

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

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

Civil Proceeding No. 358 of 2013

Smt. Sarmista Mohanty, aged about 33 years,  
W/o-Debi Prasanna Mohanty,  
D/o-Lingaraj Mohanty,  
resident of At-Mangala Bazar,  
P.O./P.S./Dist-Jharsuguda  
At present residing at Plot No. 1464/2462, Nua Sahi,  
Siripur, P.O.-Baramunda, P.S.-Khandagiri,  
Bhubaneswar, Dist-Khurda.

... Petitioner

... Versus...

Debi Prasanna Mohanty, aged about 38 years,  
S/o-Late Raghunath Mohanty,  
resident of Vill.-Badapada,  
P.O.-Badasamantapur, P.S.-Choudwar,  
Dist-Cuttack.

... Respondent

Date of Argument : 11.12.2014

Date of Judgment: 22.12.2014

J U D G M E N T

This order arises out of a petition u/s. 13 of the Hindu Marriage Act, 1955 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 case of the parties are that their marriage was solemnized in Hotel Presidency, Bhubaneswar on 11.06.2009 and since 27.11.2010 they have been living separately.

3. The specific case of the petitioner is that at the time of marriage, her father had given cash of Rs. 1,70,000/- and household articles valuing Rs. 1,00,000/- and after three month of marriage, a computer was also given to

the respondent as per their demand. It is the further case of the petitioner that, after seven to eight months of marriage, she observed that the respondent, his mother and sister-in-law were not satisfied with her. When her parents turned down the request of her fourth sister-in-law, Rani and her husband-Amarendra Mohapatra to help them to get a job, they started torturing her both physically and mentally and did not allow her to meet or talk with anybody. They scolding her on silly matters in front of others and always asked her to go to her parental home and not to return again. She has further stated that on 27.11.2010 when she went to her parental home to see her ailing mother, the respondent over phone told her not to come to his house. Thereafter her parents requested the respondent to take her back to his house but the respondent turned down their request. Since then she has been residing with her parents and they have no physical relationship since then. She has further stated that she is a merely house wife and has no source of income and is unable to maintain herself. According to the petitioner, the respondent is working as a Journalist in Kanak Television and is getting salary more than Rs. 25,000/- per month. Since the torture and cruelty became unbearable, she has filed this proceeding for decree of divorce on the grounds of cruelty and desertion and permanent alimony of Rs. 20,00,000/- from the respondent.

4. The respondent in his written statement has admitted the marriage with the petitioner but denied all the allegations made by the petitioner against him. He has stated that all the allegations are baseless and imaginary. He has further stated that it was a dowry-less marriage. It is stated by the respondent that from the very beginning the petitioner showed abnormal, childish and immature behaviour. The respondent has further stated that he observed the unusual activities of the petitioner even during solemnization of marriage, but he could not take it seriously, however, he could realize her above attitude, when the petitioner reached in her matrimonial home and in the night of "Chaturthi", the behaviour of the petitioner not only humiliated him before the guests and his family members but also gave immense mental pain to him

and the petitioner did not allow him for consummation of marriage. The abnormal and childish activities of the petitioner did not change during her stay in his house. She has never taken his care as well as his family members rather humiliated them in front of guests. In each and every aspect, she took advise/ feedback from her mother and other family members such as how to behave with her husband and in-laws, what to cook for lunch and for dinner, whether to sleep with her husband every day or not etc and all these things she used to ask her mother in presence of her in-law without any hesitation. They have consummated their marriage on few occasions i.e. also without any interest and active participation from the side of the petitioner for which he has not only suffered severe mental pain but also spent a life of married bachelor and still tolerated everything with a hope of change by efflux of time. He has further stated that on 09.11.2010 when his sister died and the entire family was in mourn, the petitioner insisted him to go to her parental home though it was never expected from the only daughter-in-law of the family but to avoid any unpleasant situation, he remained silent and just after the obsequies ceremony on 24.11.2010 she left for her parental home and has been staying there till date. Thereafter several attempts have been made from his side to bring her back but the petitioner did not come and in the meantime he got the information that the petitioner is not mentally fit to be wife though she was grown up physically. He has further stated that in the meantime during intervention of the mother and brother of the petitioner, the petitioner has taken all the articles, which were given at the time of marriage. He has further stated that he is the only earning member of the family and is getting Rs. 13,000/- per month and is unable to maintain his old parents with such minimum salary and also ready and willing to pay some few amount from his hard earning money to the petitioner.

5. From the aforesaid rival pleadings of the parties, the question that require to be adjudicated is whether, there exists any desertion and cruelty on the part of the respondent to allow the divorce petition and the petitioner is entitled to get any permanent alimony from the respondent?

