

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

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

Civil Proceeding No. 311 of 2010

Lalit Mohan Sahoo, aged about 38 years,
S/o-Sri Debaraj Sahoo,
Vill./P.O.- Padmabati, P.S.-Fategarh,
Dist-Nayagarh,
At present working as H.C./R.O. (Wireless Operator),
Group Centere, C.R.P.F., Bhubaneswar,
Dist-Khurda.

... Petitioner

... Versus...

Sabita Rani Sahoo, aged about 33 years,
W/o-Lalit Mohan Sahoo,
D/o-Sri Basudev Sahoo,
Qrs. No. 13, Type-II, C.R.P.C. Campus,
Group Centre, Bhubaneswar, Dist-Khurda.

... Opp. Party

Date of argument : 04.09.2014

Date of judgment : 15.09.2014

J U D G M E N T

This order arises out of a petition u/s. 10 of the Hindu Marriage Act, 1955 (in short, the Act 1955) praying for a decree of judicial separation and/or 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 11.12.1996 at Madhapur and they have enjoyed happy matrimonial life for some years and out of their wedlock two sons namely Suraj and Akash and one daughter namely Kiran @ Mamuni were born to them.

3. The case of the petitioner is that the respondent was an adamant and arrogant lady. On 07.09.2007 when he was on duty under 67Bn. C.R.P.F. Preetnagar, Jammu (J & K), the respondent without his knowledge left his quarters with his son Suraj leaving his son Akash and daughter Mamuni for her father's village. Thereafter the petitioner immediately left Jammu with two other children for his native village. He along with his father, elder brother and younger brother and other local gentries went to the house of the respondent for settlement but the father of respondent seeing their arrival shouted loudly with rough voice and drove them out from his house and threatened them for fatal consequences. The respondent filed Mat. Case No.163/2007 U/s-18(1) of Hindu Marriage Act before Civil Judge (Sr. Div.), Nayagarh and Criminal cases against the petitioner and his father and other family members. In the year 2008, the petitioner got his transfer to Bhubaneswar. He was allotted a quarter where he and his other two children were put in. There was a settlement at the intervention of local gentries and as per the settlement the respondent and his son Suraj came to the working place of the petitioner at Bhubaneswar on 29.06.2009 to lead a happy conjugal life. Soon after the arrival of the respondent with his elder son Suraj to the quarters, the respondent again started torturing and misbehaving him and the entire family members of the respondent including his father-in-law frequently used to come and misguided the respondent for which there was disturbance in the family. At the instance of her father the respondent also lodged a complaint before the D.I.G. Group Centre C.R.P.F. Bhubaneswar on

10.03.2010 alleging torture on her. He has further averred that due to her complaint his authorities asked him to show cause and that matter is pending for disciplinary action against him. He has further averred that the respondent while staying at Quarters did not cook food for him and for his children and moved here and there without the knowledge of the petitioner and gossiping against him and his family members. He has further averred that on 11.04.2010 the respondent after mercilessly beating him threw Peja on him and threatened him to kill. It is further contended that they have no marital relationship since 5.2.2007. Hence, the petition for dissolution of marriage or judicial separation filed by the petitioner on the grounds of desertion and cruelty against the respondent.

4. The respondent although has not filed any written statement yet contested the proceeding.

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 petition for dissolution of marriage and/or judicial separation?

6. The petitioner in order to buttress his case he, himself has been examined as P.W.1. The respondent in order to nix the allegation of the petitioner she, herself has been examined as R.W.1 and her father has been examined as R.W.2. The petitioner has relied on two documents. Ext.1 is plaint in MAT Case No.163/2007 and Ext.2 is withdrawal petition. Similarly the respondent has relied upon Ext. A is xerox copy of NGO pay slip for the month of August, 2012, Ext. B is complaint of the respondent to the Commandant,

Ext. C is copy of inquiry report, Ext. D is copy of forwarding report, Ext. F is copy of complaint to Fategarh Police, Ext. G is copy of complaint before Mahila Police Station, Ext. H is copy of the medical report and Ext. J is receipt of the School expenses of son Anupam @ Suraj.

