**IN THE HIGH COURT OF JHARKHAND AT RANCHI**

**F.A. No. 247 of 2026**

Rekha Kumari @ Rekha, aged about 36 years, wife of Sri Rakesh Kumar and daughter of Sri Kishun Lal Sahu, resident of Qtr. No.32, Cable Town, Security Line, P.O. and P.S. Golmuri, Town Jamshedpur, District-East Singhbhum-831003.

...**Petitioner/Appellant**

**Versus**

Rakesh Kumar, son of Late Jaidev Prasad, resident of Qrt No.26, Cable Town, Security Line, P.O. and P.S. Golmuri, Town Jamshedpur, District-East Singhbhum-831003.

... ...**Respondent/Respondent**

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

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For the Appellant : Mr. Prabhash Kumar, Advocate
Mr. Ganesh Ram, Advocate
For the Respondent : ...

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**CAV/Reserved on 25.08.2026** **Pronounced on 09 /10/2026**

***Per Sujit Narayan Prasad, J.***

**Prayer:**

***1.*** The instant appeal under Section 19(1) of the Family Court Act, 1984 is directed against order/judgment dated 09.02.2026 and decree signed on 16.02.2026 passed by the learned Additional Principal Judge, Additional Family Court No. 1, Jamshedpur, East Singhbhum in Original Suit No.59 of 2024, whereby and whereunder the suit, filed under Section 27(1)(b) and (d) of the Special Marriage for grant of decree of divorce, was dismissed ex parte.

**Brief facts of the case**:

***2.*** The brief facts of the case, as per the pleading made in the original suit, needs to be referred herein, which reads as under:

***3.*** The appellant is the legally married wife of the Respondent and their marriage was solemnized and registered on 20.10.2010 before the Marriage Officer at Sub-Registry Office, Jamshedpur and was also performed as per the Hindu belief and customs of both the parties. After marriage the Petitioner-appellant went to her In-law's house to lead their conjugal life harmoniously. Out of the said wedlock, the Petitioner-appellant gave birth of a female child namely Dimple Kumari on 11th January 2012 and one male child namely Lokesh Kumar born on 1st October 2015. It is averred that after birth of the son, the Respondent started committing domestic violence. The Respondent used to consume alcohol and also assaulted the Petitioner, abusing vulgar words. However, the Petitioner-appellant silently tolerated with the hope that the behaviour of the Respondent may change in future. It is further averred that the Petitioner's father in law suddenly died in 2015. After his death, the Respondent became more furious and cruel. He became habitual drunker. He stopped to do job. The Respondent has stopped to fulfill the essential needs of the family. As such, the Petitioner was facing difficulties to

maintain herself along with said two minor children. The life of the Petitioner became hell. However, she, was, anyhow, pulling her days inspite of cruelty and mental torture, caused at the instance of her husband. Subsequently on 15th March 2018 the Petitioner-appellant was driven away along with her two children by the Respondent party from the in-law's house of the Petitioner. Consequently, the Petitioner took shelter in the house of her father and still she is living with her parents. It is further averred that Petitioner is working in private job and out of her meager income she is maintaining herself as well as her children. The parents of the Petitioner are old and poor but they are sensible, they both are protecting the Petitioner and her said two children. The aforesaid two children of the Petitioner are studying in school. Their educational expenses are any how borne by the Petitioner. Respondent has become habitual drunkard; he treated the Petitioner with cruelty. He has deserted the Petitioner continuously for five years. He does not take care of children. He is not sound in mind. He is indulging himself in all negative activities by making threats out of intoxication. It is further averred that Petitioner tried her level best to change the behavior of the opposite party, but all went in vain.

***4.*** In the aforesaid background, the petitioner-wife, had filed the suit wherein prayer had been made to pass a decree for

dissolution of marriage in favour of the petitioner/ appellant herein.

***5.*** Before the family court, notice was issued through post as also notice was published in the Newspaper but the respondent did not appear in spite of proper service of notice, hence, the suit proceeded ex-parte vide order dated 05.05.2025.

***6.*** Accordingly, the suit proceeded and evidence was adduced on behalf of appellant as also some documents were exhibited.

***7.*** The learned additional family court, on the basis of materials available before the Court, dismissed the suit ex-parte filed by the petitioner-wife under Section 27(1)(b) and (d) of the Special Marriage Act 1954 (herein referred as Act 1954) for grant of decree of divorce.

***8.*** The petitioner-wife (appellant herein) being aggrieved with the order passed by the learned additional family court has approached this Court by filing the instant appeal.

