

IN THE HIGH COURT OF JHARKHAND AT RANCHI**F.A. No.274 of 2023**

Jitendra Azad, aged about 52 years, son of late Mahabir Prasad Shaw,
resident of Krishnagar Ghat Road, PO & PS Sahibganj, Dist-Sahibganj,
Jharkhand. Plaintiff/Appellant

Versus

Meena Gupta, wife of Jitendra Azad, Daughter of late Hari Prasad,
resident of Torai, PO: Torai, PS: Hiranpur, District Pakur, at present
posted as Assistant Teacher of Sanskrit in +2 Raj High School, PO,PS
and Distt. Pakur. Defendant/Respondent

CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE ARUN KUMAR RAI

For the Appellant :Mr. Pankaj Srivastava, Advocate
For the Respondent :Mr. Manoj Kumar Choubey, Advocate

C.A.V. On:19/01/2026**PRONOUNCED ON:28 /01/2026**

1. The instant appeal under Section 19(1) of the Family Court Act, 1984 is directed against the judgment and decree dated 16.06.2023 [decree signed on 29.06.2023] passed by the learned Principal Judge, Family Court, Pakur in Original Suit No.79 of 2022, whereby and whereunder, the suit for restitution of conjugal right under Section 9 of the Hindu Marriage Act, 1955 by the plaintiff/ appellant, has been dismissed on contest.

Factual Matrix

2. The brief facts of the case as pleaded in the plaint having been recorded by the learned Family Judge, needs to be referred herein as::

(i) The marriage of the appellant/petitioner with the respondent wife was solemnized at Vindhwashini Temple at Barharwa on 12.03.2018 as per Hindu rites and customs. At the time of marriage, the defendant was doing private service as a teacher in Barharwa

Saraswati Sishu Mandir and used to reside with her elder sister and family members as the mother and father of the defendant were dead. The plaintiff was in service as Medical Staff at Sahibganj Sadar Hospital on daily wages at the time of marriage and till now he is working on daily wages at Sahibganj Sadar Hospital. After the marriage, the defendant came to live at her law's house in the company of the plaintiff and other family members of the plaintiff. All the brothers of the plaintiff were separate in mess and business and this plaintiff along with his elder brother Birendra Kumar lives in a joint house as the said house has not been partitioned among the legal heirs of late Mahabir Prasad Shaw. The defendant lived in the company of the plaintiff for two to three days for the first time and thereafter went to Barharwa to join the service and for the same the plaintiff did not object and thereafter she used to live with her elder sister and family members after marriage as she was doing work of teacher at Barharwa and the defendant came two or three times after the marriage and stayed there.

(ii) By her last visit, the defendant without informing the plaintiff left his house taking all the ornaments and other things and started putting pressure upon the plaintiff to live as "Ghar Jamai" to which he flatly refused and thereafter the defendant stopped making telephonic call and plaintiff later on came to know that the defendant has been appointed as Assistant Teacher in +2 Raj High School, Pakur but she did not inform the same to the plaintiff.

(iii) Further case of the plaintiff is that Tilak Ceremony of son of the elder brother of the plaintiff was to be held on 25.6.2021 which was informed to the defendant but she showed her inability to attend the same. Thereafter, on 28.6.2021 plaintiff went to Pakur to meet the defendant and to convince her to attend the marriage which was to be held on 01.07.2021 but she flatly refused the same. The plaintiff later on came to know that the defendant had earlier performed marriage with someone but without taking divorce from him she had performed second marriage and had suppressed the facts. In spite of first marriage of the defendant the plaintiff was ready to keep her with full dignity.

(iv) Further case of the plaintiff is that the defendant thereafter began to send him messages through WhatsApp in which she had leveled several allegations upon him and his family members and she also sent message to the plaintiff to prepare divorce paper and send the same and hence the suit for restitution of conjugal rights was filed by the plaintiff (the appellant herein) under Section 9 of the Hindu Marriage Act, 1955.

