

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

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

Civil Proceeding No. 139 of 2012

Dipalisa Sahu, aged about 28 years,
W/o- Rakesh Kumar Sahu
D/o- Rabindra Kumar Sahoo,
Plot No. 331, Radhakrushnagar, (Garage Chhak)
Old Town, P.O.-Bhubaneswar-751002,
P.S.-Lingaraj, Dist-Khurda.

... Petitioner

... Versus...

Rakesh Kumar Sahoo, aged about 36 years,
S/o-Babaji Charan Sahoo,
Plot No. 818/2502, Bank Colony, Gobindeswar Lane,
Old Town, P.O.-Bhubaneswar-751002, P.S.-Lingaraj,
Dist-Khurda.

... Respondent

Date of Argument : 09.09.2014

Date of Judgment: 26.09.2014

J U D G M E N T

This order arises out of a petition u/s. 13 (ia) (ib) of the Hindu Marriage Act, 1955 praying for a decree of dissolution of marriage of the petitioner with the respondent on the grounds of desertion and cruelty.

2. The admitted facts of the case of the parties are that their marriage was solemnized at Bhubaneswar Ashish Kalyan Mandap, Samantrapur, Bhubaneswar as per Hindu rites and customs on 27.01.2008 and parties are living separately since last part of March 2009.

3. The facts of the case of the petitioner are that at the time of marriage her parents had given cash of Rs. 2,50,000/- in shape of cheque of State Bank of India Bapujinagar Branch; gold ornaments weighing 20 tolas valued at Rs. 3,00,000/- along with household articles as per demand of the respondent's

family. After marriage when the respondent and his family members could know about the study loan of Rs. 3,00,000/- incurred by her for her B.Tech Engineering studies, the respondent and his family members started ill-treating her on silly matters which created anguish, disappointment and frustration in the mind of the petitioner. It is averred by the petitioner that the respondent and his family members demanded additional dowry of a Car as well as one A.C. for the house of the respondent and when she showed her inability for the same, the respondent strained all their relations with her and forbidden the conjugal rights of her. The petitioner is a graduate engineer and was serving prior to the marriage and left her job on the demand of the respondent and his family members. When the torture became unbearable she had left her matrimonial home on 07.03.2008 in order to save her life. She has further averred that on 25.03.2008 she went to the working place of the respondent with a view to pacify and resolve the difference between them but on seeing her, the respondent became furious and took away her original Passport forcibly and on 13.04.2008 left for U.S.A. without taking or giving any information to her. On 16.02.2009 finding no alternative the petitioner went to her matrimonial home to reconcile the attitude of the respondent and his family members but the respondent and his family members tortured her both physically and mentally and also assaulted her on petty mistakes and did not give food and medicine during her illness and left her alone. She has further stated that in order to settle the dispute between them the parents of the petitioner arranged meetings twice in Hotel Janapath and Lingaraj Temple premises on 21.09.2008 and 25.01.2009 respectively and also the petitioner again went to her matrimonial home on 16.02.2009 to reconcile the attitude of the respondent and his family members but all were in vain. On the other hand, the respondent and his family members tortured her both physically and mentally. The respondent denied for any conjugal relation and also the respondent and his family members took away all her gold ornaments and Passport and lastly the respondent and his family members drove her out from his house on 28.03.2009 and since then she has been taking shelter of her parents. The respondent is serving as an Engineer, at Infosys,

Bhubaneswar whereas she is unemployed as she has left her job on the demand of the respondent and now depending upon her parents since 28.03.2009. Since the torture and cruelty on the part of the petitioner became unbearable, she has filed this proceeding seeking a decree of divorce and permanent alimony of Rs. 25,00,000/- and litigation expenses of Rs. 25,000/- from the respondent.

3. The respondent entered contest the proceeding and filed written statement. He denied all the allegations made by the petitioner against him. He has contended that the petitioner without any sufficient cause left her matrimonial house. He has further contended that the gifted jewellery as well as other articles were stolen from his house for which, he has lodged an FIR on 14.08.2008. Respondent has further contented that after marriage they lived together and led a happy conjugal life till 15.02.2008 and on 16.02.2008 the respondent left for Bangalore to attend his official work and the petitioner left her matrimonial home on 7th March 2008 without informing anybody. On 15.03.2008 the petitioner went to Bangalore and reached at the office of the respondent and in presence of colleagues, she used vulgar languages causing mal agony. The petitioner always insisted the respondent to live separately from his parents. He has further averred that despite repeated attempts from his side, the petitioner did not resume her marital relationship with him. The respondent alleged that the petitioner is short tempered; arrogant lady and she always misbehaved him and his family members. He has further stated that the petitioner voluntarily left her matrimonial house without any reasonable cause. He has averred that the petitioner with an ulterior motive filed this case for divorce and therefore, the same is liable to be dismissed.

4. From the aforesaid rival pleadings of the parties, the question that requires to be adjudicated is whether, there exists any desertion and cruelty on the part of the respondent to allow the divorce petition and secondly, whether the petitioner is entitled to any permanent alimony?

