

IN THE COURT OF THE JUDGE, FAMILY COURT,  
BHUBANESWAR.

Present : Shri Pravakar Mishra, OSJS(SB),  
Judge, Family Court, Bhubaneswar.

Civil Proceeding No. 21 of 2012

Smt. Swapna Rath @ Panda  
W/o-Sri Deepesh Panda  
D/o- Sri Raghunath Rath,  
At present residing at House No. B-23,  
Trishna Residency, Phase-III,  
At/P.O.-KIIT, Bhubaneswar-751024  
Dist-Khurda

... Petitioner

... Versus...

Sri Deepesh Panda,  
S/o-Sri Gobinda Chandra Panda,  
Permanent resident at Plot No 353/3374,  
Matrukrupa Bhavan, Sailasahi,  
Jayadev Vihar, Bhubaneswar  
At present working under Zenith Computer Ltd.  
IE, Century Plaza, Teynampet, Chennai-18

... Respondent

Date of argument : 05.09.2014

Date of order : 20.09.2014

J U D G M E N T

This order arises out of a petition u/s. 18 of the Hindu Adoption and Maintenance Act, 1956 (in short, the Act 1956) filed by the petitioner-wife against the respondent claiming a permanent alimony of Rs. 50,00,000/- and 50% share over the immovable properties of the respondent.

2. The parties have not disputed their relation as husband and wife and out of their wedlock one son namely Somesh Panda was born on 22.03.2000 and both of them are living separately more than five years.

3. The gist of the case of the petitioner is that the respondent and his family members started ill-treating her due to additional demand of dowry for which she has been residing with her parental home. The petitioner has averred that she has been restricted to make any contact with her family members even if over telephone and they have also not permitted to go to her parents house or even talk with any family members for which she suffered mental agony. The behaviour of the respondent towards her was very non-cooperative. The petitioner has averred that the respondent has got illicit relationship with a non- Oriya girl for which he avoided for any conjugal relationship with her. She tolerated the torture and cruelty made by the respondent and his family members with a hope to change in future. Even after birth of the child on 22.03.2000 the respondent and his family members did not change in their behaviour towards her. After forcing her to additional demand of dowry, her parents have compelled to send additional demand of Rs. 50,000/- to Rs. 60,000/- and the respondent received the same in his Corporation Bank Pass Book. She has averred that the petitioner is earning more than six lakhs rupees per month. Apart from that he has also income from agriculture. Since the respondent having sufficient means will-fully neglected and refused to maintain the petitioner, who is her legally wedded wife, the petitioner is obliged to file the present petition claiming permanent alimony of Rs. 50,00,000/- from the respondent and 50% share over immovable property of the respondent. Hence, the petition.

4. The Opp. Party contested the case by filing his written statement denying the allegations made in the petition save and except the admitted facts delineated herein before. The respondent has filed certified copy of Judgement dated 08.08.2011 passed by the Subordinate Judge at Tambaram in HMOP 132/2010 wherein the said court while granting divorce in favour of the present respondent has not granted with any maintenance or permanent alimony against the present petitioner. Petitioner nowhere has averred that she has stated that she has challenged the above order passed by the

Subordinate Judge at Tambaram in HMOP 132/2010. Therefore, the respondent submitted to dismiss the claim of the petitioner.

5. From the rival stand of both the parties, it is to be decided whether the petitioner is entitled for any maintenance or permanent alimony from the respondent?

6. The petitioner in order to prove her case she, herself, has been examined as P.W. 1. On the other hand, the respondent examined himself, as R.W. 1 and relied on some documents i.e. Ext. A is the property recorded in the name of sister-in-law, Ext. B is the property stands recorded in the name of mother, Ext. C is the working certificate of the petitioner, Ext. D to D/15 are the merit certificates of Somesh Panda, Ext. F is the certified copy of letter written by the petitioner to OIC, Dhenkanal Police Station, Ext. G is the certified copy of order passed by the Women Commissioner, Ext. H & J are two credit cards prepared by the respondent, Ext. K are the telephone Bills, Ext. L is the prescription of Swapna Panda, Ext. M are the photographs, Ext. N is the certified copy of the divorce passed in HMOP 132/10, Ext. Q are the Train Tickets, Ext. R is the Xerox copy of petition to Human Right Commissioner, Ext. S is the order passed by Human Rights Commissioner, Ext. T is the letter written by D. Panda to parents of the petitioner and Ext. U are the photographs.

7. The petitioner-wife claims monthly maintenance and/or permanent alimony U/s. 18 of the Act, 1956. The expression "Hindu wife" in Section 18 means, only a legally wedded wife whose marriage is in subsistence on the date of application. Ext. N is the certified copy of order in HMOP 132 of 2010 passed by the Subordinate Judge, Tambaram wherein a decree of divorce was passed between the petitioner and respondent on 08.08.2011. The present petition was filed before this Court on 24.01.2012 by the date on which the petitioner is no more the legally wedded wife of the respondent. Once there has been a decree of divorce between the parties, petition U/s. 18 of the Act 1956 could not be maintained. (If it needs assistance may be taken from

Manisha Sandeep Gade Vrs. Sandeep Vinayak Gade, reported in AIR 2005 Bom 180.) Therefore, the present petition is not maintainable.

8. The right to grant permanent alimony flows from the substantive right in Section 25 of the Hindu Marriage Act while a petition U/s. 13 (1) is filed. Therefore, the Court granting decree of divorce U/s. 13 is only competent to grant such relief. Apart from that when the petition U/s. 18 of the Act, 1956 is not maintainable, the right to claim permanent alimony does not survive. Hence, it is ordered;

### O R D E R

The petition of the petitioner is dismissed without cost.

JUDGE, FAMILY COURT,  
BHUBANESWAR.

Dictated, corrected by me and is pronounced on this the 20<sup>th</sup> day of September, 2014.

JUDGE, FAMILY COURT,  
BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1 Smt. Swapna Rath @ Panda

Witnesses examined for the respondent:

R.W.1 Sri Deepesh Pand

List of documents by petitioner:

Nil.

List of documents by respondent:

Ext. A Property recorded in the name of sister-in-law.

Ext. B Property stands recorded in the name of mother.

Ext. C Working certificate of the petitioner

Ext. D to D/15 Merit certificates of Somesh Panda

Ext. F Certified copy of letter written by the petitioner to OIC  
Dhenkanal Police Station.

Ext. G Certified copy of order passed by the Women Commissioner

Ext. H & J Two credit cards prepared by the respondent

Ext. K Telephone Bills

Ext. L Prescription of Swapna Panda

Ext. M Photographs

Ext. N	Certified copy of the divorce passed in HMOP 132/10.
Ext. Q	Train Tickets
Ext. R	Xerox copy of petition to Human Right Commissioner.
Ext. S	Order passed by Human Rights Commissioner
Ext. T	Letter written by D. Panda to parents of the petitioner
Ext. U	Photographs

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