***9.*** This Court vide order dated 8th June, 2026 issued notice to the respondent-husband.

***10.*** As per office note dated 17.07.2026, prepared on the basis of the service report of the process server, as available at Flag 'X' the notice was shown to be received personally by the respondent and the respondent also put his signature on the

back side of the notice. Further, the tracking report of the notice sent through speed post also reflects that the notice has been delivered to the address, but, in spite of valid service of notice, the respondent-husband did not appear, as such the present appeal proceeded *ex-parte* accordingly. For ready reference, order dated 20th July, 2026 is quoted as under:

> *"1. This Court has issued notice upon the respondent, vide order dated 8th June, 2026.*
>
> *2. As per the office note dated 17.07.2026 prepared on the basis of the service report of the process server as available at flag-"X" that the notice has been received personally.*
>
> *3. We have perused the service report as available at flag-"X" and found that respondent has received the notice and put his signature on the back side of the notice.*
>
> *4. We have also perused the notice sent through speed post with tracking report as available at flag-"y" and found that the notice has been delivered to addressee.*
>
> *5. There is no appearance as yet on behalf of the respondent, even though, the notice has been received personally.*
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> ***I.A. No.6123 of 2026***
>
> *6. This interlocutory application has been preferred under Section 5 of the Limitation Act for condoning the delay of 17 days in preferring the instant appeal.*
>
> *7. Heard learned counsel for the parties.*
>
> *8. Considering the sufficient cause as has been referred at paragraph-3 of the interlocutory application, the delay of 17 days in preferring the appeal, is hereby, condoned.*
>
> *9. Accordingly, I.A. No.6123 of 2026 stands allowed.*
>
> ***First Appeal No.247 of 2026***
>
> *10. Heard learned counsel for the parties.*

*11. Call for the Trial Court Records. 12. List this matter on 24th August, 2026 under the appropriate heading.*

***11.*** Accordingly, the matter proceeded and argument has been advanced on behalf of appellant.

**Submission of learned counsel for the appellant-wife**

***12.*** Mr. Prabhash Kumar, learned counsel for the appellant-wife has submitted that element of cruelty and desertion in its true perspective and tenor has not been considered by the learned additional family court, as such the judgment passed by the learned additional family court is perverse.

***13.*** Further submission has been made that learned family court failed to consider the fact that in spite of valid service of notice, the Respondent/Husband did not appear in the suit to defend his case and to place any objection with regard to the reliefs claimed in the suit and thereafter indirectly and obliquely admitted the reliefs claimed in the Original Suit.

***14.*** It has been submitted while pressing the issue of cruelty the learned family court failed to appreciate the fact that petitioner-wife had informed to police against her husband for torture in the Golmuri Police Station in February, 2024 and despite of repeated attempts by the Police and well-wisher the Respondent husband did not mend his conduct.

***15.*** So far as the issue of desertion is concerned, submission has been made that it is the Respondent/Husband who has abandoned his wife, daughter and son and has driven away

forcibly from the matrimonial home and is not maintaining his family, therefore, the Petitioner along with daughter and son has taken shelter in her father's house.

***16.*** It has been submitted that the husband of the petitioner is addicted to liquor and often used to demand money from her and on her inability to fulfill such demand, he used to beat her and which causes petitioner mentally and physically tortured.

***17.*** It has been submitted that though there was sufficient material to prove the element of cruelty and desertion on the part of respondent-husband but the learned family court has wrongly interpreted the terms of cruelty and desertion without appreciating the admitted fact that Respondent-husband is continuously and regularly torturing the petitioner both mentally and physically and as such cohabitation of husband and wife has come to an end and they are living separately since 15th March, 2018 and there is no effort by husband for resumption of their conjugal life and husband is not maintaining his family and did not take care of welfare, education of his daughter and son.

***18.*** It has been submitted that it is the degree of cruelty meted out to the petitioner which forced the petitioner to go to her matrimonial house, but these facts have not properly been appreciated by learned additional family court while passing the impugned judgment.

***19.*** Learned counsel for the appellant has further submitted that the learned family court in the concluding paragraph has observed that "it is evident that there was never any attempt on behalf of Respondent to establish conjugal relationship with the Petitioner since 15/03/2018 and more so the conduct of the Respondent since 15/03/2018 shows *animus deserendi* on the part of the Respondent" but thereafter wrongly came to the finding that it cannot be inferred that the Respondent husband is guilty of desertion towards the Petitioner/wife and failed to realise that instant marriage of parties has irretrievably broken down due to non-resumption of conjugal life since 15/03/2018.

