IN THE HIGH COURT OF JHARKHAND AT RANCHI

F.A. No.50 of 2023

… … Appellant/Opposite Party

Versus

… … Respondent/Petitioner

With

F.A. No.06 of 2023

… … Petitioner/Appellant

Versus

… … Opposite Party/Respondent

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

For the Appellant : Mr. Rajesh Lala, Advocate
Mr. Kumar Nishant, Advocate
(In F.A. No.50/2023)
: Mrs. Niharika Mazumdar, Advocate
(In F.A. No.06/2023)

For the Respondent : Mr. Rajesh Lala, Advocate
Mr. Kumar Nishant, Advocate
(In F.A. No.06/2023)
Mrs. Niharika Mazumdar, Advocate
(In F.A. No.50/2023)

CAV on 30/10/2025 ***Pronounced on 21/11/2025***

Per Sujit Narayan Prasad, J.

1. At the outset, it needs to refer herein that vide order dated 20.03.2025 passed in F.A. No. 06 of 2023, the appeals being F.A. No.50 of 2023 and F.A. No.06 of 2023, have been directed to be listed together and as such, are being taken up together, for ready reference, the order dated 20.03.2025 is being quoted herein which reads as under:

> ***"11/20.03.2025***
>
> *Since it has been submitted that in the appeal which is with respect to custody of the child, both the parties have been directed to appear before us on 16.04.2025, let this matter be listed along with F.A. No. 50 of 2023 on 16.04.2025."*

2. The appeal being F.A. No.50 of 2023 preferred by the appellant-wife against the judgment/decree by which "shared parenting" has been ordered by the Family Court, Deoghar, on the petition filed by the respondent husband under Section 6 of the Hindu Minority and Guardianship Act.

3. The appeal being F.A. No.06 of 2023 has been filed by the appellant-husband against the denial of the prayer for dissolution of marriage on the ground of 'cruelty'.

4. It appears from the order dated 12th June, 2025 passed in F.A. No.50/2023 by this Court that the both the parties have submitted that since reunion is not possible and as such, the matter may be heard on merits, for ready reference, the order dated 12.06.2025 is being quoted as under:

> ***"Order No.09/Dated: 12th June, 2025***

> *1. The case has been taken up today. Both the wife and husband are present in the Court pursuant to the order dated 08.05.2025.*
>
> *2. We, after, interaction both of them has found that there is no solution with respect to resolution of matrimonial dispute and as such, both the parties have submitted that the mater may be heard on merits.*
>
> *3. Accordingly, list this case on 07th July, 2025 for hearing on merits."*

5. Considering the aforesaid, this Court is now going to appreciate the aforesaid appeals on merit.

6. This Court, taking into consideration the ground which has been taken for dissolution of marriage on merit, i.e., the ground of cruelty, hence, is of the view that appeal being F.A. No.06 of 2023 is to be considered first.

F.A. No.06 of 2023

Prayer

7. The instant appeal being F.A. No.06 of 2023 has been filed under Section 19(1) of the Family Courts Act, challenging the legality and propriety of impugned judgment passed on 26.09.2022 and decree signed on 11.10.2022 by the learned Principal Judge, Family Court, Deoghar whereby and whereunder the Original Suit No. 101 of 2019 filed by the plaintiff-appellant-husband under Section 13(1)(i-a)of the Hindu Marriage Act, 1955 for a decree of divorce has been dismissed.

Factual Matrix

8. The brief facts of the case, as per the plaint of plaintiff (appellant-husband herein), which required to be enumerated, needs to be referred as under:

9. It is the case of the plaintiff/petitioner (husband) that the marriage was solemnized on 26.06.2011 according to the Hindu Religion, Rites and Customs including the 'Saptpadi'. The marriage of parties was registered in the office of Marriage Sub Registrar, Deoghar also.

10. In course of time, a son, namely, Amog Raj @ Moon and a baby namely, Anika Choudhary was born from the wedlock of the parties on 23.08.2012 and 15.09.2017, respectively.

11. The appellant has purchased two flats in name of the opposite party/respondent at Rajnager Extension, U.P. and Mysore, Karnataka also and was always ready to keep and maintain his wife.

12. It has been stated that the opposite party/wife (respondent herein) was always abusing the appellant in very slang language and she used to assault the appellant with utensils available in the house. The old mother and father of the appellant were also being humiliated and abused by the opposite party/respondent-wife in very filthy language. The opposite party/respondent has a tendency to spend much time in her parental home (Naihar).

13. Further, the appellant had filed an Original Suit No.114/2018 under Section 9 of Hindu Marriage, which was disposed of on 16.02.2019 on the basis of compromise. Thereafter, the opposite party/respondent went to the house of appellant but the attitude of the opposite party/respondent was rude at that time and she started to abuse and assault the appellant and his old mother and father also. In view of the said circumstances, it was quite impossible for the appellant to lead a peaceful conjugal life with the

opposite party/respondent and hence, necessity arose for filing suit for divorce.

14. The cause of action for filing suit for divorce arose since very beginning of the matrimonial life and on 20.03.2019 and 21.03.2019. Accordingly, suit for dissolution of marriage was filed before the Family Court, Deoghar.

15. The appellant has prayed for the following reliefs :-

(i) For getting a decree of dissolution of marriage in between parties (applicant and respondent) by passing decree of divorce dissolving the marriage of the appellant.

(ii) For any other relief and reliefs in favour of the appellant as the Court deems fit and proper under law.

16. After receiving the summon, the respondent/opposite party-wife has appeared and contested the suit by filing a written statement on 23.01.2020 stating therein that suit is not maintainable on the law and fact and it is fit to be rejected and the opposite party/respondent had never subjected the plaintiff/husband to cruelty either physically or mentally, rather, it was the husband himself who was subjecting the respondent/wife to cruelty, both physically and mentally as well as economically also.

17. It has further been stated in the written statement that the opposite party/respondent-wife has already filed a Criminal case against the appellant, vide Mahila P.S. Case No. 08/2019 and the instant suit has been filed by the plaintiff/husband without any basis for saving his skin

from the said case of respondent-wife. The statement made regarding the purchasing of flats in para-6 of the petition are factually incorrect. Actually, only an agreement has been done in the name of the respondent on the basis of loan as payment mode and the said loan has been also taken in the name of respondent. But up till now, six instalments are due for payment and the bank is regularly asking for the said payment from respondent. It has further been stated that the respondent wife never humiliated the father and mother of appellant and the averments made by the appellant in this regard are totally false.

18. It has been stated in written statement that the Original Suit No. 114/2018 under Section 9 of the Hindu Marriage Act was disposed of on 16.12.2019 and the respondent/wife went to her matrimonial home along with the appellant. But just after a few days of 'Bidagri' on the occasion of Holi festival, on 29.03.2019, the plaintiff/husband assaulted the respondent-wife and forced her to get out from her matrimonial home along with her both children.

19. Thereafter, the respondent came back to her father's house along with her both children, as there was no option before her. It has been stated that the respondent-wife always tried to make the entire family members happy and she had never treated the plaintiff/husband or his father and mother in a rude manner nor subjected them to cruelty and all the allegations made by the appellant in this regard are false and concocted and further, she had never assaulted the appellant with any utensil nor she had ever raised any such issue which can be treated as a cause of action

for filing a suit of divorce. On the aforesaid grounds, the respondent-wife has prayed to dismiss the suit of appellant-husband.

20. On the basis of pleadings made on behalf of the parties, the learned Family Judge has framed the following issues, which are as follows:

(i) *Whether the suit as framed is maintainable in its present form?*

(ii) *Whether petitioner has valid cause of action?*

(iii) *Whether the respondent is living in adultery with respondent no.2?*

(iv) *Whether the respondent has committed any act of cruelty against the petitioner?*

(v) *Whether the petitioner is entitled for decree of divorce on the grounds of cruelty?*

(vi) *Any other relief or reliefs?*

21. It needs to refer herein that so far the issue no. (3) is concerned, i.e., *whether the respondent is living in adultery with respondent no.2*, the learned Family Judge had specifically clarified in his order that the said issue was framed on 30.11.2021 by the predecessor of the Court and after going through the case record, he found that the suit has been filed by the petitioner under Section 13(1)(i-a) only and there is no respondent no.2 in the cause title of the petition and further, there is no pleading of the petitioner about the adultery of the respondent. The learned Family Court has further observed that the issue of adultery has wrongly been framed in this suit and accordingly, this issue has been striked out.

22. In order to prove and substantiate the case, the appellant/plaintiff (husband) has produced and examined two witnesses in support of his case, i.e., P.W.1-Sulochan Devi and P.W.2-Raja Nand Choudhary.

23. Apart from the above testimony, the petitioner has filed some photocopies of the documents and a pen drive which are available on record.

24. The respondent-wife has also been examined as D.W.1, Jyoti.

25. Apart from the above testimony, the respondent-wife has filed some documents also which have been marked as Exhibits, as follows:-

(i) *Ext.A-Certified copy of order sheet dated 14.05.2018 to 06.02.2019 in Original Suit 114/18*

(ii) *Ext. B-Certified copy of the petition of Original Suit No.114/2018 under Section 9 of the Hindu Marriage Act dated 14.05.2018.*

(iii) *Ext. C-Certified copy of the written-statement of the opposite party/respondent-wife in Original Suit No.114/2018.*

(iv) *Ext. D-Certified copy of deposition of Raja Nand Choudhary in Original Suit No.114/2018.*

(v) *Ext. E-Certified copy of show-cause of Raja Nand Choudhary in connection with Cr. Misc. Case No.340/21.*

(vi) *Ext. F to F/3-Money receipts of Kalyani Clinic in the name of Jyoti Choudhary.*

(vii) *Ext. G-Prescription of Medical Treatment of Jyoti Choudhary issued from Kalyany Clinic, Deoghar.*

(viii) *Ext. H-Ultrasound report of Jyoti Choudhary.*

(ix) *Ext. I to I/1-Report of Mangal Diagnostic Centre.*

(x) *Ext.J- Report of Haematology.*

(xi) *Ext. K-Medical Prescription of Jyoti Choudhary.*

(xii) *Ext. L-Report of Blood of Jyoti Choudhary.*

(xiii) *Ext. M to M/1-Receipts of Maya Diagnostic*

(xiv) *Ext. N-Antenatal card of Jyoti Choudhary.*

(xv) Ext. O-Certified copy of the order dated 21.05.2020 passed by this Court in A.B.A. No.157 of 2020.

