

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

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

Civil Proceeding No. 203 of 2012

Sri Dhurba Charan Das, aged about 37 years,
S/o- Late Krushna Charan Das,
At/P.O.-Andharua, P.S.-Chandaka,
Bhubaneswar, Dist-Khurda.

... Petitioner

... Versus...

Smt. Jhuni Pradhan, aged about 34 years,
W/o-Dhurba Charan Pradhan,
D/o-Satyabadi Pradhan,
At-Budhipada, P.O.-Sisilo,
P.S.-Balianta, Dist-Khurda.

... Respondent

Date of argument : 13.10.2014

Date of judgment : 15.10.2014

J U D G M E N T

This order arises out of a petition u/s. 13 of the Hindu Marriage Act, 1956 (in short, the Act 1956) praying for a decree of dissolution of marriage of the petitioner with the respondent on the grounds of desertion and cruelty.

2. The fact of the case of the petitioner are that:-

The marriage of the petitioner with respondent was solemnized in the house of the respondent as per Hindu custom and rites on 25.04.2006 and after marriage, they led a happy conjugal life in his house and out of their wedlock one female child was born in the year 2007. The petitioner has averred that he is a daily labour and earning Rs. 120/- which is also not regular and his old mother who is aged about 87 years is depending on him.

The respondent frequently visited her parental home without any cause neglecting him and his old mother. She was also always quarreling with him on silly matters. According to him, the respondent went to her parental home with her father on 12.4.2007 on the pretext to see her mother and since then she has been residing there without any reasonable cause. Several attempts have been made by him and his relatives to bring back the respondent and to lead a happy conjugal life but in vain. On 12.02.2008 the respondent came with her brother to his house and gave proposal to him to reside with her in her parental home and when the petitioner refused for the same, the respondent on the same day returned to her parental home. On 10.09.2008 the petitioner sent a pleader notice to the respondent and on reply to the notice, she has stated that she is always ready to perform matrimonial/conjugal life with the petitioner and she was not interested to stay with other family members. The petitioner has further averred on 28.04.2009 the respondent again came to his house and told him that she cannot adjust with him and his family members and again returned to his parental home. Several attempts have been made for their reunion but the respondent did not cooperate. It is further averred that the respondent tortured him both mentally and physically. Since the torture and cruelty by the respondent became un-tolerable he has filed this proceeding seeking a decree of divorce.

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

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

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

6. The petitioner sought divorce on the grounds of respondent's desertion and cruelty. It is needless to say Section 13(1) (i-b) of the Act, 1954 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-14 of his petition has stated that the respondent deserted her since 28.04.2009. The petition for divorce in this case is presented in the Court on 19.06.2012. Thus, it is clearly established that the petition has been filed after completion of two years from the date as alleged by the petitioner. From the aforesaid tenor of the evidence, it is as much as clear as noon day that there has been total liquidation of obligation of marriage between the parties since 28.4.2009, meaning thereby that intentional permanent forsaking and abandonment of one spouse by the other without the others consent and without reasonable cause also meaning not permitting or allowing or facilitating cohabitation between the spouses. The respondent without any rhyme and reason deserted the petitioner and subjected him to cruelty. This conduct of the parties is a continuous one for last more than five years. There is also blink chance of their reunion. Therefore, it is a fit case to snap out the marital relation between parties by passing a decree of divorce. In other words the petitioner could establish the ground of desertion.

7. 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 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 without any rhyme and reason withdrew herself from his society, for which, he is suffering mental agony. There is nothing to disbelieve the unchallenged evidence of the petitioner. Hence, it is ordered:

ORDER

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.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Dictated, corrected by me and is pronounced on this the 15th day of October, 2014.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1 Sri Dhurba Charan Das

Witnesses examined for the respondent:

None

List of documents by petitioner:

Nil

List of documents by respondent:

Nil

JUDGE, FAMILY COURT,
BHUBANESWAR.