

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

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

Civil Proceeding No. 21 of 2013

1. Smt. Smarki Nayak, aged aout 25 years,
w/o Akshaya Kumar Gadabada,
D/o- Gopabandhu Nayak
2. Priyam Gadabada, aged about 3 years,
S/o Akshaya Kumar Gadabada,
(Petitioner No.2 being the minor, so
represented Through his Mother guardian
Smt. Smaraki Nayak.

Both are residing at Vill/Po-Kadaba, P.S-
Begunia, Dist. Khurda, at present C/o
Gopabandhu Nayak,
Of Plot No. A-44, Krishna Garden,Phase-II,
(Barabari), Jagamara, PO/PS- Khandagiri,
Bhubaneswar, Dist- Khurda.

... Petitioners

... Versus...

Akshaya Kumar Gadabada, aged about 34
years,S/o Paramananda Gadabada,
Vill/Po- Kadaba, P.S- Begunia,
Dist. Khurda.

... Respondents.

Date of Argument : 13.01.2015

Date of Judgment : 30.01.2015

J U D G M E N T

This petition filed U/s. 18 and 20 of Hindu
Adoption & Maintenance Act filed by the petitioners
against the respondent praying for grant of

maintenance from the respondent of Rs.20,000/- per month for petitioner No.1 and Rs.10,000/- per month for petitioner No.2.

2. The facts of the case of the petitioners are as follows:-

The marriage of the petitioner no.1 with respondent was solemnized as per Hindu Custom and rites on 22.11.2008. They led a happy conjugal life and stayed at Kadaba under Begunia P.S in the resident of the respondent as husband and wife and consummated their marriage. At the time of negotiation of the marriage the father of the petitioner no.1 had given cash of Rs. 1,50,000/- and again on the date of marriage had given Rs. 1,70,000/- to the father of the defendant and had also given golden ornament of 200 gms, silver ornament of 1 kg and other house hold articles . They were blessed with a son namely Priyam, born on 11.12.2009 at Sneha Clinic, Bhubaneswar out of the wedlock of the marriage. Thereafter all the family members of the respondent being not satisfied with the dowry articles brought by the petitioner No.1, started ill treating misbehaving and torturing the petitioner no.1. Further, when on 16.1.2009 the mother of the petitioner no.1 went on a major surgery, the respondent's family did not allow the petitioner no.1 to visit her mother. Further when on 1.5.2009 the petitioner no.1 wanted to go to Hyderabad and stay with the respondent, her father in-law did not allow the same with the intention that she should not join with the respondent at Hyderabad but to serve them as a maidservant. Taking of the advantage of the

respondent's silence in the matter, the in-laws created aggravated situation and physically assaulted and tortured the plaintiff no.1 time and again. On 1.5.2009 the petitioner no.1, the respondent and the mother of the respondent had gone to Hyderabad and the mother of the respondent tortured the petitioner there. Further the petitioner no.1 stated in her petition that at Hyderabad she was mentally and physically tortured by the respondent and his mother due to demand of further dowry. Further she stated in her petition that on 11.12.2009 she gave birth a male child at Sneha Clinic, Bhubaneswar and on the intimation of the petitioner no.1 the respondent and his elder brother visited her on 12.12.2009, saw the child, but kept mom and did not show any interest to take care of the petitioner no.1 and the new born baby. From Sneha clinic they went back without making any contact with the petitioner no.1 at any time. The in-laws also did not visit the petitioner no.1 either at Sneha Clinic or at her father's house. The medical expenditure of the petitioner no.1 was borne by her father and the cost of post birth rituals of the new born child was also borne by her father. The respondent or his family members did not pay any single pie to the petitioner no.1. The defendant and his father straight way told the petitioner no.1 and her father on 23.6.2010 that they are not going to accept the petitioner no.1 and the child unless they were paid Rs.5,00,000/- as already demanded earlier and threatened her for divorce.

Further the petitioner no.1 has mentioned in her petition that the respondent has never shown any

interest to take her and her son with him and always avoided to keep any contact with her and her son or remitted a single pie for their maintenance. Further she stated that the respondents conduct is not bonafide and he does not have the slightest interest to lead a happy conjugal life and the respondent never paid a single rupees to the petitioner no.1 for her sustenance and livelihood and deliberately neglected her and her son. The petitioner no.1 is always ready and willing to join with the respondent for a happy conjugal life, but the respondent and his family members are creating un-healthy and un-congenial and unfriendly and in conducive atmosphere. The petitioner no.1's father gives food and shelter to the petitioner no.1 and 2.

Further the petitioner no.1 has mentioned in her petition that the respondent is serving as Soft ware Engineer at Hyderabad and getting Rs. 70,000/- per month. That apart he has a building and some landed property at his native village. The income of the landed property is more than Rs.3,00,000/- per annum. Further she has mentioned in her petition that being deserted by the respondent since 23.6.2009 she and her son have been residing at her parents house depending upon the mercy and charity of others in much difficulty and she has no source of income to maintain her life and her child. 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 her and Rs.10,000/- for her son.

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

4. The following points are formulated to resolve the controversy:-

(1) Whether the 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 defendant having sufficient means has neglected and refused to maintain the petitioners?

(3) What would be the quantum of maintenance to be allowed to the petitioners, if point No.1 and 2 are answered in her favour?

5. The petitioner in order to prove her case she, herself, has been examined as P.W.1 who supported the averments made in the petition. The petitioner no.1 in her affidavit evidence stated that she married to the respondent on 22.11.2008 and out of their wedlock one male child namely Paiyam Gadaba was born on 11.12.09. 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.

6. She has also stated that she 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 Hyderabad, for which she was forced to leave the company of the respondent along with plaintiff no.2. The petitioner no.1 has stated that the respondent has also assaulting her for

further dowry. 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 plaintiff no.1's living separately apart from the defendant. 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.

7. The next question for consideration is, whether the respondent has sufficient means and he has willfully neglected and refused to maintain the petitioner no.1 and 2. It is stated categorically by the petitioner no.1 that the respondent is working as a Soft Ware Engineer at Hyderabad and is getting net salary of Rs. 70,000/- per month. Apart from that he is getting Rs. 3,00,000/- per annum from his landed property, whereas she is merely a housewife having no separate income and unable to maintain herself and study and other expenses of her child. She has also stated that the defendant 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.

8. 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.10,000/- to the petitioner No.1 and Rs.5,000/- to the petitioner no.2 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.10,000/- to the petitioner No.1 and Rs. 5,000/-to the petitioner no.2 from the date of filing of application i.e on 11.1.13. The defendant 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.

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Dictated, corrected by me and is pronounced on this the 30th day of January, 2015.

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BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1 Smt. Samarki Nayak

Witnesses examined for the respondent:

None

List of documents by petitioner:

Nil

List of documents by respondent:

Nil

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