26. After perusal of the evidence led by the parties, the learned Family Judge, vide order dated 26.09.2022 has dismissed the suit (decree signed on 11.10.2022) against which, the present appeal being F.A. No.06 of 2023 has been preferred by the appellant-husband.

Submission of the learned counsel for the appellant(husband)

27. It has been contended on behalf of the appellant-husband that the factual aspect which was available before the learned Family Judge supported by the evidences has not properly been considered and as such, the judgment impugned is perverse, hence, not sustainable in the eyes of law.

28. It has been submitted by the learned counsel for the appellant-husband that the behaviour of the respondent-wife was very rude and cruel in her matrimonial home with the appellant-husband and his family members from the very beginning and the respondent-wife has subjected the appellant-husband and his family members with cruelty.

29. The element of cruelty has been found to be there if the evidences adduced on behalf of the appellant-husband will be taken into consideration but without properly appreciating the same, the learned Family Judge has come to the finding by holding that no element of cruelty is there and, as such, the impugned judgment and decree suffer from an error.

30. It has been contended that the learned Family Judge has failed to consider that the respondent/wife always quarreled with the appellant/husband and never gave comfort of marriage to the appellant.

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

Submission of the learned counsel for the respondent-wife

32. *Per contra*, learned counsel appearing for the respondent-wife, while defending the impugned judgment, has submitted that there is no error in the impugned judgement. The learned Family Judge has considered all aspects of the matter in right perspective and hence, decreed the suit in favour of the respondent-wife.

33. It has been contended that the respondent wife has never subjected the appellant-husband or his family members with cruelty nor she had done any such act which can be treated as a cause of action for filing a suit for divorce. It was the appellant-husband himself who was assaulting and abusing the respondent-wife and torturing her both mentally and physically, for which, she has filed a criminal case against the appellant-husband.

34. It has also been contended that the appellant-husband has miserably failed in proving any act of cruelty on the part of the respondent-wife.

35. Learned counsel, based upon the aforesaid grounds, has submitted that the impugned judgment cannot be said to suffer from an error.

Analysis:

36. We have heard the learned counsel for the parties, gone through the Trial Court records, the impugned judgment, the testimonies of the witnesses and the documents exhibited therein.

37. The admitted fact herein is that that the marriage was solemnized on 26.06.2011 according to the Hindu Religion, Rites and Customs including the 'Saptpadi'. The marriage of parties was registered in the office of Marriage Sub Registrar, Deoghar also.

38. In course of time, a son, namely, Amog Raj @ Moon and a baby namely, Anika Choudhary, were born from the wedlock of the parties on 23.08.2012 and 15.09.2017, respectively.

39. The appellant-husband has purchased two flats in name of the opposite party/respondent-wife at Rajnagar Extension, U.P. and Mysore, Karnataka also and was always ready to keep and maintain his wife. But the opposite party was always abusing the appellant in very slang language and she used to assault the appellant with utensils available in the house. The old mother and father of the appellant were also being humiliated and abused by the opposite party/respondent in very filthy language. The opposite party/respondent has a tendency to spend much time in her parental home (Naihar).

40. Further, the appellant had filed an Original Suit No.114/2018 under Section 9 of Hindu Marriage, which was disposed of on 16.02.2019 on the basis of compromise. It is alleged that the opposite party/respondent went to the house of appellant but the attitude of the opposite party/respondent

was rude at that time and she started to abuse and assault the appellant and his old mother and father also. In view of the said circumstances, it is quite impossible for the appellant to lead a peaceful conjugal life with the opposite party/ respondent and hence, necessity arose for filing this suit for divorce.

41. The evidence has been led on behalf of both the parties, i.e., the appellant-husband and the respondent-wife.

42. The appellant-husband has examined two witnesses, i.e., P.W.1, namely, Sulochna Devi and P.W.2, namely, Raja Nand Choudhary (appellant-husband).

43. The respondent-wife, namely, Jyoti has also been examined as D.W.1.

44. For ready reference, the evidences led on behalf of the parties are being referred as under: -

P.W.-1 Sulochana Devi, has deposed in her examination-in-chief that the instant case has been filed by her son Raja Nand Choudhary against his wife Jyoti for getting divorce from her because his wife Jyoti is rude, cruel and aggressive. She has further stated that just after three months of marriage, Jyoti (respondent herein) started to act with cruelty and she was not taking care of anyone. She used to quarrel with her husband frequently on petty matters and when we were trying to persuade her, she used to make us silent and further, she was abusing us also.

She had further stated that on 01.05.2014, there was marriage of her daughter but her daughter-in-law (respondent wife) did not attend the said function in spite of her repeated requests and she remained in the

house of her father at Deoghar. Her daughter-in-law (respondent wife) jyoti used to flee away to her Naihar frequently and her mother, father and brother were also assisting her. Her daughter-in-law (respondent wife) did not want to live in her matrimonial home nor she was doing the domestic work like cooking of food and cleaning cloths etc. She had further stated that her son Raja Nand Choudhary had taken away the Jyoti with him at the place of his work also but she did not allow to live her son peacefully.

In the year of 2018, her son lost his job and started to reside in Deoghar. The father's house of Jyoti is also in Deoghar and she used to go there frequently. Jyoti had made our life troublesome and she had become too aggressive and she used to abuse and assault her husband frequently. She was not providing food to us and she used to throw the cooked food also. She had further stated that Jyoti was always abusing her husband and she had assaulted her on several occasions with slaps. She used to confine herself in the bathroom frequently for 1-2 hours and bolt the door of bathroom from inside. On 4-5 occasions, Jyoti had left our house in night without any information and she had not gone to her Naihar also. She used to return back to matrimonial house in late night at about 12 O'clock and when they were trying to know about her said movement in late night, she used to threaten them for committing suicide by jumping from roof and thereby, implicating them in false case.

This witness has further stated that due to the quarrel of Jyoti (respondent), people nearby were frequently visiting our house and our reputation was lowered down in the society. Jyoti used to call her brother

and make him to abuse this witness on several occasions. She had further stated that Jyoti and his brother had assaulted her son Raja Nand Choudhary (appellant herein) on several occasions and due to the said act of Jyoti, it has become difficult for her son to live with her and if both of them are living together, any mishappening may take place at any time.

In her cross-examination, she has stated that the Raja Nand Choudhary is her only son and he was married with Jyoti on 20.06.2011. Her son had worked in Jammu & Kashmir since 2011 to 2019 and had gone to foreign in the year of 2016 for 6 to 7 months. She had further stated that she cannot say about the total number of cases pending between her son (appellant herein) and daughter-in-law (respondent). Further, she had stated that she has heard that the Jyoti had lodged a case of dowry against her son. She had further stated that she know that her son had stated before this Court that he is ready to keep his wife and children with him and earlier, there was a compromise in Court and her son taken back her daughter-in-law from the Baba Baidyanath Temple on 19th March but her daughter-in-law again flee away from her matrimonial home on 29th March. Further, she has denied from this suggestion of respondent that she does not want to keep her daughter-in-law.

P.W.2, namely, Raja Nand Choudhary has deposed in his examination-in-chief that the marriage with respondent-Jyoti was solemnized on 20-06-2011 according to Hindu Rites and Rituals and thereafter, his wife started to live with him. He was doing private job and he had kept his wife with him at the place of his posting at different places like, Mysore, Delhi, Panipat and Jammu & Kashmir. He had

further stated that he was keeping his wife well but his wife is of rude nature and she is aggressive and she do not want to live in peace and she was always quarrelling with him and raising hulla as also abusing him.

He had further stated that his wife used to assault him frequently with slaps and never taken care of her any words. She used to quarrel with him and his mother and father. She was always humiliating him and she used to cry on petty matters and gathered the people of locality in house. He had further stated that respondent/wife used to flee away to her Naihar along with her brother and father silently and without saying anything to him. She was neither cooking food nor she wanted to do any domestic work and, on several occasions, the brother of his wife had also assaulted him. He had further stated that his wife used to throw the cooked food and she was not providing him food and she used to confine herself in bathroom for 1-2 hours after bolting its door from inside. She used to threaten them for committing suicide after jumping from roof.

This witness has further stated that in the year of 2018, he had lost his private job and came to my house at Deoghar. The Naihar of his wife is also in Deoghar and she made our life full of miseries in Deoghar by quarrelling with us daily. She used to assault and flee away to her Naihar along with two minor children. His wife has not made any marital relation with him since the year of 2018 and she became aggressive. On several occasions, she had broken the articles of kitchen and raised hulla also. She used to abuse and dash his old mother also and under the said circumstance, it is difficult for him to live with her. His wife had lastly left her matrimonial home on 29.03.2019 and she went to her Naihar along

with children by taking all the articles. She was treating him rudely and not allowing him to make physical relation with her. On 29.03.2019, Jyoti came to his house along with her brother and father and they had assaulted him due to which he had sustained injuries and he had lodged case being Deoghar P.S. Case No. 21/2020.

