Dumka where the wife reside who is also a govt. employee in the State of Jharkhand and cannot be transferred outside the State of Jharkhand.

58. It has also been taken note in the impugned judgment that at paragraph-16 of the cross-examination, the appellant-husband has stated that after the marriage he never lived with his wife as a married couple but it is true that time-to-time as also whenever he got leave from the office even for two days, he used to visit Dumka to persuade and to stay with his wife.

59. Thus, it has been observed by the learned Family Court regarding the issue of cruelty of not living together and cohabiting that when the appellant-husband used to visit Dumka to stay with his wife and consummate with her then, how the ground of not living together and leading conjugal life is being raised. It simply means that they both were leading conjugal life and having cohabitation also.
60. So far as the ground raised on behalf of the appellant-husband regarding the issue that after passing of the judgment dated 12.07.2018 in Original Suit No. 113 of 2016 is concerned, it has been taken note in the impugned judgment as has been submitted on behalf of the learned counsel for the defendant in the Suit that the defendant-wife two times went to Angul, Odisha where her husband is posted and during her first visit, she had stayed for two days and while returning to Jharkhand, the appellant-husband had arranged for the tickets and the documents in support of the contention had been exhibited as Ext. A to A/1 and Ext. B. Rail tickets from Dumka to Ranchi and from Ranchi to Bhubneshwar and two photographs have also been exhibited as Ext. C to C/2 as also the leave application submitted by the wife to her granting authority has also been exhibited as Ext. D and D/1 as also the certificate issued by the leave granting authority.
61. The learned Family Court has also observed in the judgment impugned that it is practically not possible for the wife to go and live permanently with her husband unless she resigns from her job or the husband resigns his job and thus, the couple developed an agreement that some time the wife will join the company of husband at his place of posting and sometime the appellant-husband will join the company of her wife at her place of posting but the

said aspect has not been accepted by the appellant-husband in his pleading and evidence and only to get rid of his wife, the suit for divorce has been filed as his father did not like his wife and was not ready to make her enter his house as she is handicap from one leg.

62. It has also been taken note in the impugned judgment that the suit under Section 9 of the Hindu Marriage Act was only filed on behalf of the appellant-husband being Original Suit No. 113 of 2016 to create a document for filing a divorce suit and this fact can be related to the fact that the matter was taken up for conciliation and mediation but on every occasion, the said conciliation and mediation resulted into failure.
63. As such, the learned Family Court taking into consideration all the aspect in entirety and appreciating the arguments advanced on behalf of the parties, has held that the appellant-husband has failed to establish the element of cruelty committed on the part of wife against him either mental or physical, as such, has dismissed the suit filed on behalf of the appellant-husband for grant of decree of divorce.
64. Thus, on the basis of discussion made hereinabove it is evident that learned Family Court has appreciated meticulously each and every evidence available on record, as such, it is the considered view of this Court that there is complete absence of element of perversity in the impugned judgment.
65. This Court, based upon the aforesaid discussion, is of the view that the appellant-husband has failed to establish the element of perversity in the impugned judgment as per the discussion made hereinabove, as such, the instant appeal deserves to be dismissed.

66. Accordingly, the appeal being F.A. No. 175 of 2023 fails and is dismissed.

67. Now coming to the appeal being F.A. No. 223 of 2023 which has also been filed on behalf of the appellant-husband against the judgment impugned passed in Original Suit No. 135 of 2019 which had been filed on behalf of the wife under Section 9 of the Hindu Marriage Act for restitution of conjugal right and the same is allowed in favour of the wife.

68. This Court after appreciating the arguments advanced on behalf of both the parties has gone through the judgment impugned wherefrom it is evident that the learned Family Court has taken into consideration, after assessing the evidences both oral and documentary led from both the sides, that the wife was never guilty on her part to discharge her duty as a wife to lead conjugal relation with the appellant-husband.