***20.*** Learned counsel for the petitioner-appellant on the aforesaid grounds has submitted that the instant appeal be allowed by quashing and setting aside the order passed by learned additional family court.

**Analysis:**

***21.*** We have heard learned counsel for the appellant and gone through the pleading available on record as also the finding recorded by learned Additional Principal Judge, Addl. Family Court, Jamshedpur and other materials available on record.

***22.*** This Court before proceeding further needs to refer herein the factual aspect of the matter.

***23.*** The marriage of the petitioner-appellant and respondent-husband was solemnized and registered on 20.10.2010 before the Marriage Officer at Sub-Registry Office, Jamshedpur and was also performed as per the Hindu belief and customs of both the parties.

***24.*** After marriage the Petitioner-appellant went to her In-law's house to lead their conjugal life harmoniously. Out of the said wedlock, the Petitioner-appellant gave birth of a female child namely Dimple Kumari on 11th January 2012 and one male child namely Lokesh Kumar born on 1st October 2015. It is alleged that after birth of the son, the Respondent started committing domestic violence and used to consume alcohol and also used to assault the Petitioner using abusive language. However, the Petitioner-appellant silently tolerated with the hope that the behaviour of the Respondent may change in future. It is further alleged after the death of her father-in-law in the year 2015, the Respondent became more furious and cruel and stopped to do job and fulfill the essential needs of the family.

***25.*** Therefore, the Petitioner was facing difficulties to maintain herself along with said two minor children. Subsequently on 15th March 2018 the Petitioner-appellant was driven away along with her two children by the Respondent party from the in-law's house of the Petitioner. Consequently, the

Petitioner took shelter in the house of her father and still she is living with her parents.

***26.*** Before, the learned additional family court the respondent-husband did not appear, as such the suit proceeded ex-parte and the learned additional family court dismissed the suit, against which the instant appeal has been filed.

***27.*** Before this Court also, the notice was validly served upon the respondent-husband but he chose not to appear as such the case proceeded.

***28.*** This Court in the aforesaid backdrop facts and submission requires to consider as to:

> *"Whether the judgment and decree rendered by the learned Family Court, whereby the prayer of the petitioner-appellant wife for dissolution of marriage on the grounds of cruelty under Section 27(1)(d) and desertion under Section 27(1)(b) of the Special Marriage Act, 1954, having been declined, warrants interference in appellate jurisdiction by this Court."*

***29.*** This Court, in order to appreciate the testimony available on record, has gone through the testimony of the witness, as available in the impugned order.

***30.*** In this case the petitioner-appellant has adduced one witness i.e., the petitioner herself, in support of her case.

***31.*** P.W.1 Rekha Kumari, in her evidence in chief given by way of affidavit dated 08.07.2025 has stated that their marriage was performed under the Special Marriage Act before the

Marriage Officer, Jamshedpur. They have blessed with a daughter namely, Dimple Kumari and a son Lokesh. Her husband does not do any work and he is addicted of liquor and often used to demand money from her and on her inability to fulfill such demand he used to beat her. She was mentally and physically tortured and distressed by her husband cruel behaviour. Her husband also abused both of her children, they were afraid of him and as a result of that she found it difficult to live with him. She has also deposed that she has also informed her husband's torture to the Golmuri P.S. and despite repeated attempts by the police and well-wishers, the Respondent has not mended his misconduct.

***32.*** While answering to court question she has stated that apart from this case, there is no pending case between her and the Respondent nor was there any case in the past. Her husband tortured her in the month of January, 2024 both at her parents' house and at her in-laws house. He assaulted her and her parents. She has filed complaint to this effect at the Golmuri P.S. in February, 2024. She works as Nurse with doctors, even right after the incident, she did her job well as a nurse, she had no problems working.

***33.*** Besides oral evidence, she has also adduced documentary evidence. Exhibit 1 is the true copy of marriage certificate; Exhibit 2 is the photograph of the petitioner and the

respondent, as husband and wife; and exhibit 3 is the newspaper publication of the service of notice of the suit for appearance of the respondent.

***34.*** On the basis of the pleading of the petitioner, the learned Additional Principal Family Judge after appreciating the evidence, dismissed the suit ex-parte filed for dissolution of marriage by decree of divorce, against which the present appeal has been preferred.