In his cross-examination, he has deposed that he is residing in Deoghar since 2018 in the house of his mother and father. Since 2012 to December, 2018, he was serving outside but from the year 2014 to 2017 he had worked in India. He had remained in foreign for about three years and during the said period, his wife and children were in the parental house of his wife without his consent. His wife had lived with him in Jammu & Kashmir, Panipat, Delhi and Mysore and his both sons were born in Deoghar. Presently, he opened a showroom of Apollo tyres. He had sent about Rs. 6-7 lacs in cash to his wife through his father during period of his stay in foreign for about three years. He used to send the said money to his father and he used to deliver it to the Jyoti. He was not sending money directly to his wife because the account number of his wife was not with him. He had opened two accounts of his wife. The first account was opened in the year of 2011 in the UCO Bank Deoghar and another account was opened in the year of 2015 in the ICICI bank Mysore Branch. Presently, altogether five cases are pending between them. He did not inform to Police about the leaving of house by his wife in late night. On 20.03.2019, his wife had abused and ill-treated him and his mother and further on 21.03.2019, his wife had called her father and younger brother in his house at about 7 O'clock in the evening and they had abused and ill-

treated them and its video is also available with him. His wife came to his house lastly on 12.02.2019 by the order of Family Court.

He had further stated that he had inaugurated the showroom of Apollo Tyre on 20-10-2021 and he had himself brought his wife and two children in the inaugural ceremony of his showroom.

Further, he has denied from this suggestion of respondent that at the time of taking bail before this Court, he had promised that after being released on bail, he will bring back his wife and children with him. Further, he has denied from this suggestion of respondent that even after taking back his wife by the direction of Court, he was abusing and assaulting his wife and children.

He has further stated that this matter was referred to the Mediation Centre from the Court of learned Chief Judicial Magistrate where it was decided that he shall bring back his wife and children with him, but when he went to bring back his wife and children, they repulsed him from their house by abusing him. He had filed a case of 'Bidai' also which was compromised and he had taken back his wife and children with him on 12.02.2019. He had stated that he had no knowledge that who has incurred the expenditure of the education of his children. Further, he has denied from this suggestion of respondent that this case has been filed by him against his wife on false grounds only for showing his arrogance of wealth. Further, he has denied from this suggestion that his wife wants to live with him but he is not ready to keep her due to his rude behaviour.

D.W.-1 Jyoti (respondent-wife), has deposed in her examination-in-chief that that she was married with the petitioner on 20.06.2011 in Deoghar. After marriage, she started to live together as husband and wife and in course of time, a baby was born on 23.08.2012 and further a daughter was born on 15.09.2017 from their wedlock whose name is Amogh Raj and Anika Choudhary respectively. Her husband started to ill-treat her just after the marriage and he was unable to discharge the duty of husband but she was tolerating all his atrocities. Her husband was posted at Mysore and she was also living there with him where he used to abuse her by referring the name of her mother, father and brother. She had further stated that she lived with her husband from the year 2011 to 2017 regularly but it had become habit of her husband to abuse her and her parents and misbehaved with her and used filthy comments against her. At the time of delivery of her child in the year of 2012 and 2017, her husband left her alone at the instance of his parents and sister. Her both children were born in Deoghar in the clinic of Dr. Manju Banker and Dr. Arpita Gandhi but her husband did not come even at that time nor he incurred any expense of her delivery and the entire expense of delivery was incurred by her father. But, in spite of that she was tolerating all these things in hope of a better future.

She had stated that her husband had filed a false case under Section 9 of the Hindu Marriage Act which was compromised and she had gone to her matrimonial home again on 11.02.2019 from the Baba Baidyanath Temple but even thereafter, the attitude of her husband was not positive towards her.

She had further stated that on 29.03.2019, her husband drove out her along with her children from her matrimonial home after abusing and assaulting. Thereafter, she went to the Mahila P.S with her father and lodged a case against her husband Raja Nand Choudhary (appellant herein), father-in-law-Vishnu Choudhary, mother-in-law-Sulochana Devi and sister-in-law-Vani Jha, vide Mahila P.S. Case No. 08/2019 under Section 498-A, 323, 304/34 of the Indian Penal Code. Her husband kept her ornaments and cloths etc. with him.

She had further stated that her husband has stated before this Court in the A.B.A No.157/2020 that he is ready to keep his wife with him. Thereafter, as per direction of this Court, the matter was referred to the Mediation Centre, Deoghar where mediation was successful with her consent but subsequently her husband again denied from keeping her with him and hence, she has been constrained to live in the house of her father who is a retired bank employee and she is providing education to her children from there. She has further stated that her husband never discharged his obligation towards her and her children and he has lodged this case on false allegations.

Further, in her cross-examination, this witness has deposed that she had not filed any written complaint against her husband before the year of 2019. She has stated that some quarrel was happening between husband and wife since beginning but she was tolerating it. The dispute was increased since the year of 2017 and after filing of this case, it was further increased. Further, she has denied from this suggestion that she was subjecting the petitioner/husband and his parents with cruelty and

threatening to kill them. Further, she has denied from this suggestion also that she had assaulted and injured her husband and she has said that actually it was her husband, who had driven her out from her matrimonial home.

45. The learned Family Judge has appreciated the entire evidence as well as the documents exhibited on behalf of both the parties and after formulating a specific issue whether the petitioner is entitled for a decree of divorce under Section 13(1) (i-a) of the Hindu Marriage Act, 1955 has dismissed the suit filed by the husband, which is under challenge in the instant appeal.

46. The fact about filing of suit on the ground of cruelty is admitted one as per the evidences adduced on behalf of the appellant husband, he has tried to establish the element of cruelty upon him at the hands of the respondent-wife.

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

48. 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.

49. 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.*
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> ***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.*
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> ***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.*
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> *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.*
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> ***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."*

50. Thus, from the aforesaid, it is evident that any order said to be perverse 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.

51. In the instant case, the ground for divorce has been taken on the ground of cruelty, therefore, it would be apt for this Court to discuss the element of cruelty in order to appreciate the claim of the husband that whether he has been subjected to the cruelty by his wife.

52. 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.

53. This Court, deems it fit and proper to take into consideration the meaning of 'cruelty' as has been held by the Hon'ble Apex Court in ***Shobha Rani v. Madhukar Reddi, (1988)1 SCC 105*** wherein the wife alleged that the appellant-husband and his parents demanded dowry. The Hon'ble Apex Court emphasized that "cruelty" can have no fixed definition.

54. 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."

55. 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."

56. 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.

57. 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".

58. 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.

59. It requires to refer herein that the Hon'ble Apex Court in ***Joydeep Majumdar v. Bharti Jaiswal Majumdar, (2021) 3 SCC 742***, has observed that while judging whether the conduct is cruel or not, what has to be seen is whether that conduct, which is sustained over a period of time, renders the life of the spouse so miserable as to make it unreasonable to make one live with the other. The conduct may take the form of abusive or humiliating treatment, causing mental pain and anguish, torturing the spouse, etc. The conduct complained of must be

"grave" and "weighty" and trivial irritations and normal wear and tear of marriage would not constitute mental cruelty as a ground for divorce.

60. Thus, from the aforesaid, it is evident that for established act of cruelty the conduct complained of either by the spouse 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. Further it is evident from the interpretation of the word cruelty that the same is to be considered on different parameters depending upon the material, if available on record.

61. This Court, on the premise of the interpretation of the word "cruelty" has considered the evidences of the witnesses as has been incorporated by the learned trial Court in the impugned judgment and the same has been referred hereinabove in the preceding paragraphs.

62. Admittedly, the parties had lived together for about 6 years without any hassle i.e. from 2011 to 2017 and during the said period two children were also born from heir wedlock. The petitioner/appellant/husband has alleged about rude/cruel behaviour of his wife towards him and his family members but surprisingly, the husband/appellant has not examined independent witness or any of his neighbour to substantiate his allegation. Further, it is evident from the record that prior to filing the Deoghar Mahila P.S. Case No.08/19, the appellant/husband had never made any complain to anyone about the alleged cruel behavior of his respondent wife.

63. It is apparent from the record that admittedly appellant/husband has filed petition before the Court being Original Suit No. 114 of 2018 for restitution of his conjugal right under Section 9 of Hindu Marriage Act,

same has been marked as Ext.B before the Family Court. Thus, it is an admitted document wherein the appellant husband has not taken the plea of rude/cruel behavior of his wife but before the Family Court, plea of cruel behavior of respondent wife has been alleged, which is contrary to his own version.

64. It is evident from the entire material available on record that the appellant-husband although has taken the ground of cruelty meted to him by his wife but, in course of trial, he has failed to establish the element of cruelty meted out to him at the hands of the respondent-wife.

65. This Court, after considering the aforesaid factual aspects along with the legal position and adverting to the consideration made by the learned Family Judge in the impugned judgment has found therefrom that the issue of element of cruelty has well been considered by the learned Family Judge, which would be evident from various paragraphs of the impugned judgment, for ready reference, the relevant paragraphs of the impugned judgment are being quoted as under:

> " *In the instant case also, nothing such has been brought on record from which it can be gathered or even remotely inferred that the respondent had inflicted such cruelty towards the petitioner which can be said to be dangerous for his life, limb or health. The petitioner Raja Nand Choudhary (P.W.2) has himself said at para 23 of his cross-examination that during his stay at foreign he had allegedly sent Rs. 6 to 7 lac in cash to his wife (respondent) through his father. This P.W.2 Raja Nand Choudhary has said in para 20 of his cross-examination that till the November 2018 he was posted in Jambia. Thus, it is clear from the aforesaid two statements of the petitioner (P.W.2) also, that till the November, 2018 there was no grave bitterness in matrimonial relation of the parties otherwise there was no reason of sending such a huge amount of money to the respondent by the petitioner through his father. Of course, there had been some quarrel and disputes between the parties, prior to the year of 2018*

also and the same has been admitted by the D.W.1 Jyoti also in para 31 of her cross-examination, but the said incidents of quarrel does not seems to be more than the daily wear and tear of a marital life which can't be made basis for a decree of divorce. As per own statement of the P.W.2 Raja Nand Choudhary made at para 30 of his cross-examination, the petitioner had himself brought the respondent and her children with him in the inaugural ceremony of his shop on 20-10-2021 which also goes to show that even after having some differences, and filing of this case for divorce in the year of 2019, the parties have emotions and care for feelings of one another and their marital relation has not become completely dead or broken requiring its dissolution.