3. The learned Family Judge has called upon the respondent-wife. The wife has filed written statement and based upon the pleading of the parties altogether six issues have been framed by the learned Family Court which are as follows:

- (i) Whether the suit is maintainable in its present form ?
- (ii) Whether the plaintiff has got valid cause of action for the suit ?

- (iii) Whether this Court has got jurisdiction to try the suit?
 - (iv) Whether Meena Gupta, the wife of plaintiff, has without reasonable excuse withdrawn herself from the society of her husband ?
 - (v) Whether the petitioner is entitled to a decree for restitution of conjugal right against his wife Meena Gupta?
 - (vi) Any other relief/reliefs, the plaintiff is entitled to ?
4. The evidences have been laid on behalf of both the parties. Thereafter, the judgment has been passed dismissing the suit by holding that plaintiff/husband is not entitled to get relief as claimed.
 5. Against the aforesaid order of refusal of restitution of conjugal rights the present appeal has been filed.

Arguments advanced on behalf of the plaintiff/appellant:

6. The learned counsel appearing for the appellant-husband while assailing the impugned order/judgment has taken the following grounds:
 - (i) There is an apparent error in the impugned judgment, since, each and every aspect of the matter has not been taken into consideration and the learned trial Court has failed to take into consideration the evidences available on record.
 - (ii) It has been submitted that the court is failed to appreciate oral evidence adduced on behalf of the appellant and thus came to a wrong conclusion. The court has also not considered that the appellant has

successfully substantiated the allegation that respondent has withdrawn herself from his society without any reasonable excuse.

(iii) The defendant lived in the company of the plaintiff/appellant for two to three days for the first time thereafter went to Barharwa to join her service and for the same the plaintiff did not object and further the defendant used to live with her elder sister and members family after marriage as she was doing work of teacher at Barharwa and the defendant came two or three times after marriage and stayed for two to three days and thereafter went to Barharwa.

(iv) It is further contended that by the last visit, respondent without informing the appellant left his house took all the ornaments and other things. Later on, she began to put pressure upon the plaintiff to live as "Ghar Jamai" but the plaintiff flatly refused to stay as "Ghar Jamai" and thereafter the defendant stopped making telephonic call and plaintiff/appellant later on came to know that the defendant has been appointed as Assistant Teacher in +2 Raj High School, Pakur but the defendant/wife did not inform the same to the plaintiff.

(v) It is further stated that the "Tilak Ceremony" of one of the sons of the plaintiff's elder brother was to be held on 25.06.2021 and the plaintiff informed the defendant about the same but the defendant showed her inability to attend the same.

(vi) It is further contended that on 28.6.2021 the plaintiff went to Pakur to meet the respondent and requested to attend the marriage but the defendant flatly refused the same. The plaintiff later on came to know that

the defendant had earlier performed marriage with someone but without taking divorce from her former husband had performed second marriage and had suppressed the facts and further the plaintiff in spite of the first marriage of the defendant is ready to keep the defendant with full dignity.

7. 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.

Submission on behalf of the respondent-wife:

8. Per contra while defending the impugned order, the learned counsel appearing for the respondent-wife has taken the following grounds:

- (i) There is no error apparent in the impugned judgment as the learned Family Judge has considered the entire issue and on the basis of evidence as led by the respondent-wife has passed the order impugned as such same may not be interfered with.
- (ii) The learned Family Judge has rightly come to the conclusion that the respondent wife has not deserted the petitioner without any just or sufficient cause rather she has a valid cause/sufficient cause for living separate from the appellant and therefore, the suit filed by the petitioner has no valid cause of action.
- (iii) The plaintiff /appellant herein has a big joint family and defendant lead a peaceful conjugal life only up to 06 months, thereafter the appellant and his other family members put a demand before the respondent/wife to bring a sum of Rs. 10,00,000/- to purchase a SCORPIO for side business which was denied by the

respondent/wife and her other family members. The learned counsel for the respondent further contended that the defendant regularly lived in the house of plaintiff and used to come Barharwa for the purpose of job regularly from Sahibganj and plaintiff never told to the plaintiff to live as Gharjamai.

