

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

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

Civil Proceeding No. 396 of 2013

Sri Bidyadhar Palei, aged about 44 years,
S/o- Sri Iswar Palei,
At/P.O.-Kural, Via-Odogaon,
Dist-Nayagarh.
At present:- Qrs No. EA-126, Badagada BRIT Colony,
P.S.-Badagada, Bhubaneswar,
Dist-Khurda.

... Petitioner

... Versus...

1. Smt. Swarnalata Palei, aged about 41 years,
W/o-Bidyadhar Palei,
D/o-Late Prafulla Nayak,
At/P.O.-Bachhera,
P.S.-Jatani, Dist-Khurda.
At present:- C/o-Pramod Swain,
At/P.O.-Pubu Sahi,
P.S./Dist-Khurda,
2. Sri Pramod Swain, aged about 35 years,
S/o-Suria Swain,
At/P.O.-Pubu Sahi,
P.S./Dist-Khurda.

... Respondent

Date of argument : 10.09.2014

Date of order : 12.09.2014

ORDER

This order arises out of a petition U/s. Sec.13 (1) (i)(i-a)(i-b) 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 case of the petitioner is that, he married to the respondent No.1 according to Hindu rites and customs on 02.02.1998 at village Bachhera without any demand of dowry. After marriage, both of them led their conjugal life at Kural. After two to three months of marriage, the petitioner and respondent No.1 stayed in a rented house at Bhubaneswar as the petitioner is working as peon in the office of BDA, Bhubaneswar. During their stay at Bhubaneswar, they are blessed with one son namely Biswajit and a daughter namely Priti Pragyan and the petitioner has admitted both the children and arranged tuition and look after their education. Petitioner has averred that in the month of July 2004, he along with his son went to his village and stayed there for a night and after returning to Bhubaneswar, he heard that their tuition teacher came to his house at night and stayed there with the respondent No.1 throughout the night and on hearing this, the petitioner was mentally shocked. So, he informed the said fact to the family members of respondent No.1. The respondent No.1 has developed her extra marital relationship with others. When the petitioner opposed such illegal act, the respondent No.1 started torturing him and also neglected her children. Petitioner has further alleged that the respondent No.1 has also developed her extra marital relationship with respondent No.2 almost all the days who came to his house frequently. It is alleged inter alia that on 17.03.2006 at about 1 P.M. while the petitioner came back from his office, he found the respondent No.1 in a compromising position with respondent No.2, for which, he became shocked and dumb founded. Immediately he intimated his brother-in-law who instructed him to detain them and intimate the police. In the same night, the respondent No.1 threatened the petitioner not to disclose the said fact to others. It is further averred that the respondent No.1 did not keep any sexual relationship with petitioner since 17.03.2006 as she had extra marital relationship with others. According to him, in the month of January 2011, his daughter also saw illicit

relationship of the respondents and she opposed them. He has stated that in the month of June,2011 a meeting was convened wherein the matter was settled and after some days, the respondent No.1 again started such illegal act and on 24.02.2013 the respondent No.1 voluntarily left the house of the petitioner with respondent No.2 without any intimation and returned to his house on 28.02.2013 and on several occasions, she left house with respondent No.2 without intimating the petitioner. Petitioner has further alleged that lastly on 24.07.2013, the respondent No.1 left the matrimonial house and went to with respondent No.2 and stayed in his village- Pabu Sahi and since then she did not return. Petitioner has further averred that the respondent No.1 with an ill intention, subjected the petitioner with cruelty and voluntarily deserted him. Therefore, he has filed this case 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) (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-25 of his petition has stated that the respondent deserted her since 24.07.2013. The petition for divorce in this case is presented in the Court on 05.08.2013. 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.

7. The residue point that remains to be discussed is cruelty. P.W.1 In his evidence, he has narrated the facts and circumstances of his marriage and subsequent cruelty made by the respondent No.1 with connivance of the respondent No.2. He has further stated that the respondent No.1 has got extra marital relationship with respondent No.2 and others and since 24.07.2013 she is residing with respondent No.2 and since the year 2004, he has no physical relationship with respondent No.1. The evidence of P.W.1 remains unchallenged. There is no reason to disbelieve the evidence of P.W.1. Extra marital relationship of respondent is the main cause for entire family dispute. The respondent No.1 without any rhyme or reason left the matrimonial house and subjected the petitioner with cruelty and they have no physical relationship since long. Incidental avoidance of cohabitation of the respondent No.1 with the petitioner No.2 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. Since the respondent No.1 has been residing with the respondent No.2, there shall be no order as to the alimony either permanent or monthly to the respondent No.1. There shall also be no order as to costs.

JUDGE, FAMILY COURT,
BHUBANESWAR

Dictated, corrected by me and is pronounced on this the 12th day of September, 2014.

JUDGE, FAMILY COURT,

BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1 Sri Bidyadhar Palei

Witnesses examined for the respondent:

None

List of documents by petitioner:

None

List of documents by respondent:

Nil

JUDGE, FAMILY COURT,
BHUBANESWAR.