Therefore, on the basis of the aforesaid discussion this Court finds that the petitioner has been completely failed in proving his plea of cruelty of respondent towards him and his family members and whatever incidents of quarrel and dispute have been said to be occurred between the parties are nothing more than ordinary wear and tear of family life and none of these incidents can be said to be a treatment of the petitioner with such cruelty as to cause a reasonable apprehension in his mind that it would be harmful or injurious for him to live with the respondent."

66. On consideration of the evidence, the learned Family Judge has come to conclusion that the appellant-husband has miserably failed to establish the ground of cruelty against the respondent-wife.

67. On consideration of the finding recorded by the learned Family Court as has been discussed in the preceding paragraphs, which according to our considered view, is based upon the appreciation of the evidence led by the parties, upon which, the finding has been recorded, therefore, no element of perversity in the impugned judgment has been found, as per the discussion made hereinabove.

68. This Court, on consideration of the finding arrived at by the learned Family Judge and based upon the aforesaid discussions, is of the view that

the judgment and decree passed by the learned Family Judge is not coming under the fold of the perversity, since, the conscious consideration has been made of the evidences, both ocular and documentary, as would be evident from the impugned judgment.

69. This Court, therefore, is of the view that the judgment dated 26.09.2022 and the decree dated 11.10.2022 passed in Original Suit No.101 of 2019 by the learned Principal Judge, Family Court, Deoghar need no interference.

70. Accordingly, the instant appeal being F.A. No.06 of 2023 stands dismissed.

71. Pending interlocutory applications, if any, stand disposed of.

First Appeal No.50 of 2023

Prayer

72. The appeal being F.A. No.50 of 2023 filed under Section 19(1) of the Family Court Act, is directed against the Judgment dated 31.03.2023 (decree sealed and signed on 10.02.2023) passed in Original Suit No.71 of 2021 by the learned Principal Judge, Family Court at Deoghar, whereby and whereunder, the application filed by the petitioner Raja Nand Choudhary against his wife Jyoti under Section 6 of the Hindu Minority and Guardianship Act for getting the custody of children has been disposed of in the light of arrangement made for "Shared Parenting" of children in terms of clause (a) to (g) of the issue no.(iii) and the parties are directed to comply with the arrangement made by this Court in its letter and spirit.

Factual Matrix

73. The brief facts of the case, as per the pleading made in the plaint, is required to be enumerated herein which reads as under:

74. The marriage of petitioner/husband with the opposite party was solemnized on 26.06.2011 according to Hindu Religion and Custom and the said marriage was registered in the office of Sub Registrar, Deoghar also. In course of time, a boy was born from the wedlock of parties on 23.08.2012 whose name is Amogh Raj @ Moon. Subsequently on 15.09.2017, another baby namely, Anika was also born from the wedlock of parties.

75. In the month of March 2019, disputes and differences cropped up amongst the appellant/wife and respondent husband, thereafter, a suit under Section 13(i)(i-a) of the Hindu Marriage Act 1955 was filed in the year 2019 by the respondent husband for dissolution of their Marriage. During pendency of the said suit, the respondent-husband has filed a suit being Original Suit No. 71 of 2021 before the learned Family Court, Deoghar under Section 6 of the Hindu Minority and Guardianship Act for getting the custody of children born out the wedlock of the parties, namely, Amogh Raj @ Moon and another baby namely, Anika.

76. It has been stated by the petitioner that he is a highly educated person having educated family back-ground and he has worked as a manager in high place business with various assignments in Africa, Indonesia and various Countries and he has a sound financial backing also. During the matrimonial chaos in the family, the son Amogh Raj @ Moon aged about 08 years and daughter Anika Choudhary are living in absence of father and due to careless attitude of the opposite party/wife (appellant herein), the children are not getting proper education and proper care.

77. It has been further stated that in absence of appropriate guardianship by the opposite party, it is possible that the children may get indulged in anti-social or unsocial atmosphere. The petitioner (respondent herein) tried to see his children on several occasion but he was not allowed by the opposite party/wife to meet with his own children and ultimately, on 20.02.2021, he was not permitted to meet with his children.

78. It has further been stated that the cause of action for the filing of the aforesaid suit arose on 20.02.2021, as such, following prayer has been made in the said suit:

> *(i) A decree be passed in favour of the petitioner directing the opposite party to hand over the custody of children to the petitioner?*
> *(ii) For the cost of the suit ?*
> *(iii) For any other relief and reliefs, the Court may think fit and proper under law.*

79. After service of summon, the opposite party/wife had appeared and filed her written statement on 04.12.2021 stating therein that the petitioner is under the ill advise of his parents, sister and other relatives and he has completely failed to perform his duty as a guardian. The petitioner had no any respect, love or affection for the opposite party or her children and he never took any responsibility of his children since their birth.

80. It has further been stated that the opposite party/wife (appellant herein) is post graduate in English whereas the petitioner (respondent herein) is an irresponsible father who has no love and affection for his children and wife and he used to create havoc in the society by various means for showing his supremacy. The petitioner (respondent husband) never played a role of

responsible father nor he met the expenditure of opposite party and her children.

81. The petitioner/husband never treats his wife (appellant herein) as a companion and his background is very bad and if the children are handed over to the petitioner/husband, their life will spoil. The father of wife (appellant herein) was also a bank Manager of Co-operative Bank and presently he is also taking proper care of children and their education. The behaviour of petitioner/husband is very rude and inhuman and whenever he came to the house, created an unholy scene, therefore, the petitioner has no cause of action for this suit and the instant suit is liable to be dismissed.

82. On the basis of the pleadings of the parties, following issues have been framed by the learned Family Court:

ISSUES

(i) Whether the suit as framed is maintainable in its present form?
(ii) Whether the petitioner has valid cause of action?
(iii) Whether a decree should be passed in favour of petitioner directing the opposite party to handover the custody of children to petitioner?
(iv) Whether the petitioner is entitled to get the relief claimed or any other relief?

83. The learned Family Court, based upon the evidences adduced on behalf of the parties, disposed of the suit vide impugned judgment in the light of arrangement made for ***"shared parenting"*** of children in terms of clause (a) to (g) of the issue no. III and the parties were directed to comply with the arrangement made in its letter and spirit, against which the present appeal has been preferred by the appellant/wife.

Submission of the learned counsel for the Appellant/wife

84. The learned counsel appearing for the appellant has taken the following grounds in challenging the impugned judgment:

(i) The learned counsel for the appellant wife has submitted that the learned Family Judge has not appreciated the evidence as has been adduced on behalf of the appellant/ wife in right perspective and even though order of "share parenting" has been passed.

(ii) Learned counsel for appellant has submitted that the money alone cannot be deciding factor in giving custody of child and the love and affection of a mother is also very essential for proper nourishment and development of a child.

(iii) It has further been contended that the respondent/ husband is not a responsible father and he was never ready to discharge the duty of a responsible father and he is an arrogant person and he wants to further make the life of appellant wife pathetic by snatching her children on the strength of his money.

(iv) It has further been contended that while deciding the custody of child, the paramount consideration is the welfare of child which can be best served with their mother.

85. The learned counsel, based upon the aforesaid ground, has submitted that, therefore, the impugned judgment suffers from an error, hence is not sustainable in the eye of law.

<u>Submission of the learned counsel for respondent/husband</u>

86. While on the other hand, learned counsel appearing for the respondent/husband has taken the following grounds while defending the impugned judgment:

(i) The learned Family Judge has not committed any error, since the vital aspect of the matter of the statutory command have been taken into consideration, which is the welfare of the minor child.

(ii) The respondent/husband is natural guardian of his children and he has sufficient source of income for making the future of his children bright and on the other hand, the opposite party has no source of income and she is dependent upon her father who cannot provide better education to the children.

87. On the aforesaid premise the learned counsel for the respondent has submitted that if the learned Family Judge by taking into consideration the aforesaid facts have passed the order of "shared parentage" then it cannot be stated that the Court has committed any error, hence the present appeal is fit to be dismissed.

Analysis

88. We have heard the learned counsel for the parties and gone through the material available on record, as also the finding recorded by the learned Family Judge in the impugned judgment.

89. The question of legality and propriety of the impugned judgment is the issue of consideration in the present appeal.

90. This Court before considering the aforesaid rival submission and propriety of the impugned judgment needs to discuss herein the relevant part of the evidences adduced on behalf of the parties as also to refer the statutory provision as provided under the Hindu Minority and Guardianship Act, 1956.

91. The petitioner/husband (respondent herein) has examined his mother and himself as P.W.1 and P.W.2 respectively in support of his case.

92. Apart from the oral testimony of the aforesaid witnesses, the petitioner has filed some photocopy of documents also which have been marked with identification marks as follows: -

(i) Mark X- Photo copy of ICICI Insurance dt.10.09.2015

(ii) Mark X/1- Photo copy of insurance in the name of Raja Nand Choudhary wife and children of year 2022.

(iii) Mark X/2- Photo copy of Bank Account of Sukanya Smridhi Scheme on 15.09.21

(iv) Mark X/3- Photo copy of medical injury treatment report of Sadar Hospital on 29.03.19.

