

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

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

Civil Proceeding No. 196 of 2012

Aurosmita Mishra,
W/o-Amarendra Kar
331, 1st Floor, Corner, Stone,
Vijayanath Main Road, Modern City,
Pattabiram, Chennai-600072,
At present-D/o-Prafulla Chandra Mishra
Plot No.-2515/5, Bank Colony,
Rath Road, Old Town,
Bhubaneswar-2, Dist-Khurda.

... Petitioner

... Versus...

Amarendra Kar,
S/o-Mr. Bichitrananda Kar,
Vill. Chandradeipur, P.S.-Salipur,
Dist-Cuttack (Odisha)
At present-residing at-331, 1st Floor,
Corner Stone, Vijayanath Main Road,
Modern City, Pattabiram, Chennai-600072,
Presently serving as Assistant Manager-Finance,
Tata Communications Ltd.
226, Red Hills Road, Kallikuppam,
Ambattur, Chennai-600053.

... Respondent

Date of Argument: 11.08.2014

Date of Judgment : 27.08.2014

J U D G M E N T

This order arises out of a petition u/s. 13 (1), (ia) of the Hindu Marriage Act, 1955 (in short, the Act 1955) praying for a decree of dissolution of marriage of the petitioner with the Opp. Party on the ground of cruelty.

2. The admitted facts of the case of the parties are that their marriage was solemnized as per Hindu rites and customs at Sidhi Mandap, Old Town,

Bhubaneswar on 17.06.2010. The petitioner is a Post Graduate in Environmental Science and also of Bioinformatics. The respondent is a Chartered Accountant and was working as Assistant Manager (Finance) TATA Communication Ltd. Chennai at the time of Marriage.

3. The specific case of the petitioner is that after marriage, the petitioner and the respondent started marital life for a short period. On 20.06.2010 in the fourth night of marriage, the respondent did not cohabit with the petitioner. The respondent did not co-operate with the respondent even after subsequent days and as such, their marriage has not been consummated. After 10 days of the marriage, the respondent went to his service place and returned after four months and took the petitioner to his service place. Even at his service place, the respondent did not keep any physical relationship with her for which, the petitioner was mentally shocked. The respondent always avoided her for joint living. She has further averred that being victimized by such tragedy she intimated this fact to her parents who called her in the month of November, 2010 and seeing her parents, the respondent escaped from Chennai to his native village. She has further averred that during her stay at Chennai the respondent always misbehaved her in indifferent manner. As the respondent did not co-operate the petitioner for consummation, finding no other way, the petitioner left the company of the respondent on 23.04.2012. It is further averred that the respondent has tortured the petitioner both physically and mentally, for which, she suffered from mental agony. The petitioner has further averred that as per the demand of respondent family members, her father had given cash of Rs. 4,00,000/-, towards dowry along with 220 grams of gold ornaments and other household articles at the time of marriage and other household articles, which are in the house of the respondent. Hence, the petitioner has filed this proceeding for divorce on the ground of cruelty.

4. The defence of the respondent is that, there is no cause of action to bring this proceeding. It is contended by him that he had shared his view with the petitioner before solemnization of the marriage. Prior to marriage, the

respondent was not sure about his sexuality. He does not have any active interest for the sexual activities. He was of belief that a passionate, loveful, friendly approach from the side of his counterpart will create stimulations and emotions to maintain a normal marital social life. Before marriage the respondent with due honesty and openness communicated his problems to the petitioner, as he was of belief that the marital relationship should start with due trust. From the time of negotiation till solemnization of the marriage there was time gap of 7 months (From Nov. 2009 to June 2010). During those 7 months, the petitioner and the respondent were in regular contact over phone and emails. Whenever the respondent talks about his sexual deficiencies, the petitioner had attached no importance to it. The respondent through email presented 3 characters before the petitioner through email such as "Impotent", "Gay", "Married", out of which he designated himself as one amongst it and left it to the choice of the petitioner to take a decision as to whether she is agreeable to accept one of such character as her life partner. The petitioner answered it through email, where she expressed her willingness to accept the respondent as her life partner if he is Gay or Impotent. The relevant portion of the said email is quoted as follows:-

"Now regarding character 1 & 2, I have no objection in this situation to make you my life partner. As you have total earlier I want a relationship of love, care respect, sacrifice and trust".