7. The petitioner sought judicial separation/ dissolution of marriage on the grounds of desertion and cruelty. Desertion as a ground for divorce as also for judicial separation has been recognized under Section 13(ib) and Section 10(1) of the Hindu Marriage Act. The term desertion as defined in the explanation to Section 13(1) of the Hindu Marriage Act “means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the willful neglect of the petitioner by the other party to the marriage and the grammatical variations and cognate expression shall be construed accordingly”. The second part of the explanation is therefore wide enough to include a situation where desertion means not only withdrawal from place but from a state of things. It is now a settled principle of law that for the act of desertion to exist there must be two elements present on the side of deserting spouse namely, the factum i.e., physical separation and the *animus deserendi*, that is, the intention to bring cohabitation or the matrimonial consortium to an end. The elements present on the side of the deserted spouse should be absence of consent and absence of conduct reasonably causing the deserting spouse to form his or her intention to bring cohabitation to an end.

8. The pleading as well as evidence of P.W.1 falls short to grant such relief. P.W.1 has stated that the respondent left him at Jammu and Kashmir with two minor children and left for Bhubaneswar with one son on 7.9.2007 and thereafter on 29.6.2009 there was a compromise between the parties and all of them put in the staff quarter allotted to the petitioner at Bhubaneswar as in the mean time in the year 2008, the petitioner got his transfer to Bhubaneswar and put in the staff quarters at Bhubaneswar. It is alleged by the petitioner that the respondent did not cook food for him and wasted time gossiping family matters with other people. The aforesaid, evidence has not been backed by any other independent evidence. The petitioner has failed to prove that the respondent has abandoned any marital relation with him. Even we accept the aforesaid evidence of P.W.1 as true yet the aforesaid conduct of the respondent is not harmful for one to live a life with the wife. Being a husband he could have tolerated the conduct of the wife and if the conduct of the wife is not liked by him he could have reprimanded the wife. Law is well settled that unless a party seeking a decree of judicial separation U/s-10 can strictly bring his case within the purview of that section, he is not entitled to a decree of judicial separation even if it may be accepted that the husband is unable to pull on well with the wife because he does not like her ways. Having accepted before the nuptial fire, he has to give allowance to her irritating idiosyncrasies. If she is defiant and disrespectful towards her mother-in-law, the petitioner was undoubtedly within his right to express disapprobation and reprehend her conduct, but that is not the same thing as to entitle him to a decree for judicial separation under the law as it exists at present. As regards

to allegation of assaults on him by the respondent and throwing peja at him by the respondent, these are nothing but stray allegations because there is no supporting evidence. That apart the petitioner is a strong stout military man whereas the respondent is a slim lady and therefore it is an absurdity that the respondent had beaten the petitioner mercilessly without any reaction from his side. Therefore, I am not inclined to grant the alternative relief of judicial separation as prayed by him.

9. The petitioner while being examined as P.W.1, at Para 2 of his cross examination has candidly admitted that he has filed another civil proceeding for divorce and that proceeding has already been dismissed. Therefore, the petitioner has not brought to the notice of the court on which ground he has sought divorce against the respondent in the earlier proceeding. Therefore, he is guilty of suppression of material fact. A person who asked equitable relief must come to the court in a clean hand. Therefore, the alternate relief for divorce is liable to be rejected and in fact, I did the same. Hence ordered:

ORDER

The Civil Proceeding is dismissed on contest but without cost.

JUDGE, FAMILY COURT,
BHUBANESWAR.

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

JUDGE, FAMILY COURT,
BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1 Lalit Mohan Sahoo.

Witnesses examined for the respondent:

R.W1 Smt. Sabitarani Sahoo

R.W.2 Sri Basudev Sahoo

List of documents by petitioner:

Ext. 1 Plant in MAT case No. 163/07.

Ext. 1/a Relevant portion in MAT Case No. 163 of 2007.

Ext. 2 Withdrawal petition.

Ext. 2/a Relevant portion in the withdrawal petition.

List of documents by respondent:

Ext. AXerox copy of NGOs pay slip for the month of Aug. 2012.

Ext. A/1 Xerox copy of NGOs pay slip for the month of Aug. 2013.

Ext. BXerox copy of the complaint of the respondent to the
Commandant.

Ext. CXerox copy of the injury report.

Ext. D Xerox copy of the forwarding report.

Ext. FXerox copy of the complaint to Fategarh Police.

Ext. G Xerox copy of the complaint before Mahila Police Station.

Ext. H Xerox copy of the medical report.

Ext. J to J/7 Receipts of the school expenses of the son Anupam @ Suraj.

JUDGE, FAMILY COURT,
BHUBANESWAR.