5. The petitioner in order to buttress her case she, herself, has been examined as P.W.1 and relied on some documents i.e. Ext. 1 is the Marriage Invitation Card, Ext. 2 is the Net copy of ROR bearing Khata No. 344/745,

Ext. 3 is the Net copy of ROR bearing Khata No. 289/19 and Ext. 4 is the salary slip of the respondent for the month of March 2014. The respondent in order to negate the claim of the petitioner he, himself has been examined as R.W. 1 and relied on some documents i.e. Ext. A is the copy of the FIR, Ext. B is the Bank statement showing repayment of loan and Ext. C is the cash deducted by the company of the petitioner from the petitioner, Ext. D is the TDS certificate of Income Tax Department of India.

6. The petitioner in her evidence has supported the facts as stated in her plaint and has stated that the respondent and his family members has tortured her physically and mentally due to additional demand of dowry of a car and one A.C. and the respondent was avoiding for any conjugal relationship. She has further stated that the respondent and her family members threatened her for dire consequence. The petitioner has further stated that the respondent without any reasonable cause deserted her. She has further stated that several attempts have been made from her side for settlement of dispute, but the respondent and his family members did not cooperate. The behavior of the respondent was very cruel and adamant towards the petitioner and her family members. The petitioner has stated that at the time of marriage she was in job and on being forced by the respondent and his family members she left the job and at present she is unemployed. Since the torture and cruelty became unbearable, she left the matrimonial home on 28.03.2009. In cross-examination, she has stated that as she apprehended danger to her life, she is not inclined to return to the company of the respondent.

7. The respondent in his evidence has stated that all the gold ornaments and other gifted articles were stolen from his house for which, he had lodged an FIR at Police Station. He has stated that the petitioner has voluntarily left the matrimonial home without any reasonable cause. He has stated that while they were staying together, the petitioner tortured him both mentally and physically and did not obey the marital obligations. The respondent has filed Xerox copy of income tax statement to prove that the petitioner is serving in a multinational company. He has stated that the petitioner is drawing a

monthly salary of Rs.80,000/- per month.

9. The petitioner sought divorce on the grounds of respondent's desertion and cruelty. It is needless to say Section 13(1) (ib) of the Hindu Marriage Act, provides that the other party has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition. The petitioner at paragraph 10 of her petition has stated that the respondent deserted her since 28.03.2009. The petition of divorce in this case is presented in the Court on 17.04.2012. Thus, it is clearly established that the petition has been filed after completion of two years from the date as alleged by the petitioner. In other words the factum of parties living separately for two years from each other is established. Now the next question for consideration is whether the husband has intention to bring cohabitation permanently to an end *animus deserendi* because in essence desertion means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent and without reasonable cause. It is a total repudiation of the obligation of marriage. Desertion is not the withdrawal from a place of abode, but from a state of things. The intention to snap the tie of sacrosanct marriage for all times to come has to be apparent from the conduct. If a spouse abandons the other for a temporary period under certain circumstance without intending to cease the cohabitation permanently, it will not amount to desertion.

8. The Supreme Court in the case of *Lachman Utamchan Kirpalani Vrs. Meena*, relying upon the of quoted decision i.e, observed *Bipinichandra Jaisinghbahi Shah reported in AIR 1957 SC 176* observed that the burden of proving desertion-the "*factum*" as well as the "*animus deserendi*" is on the petitioner, and he or she has to establish beyond reasonable doubt, to the satisfaction of the Court, the desertion throughout the entire period and that such desertion was without any just cause. In other words, even if the wife, where she is the deserting spouse, does not prove just cause for her living apart, the petitioner-husband has still to satisfy the Court that the desertion was without just cause.

9. Here in the instant case, it is borne out from the pleading and on the evidence on record from the side of the petitioner that the respondent and his family members mal-treated her when they came to know the outstanding education loan of the petitioner. The petitioner has further stated that she was also mal-treated by the respondent and his family members for non-fulfillment of additional demand of dowry and as the torture was unbearable she left her matrimonial home on 28.03.2009. She has further stated that two meetings were held on their behest to settle the dispute but the dispute could not be settled. She has further stated that as the respondent stopped cohabitation with her, she left her matrimonial home. During cross examination, she has admitted that she has not told to anybody that she was deprived of marital life due to non-fulfillment of dowry. Subsequently, she filled up the gap by stating that she informed these facts to her maternal uncle and her parents, that the respondent is not sharing bed with her. The respondent by making one sentence of allegation that the petitioner has deserted him without an attempt has not been made by him to secure his wife to the matrimonial home cannot be construed that the petitioner deserted him. On the contrary, the petitioner on oath has deposed that two Panchayat meetings were conveyed and attempts have been made by her to join the matrimonial home have failed which shows that she has not deserted, on the contrary, it is the respondent who had deserted her. The respondent has admitted the statement of the petitioner that she had gone to Bangalore the working place of the respondent to join with him. The respondent at paragraph-4 has admitted that the petitioner insisted him to reside in a separate house at Bangalore i.e. his working place. He has further admitted that he does not know where the petitioner is presently residing. The respondent even has not issued a notice and made any correspondent with the petitioner suggesting the petitioner to join with him. All these conduct of the respondent is consistent with the allegation of the petitioner that the respondent has ceased his cohabitation with the petitioner. Therefore, there was animus deserendi on the part of the husband i.e. intentional permanent forshaking and abandonment of wife by him without wife's consent and without reasonable cause. It is the husband,