69. It has been taken note therein that the marriage in between the parties was solemnized in the year 2011 and till 2016 there was no dispute between them and for the first time, the issue arose in the year 2016 when the appellant-husband filed a suit being Original Suit No. 113 of 2016 under Section 9 of the Hindu Marriage Act which was decreed in favour of the appellant-husband and the learned Family Court has held that “the respondent/wife Fulmani Marandi is directed to join her husband/petitioner at this place of posting at her matrimonial home on permanent basis.”

70. Being aggrieved with the part of the judgment wherein the wife was directed to go and lead conjugal life with her husband on “**permanent basis**”, the wife challenged the same before the Co-ordinate Bench of this Court. Further the wife in the said petition has submitted that she is ready

and willing to resume her conjugal life with the respondent and she is not aggrieved with any part of the judgment dated 12.07.2018 save and except that aforesaid part. Thereafter vide order dated 28.06.2023 passed in First Appeal No. 510 of 2018 the said part of order passed by the learned Family Court has been deleted.

71. Herein, it would be appropriate 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 right.—When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the 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.]

72. 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 with 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.

73. 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.
74. 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).
75. 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)".

76. 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.

77. 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

78. 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.”

79. 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 file petition before 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.
80. In the backdrop of the settled position this Court is now re-adverting to the factual aspect of the instant case and it is from the impugned judgment that the learned family court has taken note of the fact that the allegation against the wife of not residing with the appellant-husband is not true reason being that the wife had tried his best to lead conjugal life and she has also went to Angul, Odisha to stay with her husband, the appellant herein, which has been supported by the rail tickets, leave application given by the wife to her department as she is a govt. employee of State of Jharkhand but the appellant-husband did not allow her to enter the house and switched off his mobile phone.

81. The learned Family Court has also taken note of the fact regarding mediation conducted in between the parties which resulted into failure and the appellant-husband is not willing to accept the plaintiff-wife as his wife and only wants to get rid of her on one reason or the other.
82. The learned Family Court has also taken note of the fact that the allegation against the wife of not residing with her husband is not true as the documentary evident as Ext. 1 and 1/1 Rail tickets from Dumka to Ranchi and Ranchi to Bhubneshwar and Ext. 2, a bill of Santi Guest House of Odisha proves that the wife was in Angul, Odisha, i.e., work place of the appellant-husband, as such, it cannot be said that the wife was not willing to go to the work place of her husband and lead conjugal life with him. One document had also been exhibited as Ext. 3/1 which reveals some injury on the person of the wife which shows that the wife was tortured at Angul, Odisha when she had gone to reside with her husband, the appellant-husband herein.
83. The learned Family Court, considering all the aspects of the matter and evidences lead on behalf of both the parties as also appreciating the arguments on behalf of both the parties, had come to the conclusion that the wife is bonafide and since the beginning of their marriage, she has tried to lead conjugal life and it is the appellant-husband who has avoided her on every occasion on one reason or the other and one of the reasons as has been gathered is that the wife is handicapped from one leg which can be the reason that the appellant-husband is trying to get rid of her.
84. Thereby, the learned Family Court, considering all these aspects, had allowed the Original Suit No. 135 of 2019 filed on behalf of the wife for

restitution of conjugal right and ordered the appellant-husband to comply with the judgment and to lead conjugal life within two months from the date of passing of the decree.

85. Thus, on the basis of discussion made hereinabove it is evident that learned Family Court has appreciated meticulously each and every evidence available on record, as such, it is the considered view of this Court that there is complete absence of element of perversity in the impugned judgment.

86. This Court, based upon the aforesaid discussion, is of the view that the appellant-husband has failed to establish the element of perversity in the impugned judgment as per the discussion made hereinabove, as such, the instant appeal deserves to be dismissed.

87. Accordingly, the appeal being F.A. No. 223 of 2023 also fails and is dismissed.

88. In the result, both the present appeals are hereby, dismissed.

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

I agree

(Sujit Narayan Prasad, J.)

(Sanjay Prasad, J.)

(Sanjay Prasad, J.)

10th April, 2026

Saurabh/A.F.R.

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