

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

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

Civil Proceeding No. 198 of 2014

1. Smt. Alpana Patanayak, aged about 39 years,
W/o-Sri Bidhu Bhusan Patanayak,
At present residing at Flat No. 107,
Subhadra Complex, At-Patia,
P.O./P.S.-Chandrasekharapur,
Bhubaneswar, Dist-Khurda.
2. Sri Ayush Patanayak, aged about 13 years
S/o-Sri Bidhu Bhusan Patanayak
Being minor represented by his mother guardian
Smt. Alpana Patanayak,
At present residing at Flat No. 107,
Subhadra Complex, At-Patia,
P.O./P.S.-Chandrasekharapur,
Bhubaneswar, Dist-Khurda.

... Petitioner

... Versus...

Sri Bidhu Bhusan Patanaik, aged about 46 years,
S/o-Binoy Bhusan Patanaik,
At-Jhajapadia, P.O./P.S.-Belpahar,
Dist-Jharsuguda.

... Respondent

Date of Argument : 12.01.2015

Date of Judgment : 28.01.2015

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, 1955 (in short, the Act 1955) filed by the petitioner No.1 for

self and for her minor son, petitioner No.2 claiming a monthly maintenance of Rs.20,000/- from the respondent.

2. The facts of the case petitioner No.1 are as follows:-

The marriage of the petitioner No.1 with respondent was solemnized at Jora in the district of Keonjhar on 10.02.1999 and out of their wedlock one male child namely Ayush Patanayak was born on 21.04.2001. According to the petitioner No.1 at the time of marriage her father had given gold and silver ornaments along with household articles and cash as dowry as per demand of the respondent and his family members. It is the further case of the petitioner that after few days of marriage, the respondent and his family members tortured her both physically and mentally due to additional demand of dowry. It is further stated by the Petitioner No.1 that in the year 2001 the respondent had transferred to Jamshedpur in the State of Jharkhand to where both the petitioners have accompanied to him. During their stay there, the respondent became more violent and assaulted her frequently by aspersing her character. She has further stated the respondent has forcibly taken her signatures on some blank papers and threatened to use those papers against her if she would take legal action against him and also compelled to agree for a mutual divorce, so that he could marry for the second time and get more dowry. When the torture became unbearable she has agreed for a mutual divorce subject to condition that the petitioner No.2 shall remain in custody of petitioner No.1 and the respondent shall pay allowance every month regularly for their maintenance and accordingly petitioner No.1 filed a petition U/s. 13 (B) of the Hindu Marriage Act, 1955 in the Family Court, East Singhbhum at Jamshedpur vide Matrimonial Suit No. 301 of 2008. Thereafter, the Opp. Party failed and neglected to maintain the petitioners as agreed between them before filing of the Matrimonial Suit and the respondent also wanted to forcibly take the petitioner No.2 from her custody for which she has filed a petition U/s. 125 Cr.P.C. in the Family Court, Jamshedpur for maintenance vide Misc. Case No. 69 of 2009. She has further stated that she is a merely house wife having no separate income for which she was forced to leave

Jamshedpur along with petitioner No.2 and returned to her parental home at Bhubaneswar and after her return from Jamshedpur she could not pursue the Misc. Case filed by her at Jamshedpur and in the meantime the respondent has also transferred to Beopahpar. She has further stated that the respondent has filed a divorce case U/s. 13 (i-a) of Hindu Marriage Act, 1956 against her in Civil (S.D) Jharsuguda vide Matrimonial Suit No. 17 of 2012 which is pending for disposal. According to the petitioner No.1 she has no source of income to maintain herself and to maintain the study and other expenses of petitioner No.2 who is now prosecuting his study in a English Medium Public School at Bhubaneswar. It is the further case of the petitioner No.1 that the respondent is working as an Executive of the Tata Concern at Belpahar and is getting net salary of Rs. 40,000/- per month. Apart from that he is getting Rs. 20,000/- per month from his family business. Since the respondent having sufficient means will-fully neglected and refused to maintain them, who are her legally wedded wife and legitimate son, the petitioner No.1 is obliged to file the present petition claiming a monthly maintenance of Rs. 20,000/- for herself and for petitioner No.2 from the respondent.

