

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

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

Civil Proceeding No. 178 of 2014

Manisha Priyadarshini, aged about 27 years,  
W/o-Satya Ranjan Mahanandia,  
D/o-Satchidananda Jena,  
House No. 8, Plot No. 279,  
Brundaban Garden, Niladri Vihar,  
P.S.-Chandrasekharapur, Dist-Khurda,  
Odisha.

... Petitioner

... Versus...

Satya Ranjan Mahanandia, aged about 28 years,  
S/o-Prabhat Kumar Mahanandia,  
G.A. Plot No. 284, Bharatpur,  
Baramunda Colony, Bhubaneswar,  
P.S.-Khandagiri, Dist-Khurda.  
Presently working for HCL Great Britain Ltd.  
in the Department of HCL-Axon-GD IND Del-World Class (E)  
bearing employee ID No. 51322866,  
having its office at Hosur Road, Surya Sapphire-3,  
Electronic City, Bangalore,  
Pin-560030.

... Respondent

Date of Argument : 17.11.2014

Date of Judgment : 22.11.2014

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 (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 that the marriage of the petitioner with respondent was solemnized as per Hindu custom and rites in Hotel Suryansh, Bhubaneswar on 14.02.2012. According to the petitioner, at the time of marriage, her father had given gold ornaments worth of Rs. 4,50,000/- along with other household articles. On 17.02.2012 despite of her cooperation for consummation of marriage, the respondent was unable to cohabit her. She has further averred that the respondent was incapable of consummation of marriage. Within few days after marriage, her mother-in-law in presence of her family members and relatives taunted her and her parents that they have not given sufficient dowry and after subsequent days also. On 27.02.2012 she went to the working place of the respondent to Bangalore where he worked as a Software Engineer in a Company. According to the petitioner, she observed that the Opp. Party was suffering from Phimosi and Penile Curvature which are medical conditions related to impotency. Though she shocked she remained claim and proposed to the Opp. Party for a medical consultation to which the Opp. Party refused and also the Opp. Party discouraged her to speak about this matter to his mother or mother-in-law. During their staying at Bangalore the Opp. Party never seek help from physicians or any of his family members and never co-operated her to solve this issue in order to lead a happy marital life and he was always trying to hide his incapacity under the pretext of ignorance. She has further averred that during her stay in Bangalore from 27.02.2012 to 08.05.2012 the Opp. Party always showed rude and cruel attitude towards her for not bringing sufficient dowry. The Opp. Party often drew comparison with his his colleagues who had been gifted dowry ranging from Rs. 30,00,000/- to Rs. 3,00,00,000/-. On 08.05.2012 the Opp. Party seriously rebuked and assaulted her and pressed her face on the bed and strangulated her neck but somehow she managed to get rid of his clutches and driven her out from his house and told her not to return if she could not arrange Rs. 30,00,000/-. Finding no alternative she took shelter in her aunt's house and thereafter she came back to Bhubaneswar and since then she has been residing in her

parental home and neither the Opp. Party nor his family members came to pay her a visit or take her back. On 26.07.2012 and 11.08.2012 her father communicated two letters to the father of the Opp. Party to resolve the marital discord but the father of the Opp. Party replied in a very harsh and uncivilized manner alleging her impotent on 25.08.2012. She has further averred that she has filed one complaint case before learned S.D.J.M., Bhubaneswar bearing Case No. 3223 of 2012 and also lodged an F.I.R. before the Mahila P.S. Bhubaneswar regarding dowry torture against the Opp. Party and his family members vide Mahila P.S. Case No. 449/2012 corresponding to G.R. Case No. 4006/2012. It is further averred that several attempts have been made from the side of the petitioner for settlement of the dispute, but the respondent did not cooperate. Their marriage has been irretrievably broken down. Since the torture and cruelty by the respondent became in-tolerable the petitioner has filed this proceeding seeking a decree of divorce.

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

4. The question that requires to be adjudicated is whether, there exists any cruelty on the part of the respondent to allow the petition for divorce?

5. The petitioner in order to prove her case she, herself, has been examined P.W. 1 and her mother namely Brundabati Jena as P.W. 2 and relied on some documents i.e. Ext. 1 is the Marriage Certificate, Ext. 2 is the Medical checkup report of the petitioner, Ext. 3 is the petition filed before State Women's Commission, Ext. 4 is the petition filed State Human Rights Commission along with order, Ext. 5 is the Copy of F.I.R. bearing P.S. Case No. 449 of 2012 and Ext. 6 to 6/f are the Money receipts against purchase of gold ornaments.

6. The petitioner sought divorce on the ground of respondent cruelty. P.W. 1 and 2 have has deposed about the maltreatment of the respondent towards her. Their statements are facsimile to the allegation 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. Now the next point for consideration is cruelty. Admittedly, there has been no cohabitation between the parties since 28.04.2009. From the unchallenged evidence of the petitioner, it is clearly established that the respondent without any rhyme or reason willfully withdrew the cohabitation with the petitioner. There is no evidence on record that denial of sexual intercourse is the result of sexual weakness of the respondent disabling her from having a sexual union with the petitioner but it was willfully refused by the respondent. The result is frustration and misery to the petitioner due to denial of normal sexual life and hence cruelty. Marriage without sex is an anathema. Sex is the foundation of marriage and without a vigorous and harmonious sexual activity it would be impossible for any marriage to continue for long. It cannot be denied that the sexual activity in marriage has an extremely favourable influence on a woman's mind and body. The result being that if he does not get proper sexual satisfaction it will lead to depression and frustration. It has been said that the sexual relations when happy and harmonious vivifies a woman's brain, develops her character and trebles her vitality. It must be recognized that nothing is more fatal to marriage than disappointment in sexual intercourse. Further, the petitioner has stated that the respondent without any rhyme and reason driven her out from his house on 08.05.2012. There is nothing to disbelieve the unchallenged evidence of the petitioner. Since it has been the duty of the petitioner to establish the ground i.e. cruelty set out in the petition seeking divorce against the respondent, the evidence of P.W. 1 is examined in ferreted eyes and on such examination I am satisfied that the petitioner could able to establish the same. Assaulting physically to the petitioner due to non-fulfillment of additional demand of dowry and non consummation of marriage 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. Hence, it is ordered;

O R D E R

The petition is allowed ex-parte in favour of the petitioner. 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 and the marriage certified vide Ext. 1 is hereby cancelled.

JUDGE, FAMILY COURT,  
BHUBANESWAR.

Dictated, corrected by me and is pronounced on this the 22<sup>nd</sup> day of November, 2014.

JUDGE, FAMILY COURT,  
BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1        Manisha Priyadarshini  
P.W.2        Brundabati Jena

Witnesses examined for the respondent:

None

List of documents by petitioner:

Ext. 1        Marriage Registration Certificate  
Ext. 2        Medical Check up report of the petitioner  
Ext. 3        Petition filed before State Women's Commissioner  
Ext. 4        Petition filed before State Human Rights Commission along with  
                  order  
Ext. 5        Copy of F.I.R  
Ext.6 to 6/f Money receipts against purchase of gold ornaments

List of documents by respondent:

Nil

JUDGE, FAMILY COURT,  
BHUBANESWAR.