93. The opposite party/wife (appellant herein) has examined herself as DW.1 and also had examined Subodh Chandra Jha as D.W. 2.

94. Apart from the aforesaid oral testimony, the opposite party/wife (appellant herein) has also filed some documents which have been marked exhibits as follows :-

(i) Ext A- Certified copy of the deposition P.W. 2 in Original Suit 101/19.

(ii) Ext B- Certified copy of the deposition P.W. 1 in Original Suit 101/19

(iii) Ext C - Certified copy of order sheet dated 7.4.22 in Mahila P.S. Case No. 8/19

(iv) Ext D to D/15- School Fee receipts

95. For ready reference the testimonies of witnesses are being referred herein which reads as under:

96. The P.W. 1 Sulochana Devi has said in her examination-in-chief that the child Amogh Raj was born on 23.08.2012 and Anika Choudhary was born on 15.09.2017. She had further stated that the conduct of her daughter-in-law Jyoti was very rude from just after the marriage and she was not caring about anyone. She used to assault her husband with slaps and fist and dash her also. The father's house of Jyoti (appellant herein) is also in Deoghar and she has taken both the children to her father's house.

She had further stated that her daughter-in-law (appellant herein) is very aggressive and her character is also not good and she is not taking proper care of her children. She does not send her children to proper school nor she takes care of them and children have been seen wandering here and there on several occasions due to which they apprehend that they may fall in bad association. This witness had further stated that her daughter-in-law (appellant herein) does not allow to meet her husband with his children and whenever her son tried to meet with his children, her daughter-in-law became furious and aggressive and ready to assault.

Further in her cross-examination this witness had stated that today she has come with her son Raja Nand (respondent husband herein) for deposing before the Court. She further testified that she doesn’t know about the school in which my grand-daughter and grandson are studying since the year of 2019 and she has no knowledge about their present status. She had further stated that altogether five cases are pending between her son and her daughter-in-law. Further, she has denied from this suggestion that the environment of her house is not good.

97. The P.W. 2 Raja Nand Choudahry (respondent herein) has stated that he has filed this case for getting custody of his son Amogh Raj @ Moon and daughter Anika Choudahry. The date of birth of Amogh Raj is 23.08.2012 whereas the date of birth of Anika Choudhary is 15.09.2017. He had further stated that he was married with Jyoti @ Golden (appellant herein) on 26.06.2011 in Deoghar according to Hindu Rituals and Rites. He had further stated that the nature of my wife is very rude and she is a quarrelsome lady and she used to always quarrel with him and she was abusing and assaulting him frequently. She used to assault him with slaps in presence of his neighbour .

98. He had further stated that he had lost his job in the year of 2018 and started to live in Deoghar whereupon his wife(appellant) became more furious and she was frequently quarreling and leaving his house. He had testified that on 29.03.2019 his wife went to her father's house along with his both the minor children and father and brother of his wife had assaulted and injured him for which he has filed a Deoghar Town P.S. Case no. 21/2020 also. He had stated that his wife has taken all ornaments with her and in course of going, she threatened him that she will not live with him.

99. This witness has further said that his wife is not taking proper care of the children and she is not providing them good education and his brother in-law is a drunker and father-in-law used to consume too much Ganja due to which he apprehends that his child will also become drug addict and their life may ruin in bad association. He intends to provide good education to his children and thereby make them good/citizen so that they may live well in society.

100. He had further stated that his wife does not care for children and she used to leave them to move here and there with dirty boys for whole day. His wife has not given my children in good school and she does not provide good tuition to them due to which there is danger of spoiling of their future. He had further stated that he had tried to meet his children several times but his wife and her brother and father do not allow him to meet with his children. In the month of February 2021, he had tried to keep his children but his wife did not allow it and she was adamant. He had stated that his both minor children will remain safe in his custody and their life will be flourished and if they are allowed to remain with their mother, their life will be spoiled. He intends to obtain custody of this children for their welfare and proper maintenance.

101. Further, in his cross-examination this witness has said that his monthly income is about 25-30 thousand only and he has no immovable property in his name and his bank balance is about 6-7 lacs. He had further stated that he has not seen his brother-in-law drinking wine ever. He has two brothers-in-law out of whom one is posted in Punjab National Bank and he does not know the whereabouts of his second brother-in-law. Further, he has denied from this suggestion that he had filed an undertaking before the Hon'ble High Court of Jharkhand, Ranchi that he shall keep his wife with him. He has further said that he has no document for showing that he had ever paid fee and other educational expense of his children.

102. The D.W. 1 Jyoti (the appellant wife herein) has said in her examination-in-chief that she is maintaining her both children and providing education to them with the help my retired father and the aim

of her life is to provide good education to her children and make them a good citizen. Presently, her both children are studying in Sandipani Public School and her son Amogh Raj is in class 3 and her daughter is getting education in Nursery. Further, this witness has identified the fee receipts issued by Sandipani Public School which have been marked as Exhibit- D to D/15.

103. This witness has further said that her husband Raja Nand Choudhary (respondent herein) was torturing and always ill-treating her and her children and on 29.03.2019, he had driven her out from her matrimonial home after assaulting her and since then, she has been residing in her father's house and struggling for providing a good environment to her children. She had further stated that her husband is neither a responsible person nor a responsible guardian and he has arrogance of his wealth which is a hindrance in being a good man.

104. She had further stated that her husband has leveled false allegations against her and if her children are being allowed to go in custody of her husband, their life will be spoiled. She had further stated that she is post graduate in English and used to teach her children.

105. Further in her cross-examination this witness has said that the Sandipani School has no recognition from Government however it is in process and she has got admission of her children in the said school in-spite of knowing this fact because it is better to provide education to children in a school of nearby as it provides good care. She had further stated that she is an unemployed and she has no source of income. Yet she goes to the Sandipani School and teach in Junior section but she does not get salary from there. She had further stated that her mother and

father are self-sufficient and they do not need her service. She had stated that on 29.03.2019 her husband had driven out them from her matrimonial home after assaulting and since then she and her children are together. This witness has further said that being a human and mother of children, she wants that her children should get education from a good school and become a good citizen and if her husband wants to get admission of her children in D.A.V School and pay its expenditure by allowing the children to live with her peacefully and without any hindrance, she will be ready for it. She had further stated that she doesn't want to handover her children to her husband. Further she has denied from this suggestion of petitioner husband (respondent herein) that her father consumes Ganja and her brothers drink wine. Further, she has denied from this suggestion also that the atmosphere of her parental house is not good for children and she allows the children to go in bad association.

106. The D.W. 2 Subodh Chandra Jha has said in his examination-in-chief that just after marriage, his son-in-law started to ill-treat his daughter and he was abusing and assaulting her without any reason. In course of time, his daughter (appellant herein) conceived whereupon Raja Nand Choudhary (respondent husband) started to quarrel with her for saving his skin from bearing the expense of delivery. The delivery of his daughter was done on 23.08.2012 in the clinic of Dr. Manju Banker and its all expenses were borne by this witness. Again on 15.09.2017 the second baby of his daughter was delivered in the private clinic of Dr. Arpita Gandhi and its entire expense was incurred by this witness. The Raja Nand Choudhary (respondent husband) never played a role of good

guardian and on 29.03.2019 the Raja Nand Choudhary, his father Bishnu Deo Choudhary, mother Sulochana Devi and sister Vani Jha assaulted and abused his daughter and drove his daughter out from her matrimonial home along with her children whereupon his daughter had lodged a Mahila P.S. Case No. 08/2019 dated 29.03.2019 u/s 498 A, 323, 504/34 I.P.C.

107. He had stated that presently he is providing education to both children of his daughter in a school situated at Deoghar and he want to make them a good citizen. His one son is employed in Bank whereas the other is doing private job after passing M.B.A. He had stated that the petitioner is a man of arrogance and he has ego of money and further his sister Vani Jha also does not behave properly due to which the atmosphere of petitioner's (respondent herein) house is so bad that children's future cannot be bright there. He had further stated that his daughter is post graduate in English and she provides good education to her children.

108. Further, in his cross-examination this witness has said that yet his daughter is unable to maintain her both children herself but he is competent for it.

109. After referring the aforesaid testimonies, it would be apt to discuss herein the Section 6 of the Hindu Minority and Guardianship Act, 1956 (hereinafter referred to as the Act of 1956) deals with natural guardian of a Hindu minor, Section 9 thereof deals with the testamentary guardians and their powers and Section 13 deals with the provision of welfare of the minor to be paramount consideration. For ready reference, these provisions are quoted as under:

"6. Natural guardians of a Hindu minor.--The natural guardians of a Hindu minor; in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property), are-- (a) in the case of a boy or an unmarried girl-the father, and after him, the mother: provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother; (b) in the case of an illegitimate boy or an illegitimate unmarried girl--the mother, and after her, the father; (c) in the case of a married girl--the husband: Provided that no person shall be entitled to act as the natural guardian of a minor under the provisions of this section-- (a) if he has ceased to be a Hindu, or (b) if he has completely and finally renounced the world by becoming a hermit (vanaprastha) or an ascetic (yati or sanyasi). Explanation.--In this section, the expressions "father" and "mother" do not include a step-father and a step- mother.