- (iv) The learned counsel for the respondent further contended that respondent is an assistant teacher in +2 Raj High School, Pakur and the plaintiff began to create pressure to the defendant to leave the job which was denied by the respondent as a result of which dispute has been cropped up and the respondent always ready to consume their matrimonial life with the plaintiff but she do not wants to leave the job and the defendant/respondent was very much torture by the plaintiff/appellant and his family but she do not lodged any case against the plaintiff or his family under the hope that once upon a time everything will be normal.

- (v) It has also been submitted that the learned Family Court after taking into consideration the material available on record has found that the conduct of the appellant- husband has never been towards salvaging the institution of marriage as it is he who has by creating the situation has compelled the respondent-wife to desert the matrimonial house and, therefore on the pretext of the aforesaid categorical finding of the Family Court, the impugned order requires no interference.

9. Learned counsel, based upon the aforesaid grounds, has submitted that the learned Family Judge has rightly recorded its finding that there is a cogent

material that defendant/respondent has got sufficient reason to live separate from her husband/appellant, therefore the impugned judgment requires no interference by this Court.

Analysis:

10. This Court has heard the learned counsel appearing on behalf of both the parties and gone through the findings recorded by the learned Family Judge in the impugned judgment.
11. The case has been heard at length. The admitted fact herein is that the suit has been filed under Section 9 of the Hindu Marriage Act, 1955 for a decree of restitution of conjugal rights wherein, issues have been framed wherein primarily issue nos. (iv) and (v) are most relevant.
12. It is evident from impugned judgment that the evidence has been led on behalf of both the parties. For ready reference, the evidences led on behalf of the parties are being referred as under:
 - (i) PW-1 Jitendra Azad is the plaintiff (appellant herein) himself. He has reiterated the facts as stated in the plaint in his examination-in-chief. In his cross-examination he has stated that he completed graduation in Psychology in the year 1991. He has written his petition in English and after understanding he put his signature on it. He has written in his affidavit on oath that after marriage his wife lived with him for 2-3 days and this version he has also written in his plaint. After living 2 - 3 days at his house, his wife came to him for one day and thereafter again went to her maike. After three months of marriage. in the month of June, he went at Agra,

Haridwar, Rishikesh for tour with his wife. The tour was scheduled for 2-3 days. They have solemnized social marriage. After conversation of both the sides they have got marriage. He gave gold and silver jewellery to his wife and he can submit the paper. After 2 & 1½ years he came to know through Facebook that his wife has got Government job and in these 2 & 1½ years he has no relation with his wife. This version he has written in his suit. He is temporarily working at Sahibganj Sadar Hospital as an Assistant and he gets salary Rs. 10,000/-. He is working since the year 2017.

- (ii) PW-2, Navin Kumar has fully supported the case of plaintiff in his examination-in-chief and has stated more or less the similar version as stated by P.W.1. In his cross-examination he has stated that he cannot say from which date Mina Gupta is living. He does not know that after marriage Mina Gupta continued to live with her husband and thereafter her husband assaulted and ousted her. He cannot say on which date Jitendra Azad has filed this suit. He came to know from Jitendra Azad after 5- 6 months that Mina Gupta got the job. He does not know that Mina Gupta had joined the job at the instance of Jitendra Azad. Jitendra Azad had told him that he had gone for bedai of Mina Gupta regarding this he does not know personally. He also does not know that Jitendra Azad never gone to take his wife and he also cannot say who had gone with Jitendra Azad. He cannot say when the marriage of his cousin was performed. He also cannot say on which date the talk of marriage was held but that was held in the year 2018. He cannot say the day and month. For settlement of marriage he, Jitendra, Debendra

Prasad and Mahendra Prasad went there. He does not know that Jitendra Azad has filed this false case and never went to take his wife. He and Jitendra is working in same department. They have no family relation.

9. On the other hand, the defendant has also examined two witnesses in support of her case. Out of whom Defence-Witness No.1 Mina Kumari Gupta is the defendant herself.

