

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

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

Civil Proceeding No. 387 of 2012

Lalatendu Nayak, aged about 36 years,  
S/o- Bibekananda Nayak,  
Plot No. 27(p), Back side of Mahashi College of Natural Law  
P.O./P.S.-Saheednagar, Bhubaneswar,  
Dist-Khurda.

... Petitioner

... Versus...

Mamata Jena, aged about 38 years,  
D/o- Sri Netrananda Jena,  
W/o- Lalatendu Nayak,  
Permanent resident of Vill-Niangoroda, Nimapada,  
Dist-Puri.  
At present residing at C/o-Saroj Kumar Sahoo,  
Plot No. 428, Lane-7, Nayapalli, Nuasahi,  
(In front of Santoshi Maa Mandir) P.O./P.S.-Nayapalli,  
Bhubaneswar-12, Dist-Khurda  
Working as Demonstrator in Chemistry Department D.R. College,  
Nayapalli, P.O./P.S.-Nayapalli, Bhubaneswar,  
Dist-Khurda.

... Respondent

Date of argument : 16.08.2014

Date of order : 01.09.2014

ORDER

This order arises out of a petition u/s. 13 (1) (ia) (ib) of the Hindu Marriage Act, 1955 (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 facts of the case of the petitioner are that:-

The marriage of the petitioner with respondent was solemnized as per Hindu Custom and rites at Plot No. 529, Nuasahi, Nayapalli Bhubaneswar on 01.05.2005 and consummated their marriage at the residence of petitioner. He has averred that on 21.05.2005 the petitioner with the respondent went to her father's house and returned to his house on 10.06.2005 and again on 25.06.2005 she went to her father's house and returned on 18.11.2005. On 02.12.2005 the petitioner and the respondent went to Puri and after returning from Puri, the respondent again went to her brother's house. He has further averred that in spite of his request to the respondent she did not attend on the date of his marriage anniversary and stayed in her father's house. He has further averred after few days of marriage the petitioner observed that, the respondent was in regular habit of visiting her brother-in-laws' house every week and after returning from there, she was misbehaving with the petitioner and his family members. It is averred that the respondent on silly matters got annoyed and misbehaved the petitioner and his family members. She was also demanding some costly articles and when the petitioner showed his inability for the same the respondent was not willing to lead a happy married life and picked up quarrel without any rhyme or reason. He has further averred that during the stay of the respondent at his house he and his parents have provided all facilities, love and affection and comforts in their house. He has further averred that due to shake of preserving the family prestige the petitioner and his parents tried to take much more care of the respondent to change her behaviour but there is no change in the behaviour of the respondent. He has further averred that the respondent was avoiding for any issue. Rather the respondent quarreled with him and assaulted the petitioner and hurled abusive language even if she pushed out the petitioner from bedroom and locked herself in the bedroom and she was avoiding for any sexual relationship with her. For such behaviour of the respondent the petitioner has suffered mental torture and humiliation. He has further averred

that the respondent also did not help his mother for preparation of food and when the petitioner asked her to help his mother, the petitioner started abusing him and sometimes she threw out the household articles. He has further averred that the respondent also very often humiliated and abused and shouted at him in front of public. The respondent regularly after quarreling with the petitioner went to her brother's house in order to keep herself at distance from the petitioner and his family members without any intimation to him and his parents. He has further averred that due to this frequent disturbance in his family and as per advice of the astrologer he made a puja (Rudravisheka) at Lingaraj Temple on 24.07.2007 and the respondent after attending puja went to her brother's house. He has further averred that due to such violence in the family his mother died on 25.03.2010 and his father faced one severe accident due to mental imbalance on 03.02.2012 and admitted in the hospital and discharged on 27.02.2012 and till date he is not fully recovered. Several attempts have been made by his family members, relatives and friends to settle the matter but in vain. Finding no alternative on 24.02.2010 the petitioner approached the President Women's Cell of D.C.P., Bhubaneswar and in spite of best efforts and conciliation of the President Women's Cell of D.C.P, Bhubaneswar it was failed. And they advised for filing a mutual divorce in proper court and accordingly an agreement of mutual divorce was executed and notarised on 20.07.2010 between the parties at the instance of the President Women's Cell of D.C.P. Bhubaneswar in the presence of witnesses and relatives of both parties. He has averred that since 26.11.2007 the respondent left his house as per her sweet will. Since the torture and cruelty by the respondent has become in-tolerable he 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.

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 23 of his petition has stated that the respondent deserted him since 26.11.2007. The petition of divorce in this case is presented in the Court on 26.09.2012. 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 26.11.2007, 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. 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. Going parental to house without knowledge of the husband and his parents and public using abusive languages in front of their neighbours, friends and relatives and not cooperating for co-habitation and locking herself in the

bedroom amounts to cruelty. Therefore, the petitioner could also successfully established 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.

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      Lalatendu Nayak

Witnesses examined for the respondent:

None

List of documents by petitioner:

Nil

List of documents by respondent:

Nil

JUDGE, FAMILY COURT,  
BHUBANESWAR.