9. Testamentary guardians and their powers.--(1) A Hindu father entitled to act as the natural guardian of his minor legitimate children may, by will appoint a guardian for any of them in respect of the minor's person or in respect of the minor's property (other than the undivided interest referred to in section 12) or in respect of both. (2) An appointment made under sub-section (1) shall have no effect if the father predeceases the mother, but shall revive if the mother dies without appointing, by will, any person as guardian. (3) A Hindu widow entitled to act as the natural guardian of her minor legitimate children, and a Hindu mother entitled to act as the natural guardian of her minor legitimate children by reason of the fact that the father has become disentitled to act as such, may, by will, appoint a guardian for any of them in respect of the minor's person or in respect of the minor's property (other than the undivided interest referred to in section 12) or in respect of both. (4) A Hindu mother entitled to act as the natural guardian of her minor illegitimate children may; by will, appoint a guardian for any of them in respect of the minor's person or in respect of the minor's property or in respect of both. (5) The guardian so appointed by will has the right to act as the minor's guardian after the death of the minor's father or mother, as the case may be, and to exercise all the rights of a natural guardian under this Act to such extent and subject to such restrictions, if any, as are specified in this Act and in the will. (6) The right of the guardian so appointed by will shall, where the minor is a girl, cease on her marriage.

> *13. Welfare of minor to be paramount consideration.—*
>
> *(1) In the appointment of declaration of any person as guardian of a Hindu minor by a court, the welfare of the minor shall be the paramount consideration. (2) No person shall be entitled to the guardianship by virtue of the provisions of this Act or of any law relating to guardianship in marriage among Hindus, if the court is of opinion that his or her guardianship will not be for the welfare of the minor."*

110. It needs to refer herein that the word “after” as used in Section 6(a) of the Act, 1956 can be construed so as to save it from being unconstitutional the presumption being that the legislature acted in accordance with the constitution. Moreover, when Sections 4 and 6 of the Hindu Minority and Guardianship Act are construed harmoniously the word “after‟ can be understood to mean in the absence of, thereby referring to father's absence from the care of the minor's property or person for any reason whatever.

111. It is evident from the mandate of the said Statute that although the father has been made natural guardian but how to make balance in awarding the custody of the minor, the wellbeing consideration even in the Statute has been mandated by inserting the provisions under section 13 thereof.

112. It is evident from Section 13 of the Act, 1956 that while appointing any person as guardian of a Hindu minor the paramount consideration is the welfare of the minor and no person shall be entitled to the guardianship by virtue of the provisions of this Act or of any law relating to guardianship in marriage among Hindus, if the court is of opinion that his or her guardianship will not be for the welfare of the minor.

113. Section 13 of the Act of 1956 is very specific that there cannot be compromise on the issue of the welfare of the minor even though the father

is natural guardian in view of the provision of section 6 of the Hindu Minority and Guardianship Act, 1956.

114. The relevance of provision of section 13 of the Act of 1956 has got bearing in the matter of custody of the minor if the sub-section 2 of section 13 will be taken into consideration wherein the word starts "No person shall be entitled to the guardianship by virtue of the provisions of this Act or of any law relating to guardianship in marriage among Hindus, if the Court is of opinion that his or her guardianship will not be for the welfare of the minor", meaning thereby, it is onus upon the Court to come to the satisfaction by making out a concrete opinion regarding the issue of the welfare of the minor.

115. The law, therefore, is well settled that even though the father is the natural guardian as stipulated in the statute but the paramount consideration in the matter of handing over the custody of the child is welfare of the child.

116. The law relating to custody of minors has received an exhaustive consideration by the Hon'ble Apex Court in a series of pronouncements. In the case of ***Gaurav Nagpal v. Sumedha Nagpal (2009) 1 SCC 42*** the principles of English and American law in this regard were considered by Hon'ble Apex Court to hold that the legal position in India is not in any way different. Noticing the judgment of the Bombay High Court in ***Saraswatibai Shripad Ved v. Shripad Vasanji Ved [AIR 1941 Bom 103] , Rosy Jacob v. Jacob A. Chakramakkal (1973) 1 SCC 840 and Thrity Hoshie Dolikuka v. Hoshiam Shavaksha Dolikuka (1982) 2 SCC 544,*** the Hon'ble Apex eventually concluded in paras 50 and 51 which reads as under:

> *50. [T]hat when the court is confronted with conflicting demands made by the parents, each time it has to justify the demands. The court has not only to look at the issue on legalistic basis, in such matters human angles are relevant for deciding those issues. The court then does not give emphasis on what the parties say, it has to exercise a jurisdiction which is aimed at the welfare of the minor. As observed recently in Mausami Moitra Ganguli case [Mausami Moitra, the court has to give due weightage to the child's ordinary contentment, health, education, intellectual development and favourable surroundings but over and above physical comforts, the moral and ethical values have also to be noted. They are equal if not more important than the others.*
>
> *51. The word "welfare" used in Section 13 of the Act has to be construed literally and must be taken in its widest sense. The moral and ethical welfare of the child must also weigh with the court as well as its physical well-being. Though the provisions of the special statutes which govern the rights of the parents and guardians may be taken into consideration, there is nothing which can stand in the way of the court exercising its parens patriae jurisdiction arising in such cases."*

117. Thus, the Hon'ble Apex Court has categorically held that while considering the issue of custody of the minor child the court has not only to look at the issue on legalistic basis, in such matters human angles are relevant for deciding those issues. Further it has been held that the Court should not emphasis only on what the parties say rather the welfare of the minor should be paramount consideration. Further the Hon'ble Apex Court has opined that the Court has to give due weightage to the child's ordinary contentment, health, education, intellectual development and favourable

surroundings but over and above physical comforts, the moral and ethical values have also to be noted.

118. The Hon'ble Apex Court in the aforesaid Judgment interpreted the word "welfare" used in Section 13 of the Act and has observed that it must be taken in its widest sense, though the provisions of the special statutes which govern the rights of the parents and guardians may be taken into consideration, there is nothing which can stand in the way of the court exercising its "parens patriae jurisdiction" arising in such cases.

119. It needs to refer herein that in child custody matters, the court's "parens patriae" jurisdiction empowers the Court to act as a guardian for the child, prioritizing their best interests above all else. This principle, allows the court to intervene and make decisions that protect the child's welfare, even if it means overriding the wishes of the parents or guardians.

120. In the case of ***Nil Ratan Kundu v Abhijit Kundu, 2008 (9) SCC 413*** the Hon'ble Apex Court has held that in deciding a difficult and complex question as to the custody of a minor, a court of law should keep in mind the relevant statutes and the rights flowing therefrom. But such cases cannot be decided solely by interpreting legal provisions. It is a human problem and is required to be solved with human touch. A court while dealing with custody cases, is neither bound by statutes nor by strict rules of evidence or procedure nor by precedents. In selecting proper guardian of a minor, the paramount consideration should be the welfare and wellbeing of the child. In selecting a guardian, the court is exercising "parens patriae jurisdiction" and is expected, nay bound, to give due weight to a child's ordinary comfort, contentment, health, education, intellectual development and favourable

surroundings. But over and above physical comforts, moral and ethical values cannot be ignored. They are equally, or we may say, even more important, essential and indispensable considerations. If the minor is old enough to form an intelligent preference or judgment, the court must consider such preference as well, though the final decision should rest with the court as to what is conducive to the welfare of the minor.

121. In the case of ***Yashita Sahu v State of Rajasthan, (2020) 3 SCC 67***, the Hon'ble Apex Court has propounded that the welfare of the child is paramount in matters relating to custody. In this context, we may refer to Para 22 thereof, which reads as follows:

> *22. A child, especially a child of tender years requires the love, affection, company, protection of both parents. This is not only the requirement of the child but is his/her basic human right. Just because the parents are at war with each other, does not mean that the child should be denied the care, affection, love or protection of any one of the two parents. A child is not an inanimate object which can be tossed from one parent to the other. Every separation, every reunion may have a traumatic and psychosomatic impact on the child. Therefore, it is to be ensured that the court weighs each and every circumstance very carefully before deciding how and in what matter the custody of the child should be shared between both the parents. Even if the custody is given to one parent the other parent must have sufficient visitation rights to ensure that the child keeps in touch with the other parent and does not lose social, physical and psychological contact with any one of the two parents. It is only in extreme circumstances that one parent should be denied contact with the child. Reasons must be assigned if one parent is to be denied any visitation rights or contact with the child. Courts dealing with the custody matters must while deciding issues of custody clearly define the nature, manner and specifics of the visitation rights.'*

122. In the case of ***Gaytri Bajaj v. Jiten Bhalla, (2012) 12 SCC 471***, the Hon'ble Apex Court has observed that it is the welfare and interest of the

child and not the rights of the parents which is the determining factor for deciding the question of custody and the question of welfare of the child has to be considered in the context of the facts of each case and decided cases on the issue may not be appropriate to be considered as binding precedents. For ready reference the relevant paragraph of the aforesaid judgment is being quoted as under:

> *14. From the above it follows that an order of custody of minor children either under the provisions of the Guardians and Wards Act, 1890 or the Hindu Minority and Guardianship Act, 1956 is required to be made by the court treating the interest and welfare of the minor to be of paramount importance. It is not the better right of either parent that would require adjudication while deciding their entitlement to custody. The desire of the child coupled with the availability of a conducive and appropriate environment for proper upbringing together with the ability and means of the parent concerned to take care of the child are some of the relevant factors that have to be taken into account by the court while deciding the issue of custody of a minor. What must be emphasised is that while all other factors are undoubtedly relevant, it is the desire, interest and welfare of the minor which is the crucial and ultimate consideration that must guide the determination required to be made by the court.*

123. It is settled position of law that there cannot be any straitjacket formula in the matters of custody. "Welfare of the child" is of paramount importance, reference in this regard may be taken from the judgment rendered by the Hon'ble Apex Court in the case of ***Gautam Kumar Das v. State (NCT of Delhi), (2024) 10 SCC 588.***

124. In the case of **Shazia Aman Khan v. State of Orissa, (2024) 7 SCC 564 the** Hon'ble Apex Court while referring the ratio of Nil Ratan Kundu v. Abhijit Kundu, (2008) 9 SCC 413 has observed that welfare of the children

is to be seen and not the rights of the parties, the relevant paragraph of the aforesaid judgment is being quoted as under:

> *19. In Nil Ratan Kundu v. Abhijit Kundu [Nil Ratan Kundu v. Abhijit Kundu, (2008) 9 SCC 413] , this Court laid down the principles governing custody of minor children and held that welfare of the children is to be seen and not the rights of the parties by observing as under : (SCC pp. 428-29, paras 52 & 55) "Principles governing custody of minor children*
>
> *52. In our judgment, the law relating to custody of a child is fairly well-settled and it is this. In deciding a difficult and complex question as to the custody of minor, a court of law should keep in mind relevant statutes and the rights flowing therefrom. But such cases cannot be decided solely by interpreting legal provisions. It is a human problem and is required to be solved with human touch. A court while dealing with custody cases, is neither bound by statutes nor by strict rules of evidence or procedure nor by precedents. In selecting proper guardian of a minor, the paramount consideration should be the welfare and well-being of the child. In selecting a guardian, the court is exercising parens patriae jurisdiction and is expected, nay bound, to give due weight to a child's ordinary comfort, contentment, health, education, intellectual development and favourable surroundings. But over and above physical comforts, moral and ethical values cannot be ignored. They are equally, or we may say, even more important, essential and indispensable considerations. If the minor is old enough to form an intelligent preference or judgment, the court must consider such preference as well, though the final decision should rest with the court as to what is conducive to the welfare of the minor.*
>
> *55. We are unable to appreciate the approach of the courts below. This Court in a catena of decisions has held that the controlling consideration governing the custody of children is the welfare of children and not the right of their parents." (emphasis supplied) 21. This Court in Roxann Sharma v. Arun Sharma [Roxann Sharma v. Arun Sharma, (2015) 8 SCC 318 : (2015) 4 SCC (Civ) 87] , opined that the child is not a chattel or ball that it is bounced to and for the parents. Welfare of the child is the focal point. Relevant lines from para 18 are reproduced hereunder : (SCC p. 328)*

"18. ... There can be no cavil that when a court is confronted by conflicting claims of custody there are no rights of the parents which have to be enforced; the child is not a chattel or a ball that is bounced to and for the parents. It is only the child's welfare which is the focal point for consideration. Parliament rightly thinks that the custody of a child less than five years of age should ordinarily be with the mother and this expectation can be deviated from only for strong reasons."

20. This Court has consistently held that welfare of the child is of paramount consideration and not personal law and statute. In Ashish Ranjan v. Anupma Tandon [Ashish Ranjan v. Anupma Tandon, (2010) 14 SCC 274 : (2011) 4 SCC (Civ) 948] , this Court held as under : (SCC p. 282, para 19)

"19. The statutory provisions dealing with the custody of the child under any personal law cannot and must not supersede the paramount consideration as to what is conducive to the welfare of the minor. In fact, no statute on the subject, can ignore, eschew or obliterate the vital factor of the welfare of the minor."

22. Another principle of law which is settled with reference to custody of the child is the wish of the child, if she is capable of. Reference Gowda v. State can of be made to Rohith Thammana Karnataka [Rohith Thammana Gowda v. State of Karnataka, (2022) 20 SCC 550 : 2022 SCC OnLine SC 937] case. It was held as under : (SCC para 18) "18. We have stated earlier that the question "what is the wish/desire of the child" can be ascertained through interaction, but then, the question as to "what would be the best interest of the child" is a matter to be decided by the court taking into account all the relevant circumstances. A careful scrutiny of the impugned judgment would, however, reveal that even after identifying the said question rightly the High Court had swayed away from the said point and entered into consideration of certain aspects not relevant for the said purpose. We will explain the raison d'etre for the said remark."

125. Thus, from the aforesaid settled position of law it is evident that the consideration governing the custody of children is the welfare of the children" and not the rights of the parties." Further, the welfare of child is determined neither by economic affluence nor a deep mental or emotional

concern for the well-being of the child. The answer depends on the balancing of all these factors and determining what is best for child's total well-being.

126. In the backdrop of the aforesaid settled position of law this Court is now adverting to the factual aspect of the present case in order to asses as to the whether the findings so recorded by the learned Family Judge can be said to suffer from an error by giving go by to the mandate of section of the Hindu Minority and Guardianship Act, 1956 and further as to whether while passing the order of "share parentage", the learned Family Judge has committed an error by giving go by to the provision of sub-section 2 of section 13 of the Hindu Minority and Guardianship Act, 1956.

127. It is evident from the statutory provision referred herein as also the judgment passed by Hon'ble Apex Court, the consideration has been given by laying down the law that even the father is the natural guardian but the well-being/welfare of the minor child is to be taken into consideration as provided under Section 13 of the Act 1956, wherein the welfare of the minor has statutorily been provided of the paramount consideration.

128. The Hon'ble Apex Court in the judgment referred hereinabove has also come out with the said view that the paramount consideration in the matter of guardianship/custody is the welfare of the minor child.

129. This Court, after having referred the statutory provision as discussed hereinabove as also the judgment pronounced by the Hon'ble Apex Court is proceeding to examine the factual aspect so as to come to the conclusion regarding the issue of the infirmity said to be caused by the learned principal Judge Family Court.

130. It is evident from the testimony of the witnesses which has been referred hereinabove in the preceding paragraphs that there are series of litigations between the parties. Further, it is also undisputed that both parties are residing in the same city, being Deoghar and presently both children are living with their mother (the appellant herein) in the house of their maternal grandfather and going to school from there. Both the children are minor as boy child is 12 years old and daughter child is 8 years old. The appellant is post graduate in English and she also used to teach in school.

131. It is evident that the respondent has sought custody of children before learned Family Court basically on the ground that he is highly educated and has an educational family background and has worked at several places in the capacity of business Manager and he has a sound financial backing. Further ground has been alleged that appellant wife has a careless attitude due to which children are not getting proper education and proper care and in absence of proper guardianship, the children are likely to get indulge in inconsiderate atmosphere.

132. As per the testimony it is evident that appellant wife having degree of post-graduation in subject English, as such both the parties are sufficiently educated. Further from the testimony of P.W.1 it is evident that this witness has no idea about present status of her grand-children, which is evident from part (para 15 of the cross-examination) of her testimony, for ready reference the same is being quoted as under:

" वर्ष 2019 से मेरा पोता और पोती किस स्कूल में पढ़ रहा है और कैसे रह रहा है, मुझे इसकी जानकारी नहीं है। "

133. Further it is evident from testimony the P.W. 2 Raja Nand Choudhary (respondent herein) has admitted in para 24 and 25 of his cross-examination that his father-in-law Subodh Chandra Jha (father of the appellant wife) has retired from Co-operative Bank and his brother-in-law Manish Kumar is working in Punjab National Bank. Further this witness has admitted in para 27 of his cross-examination that -

" मैने अपने साले को कभी शराब पीते हुए नहीं देखा है । साले को दिनांक 21.03.2019 को शराब के नशे में देखा था "

134. Thus, from the aforesaid testimony of P.W.1 Sulochana Devi and P.W. 2 Raja Nand Choudhary (respondent herein) it is evident that the entire allegations of the alleged bad association of children and bad atmosphere of the parental house of the appellant wife have been taken by the petitioner (respondent husband) without any cogent evidence. Further the petitioner (respondent husband) is saying that his brothers-in-law used to consume wine but he himself admitted that he has not seen him consuming wine. Further, as per own admission of petitioner (respondent herein) that the petitioner's father-in-law was retired from Co-operative bank whereas his one brother in-law is working in Bank and thus, if all these things are taken together it clearly goes to show that the atmosphere of the house of the parents of respondent (appellant wife herein) is not bad as pleaded by the petitioner (respondent husband).

135. After appreciating the evidences available on record this Court has gone through the impugned judgment wherefrom it is evident that the learned principal Family Judge has taken into consideration the entire aforesaid fact and further taken into consideration the core of Section 6(a)

of the Hindu Minority and Guardianship Act, 1956 and turned down the claim of custody of the petitioner (respondent husband). However, the learned Family Judge while negating the claim of petitioner (respondent husband herein) had passed order of "sharing parentage" against which the present appeal has been filed by the respondent (appellant herein), for ready reference the relevant paragraphs of the impugned Judgment are being quoted herein which reads as under:

> *"In the instant case also both the mother and father are fighting several litigations and admittedly the children are presently residing with their mother (the opposite party). The conciliation was done between the parties but no could settlement be arrived between them. Further, the children were also examined in chamber for knowing their interest wherein the girl Anika showed her inclination much towards her mother whereas the affection of boy Amogh Raj was equal towards both his mother and father. Further, it is a matter of common experience that for the proper growth and all round development of a child, the care and affection of both the mother and father is equally needed. But, in the instant case, the children are being deprived from affection of their father due to litigation of their parents. Further, both the mother and father are presently residing in Deoghar and thus they are easily accessible to one another.*
>
> *Further, it has come on record from the oral testimony of the P.W. 1 Sulochana Devi as well as the P.W. 2 Raja Nand Choudhary also that the petitioner Raja Nand Choudhary has opened a show.room of Appolo Tyre and thus it is quite natural that he would remain engaged in his business from morning to night. In absence of petitioner from his house, a lady will be needed to look-after the children after their returning from school and further to assist them in their study also. But admittedly the petitioner is the only son of his family and thus it is quite natural that after going of petitioner on his shop, only his old mother and father will remain available in his house and no other lady will be available to look after the children.*
>
> *On the other hand, the respondent/ is mother of the children and presently she is looking after them at her parental house and the children are continuing their studies from there. The mother and father of respondent also live with her It is quite natural that mother would have interest of the minor most dear to her, Since it is the mother who would have the interest of the minor most at heart, the tender years of a child needing care, protection and guidance of the most interested person, the mother has come to be preferred to others.----------*
>
> *Thus, keeping in view the larger interest and welfare of children, this Court finds that it is in the interest of justice that such an arrangement should be made that the children can get love and affection of their both parents and concept of shared parenting will be best suited in this case. Keeping in view the above stated facts and circumstances of this case, it would be just and proper for this Court to make*

arrangement for shared parenting instead of handing over the children to the petitioner and deprive the children from the affection of their mother. Hence, keeping in view the larger interest of children, the following arrangement is made in respect of custody of children.-

(a) the Children shall live with opposite party (mother) from Monday to till 4 P.M. of Saturday and thereafter the opposite party will sent the children to the custody of petitioner (father) where children shall live with their father and grandparents till 7 P.M of Sunday. Thereafter, the petitioner (father) shall return the children to the opposite party (mother) by 8 P.M on every Sunday. While dong so, the safety and security of children shall be ensured by each party. The provision of transportation for taking the children from the parental house of the opposite party and further for handing over the children to the opposite party shall made by the petitioner.