"Have faith on me. I'll never let you down for ur sexual preference. Just I want ur heartfelt LOVE. That's all".

"I have taken this decision after thinking several times. So don't worry about my future. I feel I can make your life very beautiful if you will support me".

"Our relationship already began and it will never end till my death".

"Another thing pls feel free to share all ur problems with me. We'll together find out the solution."

"Are you with me?????"...."

The above quoted email was sent by the petitioner on Thurs Jan 28th

2010 at 10.55 P.M. from her email id. Eaurosmita83@gmail.com. The copy of the said email of the petitioner are marked as Ext. A to A/2. Irrespective of telephonic discussion and correspondence by email, the respondent before 20 days of the marriage felt it wise to share the view by face to face dialogue with the petitioner. A meeting was accordingly arranged at Ram Mandir, Bhubaneswar. That meeting continued around two hours where the respondent opened his sex disabilities, but the petitioner without hesitation accepted it and even went to the extent saying that they would not remain as just Friends and she would not make any love appeal unless it is desired from the side of the respondent. When there was exchange of free and open mind between the parties especially, when the respondent opened his weakness, the petitioner too opened her weakness by disclosing that she had suppressed about defect of her eyesight. She disclosed that she used contact lenses of-5 and she can't read, write, and resume normal household works without using either contact lenses or spectacles. The petitioner brought her above deficiency to the notice of the respondent through email dated 28th Jan 2010 at 10.55 AM through her email id vide Ext. A/1. The respondent expressed his no objection to it. In the meantime the respondent and petitioner were in regular touch over phone and email and they had opportunity to know each other and as a matter of fact both the parties agreed to be the life partner knowing their respective weakness and deficiencies, but to the utter surprise of the respondent on the fourth night, when they became united, the petitioner desired for cohabitation. When the respondent took all endeavour to take her into confidence that it would take time to lead normal marital life, the petitioner forgetting her promise/assurance given before marriage reacted seriously. Soon thereafter she created unrest in the family and her conduct, attitude, behavior lower down the social image and prestige of the respondent and his family, in their entire sphere making them laughing stock in esteem of general public and in eyes of near and happiness from the life of the respondent. The petitioner intentionally insulted, misbehaved, and treated with cruelty with the

respondent and voluntarily returned to her parental home without his knowledge and behind his back taking all the valuables with her. When she was with the respondent at Chennai, the petitioner instituted the present proceeding suppressing the truth and therefore she is not entitled to the relief sought for in this proceeding. He denied about the allegation made by the petitioner against him. He has denied to have received any money and house hold articles from the petitioner towards dowry. He has further averred that the petitioner was always avoiding for any sexual relationship with him. The petitioner was adamant and egoistic and such conduct, temperament, attitude and behavior of the petitioner took away the happiness from the life of the respondent. He has further averred that the petitioner is highly qualified having master degree and at present staying at Bhubaneswar and is employed in private sector having sufficient income. He has further averred that the petitioner with an ulterior motive filed this case for divorce and therefore, the same is liable to be dismissed.

5. From the aforesaid rival pleadings of the parties, the question that requires to be adjudicated is whether, there exists any cruelty on the part of the respondent to allow the divorce petition?

6. The petitioner in order to buttress her case she, herself, has been examined as P.W.1 and relied on three documents i.e. Ext.1 is the marriage invitation card and Ext. 2 and 2/1 are the marriage photographs and Ext. 3 is the salary particulars of the respondent. The respondent in order to nix the allegation of the petitioner he, himself, has been examined as R.W. 1 and relied on some documents i.e. Ext. A, A/1 and A/2 are the Email correspondences between the petitioner and respondent before marriage.