(i) D.W.1 Mina Gupta(respondent) has stated in her examination-in-chief that this case was filed by Jitendra Azad against her for restitution of conjugal life. It is true that her marriage was solemnized with the plaintiff on 12 March, 2018. At the time of marriage her family members had gifted 8 anna gold ring, golden chain of 2 Bhari. Payal of silver 6 Bhari, Godrej Almirah, LCD of Soni, Freeze of LG company, Clothes, Utensils and other household articles and cash of Rs. 3,00,000/- for marriage expense and all the receipts of articles have been handed over to the plaintiff along with the articles. The version of plaintiff that he has given ornaments gold necklace, Dolna, Manghtika and Payal of silver is completely wrong. At the time of marriage she was doing private job at Barharwa Sishu Mandir as an assistant teacher and every day she goes Sahibganj to Barharwa and Barharwa to Sahibganj. After marriage she went her sasural and led happy conjugal life with her husband. The family members of the plaintiff are large and she lived properly for 06 months, thereafter the plaintiff and other family members of her husband started demanding Rs 10,00,000/-

to purchase a SCORPIO for side business. She denied the same, hence dispute arose. At the time of marriage both the family members were well conversant with each other and after getting knowledge the said marriage was solemnized. After marriage she had told her husband and his family members that she does not want to do the job because it was impossible to lead a big family, cooking food, maintaining family and maintaining job so that was very impossible to continue her job. But her husband and his family members compelled her not to leave the job as a result she does not leave the job. Her husband insists her to purchase a SCORPIO Car from maternal uncle for side business so that their family properly maintain. So she continued her job and every day she goes to Barharwa to Sahibganj and Sahibganj to Barharwa for her job. Jitendra Azad and his family members tortured and assaulted her, she was tolerating and did not lodge any case. In the meantime plaintiff had lodged a case. She did not send any WhatsApp message to the plaintiff. Later on plaintiff always creating pressure upon her to leave her govt. job for which the dispute arose. Plaintiff on conspiracy to save his skin from the case of 498A of IPC has filed present suit against her.

In her cross examination she has stated that Jitendra Azad is her husband. She has not divorced him and still they are husband and wife. She is living at Pakur and she is a teacher of Pakur Raj High +2. Her husband is living at Sahibganj and he is working at Hospital as contractual. Her matrimonial house is at Sahibganj. She is

working at Pakur since 2019. The family of her husband is a joint family. But they are living in separate house. Her in-laws are not alive. Her marriage was solemnized in the year 2018. When her marriage was solemnized, she was a teacher of Barharwa Sishu Mandir. She had applied for teacher job at Raj High School in the year 2016 and she got appointment in the year 2019. She came alone for joining at Pakur and she had told her husband. Since then, her husband had lodged this case, she is living separate from her husband. When she went at her sasural they started dowry demand and torture and assaulted her. Though her husband had tortured and assaulted her therefore she did not lodge any case against her husband but she had talk with him in home environment. She has got the notice of this suit after receiving the notice she came to know that her husband blamed her with so many false allegations. If her husband wants to take her with him but she will not leave her job. She gets salary Rs. 60,000/- per month. if her husband gives promise that he will not torture her and do not say to leave her job and when she gets leave then she will go at her Sasural and her husband will also come at Pakur live with her. She performed second marriage. Her earlier husband is alive. He was mentally disturbed for which she divorced him and after getting divorce of 7-8 years she had performed 2nd marriage.

- (ii) Defendant witness no.2 is Rupesh Kumar Shaw is the brother of defendant has stated it is true that the marriage of plaintiff and defendant was solemnized on 12th March, 2018. At the time of