***35.*** 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.

***36.*** 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).

***37.*** 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.

***38.*** 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."*

***39.*** 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.

***40.*** 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.

***41.*** 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.

***42.*** 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.

***43.*** This Court, while appreciating the word 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 EncyclopedicEdn.)*

*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."*

***44.*** 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.

***45.*** 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.

***46.*** 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.***

***47.*** In the backdrop of the aforesaid settled position of law this Court is now adverting to the contention of the learned counsel for the appellant as well as factual matrix of the case.

***48.*** Since in the present matter, a submission has been advanced on behalf of the appellant-wife that the respondent-husband subjected her to mental cruelty, it becomes necessary to advert to the statutory element of cruelty as contemplated under Section 27(1)(d) of the Special Marriage Act, 1954. It is pertinent to note that a *pari materia* provision relating to cruelty is also embodied in Section 13(1) (i-a) of the Hindu Marriage Act, 1955, and the judicial exposition under that enactment serves as a guiding principle for construing cruelty under the Special Marriage Act.

***49.*** So far the allegation of cruelty is concerned, it needs to refer herein the definition of '*cruelty'* as has been defined

by Hon'ble Apex in the judgment rendered in ***Dr. N.G. Dastane Vs. Mrs. S. Dastane [(1975) 2 SCC 326],*** wherein it has been held that the Court is to enquire as to whether the charge as cruelty, is of such a character, as to cause in the mind of the petitioner, a reasonable apprehension that, it will be harmful or injurious for him to live with the respondent.

***50.*** The cruelty has also been defined in the case of ***Shobha Rani Vs. Madhukar Reddi [(1988) 1 SCC 105],*** wherein the wife alleged that the husband and his parents demanded dowry. The Hon'ble Apex Court emphasized that "cruelty" can have no fixed definition.

***51.*** According to the Hon'ble Apex Court, "cruelty" is the "conduct in relation to or in respect of matrimonial conduct in respect of matrimonial duties and obligations". It is the conduct which adversely affects the spouse. Such cruelty can be either "mental" or "physical", intentional or unintentional. For example, unintentionally waking your spouse up in the middle of the night may be mental cruelty; intention is not an essential element of cruelty but it may be present. Physical cruelty is less ambiguous and more "a question of fact and degree."

***52.*** 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."

***53.*** 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.

***54.*** In ***V. Bhagat vs. D. Bhagat (Mrs.), (1994)1 SCC 337***, the wife alleged in her written statement that her husband was suffering from "mental problems and paranoid disorder". The wife's lawyer also levelled allegations of "lunacy" and "insanity" against the husband and his family while he was conducting cross-examination. The Hon"ble Apex Court held these allegations against the husband to constitute "cruelty".

***55.*** In ***Vijay Kumar Ramchandra Bhate v. Neela Vijay Kumar Bhate, (2003)6 SCC 334*** the Hon'ble Apex Court has observed by taking into consideration the allegations levelled by the husband in his written statement that his wife was "unchaste" and had indecent familiarity with a person outside wedlock and that his wife was having an extramarital affair. These allegations, given the context

of an educated Indian woman, were held to constitute "cruelty" itself.

***56.*** 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.

***57.*** "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**.

***58.*** 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.

***59.*** 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.***

***60.*** 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, (2021) 3 SCC 742.***

***61.*** 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.**

***62.*** 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.

***63.*** The word "cruelty" either under Section 13 (1)(a) of the Hindu Marriage Act or under Section 27(1)(d) of the

Special Marriage Act has got no static connotation, and therefore, gives a very wide discretion to the Court to apply it liberally and contextually.

***64.*** 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.

***65.*** Herein desertion stipulated under Section 27 (1) (b) of the Act 1954has also been taken as ground by the appellant for decree of divorce, therefore it would be apt to discuss herein the word “desertion”. Desertion has also been embodied in Section 13(1) (i-b) of Hindu Marriage Act 1955.

***66.*** As per its meaning provided under the statute, Special Marriage Act, that either of the spouse is withdrawing on its own volition from the house then it will not amount to desertion but vice-versa to that if the wife or husband, as the case may be, is being forced to leave the house then it will not amount desertion.

***67.*** Desertion has been defined in the statute book and has been interpreted by Hon'ble Apex Court in catena of decision.

***68.*** It is pertinent to note that the word 'desertion', as has been defined in Explanation part of Section 27 of the Special Marriage Act, which means that means 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.