who has totally repudiated the obligation of the marriage. Therefore, even though the petitioner withdraws from cohabitation, she is not the deserting party, it is the husband who is the deserting party. Therefore, the petitioner could establish the ground of desertion.

10. As regards to cruelty, the petitioner has stated that she was mal-treated by the respondent and his family members when they came to know that the petitioner has outstanding loan for her B.Tech education. The respondent has not denied the said fact. The petitioner further stated that on the pressure of the respondent and his family member she quitted her job. This fact also not been denied by the respondent. She has further stated that the respondent left U.S.A without intimating her as well as taking her Passport. This fact has also not been seriously disputed, except a denial by the respondent. Unless the respondent has taken away her passport, it is not understood why a wife will make such allegation against her husband. The petitioner has totally stayed one year in her matrimonial home. She left her matrimonial home to persistent torture on her on account of additional demand of dowry and outstanding education loan against her. The petitioner has clearly stated that she is not willing to return to the company of the respondent as she apprehends danger to her life. Her apprehension is natural, especially when the wife complained about the persistent demand of dowry by her husband and her parents-in-law. The wife has reasonable apprehension arising from the conduct of the husband that she is likely to be physically harmed and there was justification of the wife's refusal to live with her husband. Therefore, though the petitioner wife is living separately, she cannot be said to have deserted the respondent. It is in fact the respondent himself who appears to be at fault. In these circumstances, the petitioner succeeds in obtaining the decree of divorce on the ground of desertion and cruelty.

11. The respondent relying on Gurbux Sing Vrs. Harminder Kour reported in AIR 2011 Supreme Court 114 submitted that since the petitioner complaining of cruelty has not make out specific case that conduct alleged amounts cruelty and isolated frictions on some occasions does not amounts to cruelty. The aforesaid principle of law is not applicable to facts and

circumstances of case in view of established conduct of the respondent and his family members delineated herein before which I do not like to geminate lest repetition should lose the charm of hearing. Apart from that there is always peril treating the words of a judgment as though they are words is a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of the particular case. Circumstantial flexibility one additional or different fact may make a world of difference between conclusions in two cases. Each case depends on its on facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the board resemblance to another case is not at all decisive. Herein the instance case, the conduct of the respondent which I have delineated are no doubt amounted to cruelty which are equally 'grave and weighty' for the petitioner not to live with the respondent.

12. As regards to the permanent alimony, in my considered opinion, that the parties are their prime stage of the youth and therefore there exist of their remarriage. Therefore, if permanent alimony is allowed to the petitioner it would amounts to an unjust enrichment and therefore, I decline to grant any permanent alimony. From the T.D.S Traces marked Exts. C and D show that the petitioner is working presently and her net salary is Rs. 56,250/- whereas the pay particulars of the respondent marked Ext. 4 shows that his net salary is Rs. 42,557/-. Of course this is after deduction of Rs. 75,000/- towards pay advances which is temporary in nature. Therefore, after statutory deductions his net salary would be Rs. 1,17,557/-. Therefore, I think it would be just and proper to direct the respondent to pay Rs. 20,000/- towards permanent monthly alimony to the petitioner until remarriage or otherwise disqualified under the statute. Accordingly, this issue is also answered in favour of the petitioner. Hence, it is ordered.

O R D E R

The petition of the petitioner is allowed on contest with 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 Rs. 20,000/- per month towards alimony to the petitioner from this date of order till the petitioner gets remarried. Besides that the respondent is directed to pay Rs. 10,000/- towards litigation expenses to the petitioner.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Dictated, corrected by me and is pronounced on this the 26th day of September, 2014.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1 Dipalisa Sahu.

Witnesses examined for the respondent:

R.W.1 Rakesh Kumar Sahoo

List of documents by petitioner:

Ext. 1 Marriage Invitation Card

Ext. 2 Net copy of ROR bearing Khata No. 344/745

Ext. 3 Net copy of ROR bearing Khata No. 289/19

Ext. 4 Salary certificate of the petitioner for the month of March 2014

List of documents by respondent:

Ext. A Carbon Copy of FIR

Ext. B Bank statement showing repayment of loan

Ext. C Cash deducted by the company of the petitioner from the petitioner

Ext. D TDS certificate of Income Tax Department of India

JUDGE, FAMILY COURT,
BHUBANESWAR