6. The petitioner in order to buttress her case she, herself, has been examined as P.W.1 and relied on some documents i.e. Ext. 1 to Ext. 1/d are the bank paying slips dated 22.05.2009, 22.05.2009 amounting Rs. 25,000/- and Rs. 20,000/- respectively credited to S.B.I account No. 10368217988, Ext. 2 is the list of items gifted during marriage, Ext. 3 to 3/k are the money receipts of treatment at Apollo Hospital, Bhubaneswar. The respondent in order to nix the allegations of the petitioner, he, himself, has been examined as R.W. 1 and one Bhuban Mohini Mohanty as R.W. 2 relied on two documents i.e Ext. A is the articles received against the red marks and Ext. B is the pay slip of the respondent.

7. The petitioner in her evidence has stated that she has stayed one year in her matrimonial home and thereafter the respondent deserted her in her parental home on 27.11.2010 and since then she has been residing in her parental home. She along with her family members visited twice or thrice to her matrimonial home but on all the occasions they found non was present in the house of the respondent as the house was under lock and key. She informed her visit to one Barik Babu who is front door neighbour of the respondent. Further the petitioner has stated that the family of the respondent is a joint family and her husband is looking after the management of the family. Nothing substantial has been brought out from the evidence of P.W. 1 and during her cross examination by the respondent.

8. The respondent in his evidence has denied to have received any dowry. He has further stated that they have returned the articles which the petitioner brought with her at the time of marriage. Some of gift articles are with him and with the petitioner. He has further stated that his brother has received some cash vide Ext. 1. He has further stated that he noticed the childish behaviour of the petitioner in the fourth night of the marriage and the childish behaviour which he referred is watching cartoon serial in T.V. He has further stated that his gross salary is Rs. 16,500/- per month and his mother is getting nominal pension and his other two brothers are employed. The respondent in his evidence though stated the abnormal behaviour of the

petitioner but no documentary evidence has brought out to prove the same. The respondent in his evidence though denied to have tortured the petitioner yet nowhere he has stated that he took sufficient initiation for continuance of their marital relationship. The evidence of R.W. 2 meets as that of R.W. 1.

9. The respondent has admitted that they have been residing separately since 27.11.2010 and since then they have no sexual relation between them. 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- 2 (d) of his petition has stated that the respondent deserted him since 27.11.2010. The petition for divorce in this case is presented in the Court on 17.07.2013. 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 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 27.11.2010, 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 and subjected him to cruelty. This conduct of the parties is a continuous one for last more than 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.

10. Now the next point for consideration is cruelty. Admittedly, there has been no cohabitation between the parties since 27.11.2010. 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. 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 woman'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 woman's brain, develops his character and trebles her 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 refused for any sexual relationship since 27.11.2010. Since it has been the duty of the petitioner to establish the ground i.e. cruelty set out in the petition seeking divorce against the respondent, the evidence of P.W. 1 is examined in ferreted eyes and on such examination I am satisfied that the petitioner could able to establish the same. Not allowing the petitioner to stay in her matrimonial home and avoiding to resume normal marital life with the petitioner which are emerged out from the evidence P.W. 1 are circumstances of the cruelty and therefore, the petition of the petitioner deserves merit to be allowed.

10. Next residue to consider is whether the petitioner is entitled for permanent alimony? The petitioner admittedly is house wife having no independent source of income. From Ext. B, it is apparent that the respondent is working in Kanaka T.V and his gross salary for the month of October, 2014 is Rs. 16,500/- and the respondent in his cross examination has also admitted to have received the above amount. He has further admitted in his cross examination that his mother is getting nominal pension and his other two brothers are employed. Therefore, the respondent has no dependency. Therefore, the petitioner is entitled to get alimony for her support. Considering the cost of living and other attendant circumstances, in as much as, the income of the respondent, I feel in the ends of justice and equity, a sum of Rs.

13,00,000/- (Rupees thirteen lakhs) only towards permanent alimony would be just and proper to the petitioner which according to me, would not allow to petitioner to lead a princely and luxury life and also at the same time it would not put the respondent to any vagrancy. Hence, it is ordered;

O R D E R

The petition of the petitioner is allowed on contest 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. As the petitioner is a house wife, the respondent is directed to pay permanent alimony of Rs. 13,00,000/- (Rupees thirteen lakhs) only to the petitioner.

JUDGE, FAMILY COURT,  
BHUBANESWAR.

Dictated, corrected by me and is pronounced on this the 22<sup>nd</sup> day of December, 2014.

JUDGE, FAMILY COURT,  
BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1                      Smt. Sarmista Mohanty

Witnesses examined for the respondent:

R.W.1                      Debi Prasanna Mohanty

R.W. 2                      Bhubana Mohini Mohanty

List of documents by petitioner:

Ext. 1 to 1/d              Bank Paying Slips

Ext. 2                      List of items gifted during marriage

Ext. 3 to 3/k              Money Receipts of Apollo Hospital, Bhubaneswar

List of documents by respondent:

Ext. A                      Articles received against the red marks

Ext. B                      Pay slip of the respondent.

JUDGE, FAMILY COURT,  
BHUBANESWAR.