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

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

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

> *"In its essence desertion means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent,*

> *and without reasonable cause. It is a total repudiation of the obligations of marriage. In view of the large variety of circumstances and of modes of life involved, the Court has discouraged attempts at defining desertion, there being no general principle applicable to all cases.*

***71.*** Desertion is not the withdrawal from a place but from a state of things, for what the law seeks to enforce is the recognition and discharge of the common obligations of the married state; the state of things may usually be termed, for short, 'the home'. There can be desertion without previous cohabitation by the parties, or without the marriage having been consummated. The person who actually withdraws from cohabitation is not necessarily the deserting party.

***72.*** The offence of desertion is a course of conduct which exists independently of its duration, but as a ground for divorce it must exist for a period of at least two years immediately preceding the presentation of the petition or, where the offence appears as a cross-charge, of the answer.

***73.*** 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.

***74.*** It is, thus, evident from the aforesaid reference of meaning of desertion that the quality of permanence is one

of the essential elements which differentiate desertion from 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.

***75.*** Similarly, two elements are essential so far as the deserted spouse is concerned: (*1*) the absence of consent, and (*2*) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to from the necessary intention aforesaid.

***76.*** The Hon'ble Apex Court in ***Debananda Tamuli vs. Kakumoni 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** which has been consistently followed in several decisions of this Court.

***77.*** The law consistently has been laid down by this Court that desertion means the intentional abandonment of one spouse by the other without the consent of the other and without a reasonable cause. The deserted spouse must

prove that there is a factum of separation and there is an intention on the part of deserting spouse to bring the cohabitation to a permanent end. In other words, there should be *animus deserendi* on the part of the deserting spouse. There must be an absence of consent on the part of the deserted spouse and the conduct of the deserted spouse should not give a reasonable cause to the deserting spouse to leave the matrimonial home.

***78.*** This Court, based upon the aforesaid discussions on the issue of cruelty and desertion, has gone through the testimony of witness and other materials available on record.

***79.*** So far as the issue of cruelty is concerned, this Court has considered the evidence of the appellant-wife, who has specifically stated that she was subjected to torture in the drunk stage by her husband, the respondent herein, and not only that he used to assault for the purpose to take money. It has also been stated that even the two children are being subjected to torture by the respondent-husband. However, the learned trial court has given the finding that since no criminal case has been instituted to that effect, as such the element of cruelty cannot be said to be proved.

***80.*** In this regard, this Court has also duly considered the evidence adduced by the appellant and finds that she specifically referred to the information furnished to the

Golmuri Police Station regarding the torture and assault perpetrated by her husband. However, the learned Family Judge failed to take cognizance of this material fact, perhaps on the premise that no formal First Information Report was drawn.

***81.*** This Court is of the considered view that, in matrimonial disputes, when either party adduces evidence to substantiate the element of cruelty particularly the wife the mere fact of non-institution of a formal First Information Report cannot, by itself, be treated as a ground to discredit such testimony. The appellant-wife, even if she did not lodge a formal FIR, has nonetheless explained the torture and assault suffered at the hands of the respondent-husband. The pertinent question that arises is why she would voluntarily choose to live alone and endure the rigours of solitude and financial hardship, unless compelled by the cruelty meted out to her. This circumstance lends credibility to her statement and cannot be brushed aside merely on extraneous consideration.

***82.*** The aforesaid aspect of the matter has not been duly taken into consideration by the learned Additional Family Judge while adjudicating the issue of cruelty. Without appreciating this vital circumstance, the learned Additional Family Court proceeded to record an erroneous

finding that none of the allegations of cruelty levelled by the petitioner against the respondent stood proved.

***83.*** Consequently, the finding so recorded by the learned Additional Family Court falls within the ambit of perversity, insofar as the determination with respect to cruelty is concerned, the same having been rendered without proper appreciation of the material evidence available on record.

***84.*** So far as the issue of desertion is concerned, this Court observes that under the statutory scheme of both the Special Marriage Act and the Hindu Marriage Act, desertion contemplates a voluntary withdrawal by either spouse from the matrimonial home with the intention of permanently terminating cohabitation. Conversely, where the wife or husband, as the case may be, is compelled or forced to leave the matrimonial home due to circumstances created by the other spouse, such departure cannot, in law, amount to desertion.

***85.*** This Court for the purpose of appreciation of the fact about the element of desertion has again delve into the testimony of appellant, wherein it has specifically been stated that the respondent-husband used to take liquor as a habit and also used to assault for the purpose of snatching away the money since the appellant for her and for survival of her two children is doing job of nurse in private hospital.

