

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

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

Civil Proceeding No. 47 of 2013

Smt. Suchismita Nayak, aged about 26 years,
W/o-Baidanath Nayak,
D/o-Ainthe Rout,
Vill/P.O.-Raghunathpur,
P.S.-Nandankanan, Bhubaneswar,
Dist-Khurda.

... Petitioner

... Versus...

Baidanath Nayak, aged about 35 years,
S/o-Maheswar Nayak,
Vill./P.O.-Karikolo,
P.S.-Athagada,
Dist-Cuttack.

... Respondent

Date of Argument : 06.01.2015

Date of Judgment : 21.01.2015

J U D G M E N T

This order arises out of a petition u/s. 13 (1) (i-a) of the Hindu Marriage Act, 1955 read with Section 7 of the Family Court Act (in short, the Act 1955) praying for a decree of dissolution of marriage of the petitioner with the respondent on the ground of cruelty.

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

The marriage of the petitioner with respondent was solemnized as per Hindu Custom and rites in her parental home situated at village Raghunathpur under Nandankanan Police Station, Bhubaneswar in the

district of Khurda on 28.02.2003 and after marriage, they lived together as husband and wife in her matrimonial home in the village Karikolo under Athagada Police Station in the district of the Cuttack and out of their wedlock one male child namely Atmanjan Nayak was born in Usti Hospital, Chandrasekharpur, Bhubaneswar on 25.01.2005. According to the petitioner, her father had given Rs. 80,000/-, a Maruti Omini Car bearing registration No. ORA-02-2313, gold ornaments weighing approximately 250 grams and 800 grams of silver ornaments along with other household articles. She has further averred that after her arrival in her in-laws house, her mother-in-law and sister-in-law forcibly removed all her gold ornaments from her person and kept with them but surprisingly seeing the unlawful action of his mother and sister, the respondent became silent. After seven days of marriage, the respondent and his family members started torturing her both physically and mentally on different pleas. She has further stated that during her pregnancy the respondent did not take her care and did not provide proper food and medicine. On her information, her father came and took her to her parental home with permission of respondent and his family members. On 25.01.2004, she was blessed with a male child in Usti Hospital, Chandrasekharpur but neither the respondent nor his family members has come to see the newly born baby as well as to her and the entire medical expenditure was borne by her parents. Finding no other alternative, when she and her newly born child along with her father went to her in laws house, the respondent and his family members assaulted them and being shocked, her father returned leaving her and her newly born child. Thereafter, the respondent and his family members started torturing her both physically and mentally due to additional demand of cash and jewellery. In the year 2009, the respondent and his family members had driven her out from their house. Finding no alternative, she stayed in a rented house in village Raghunathpur under Nandakan Police Station, Bhubaneswar. On 20.09.2009 all on a sudden, the respondent and his family members came to her rented house, abused her in filthy languages and tried to kill her by tying her saree in the ceiling fan and hearing her shouts, the neighbours arrived at the spot and thereafter the respondent and

his family members left the rented house with a threat for dire consequence. Immediately thereafter, she has filed a case before Mahila Police Station Bhubaneswar bearing No. 130/09 U/s. 498(A), 307, 323, 294, 506, 34 IPC and 4 D.P. Act. It is the further case of the petitioner that the respondent is a private Taxi driver and is earning Rs. 1,50,000/- per annum. Apart from that he is getting Rs. 50,000/- per annum from agriculture. Several attempts have been from her side to settle the dispute but all were in vain. She has stated that she is merely a housewife and unable to maintain herself and her child. Since the torture and cruelty by the respondent became in-tolerable she has filed this proceeding seeking a decree of divorce on the ground of cruelty.

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

4. The questions that require to be adjudicated is whether, there exists any cruelty on the part of the respondent to allow the petition for divorce and whether the petitioner is entitled to any permanent alimony?

5. The petitioner in order to prove her case she, herself, has been examined P.W. 1.

6. The petitioner sought divorce on the ground of respondent's cruelty. She has deposed about the maltreatment of the respondent towards her. Her statement is facsimile to the allegations made in petition which have gone unchallenged as there has been no cross examination since the respondent has been set ex-parte. Law is well settled that when a statement of a witness gone unchallenged, the same must be accepted as true. Therefore, the statement of P.W. 1 is accepted as true. Examining the evidence of P.W. 1 in ferreted eyes. I am satisfied that the petitioner could able to establish the cruelty. Removing gold ornaments from the person of the petitioner soon after her arrival at the house of the respondent, torturing her both physically and mentally due to additional demand of dowry, trying to tie the respondent in ceiling fan in the rented house and giving threat to her for dire consequence which are emerged out from the evidence P.W. 1 are circumstances of the cruelty and therefore, the petition of the petitioner deserves merit to be allowed.

7. As regards to the permanent alimony, the petitioner has stated that the respondent is working as a private driver and is earning Rs. 1,50,000/- per annum. Apart from that he is getting Rs. 50,000/- per annum from agriculture. Considering the income of the respondent, the fact and circumstances of the case and the present day cost of living, it would be just and proper to allow permanent alimony of Rs. 3,00,000/- to the petitioner. He is also directed to bear all the educational and medical expenses of the minor son. Hence, it is ordered;

O R D E R

The petition is allowed ex-parte in favour of the petitioner without cost. A decree of divorce is passed and the marriage between the petitioner and the respondent is hereby declared dissolved with effect from the date of decree. The respondent is directed to pay permanent alimony of Rs. 3,00,000/- to the petitioner. He is also directed to bear all the educational and medical expenses of the minor son.

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Dictated, corrected by me and is pronounced on this the 21th day of January, 2015.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1 Suchismita Nayak

Witnesses examined for the respondent:

None

List of documents by petitioner:

Nil

List of documents by respondent:

Nil

JUDGE, FAMILY COURT,
BHUBANESWAR.