

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

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

Civil Proceeding No. 24 of 2011

Sri Jelendra Padhiary, aged about 32 years,  
S/o-Kulamani Padhiary,  
Vill/P.O.-Gandarpur,  
P.S.-Mancheswar, Dist-Khurda  
At present:- Arun Excello, No. 7, 1<sup>st</sup> Floom,  
Gama Block, Old No.-61 & 63, Sadasiva Nagar,  
3<sup>rd</sup> Main Road, Madipakkam, Chennai-600091,  
and office address:- Indian Infoline Ltd.,  
Ganesh Complex-393/280, 2<sup>nd</sup> Floor,  
Anna Salai, Teynampet, Chennai-600018.

... Petitioner

... Versus...

Pragati Chhotray, aged about 32 years,  
D/o-Pratap Kishore Chhotray,  
of Chhanaghar, P.O./P.S.-Jatni, Dist-Khurda  
At present-HIG-29, BDA Enclave, Gangadhar Meher Marg,  
P.S.-Nayapalli, Mouza-Jayadev Vihar,  
Bhubaneswar, Dist-Khurda

... Respondent

Date of argument : 02.09.2014

Date of order : 17.09.2014

J U D G M E N T

This order arises out of a petition u/s. 13 of the Hindu Marriage Act, 1954 (in short, the Act 1954) praying for a decree of dissolution of marriage of the petitioner with the Opp. Party on the grounds of desertion and cruelty.

2. The admitted facts of the parties are that their marriage was solemnized on 23.04.2008 and consummated in the house of the petitioner at

Gandarpur. The petitioner is a chartered Accountant whereas the respondent is a house wife. The respondent deserted the petitioner since 17.08.2008.

3. The case of the petitioner is that it is an arranged and dowry less marriage. He has further averred that on 02.05.2008 he went to his service place at Chennai and on the same day the respondent went to her father's house. On 16.05.2008 the respondent went to his service place at Chennai and stayed there for 45 days and returned to her father's house at Bhubaneswar in the first week of July, 2008. He has averred that the respondent stayed for a week in his house and during her stay the character of the respondent found to be different and her behaviour towards him, his parents and friends was found rude. He has further averred that during her stay at Chennai her behaviour was found to be very rough, arrogant, short-tempered, dominating in nature and always ill-treated, tortured him in various ways. In the first week of July, 2008 when the respondent returned to her parent's house, she falsely blamed him and expressed not to reside with the petitioner and insisted her father to seek a job for her to remain independently and separately. On 10.08.2008 at Chennai the respondent got annoyed on small causes and used slang languages and underestimated him and telephoned to one of her relations namely Dillip Swain who is serving in Indian Oil Corporation and another young man Sinku Mohanty who rushed to his house and picked up all the household articles and locked up a room keeping day to day using articles in the room, fled away along with them and stayed somewhere in night at Chennai without his knowledge and after one week the respondent returned to his house at Chennai. It is further averred that in spite of best efforts by him, the respondent did not change her nature and being very rough and serious left his house at Chennai on 17.08.2008 with her bag and baggages along with gold ornaments of 20 tolas which the petitioner purchased out of his own income along with another gold ornaments of 30 tolas which the father of the respondent given at the time of marriage. He has further averred that the respondent after returning to her parental home at Bhubaneswar, he received phone call from her father that

the respondent alleged before him that he was a psychotic patient and in order to self satisfaction and also satisfaction of the respondent went to Dr. Soumya Kanta Das, M.D, the consultant in psychiatrist at Budheswari Colony, Bhubaneswar along with the respondent on 10.09.2008, who after test and examination found no symptom of psychiatric behaves or mental disorder. He has further averred that the respondent having illicit relationship with Dillip Swain to which he came to know latter for which the respondent underestimated him by saying he is having black complexion, short height and a bald person and not at all her choice and sexually exploited him, subjected to cruelty by the respondent both sexually and socially in his day to day life. He has further stated that the respondent is having gynecology problem and she faced 25 days bleeding in a month and suppressed the thing before him and always avoided from him and on the other hand she blamed him by saying that he is a psychiatric patient. He has further averred that the respondent filed a case before the Civil Judge, (Sr. Division) Bhubaneswar vide MAT Case No. 1189/2008 U/s-9 of the Hindu Marriage Act for restitution of Conjugal Rights and after reconciliation the respondent denied to stay with him. On 04.02.2009 the respondent with the connivance with her father lodged a complaint before the learned S.D.J.M., Bhubaneswar vide I.C.C. No. 488/2009 for the offence U/s. 498 (A), 294, 323, 506/34 I.P.C. r/w section 4 of the D.P. Act who forwarded the complaint petition to the I.I.C. Mahila P.S. to take up investigation but the I.I.C. did not register the case as she did not find prima facie case against the petitioner. However, subsequently being pressurized by the Commissionerate Police registered the Mahila P.S. Case No. 49/2009 which subsequently registered as G.R. Case No. 1036/2009. He has further averred that the father of the respondent knowing well that the respondent is not fit to maintain marital life due to gynecology problem which cannot be cured and in order to protect his social prestige had given marriage his last daughter who was fell in love with a boy and was prepared to leave with her lover, cunningly arranged the marriage of the respondent with him with an ulterior and malafie intention to take compensation/maintenance

from him at later stage. Hence, the petition for divorce filed by the husband on the aforesaid two grounds.

