

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

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

Civil Proceeding No. 29 of 2013

Smt. Mousumi Behera, aged about 32 years,  
D/o- Pradeep Kumar Behera,  
W/o-Upendra Bhanja,  
Resident of Flat No. 305, Block-C, Sonali Apartment,  
Saileshree Vihar, P.S.-Infocity,  
Bhubaneswar, Dist-Khurda.

... Petitioner

... Versus...

Upendra Bhanja, aged about 34 years,  
S/o-Bhagaban Bhanja,  
At-Gajendra Nilaya Kisinabad, Mendhasula,  
Dist-Balasore-756003.

... Respondent

Date of argument : 18.08.2014

Date of order : 01.09.2014

ORDER

This order arises out of a petition u/s. 13 (1) (ia) of the Hindu Marriage Act, 1955 r/w Section 7 of the Family Court Act (in short, the Act 1955) 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 as per Hindu Custom and rites at Bangalore on 23.02.2005 and subsequently they registered before their marriage before the Marriage Officer, Bangalore on 07.10.2006 and out of their wedlock one son namely Aahan was born on 14.05.2008. She has averred that prior to the marriage both they were known

to each other. She has averred that at the time of marriage she was serving in TATA Consultancy Services (TCS) and the respondent was serving in Wipro Technology India Ltd. She has further averred that after marriage, both of them resided in a rented house at Flat No. 2/A, Buchhapa Street, Ejipura, Bangalore-47 in the State of Karnataka and stayed there from February, 2005 to October, 2006 where the respondent has tortured her both physically and mentally and used to drink every day and he did not come to home in time. She has further averred that when she was five months pregnancy the respondent shifted Bangalore to Hyderabad without informing her for which taking all pain and to save her marital life she got her transfer to Hyderabad. She has further averred that on silly matters the respondent abused her in filthy languages and also manhandled her on many occasions and tortured her both physically and mentally but she tolerated it with a hope that later he will change his behaviour towards her. She has further averred that at the time of her pregnancy the respondent and his family members did not take proper care of her. The respondent taking some plea or other always remained outside the house without taking proper care of her. She has further averred that when she was admitted in the hospital for delivery at Hyderabad, none of the family members including the respondent visited the hospital to know her health condition or to see the new born baby. She has averred that she has spent all the expenses of hospital charges from her salary. She has further averred during the pre and post pregnancy period she started staying at Hyderabad and she used to take care of the new born baby in critical conditions, but the respondent never provided any sort of help from his side, rather created unhealthy situation in a drunken condition and abused her in several occasions. She has further averred that in the meanwhile the respondent lost his job and came to Bhubaneswar to start a business and after that the petitioner came to Bhubaneswar and joined in a Software Company namely INFOSYS. She has further averred that the respondent after coming to Bhubaneswar started taking more alcohol with his friends and kept relationship with another girl and when she protested it, the respondent

assaulted her and threatened for dire consequences. She has averred that on being asked by the respondent she gave Rs. 3,70,000/- to him for starting a business when the respondent was jobless. In this manner he extracted money from her and on her protest the respondent assaulted her frequently. Apart from that she has given 2000 Euro to the respondent for the treatment of her father-in-law. She has further averred that she and the respondent have owned a 3BHK Apartment at Bangalore in the year 2006 and the petitioner has been paying the monthly instalments of said apartment from 2008 and till that time the flat was sold and the respondent did not give any money to her. It is further averred that since 07.01.2011 the respondent is residing outside and did not provide any financial assistance to her as well as the child. She has further averred that several attempts have been made from the side of the petitioner for settlement of dispute, but the respondent and his family members did not cooperate. She has further averred that the respondent without rhyme and reason deserted her since 07.01.2011. Since the torture and cruelty by the respondent has become in-tolerable she 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 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 and relied on three documents i.e. Ext. 1 is the Marriage Certificate, Ext. 2 is the Insurance Papers and Ext. 3 is the Bank Statements.

6. The petitioner sought divorce on the grounds of respondent's desertion and cruelty. It is needless to say Section 13(1) (ib) 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 15 of his petition has stated that the respondent deserted him since 07.01.2011. The petition of divorce in this case

is presented in the Court on 18.01.2013. The evidence of the petitioner remains unchallenged and there is no reason to disbelieve the unchallenged testimony of the petitioner. 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 07.01.2011, 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 or reason deserted the petitioner. This conduct of the parties is a continuous one for last three 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. The residue point that remains to be discussed is cruelty. Manhandling and abusing the petitioner in filthy languages in drunken condition and extracting money amounts to cruelty. Therefore, the petitioner could successfully establish the ground of cruelty which is also one of the ingredients u/s. 13 (1) (ia) of the Act for granting a decree of divorce. 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 and the Marriage Certificate bearing No. BAS-M2232-2006-07 is hereby cancelled.

JUDGE, FAMILY COURT,  
BHUBANESWAR.

Dictated, corrected by me and is pronounced on this the 1<sup>st</sup> day of September, 2014.

JUDGE, FAMILY COURT,  
BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1 Smt. Mousumi Behera

Witnesses examined for the respondent:

None

List of documents by petitioner:

Ext. 1 Marriage Certificate bearing No. BAS-M2232-2006-07

Ext. 2 Insurance Papers

Ext. 3 Bank Statements

List of documents by respondent:

Nil

JUDGE, FAMILY COURT,  
BHUBANESWAR.