3. The respondent did not enter contest the petition and therefore, is set ex-parte.

The following points are formulated to resolve the controversy:-

- (1) Whether petitioner No.1 is the legally married wife and petitioner No.2 is the legitimate son of the respondent and petitioner No.1 has sufficient cause to live separately from the respondent?
- (2) Whether the respondent having sufficient means has neglected and refused to maintain the petitioners?
- (3) What would be the quantum of maintenance to be allowed to the petitioner, if point No. 1 and 2 are answered in her favour?

4. The petitioner in order to prove her case she, herself, has been examined P.W. 1. The petitioner in her affidavit evidence stated that she married to the respondent on 10.02.1999 and out of their wedlock one male

child namely Ayush Patanayak was born on 10.02.2009. Her aforesaid statements have not been challenged. Thus, it can safely be concluded that the petitioner No.1 is the legally wedded wife and petitioner No.2 is the legitimate son of the respondent.

5. She has also stated that the petitioner No.1 was subjected to torture not only by the respondent but also by her in-laws due to additional demand of dowry in her matrimonial home as well as at Jamshedpur for which she was forced to leave the company of the respondent along with petitioner No.2. The petitioner No.1 has stated that the respondent has also assaulting her aspersing her character and had forcibly taken some signatures on some blank papers stating to use if she would take legal action against him and wanted to forcibly take the petitioner No.2 from her custody. Therefore, it can safely be concluded that the petitioner No.1 has not left the company of the respondent voluntarily. It is the respondent and his family members who are responsible for petitioner No.1's living separately apart from the respondent. Being the husband it is his foremost duty to maintain his legally married wife and children. From the evidence of the P.W. 1 it is forthcoming that she has no independent source of income and she is fully dependent on her father.

6. The next question for consideration is, whether the respondent has sufficient means and he has willfully neglected and refused to maintain the petitioner. It is stated categorically by the petitioner No.1 that the respondent is working as an Executive of Tata Concern at Belpahar and is getting net salary of Rs. 40,000/-. Apart from that he is getting Rs. 20,000/- per month from family business whereas she is merely a housewife having no separate income and unable to maintain herself and study and other expenses of her minor son-petitioner No.2. She has also stated that the respondent has not provided a single farthing to the petitioner since the date of leaving her at her parental home. This facts and circumstance is clearly suggestive of the facts that the respondent having sufficient means not only willfully neglected but also refused to maintain the petitioners, who have no sufficient means to support themselves. Therefore, the respondent is liable to provide

maintenance to the petitioners.

7. The next question for consideration is the quantum of maintenance. Considering the cost of living and other attendant circumstances, in as much as, the income of the respondent, I feel in the ends of justice and equity, a sum of Rs. 15,000/- per month would be just and proper, which according to me, would not allow to petitioners to lead a princely and luxury life and also at the same time it would not put the respondent to any vagrancy. Hence ordered;

O R D E R

The petition is allowed ex-parte in favour of the petitioner. The respondent is directed to pay a monthly maintenance of Rs. 15,000/- to the petitioner from the date of filing of application i.e. on 17.05.2014. The respondent is further directed to clear the arrear maintenance within two months hereinafter. He is also directed to pay the current monthly maintenance within the 1st week of the succeeding month. Failure to carry out the order by the respondent, the petitioners are at liberty to levy execution through due process of law.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Dictated, corrected by me and is pronounced on this the 28th day of January, 2015.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1 Smt. Alpana Patanayak

Witnesses examined for the respondent:

None

List of documents by petitioner:

Nil

List of documents by respondent:

Nil

JUDGE, FAMILY COURT,
BHUBANESWAR.