***86.*** It has been clearly stated in the evidence that, under compelling circumstances and in order to safeguard her own life as well as the lives of her two children, the appellant-wife was constrained to leave the matrimonial home and take shelter in her parental house. She has been residing there continuously since the year 2018, which fact further demonstrates that her separation was not voluntary but necessitated by the cruelty and peril she faced at the hands of the respondent-husband.

***87.*** In the aforesaid circumstances, this Court is of the considered view that the departure of the appellant-wife from the matrimonial home cannot be construed as a wilful abandonment of the respondent-husband. Rather, it was a compelled act necessitated by the cruelty inflicted upon her, thereby amounting itself to cruelty in law.

***88.*** The cruelty and desertion are inter-related to some extent. If the cruelty is meted out to the wife, then wife is compelled to leave the house and, in such situation, it cannot be alleged it is the wife who on own volition has left the matrimonial house.

***89.*** From the record it is further evident that despite valid service of notice/summons, the respondent-husband has deliberately abstained from appearance both before the learned Family Court as well as before this Court. Such conduct unmistakably demonstrates that the respondent

has no inclination to preserve or protect the marital bond and has chosen to remain completely aloof from the proceedings. His persistent non-appearance, notwithstanding due service, reflects a conscious disregard of the judicial process and underscores his indifference towards saving the matrimonial relationship.

***90.*** This Court, upon a comprehensive appraisal of the grounds urged, the precedents cited, and the testimony of the appellant, while adverting to the judgment rendered by the learned Additional Family Court, finds that the said Court, in assigning reasons for declining the decree of divorce, has wholly omitted consideration of the material evidence regarding the respondent-husband's drinking habit and the assault and torture inflicted upon the petitioner/appellant-wife, which compelled her to leave her matrimonial home. Furthermore, the learned Family Court failed to take into account that the parties have been living separately since 2018, thereby rendering the marriage a mere dead wood incapable of revival. It is further manifest from the testimony of the appellant-wife that she is unwilling to continue her marital life, being unable to endure the cruelty and torture at the hands of the respondent-husband, and being an independent lady, she cannot be compelled to reside with him.

***91.*** For the discussions made hereinabove, this Court is of the view that the desertion by the wife of her husband is under compelling circumstances and not the voluntary one.

***92.*** Accordingly, issue as framed by this Court is decided in favour of the appellant-wife.

***93.*** This Court, upon a detailed discussion of the factual aspects in conjunction with the settled legal position, while adverting to the consideration undertaken by the learned Additional Family Judge in the impugned judgment, finds that the issues relating to cruelty and desertion alleged against the appellant-husband have not been properly examined.

***94.*** On a careful appraisal of the aforesaid discussion, this Court is of the considered view that the impugned judgment and decree rendered by the learned Family Judge fall within the ambit of perversity, inasmuch as there has been no conscious consideration of the evidence available on record.

***95.*** In view of the foregoing discussion, this Court holds that the impugned judgment dated 09.02.2026 and the decree signed on 16.02.2026 by the learned Additional Principal Judge, Additional Family Court No. 1, Jamshedpur, East Singhbhum in Original Suit No.59 of 2024 cannot be sustained in law and, accordingly, the same is hereby quashed and set aside.

***96.*** Consequently, the prayer as made in the original suit stands allowed and the marriage between the parties i.e., the appellant and the respondent, stands dissolved.

***97.*** The Registry of this Court is directed to issue decree of dissolution of Marriage.

***98.*** It goes without saying that the Right to inheritance of the children will remain intact and will have no bearing with the dissolution of marriage, which is being allowed.

***99.*** It needs to refer herein that the wife has not approached the court for getting the maintenance which reflects *bona fide* on the part of the appellant-wife, for the reason that she has got a job of Nurse in the private hospital to sustain herself and her two children.

***100.*** However, this Court is of the view that though the wife herself has not chosen to file an application for maintenance of herself but that does not preclude her from claiming maintenance for her minor children for their sustenance and study.

***101.*** As such, it is also left open upon for the appellant to claim the maintenance for her children from the respondent-husband by filing appropriate application before the appropriate forum.

***102.*** With the aforesaid directions and observations, the instant appeal stands allowed and as such disposed of.

***103.*** Pending Interlocutory Application, if any, stands disposed of.

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

**(Sanjay Prasad, J.)** **(Sanjay Prasad, J.)**

***9th October, 2026***

*Alankar*/**A.F.R.**

**Uploaded on 09.10.2026**