marriage his family members had gifted 8 anna gold ring, golden chain of 2 bhari, Payal of silver 6 bhari, Godrej Almirah, LCD of Soni, Freeze of LG company, clothes, utensils and other house hold articles and cash of Rs. 3,00,000/- for marriage expense and all the receipts of articles have been handed over to the plaintiff along with the articles. The version of plaintiff that he has given ornaments gold necklace, Dolna, Manghtika and Payal of silver is completely wrong. At the time of marriage his sister was doing private job at Barharwa Sishu Mandir as an assistant teacher and every day she goes Sahibganj to Barharwa and Barharwa to Sahibganj. After marriage his sister went her sasural and led happy conjugal life with her husband about six months. Thereafter husband of his sister started demanding Rs 10,00,000/- to purchase a SCORPIO for side business. His sister denied the same, hence dispute arose. At the time of marriage both the family members were well conversant with each other and thereafter the marriage was solemnized. After marriage his sister does not want to perform job at Barharwa Sishu Mandir because after completion of all works her sister has to board the train for Sahibganj to Barharwa and Barharwa to Sahibganj for which his sister was facing difficulties. But his brother-in-law asked his sister that he is getting only Rs. 10,000/- so he could not maintain their family properly and told his sister not to leave her job and if she leaves the job then asked MAMA to purchase a SCORPIO Car for side business. So, his sister/ defendant continued her job and everyday she goes Barharwa to Sahibganj and Sahibganj to Barharwa for her job. Jitendra Azad/his brother-in-law

and his family members differently tortured and assaulted his sister and his sister tolerating the same and did not lodge any case against them. In the meantime, his brother-in-law/plaintiff Jitender Azad had lodged a case against his sister for torture and cruelty. Only to save his skin from the case of 498A of IPC this suit has been filed against his sister/defendant by the plaintiff.

During cross-examination he stated that Mina Gupta is his cousin sister. He further stated that the marriage of Mina Gupta was solemnized with Jitendra Azad at Barharwa temple and at that time he was present there. The marriage was solemnized in the year 2018. He further stated that the gold chain, gold ring and silver payel were made at Barharwa but he cannot remember in which shop that was made. He does not remember in which shop Almirah, LCD, Freeze have purchased from Barharwa. He had given Rs. 3 lakhs cash to Jitendra Azad for marriage expenses. He had given money to Jitendra Azad at his Sahibganj house and at that time his Bhabi was present there and nothing else. All the brothers together collected the money and thereafter they paid the same to the plaintiff but he did not remember exactly share amount had given by each brother. Before the said marriage his sister was already married. Divorce was not obtained by his sister from her first husband in any court of law, that was from the panchayati. Before marriage his sister was working as a teacher and his brother in law knows the facts very well and thereafter he performed marriage with his sister. His sister had got secured Government Job about

three years ago, thereafter she left the job of Sishu Mandir. His sister has got the government job at Pakur Raj High School and now his sister is living at Pakur. Jitendra Azad was demanding SCORPIO vehicle for his side business. His sister did not give the vehicle. The vehicle was demanded in the month of January, 2020. Jitendra Azad is working under contractual basis at Health Department, Sahibganj. This suit has been filed by Jitendra Azad for the *bidai* of his sister. His sister does not want to go her *sasural* because her in-laws and her husband committed torture upon her and demanded money. His sister is B.Ed educated and also a teacher of +2 school. His sister did not lodge any FIR against her husband or in-laws on account of torture and demand of money and no case was lodged before the court. He tried to settle the matter. For settlement they went at Sahibganj. He and his friend namely Chandra Shekhar Gupta went there. His sister did not go there. It is true that his brother-in-law gets salary of Rs. 10,000/- and his sister gets salary of Rs. 60,000/-. He is ready to send his sister with his brother-in-law, if his brother-in-law will keep well his sister, will not assault and torture her and no money will be demanded. It is true that still his sister and his brother-in-law are husband and wife.

10. The learned Family Judge has gone into the evidences laid on behalf of the parties as also the submissions made in the pleadings, i.e., plaint and written statement, has found that the defendant (respondent wife herein) has able to establish that she is not living in her parental house voluntarily rather under compulsion of circumstances and she has sufficient reason to live separately

from husband accordingly, the learned Family Judge has dismissed the suit filed by the appellant/husband for restitution of conjugal right.

11. Now adverting to the contention of the learned counsel for the parties wherein the learned counsel for the appellant wife has emphatically contended that since the learned family judge has not taken into consideration the entire factual aspect in right prospective as such the impugned order/judgment is perverse and not sustainable in eye of law.

12. This Court, while appreciating the argument advanced on behalf of the appellant 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.