(b) The aforesaid arrangement is for a period of first three weekend in a month and in the last weak of month, the children will remain in custody of the opposite party (mother) for the purpose of updating their studies.

(c) Both parties are directed to see that the children will be made available for the petitioner (father) during the Summer Vacation, Winter Vacation /X mas Vacation. The children shall spent first half of the vacation period with the father and in the second half period of the vacation, the children will remain in custody of their mother.

(d) The custody of children during the festivals, birthday etc, will be shared between the father and mother on a mutually agreed basis.

(e) petitioner (father) can have acess to the children through mobile phone, landline or Skype during the weekdays at a mutually agreed time. Similarly, the mother will also have acess when the children are with the father.

(f) It has come on record that the father (petitioner) is interested in providing good education to the children. The mother Jyoti (D.W. 1) has also said that she wants to provide education to her children in good school. Thus, if the petitioner (father) offers to get admission of children in a good school at Deoghar, both the father and mother shall take decision in this regard and ensure the best education of their children.

(g) Both the mother and father shall ensure that the study of children is not hampered in any way and they shall fully co-operate the children in completion of their Home Work/Assignment given in school during their respective custody of children.

Accordingly, this issue is being decided in the light of aforesaid discussion.

In view of the disposal of issue no. (III), this Court finds that the petitioner is not entitled to get absolute custody of children and the instant suit as framed is not maintainable for the relief claimed and the petitioner has no valid cause of action for it. The petitioner is not entitled to get the relief claimed, however, he is entitled to get the relief of shared parenting in terms of arrangement made while deciding the issue no. III under the clause (a) to (g). Accordingly, these three issues are being decided in the light of aforesaid discussion."

136. Thus, from the aforesaid paragraphs of the impugned order quoted and referred hereinabove, it is evident that the learned Family Court has categorically observed that the petitioner is not entitled to get absolute custody of children and the instant suit as framed is not maintainable for the relief claimed and the petitioner has no valid cause of action for it. The learned Family Court has further held that the petitioner is not entitled to get the relief claimed however, he is entitled to get the relief of "shared parenting" in terms of arrangement made while deciding the issue no. III under the clause (a) to (g).

137. Thus, from the aforesaid it is evident that the Family Court while negating the claim of the petitioner/husband (respondent herein) has abruptly ordered the arrangement of "shared parenting" because the learned Family Court itself observed that petitioner is not entitled to get the relief claimed but on other hand passed the arrangement of "shared parenting" without any cogent reason.

138. It is evident from the impugned judgment that the learned Family Court was fully aware about the strained relationship between the parties and the factual aspect related to the strained relationship between the parties has fully been substantiated by the statement of P.W.1 Sulochana Devi (grand-mother of the children) who herself has stated in her testimony that five cases is going on between the parties.

139. Further the learned Family Court has observed that petitioner/husband (respondent herein) has no knowledge about the school fee/fee receipt of his children. Further as per the pleading of the appellant as pleaded in the memo of appeal it is evident that the petitioner/husband (respondent

herein) has not paid the maintenance amount to his children which was directed to be paid by the Family Court in the Maintenance case no. 73 of 2019, i.e., Rs. 5000/ to the boy child and Rs. 3000/- to the daughter child and this fact itself shows that petitioner/husband (respondent herein) has no serious concern about the well-being of his children.

140. Further it is evident from the impugned order that the learned Family Court has observed that the petitioner (respondent herein) has opened a showroom of Apollo Tyre and thus it is quite natural that he would remain engaged in his business from morning to night. In absence of petitioner (respondent herein) from his house, a lady will be needed to look-after the children after their returning from school and further to assist them in their study also but admittedly the petitioner (respondent herein) is the only son of his family and thus it is quite natural that after going of petitioner on his shop, only his old mother and father will remain available in his house and no other lady will be available to look after the children.

141. Thus, from the aforesaid it is evident that while passing the arrangement of "Shared parenting" the learned Family Court has not taken into consideration of its own finding that the petitioner (respondent herein) has paucity of time due to his nature of business and even then has passed order of "shared parenting" which is contrary to its own finding as quoted and referred hereinabove.

142. It requires to refer herein that high conflict between parents can negatively impact a child in shared parenting, and courts consider this risk, prioritizing a child's welfare above all else. The shared parenting

may be beneficial but it is not suitable for every family, especially in cases of extreme conflict which is the case herein. Further It is not healthy for a child to move between two homes and a stable, anchored home is the best option in relation to his/her study and other future prospects.

143. As a US Court of Appeals noted in ***Braiman v Braiman 44 N.Y.2d 584 (1978)***: "Joint custody is encouraged primarily as a voluntary alternative for relatively stable, amicable parents behaving in mature civilized fashion. As a court-ordered arrangement imposed upon already embattled and embittered parents, accusing one another of serious vices and wrongs, it can only enhance familial chaos."

144. In the instant case since relationship between parties are not in right shape and there are five cases are going on between the parties, as such there is high-conflict relationship between parents which can lead to instability, increased anxiety, and poor health outcomes for the child. Low-quality parental relationships can disrupt a child's routines, even with a shared parenting plan. One parent might try to force the child to take sides, a phenomenon known as parental alienation, which is harmful to the child's relationship with the other parent.

145. It needs to refer herein that as per the ratio laid down by the Hon'ble Apex Court in the case of ***Gaurav Nagpal* v. *Sumedha Nagpal (supra)*** while taking a decision regarding custody or other issues pertaining to a child, welfare of the child is of paramount consideration. It has further been observed by the Hon'ble Apex Court that it is not the welfare of the father, nor the welfare of the mother, that is the paramount consideration for the court. It is the welfare of the minor and of the minor alone which

is the paramount consideration. The Hon'ble Apex Court has further observed that the word "welfare" used in Section 13 of the Act has to be construed literally and must be taken in its widest sense. The moral and ethical welfare of the child must also weigh with the court as well as its physical well-being. Though the provisions of the special statutes which govern the rights of the parents or guardians may be taken into consideration, there is nothing which can stand in the way of the court exercising its *parens patriae* jurisdiction arising in such cases.

146. Further in the case of ***Gaytri Bajaj v. Jiten Bhalla, (supra)*** the Hon'ble Apex Court has categorically observed that it is the welfare and interest of the child and not the rights of the parents which is the determining factor for deciding the question of custody and the question of welfare of the child has to be considered in the context of the facts of each case and decided cases on the issue may not be appropriate to be considered as binding precedents.

147. There is no denial of the fact that the father is the natural guardian as stipulated in the statute but the paramount consideration in the matter of handing over the custody of the child is "welfare of the child" as per the settled proposition of law which has been settled by the Hon'ble Apex Court and same has been referred in the preceding paragraph.

148. Thus, on the basis of discussions made hereinabove and also applying the ratio of the judgment rendered by the Hon'ble Apex Court in the case of ***Gaurav Nagpal* v. *Sumedha Nagpal (supra)*** and further taking into consideration the embitted relationship between the parties and welfare of the children, this Court is of the considered view that the arrangement of

"share parenting" as ordered by the learned Principal Judge Family Court, Deoghar is not sustainable.

149. Accordingly, the relief of "shared parenting" granted to the respondent husband in terms of arrangement made while deciding the issue no. (iii) under clause (a) to (g) in the impugned judgment dated 31.01.2023 passed in Original Suit no. 71 of 2021 by the learned principal Judge Family Court Deoghar, is hereby quashed and set aside.

150. Consequently, the impugned judgment dated 31.01.2023 passed in Original Suit no. 71 of 2021 by the learned principal Judge Family Court Deoghar is hereby modified to the extent aforesaid.

151. Further, this court is conscious with the fact that even if the custody is given to one parent the other parent must have sufficient visitation rights to ensure that the child keeps in touch with the other parent and does not lose social, physical and psychological contact with any one of the two parents, reference in this regard be made to the judgment rendered by the Hon'ble Apex Court in the case of ***Yashita Sahu v State of Rajasthan, (2020) 3 SCC 67.***

152. Accordingly, we, hereby, permit the respondent (father) to have the visitation right to take both the minor children, who is in custody of the appellant herein (mother), once in every fortnight from 10.00 a.m. to 5.00 p.m. and, thereafter, handover the custody of the children to the appellant herein. During the summer vacation to the child, the respondent will have visitation right on every Saturday of the week from 10.00 a.m. to 5.00 p.m. and handover the custody of the children to the appellant herein.

153. With the aforesaid directions and observations, the instant appeal being F.A. No.50 of 2023 stands disposed of.

154. Pending interlocutory applications, if any, also stand disposed of.

(Sujit Narayan Prasad, J.)

I Agree

(Arun Kumar Rai, J.)

(Arun Kumar Rai, J.)

21/11/2025

Rohit/**A.F.R.**

Uploaded on 24.11.2025