4. The respondent contested the case and filed written statement. In her W.S she denied all the allegations made by the petitioner. She has stated that she has taken several attempts for reunion but the petitioner refused to join her. She has averred that the petitioner is a greedy, psychiatric, ill-tampered, arrogant person and prior to marriage, he along with his father has demanded cash of Rs.7 Lakhs and gold ornaments of 30 tolas along with valuable articles. She has stated that, after marriage, the petitioner and his family members tortured her demanding additional dowry. She has further stated that during her stay with petitioner for about eight days, the petitioner used to pass sadistic comment at her and during her stay with him at Chennai, she was forced to do all domestic works without any assistance. It is further averred that at Chennai, the petitioner demanded Rs.3 Lakhs to her father and with much difficulties she stayed with the petitioner till 02.07.2008. The petitioner did not allow her to mix with the other female persons in the locality and he being a heavy drunkard assaulted her without any just cause and used to see blue films in the computer. It is further averred that on 10<sup>th</sup> Sept. 2008 they both were checked up medically by a psychiatric specialist Dr. Soumya Kanta Das who found no defect. She has further averred that, the petitioner with a malafide intention has filed this proceeding 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 desertion and cruelty on the part of the respondent to allow the divorce petition?

6. The petitioner in order to buttress his case he, himself, has been examined as P.W.1. One Madhaba Rourt as P.W. 2, one Madhaba Rout as P.W. 3 and one Anil Kumar Mishra as P.W. 4 The respondent in order to nix the allegation of the petitioner she, herself, has been examined as R.W. 1, one of the friend of her father Sri Brahmananda Behera as R.W. 2, one of his cousin brother namely Sri Priyabrata

Chhotray as R.W. 3, her father as R.W. 4 and one Gopinath Mohanty as R.W. 5 and relied on some documents i.e. Ext. A is the Savings Pass Book of OSCB bearing A/c. No. 758, Ext. B is the Savings Pass Book of IOB bearing A/c. No. 7374, Ext. C is the prescription of Dr. V. Vijayalaxmi, Ext. D is the Medical test report of Dr. Soumya Kanta Das, Ext. F to F/3 are the Railway Tickets, Ext. G is the National Register e-Services of registered vehicles, Ext. H is the Inland letter from Chennai addressed to mother how the respondent was tortured, Ext. J is the account statement of HDFC Bank bearing A/c. No. 03541050030136 for the period from 01.06.2012 to 22.06.2013, Ext. K is the account statement of Axix Bank bearing A/c. No. 91101005619108 for the period from 01.04.2012 to 22.06.2013, Ext. L is the Income Tax T.D.S. statements for the period from 2008 to 2012 and Ext. M is the prescription of the doctor of the father and mother of the respondent.

7. 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 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 9 of his petition has stated that the respondent deserted her since 17.08.2008. The petition of divorce in this case is presented in the Court on 17.08.2009. Thus, it is clearly established that the petition has been filed before completion of two years from the date as alleged by the petitioner. Thus, the ground of desertion held not established.

8. The residue point that remains to be discussed is cruelty. Admittedly, the parties lived separately for more than five years making acrimonious allegations against each other. Both the parties have also led balancing evidence by examining four to five witnesses from either sides. The petitioner made allegation against the respondent that she has some affairs with Dillip Swain and some other young boys. Admittedly, the respondent left the company of the petitioner on 17.08.2008 and returned to Bhubaneswar and filed criminal case against the petitioner. In this case from the evidences of the parties, it is well established that the marriage is dead both emotionally and practically. Therefore, continuance of marital alliance for name shake is prolonging the agony and affliction. It cannot be disputed that the husband has not been dutiful and conscious of his responsibilities towards the

respondent. He did not contribute anything towards the welfare of the wife. Yet, the marriage being dead, the continuance of it would be cruelty. Additionally, once serious allegation have made against each other, it becomes clear that there is no chance of parties coming together or living together especially, when the husband put forward an allegation against the wife that she was having un-disable association with young boys. Therefore, in my considered opinion, it is a fit case to snap out the marriage between the parties lest it would lead to tortuous litigation and continued agony of the parties resulting, the mental cruelty. Hence, it is ordered;

### ORDER

The petition of the petitioner is allowed on contest 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 permanent alimony of Rs. 15,00,000/- and litigation expenses of Rs. 10,000/- to the respondent.

JUDGE, FAMILY COURT,  
BHUBANESWAR.

Dictated, corrected by me and is pronounced on this the 17<sup>th</sup> day of September, 2014.

JUDGE, FAMILY COURT,  
BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1	Jalendra Padhiary
P.W.2	Madhaba Rout
P.W.3	Anil Kumar Mishra

Witnesses examined for the respondent:

R.W.1	Pragati Chhotray
R.W.2	Brahamananda Behera
R.W.3	Priyabarata Chhotray
R.W.4	Pratap Kishore Chhotray
R.W.5	Gopinath Mohanty

List of documents by petitioner:

Nil

List of documents by respondent:

- Ext. A Saving Pass Book A/c. No. 758 of OSCB  
Ext. B Savings Pass Book A/c. No. 7374 of IOB  
Ext. C Prescription of Dr. V. Vijayalaxmi  
Ext. D Medical test report of Soumya Kanta Das  
Ext. F to F/3 Railway Tickets  
Ext. G National Register e-Services of registered vehicles  
Ext. H Inland Letter from Chennai addressed to mother  
Ext. J Account statement of HDFC Bank A/c. No. 03541050030136  
for the period from 01.06.2012 to 22.06.2013  
Ext. K Account statement of Axis Bank bearing A/c. No.  
91101005619108 for the period from 01.04.2012 to  
22.06.2013 (five sheets)  
Ext. L Income Tax T.D.S. Statements for the period from 2008 to  
2012 (four sheets)  
Ext. M Prescription of the doctor of the father and mother of the  
respondent. (six sheets)

JUDGE, FAMILY COURT,  
BHUBANESWAR.