

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

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

Civil Proceeding No. 187 of 2013

Bikash Chandra Swain, aged about 36 years,
S/o.- Durga Chandra Swain,
Resident of Vill./P.O.-Harianka, Via-Danapur,
P.S.-Kendrapara Sadar, Dist-Kendrapara,
Pin-754210.

At present Plot No. 1529/4495, Chintamaniswar Canal Road,
P.S.-Laxmisagar, Bhubaneswar-6

... Petitioner

... Versus...

Mrs. Sushree Manisha Mohapatra, aged about 24 years,
W/o. Bikash Chandra Swain,
D/o-Sridhar Sekhar Mohapatra,
Resident of Vill.-Othaka, P.O./P.S-Nischintakoili,
Dist-Khurda, Odisha.

... Respondent

Date of Argument: 04.03.2015

Date of Judgment : 21.03.2015

J U D G M E N T

The petitioner has a filed 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 his marriage 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 the village of the respondent at Othaka on 08.06.2012 and they have no issue out of their wedlock. After some days of marriage, the respondent insisted him to live separately in his service place

at Bhubaneswar. When he refused to the said proposal of the respondent on the ground that he has not taken a suitable house on rent, she started ill-treating him and his family members for which he was shocked mentally. When he complained it before the parents of the respondent, they did not pay any heed to it. Rather they threatened him to ruin him, if he did not obey the respondent in fulfilling her desire. Finding no alternative, hoping to amend the behavior of the respondent, he brought the respondent to a rented house at Bhubaneswar in the month of July, 2012 but there was no change in the behavior of the respondent. It is the further case of the petitioner that on silly matters, the respondent scolded him. She was in habit of disobeying and disrespecting the family customs and tradition. The respondent during her stay at Bhubaneswar with him wandered in the town during his absence without doing any household work. The respondent also picked up quarrels and started throwing the household articles when he failed to cook food as per her order. She has also threatened to commit suicide and to file false cases of dowry torture against him and his family members in order to harass and humiliate them in public. According to the petitioner, the respondent is egoistic and adamant lady. The respondent used to abuse and misbehave him in presence of his friends and relatives. Due to cruel behavior of the respondent towards him, he suffered from Hypertension and did not do his official and personal work properly. He has further stated that the conjugal relation between them was not good from the very day of marriage as the respondent has not shown any interest and refused to keep any sexual relation with him. According to the petitioner, she has left his house voluntarily in his absence taking all her belongings with her with an intent to bring the cohabitation permanently to an end. Thereafter several attempts have been made from his side for their reunion but all were in vain due to refusal of the respondent. Since the torture and cruelty by the respondent became in-tolerable and as the respondent debarred him from any marital relationship, he 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 two points that requires to be adjudicated in this proceedings. They are:- Firstly, whether there exists any cruelty on the part of the respondent to the petitioner to allow the petition for divorce and secondly, whether the respondent is entitled for alimony either permanent or monthly?

5. The petitioner in order to prove his case he, himself, has been examined P.W. 1.

Point No.1

6. Whether, there exists any cruelty on the part of the respondent to allow the petition for divorce?

The petitioner sought divorce on the ground of respondent's cruelty. He has deposed about the maltreatment of the respondent towards him. His statement is 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. Admittedly, there has been no cohabitation between the parties since 06.08.2012. 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. 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 man'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 man's brain, develops his character and trebles his 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 bluntly refused to return his company though several attempts have been from his sides and she has also refused to keep any sexual relationship with him by saying that he is not the appropriate to remain as her husband and therefore, it amounts to mental cruelty. Accordingly, this point is answered in favour of the petitioner.

Point No.2

7. Whether the respondent is entitled for alimony either permanent or monthly?

The next point for consideration is that whether the respondent is entitled for alimony either permanent or monthly. It is admitted by the petitioner that he is a service holder. Therefore, the petitioner is a man of means. The respondent is aged about 24 years old at the time of filing of the present petition i.e. 12.04.2013 and therefore, by now she is aged about 27 years old. The respondent is on the prime stage of the youth and therefore there exists of her remarriage. Therefore, if permanent alimony is allowed to the respondent it would amounts to an unjust enrichment and therefore, I decline to grant any permanent alimony. Considering the spiraling rising of the price of the essential commodities and present day cost of living, I think it would be just and proper to direct the petitioner to pay Rs. 10,000/- towards monthly alimony to the respondent. It is made clear that the monthly alimony shall be paid from this date of order till the respondent gets the remarried. Accordingly, this issue is also answered in favour of the petitioner. Hence, it is ordered.

ORDER

The suit and the same be decreed 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. The petitioner is directed to pay Rs. 10,000/- per month towards monthly alimony to the respondent. It is made clear that the monthly alimony shall be paid from this date of order till the respondent gets the remarried.

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

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BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1 Bikash Chandra Swain

Witnesses examined for the respondent:

None

List of documents by petitioner:

Nil

List of documents by respondent:

Nil

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