13. 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.”*

14. Thus, the expression “perverse” means that the findings of the subordinate authority are not supported by the evidence brought on record or they are against the law or suffer from the vice of procedural irregularity. A perverse verdict may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence.
15. In backdrop of the aforesaid factual aspect and legal position, it would be apt to discuss herein the object and scope of decree of restitution. The object of restitution decree was to bring about cohabitation between the estranged parties so that they could live together in the matrimonial home in amity. The leading idea of Section 9 was to preserve the marriage. For ready reference Section 9 of the Hindu Marriage Act is being referred as under:

***“9. Restitution of conjugal rights.**— When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other aggrieved party may apply, by petition to the district court, for restitution of conjugal rights and the court, on being satisfied of the truth of the statements made in such petition and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.*

[Explanation.—Where a question arises whether there has been reasonable excuse for withdrawal from the society, the burden of proving reasonable excuse shall be on the person who has withdrawn from the society.]”

16. From perusal of the aforesaid provision, it is evident that if either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply, before the court concerned, for restitution of conjugal rights and the court, on being satisfied of the truth of the statements made in such petition and further taking into consideration the legal ground that why the application should not be granted, may decree restitution of conjugal rights accordingly.
17. 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.
18. 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).
19. 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)".

20. 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. 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.

21. 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 paragraphs are 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.”

22. Thus, on the basis of aforesaid settled position of law, it is evident that the court will grant a decree for restitution of conjugal rights when one spouse has withdrawn from the other's society without reasonable excuse. This means if a husband or wife leaves the marital home or refuses to live with their spouse without a justifiable reason, the other spouse can petition the court for this remedy. The court, if satisfied with the truth of the petition and finding no legal barrier, may order the withdrawing spouse to return and resume cohabitation.

23. Now advertng to the factual aspect of the instant case wherefrom it is evident from the testimony and evidences that in the instant case it has

been alleged on behalf of the appellant that respondent without any reasonable cause left the house of the appellant/ plaintiff and living separately with her parents' house but defendant/wife contended that the plaintiff/appellant and his other family members put a demand before her and her family to bring a sum of Rs. 10,00,000/- to purchase a SCORPIO for side business which was denied by her and her other family members. It has further been stated by the respondent wife that the appellant plaintiff always creating pressure her leave her govt. job for which the dispute arose.

24. It is evident from record that the case under Section 498A of IPC has been filed against plaintiff/appellant and he himself during cross-examination admitted that after 2 & ½ years he came to know through Facebook that his wife has got Government job and in these 2 & ½ years he has no relation with his wife. He is temporarily working at Sahibganj Sadar Hospital as an Assistant and he get salary Rs. 10,000/-
25. Further, it is evident from deposition of D.W. 1 Meena Gupta that at the time of marriage respondent's family member had gifted 8 anna gold ring, golden chain of 2 Bhan, Payal of silver 6 Bhari, Godrej Almirah, LCD of Soni, Freeze of LG company, Clothes, Utensils and other house hold articles and cash of Rs. 3,00,000/- for marriage expense and all the receipt of articles has been handed over to the plaintiff / appellant along with the articles and at the time of marriage respondent was doing private job at Baharwa Sishu Mandir as an assistant teacher and every day she used to go Sahibganj to Barharwa and Barharwa to Sahibganj.
26. It has further been stated that the parties lived properly for 06 months, thereafter the appellant and other family members of her husband started

demanding Rs. 10,00,000/- to purchase a SCORPIO for side business. She denied the same, hence dispute arose.