7. The petitioner has sought divorce on the ground of curtly attributing sexual deficiency of the respondent. P.W. 1 in her evidence has stated that after ten days of marriage, her husband alone went to his service place at Chennai and four months thereafter he came and took the petitioner to Chennai. P.W.1 has stated that she was deprived of the sexual relationship and when she expressed her dissatisfaction before the respondent, he started

ill-treating and misbehaving her in order to patch-up his sexual deficiencies. Petitioner has stated that the respondent has got physical disability for any sexual intercourse with her which caused mental agony. She has further stated that she is a Post Graduate in the subject of Environmental Science and also in the subject of Bioinformatics and now she is unemployed and depending on her father. The respondent is a Chartered Accountant having his employment in the Tata Communications Ltd. As Assistant Manager-Finance in Chennai and his annual salary is more than Rs.12,00,000/-. The petitioner mainly stated that the respondent has tortured her both mentally and physically due to his sexual deficiency and impotency. In her cross-examination, she has stated that due to mental agony, she left her marital home on 23.4.2012. During cross examination to P.W. 1, it has been elicited that after four months of the marriage, her husband took her to Chennai but did not keep physical relationship with her, even he did not sleep with her and the respondent was sharing bed with his younger brother. She has further stated that the respondent was also not conscious for her day to day affairs or requirement even had no liking to share any love and affection with her.

8. The respondent in his affidavit evidence has stated that whatever the ornaments and household articles were given to him at the time of marriage, all the articles are now with the petitioner. R.W.1 has stated that there was no demand at the time of marriage from his side. He has further stated that the petitioner is suffering from disease of her eye-sight used contact lenses of -5 and she cannot write and resume her normal household works without spectacles or contact lenses. R.W.1 has stated that before 20 days of marriage, a meeting was arranged at Ram Mandir, Bhubaneswar where the petitioner and himself had a discussion around two hours, where he communicated the petitioner about his sexual deficiencies and petitioner knowing fully well without hesitation accepted the marriage proposal. After marriage, the petitioner created unrest in the family and her conduct, attitude, temperament and behavior low down the social image and prestige of himself and his family in the esteem of the public. The petitioner took

away all happiness of his life. She insulted him, misbehaved and treated with all cruelty and voluntarily returned to her parental home without his knowledge.

From the aforesaid evidence of the parties, it is apparent that the petitioner knowing fully well about the sex disability of the respondent had gone for marriage and therefore, she cannot take advantage of her own wrong seeking a decree of divorce. However, there can be little doubt from the material available that the unnatural conduct of the respondent in trying to avoid the company of his wife, in not going to her house to bring her and in having his bed in another room from his wife and not caring the day to day life and requirements of the petitioner and sleeping with his brother, all lead to the conclusion that the conduct and behaviour of the respondent caused to such mental agony and frustration to the petitioner where it was impossible for her to live with the respondent. Mental cruelty is a state of mind and feeling with one of the spouses due to the behavior or behavioural pattern by the other. Unlike the case of physical cruelty the mental cruelty is difficult to establish by direct evidence. It is necessarily a matter of inference to be drawn from facts and circumstances of the case. A feeling of anguish, disappointment and frustration in one spouse caused by the conduct of the other can only be appreciated on assessing the attending facts and circumstances in which the two partners of matrimonial life have been living. In other words, the petitioner could succeed in establishing mental cruelty to her by the respondent entailing her to get decree of divorce. Hence, ordered;

ORDER

The petition of the petitioner is allowed 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 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. However, the respondent is directed to pay Rs.

15,000/- per month towards alimony to the petitioner from this date of order till the petitioner gets remarried. 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 petitioner is at liberty to levy execution through due process of law.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Dictated, corrected by me and is pronounced on this the 27th day of August, 2014.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1 Aurosmita Mishra

Witnesses examined for the respondent:

R.W. 1 Amarendra Kar

List of documents by petitioner:

Ext.1 Marriage Invitation Card

Ext. 2 & 2/1 Marriage Photographs

Ext. 3 Salary particulars of the respondent

List of documents by respondent:

Ext. A,A/1 & A/2 Email correspondences between the parties before marriage.

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