27. Further from testimonies it is evident that statement and case of respondent wife has fully been corroborated by the statement of DW.2 i.e. brother of the respondent/wife who has stated on the same line as has been stated by the respondent DW.1 as such on the basis of evidences, brought on the record, this Court is of the view that respondent wife being a woman has right to stand financially on her own feet, to pursue to her professional goals, and to oblige the society as a professional woman.
28. The appellant/husband and respondent/wife were working in two different cities and the plaintiff began to create pressure to the defendant to leave the job which was denied by the defendant as a result of which dispute has been cropped up and further respondent/wife always ready to consume matrimonial life with the appellant but she does not want to leave her job.
29. The leading idea of section 9, is to preserve the marriage. The outstanding fact is that the husband and wife are living apart and leading their own separate lives. The court seeks to enquire into this separation. The inquiry into the affairs of the matrimonial life is to be confined to this one fact "is there a just cause for the respondent to live apart and separate from the petitioning spouse?" Further delving into their matrimonial life is not necessary. What the court seeks to do is to enquire into the causes which have led to the rupture of the marital relations and a refusal to share the matrimonial life. If there is no reasonable excuse for living apart the court orders the withdrawing party to live together. Living apart is the very antithesis of living together as society is the antithesis of separation. The

policy of the Act is to assist in the maintenance of marriages other than those reduced to a mere shell.

30. Where there is complete cessation of cohabitation and the parties are living apart section 9 can properly be invoked. This state of affairs is normally brought about by one spouse leaving the matrimonial home, so that they are no longer living under the same roof. They are living in a state of separation. They are living as two units rather than one. Two separate households are created. So, they are treated as living apart unless they are living with each other in the same matrimonial home.
31. It is true that the orthodox concept of the Hindu wife is that she is expected to be *Dharmapatni*, *Ardhangini*, *Bharya* or *Anugamini*. The literal meaning is that she has to follow the husband and be in his company always as a part of his own body. This orthodox concept of wife and expectations from her to subject herself to husband's wishes has undergone a revolutionary change with education and high literacy in women and with recognition of equal rights to women in the constitution and abolition of sex distinction in all walks of life. She is a partner in marriage with equal status and equal rights with the husband.
32. As marriage partners no partner can claim a better or superior right over the other. It is true that married life means joint living of the parties to the marriage for mutual conjugal happiness and sexual life. But where both the parties to the marriage employed in service or engaged in profession or vocation of their choice, the nature of their married life is and should be such as permitted by the nature of their employments or avocations. The question herein is whether a husband has an absolute right to insist that the wife should leave her service and live with him as his dependent only

to discharge her marital obligations towards him, their children and the members of the family of the husband. A same proposition can be posed for the wife as to whether she has a right to insist that the husband should enjoy so much of married life as would be permitted by the nature of employment of the wife in service at the place away from him. Such problems between the modern couples are on increase naturally because there are large number of married partners who are educated and have a career of their own in service or profession and they want to continue with them during the whole period of their married life.

33. From the above views expounded above, the test can be applied is of reasonableness. In other words, it is to be decided as to which party is unreasonable in its approach in the matter of joint living. As has been brought out in the evidence on record herein that the both parties are employed in different cities and they are not in position to leave his/her service and place of work. Therefore, the test applied in such situations between married couples is of 'reasonableness'.
34. As evident from record as also discussed hereinabove, the wife's insistence to continue with her service and at the same time to adjust her marital life cannot be said to be wholly unreasonable. As we discussed hereinabove, the restitution of conjugal rights does not mean that it is only the responsibility and duty of the wife who must silently follow the husband, rather it is joint duty of both the husband and wife to find the suitable and proper path to carry their relationship, therefore it is considered view of this Court that the respondent/wife had deserted appellant/husband with valid/Sufficient reasons.

35. Thus, on the basis of discussion made hereinabove, this Court is of the considered view that this is not a case where it can be said that the findings of the learned Family Court are based on no evidence rather the order of restitution of conjugal rights has been passed on due deliberation of the entire factual aspects along with the proper appreciation of evidences laid by both the parties and, therefore, there is no perversity in the order/judgment of the learned Family Court.
36. Thus, on the basis of the discussions made hereinabove, this Court, is of the view that the judgment dated 16.06.2023 [decree signed on 29.06.2023] passed by the learned Principal Judge, Family Court, Pakur in Original Suit No.79 of 2022 requires no interference.
37. Accordingly, the instant appeal fails and is, dismissed
38. Pending interlocutory application(s), if any, also stands disposed of.

I Agree

(Sujit Narayan Prasad, J.)

(Arun Kumar Rai, J.)

(Arun Kumar Rai, J.)