

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

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

Civil Proceeding No. 440 of 2012

Sri Laxmidhar Panda, aged about 37 years,
S/o.- Brajabandhu Panda,
Resident of Plot No. 1386/2575,
Bhimatangi Housing Colony, Phase-II,
P.S.-Airfield, Bhubaneswar, Dist-Khurda.

... Petitioner

... Versus...

Sudhanjali Sahoo, aged about 36 years,
D/o. Rasananda Sahoo,
W/o-Laxmidhar Panda,
Resident of P-19, Sector-10, CDA,
P.S.-Markat Nagar, Dist-Cuttack,
At present C/o-Sarat Kumar Senapati,
Plot No. 544/12, Lingaraj Vihar, Pokhariput,
Bhubaneswar-751020, Dist-Khurda.

... Respondent

Date of Argument: 11.03.2015

Date of Judgment : 24.03.2015

J U D G M E N T

The petitioner has a filed a petition u/s. 13 (1) (i-a) of the Hindu Marriage Act, 1955 (in short, the Act 1955) praying for a decree of dissolution of his marriage with the respondent on the ground of cruelty.

2. The facts of the case of the petitioner are as follows:-

The marriage of the petitioner with respondent was solemnized as per Hindu Custom and rites in Sarthak Palace, Cuttack on 16.01.2011 and they have no issue out of their wedlock. After some days of marriage, the respondent has started creating disturbance on silly matters in his family. According to the petitioner, the respondent is serving as a Lab Assistant at GITA College, Madanpur and is getting salary of Rs. 15,000/- per month. She used to leave his house early in the morning and returned in the late hours of night. When he asked the reason of her return at late hours of night, the respondent started abusing him in filthy languages in loud voice and also assaulted him in presence of his family members. Few days after marriage, when her TV was out of order, he asked her to hand over the guarantee card for its repair as all the guarantor cards and the keys of the almirah and boxes were handled by her. In spite of handing over the guarantee card, she started quarrelling with him and on her information her uncle and two brothers arrived at 10.30 P.M in his house and all of them abused him in filthy languages. It is the further case of the petitioner that the respondent did not allow him to keep physical relationship with him. She has also told before him that she did not agree for the marriage but due to pressure of her parents, she agreed for the marriage and also told before him that he was not fit for her. Once the respondent after threatening to commit suicide kept herself inside a room under lock for which he and his family members saved her life by breaking the door. The respondent being more affluent than his family passed ugly comments towards him for which he was mentally shocked. The respondent also during her stay in his house did not do any household work. He has further stated that she has also left his house on the plea to visit his parental home at Cuttack but instead of going to Cuttack, she used to stay at Kalinga Vihar, Bhubaneswar in her uncle's house and returned after four to five days. When he asked the reason, she became furious and assaulted him

by broom in presence of his family members. She has also aborted her pregnancy without his knowledge. It is the further case of the petitioner that the respondent always threatened to file false dowry torture cases against him and his family members. On 08.12.2011, the respondent left his house taking all her gold ornaments and belongs without their knowledge and is staying in her uncle's house at Kalinga Vihar, Bhubaneswar. After much persuasion from his side she came back to his company. During her stay she always insisted him to live separately from his old ailing parents. When he refused her proposal, she threatened to kill herself by pouring kerosene with a suicide note that she was murdered by him and his family members, for which, he was forced to live separately from his old and ailing parents. During his stay separately from his parents, the respondent behaved him like her servant and picked up quarrels on silly matters. The respondent also insisted him for unnatural sex and when he did not agree for the same, the respondent assaulted him. On 23.03.2012 she has driven him out from rented house and since then he has been residing in his parent's house. Since the torture and cruelty by the respondent became in-tolerable and as the respondent debarred him from any marital relationship, 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 two points are required to be adjudicated in this proceeding. They are:- Firstly, whether there exists any cruelty on the part of the respondent to the petitioner to allow the petition for divorce and secondly, whether the respondent is entitled for alimony either permanent or monthly?
5. The petitioner in order to prove his case he, himself, has been examined P.W. 1 and relied on a document i.e. Ext.1 is the salary certificate of the respondent.

Point No.1

6. Whether, there exists any cruelty on the part of the respondent to allow the petition for divorce?

The petitioner sought divorce on the ground of respondent's cruelty. He has deposed about the maltreatment of the respondent towards him. His statement is facsimile to the allegation made in petition which have gone unchallenged as there has been no cross examination since the respondent has been set ex-parte. Law is well settled that when a statement of a witness gone unchallenged, the same must be accepted as true. Therefore, the statement of P.W. 1 is accepted as true. Admittedly, there has been no cohabitation between the parties since 23.03.2012. From the unchallenged evidence of the petitioner, 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 man'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 man's brain, develops his character and trebles his vitality. It must be recognized that nothing is more fatal to marriage than disappointment in sexual intercourse. The other allegations of the petitioner against the respondent are that the respondent assaulted, abused and insisted to live separately from his old parents as well as attempting to commit suicide and remaining inside the house locking the door inside are the circumstances which amount to cruelty and it was

impossible to for a man to live with such a lady. Therefore, the petitioner could established a ground of cruelty on him by the respondent. Accordingly, this point is answered in favour of the petitioner.

Point No.2

7. Whether the respondent is entitled for alimony either permanent or monthly?

The next point for consideration is that whether the respondent is entitled for alimony either permanent or monthly. As per Ext.1, the salary certificate of the respondent she is working as Laboratory Assistant, in Computer Science and Engineering department of GITA Institute of Technology, Bhubaneswar and is getting net salary of Rs. 6,660/- per month. Though the petitioner has stated that he is a service holder yet he has withheld his salary particulars. His keenness in filing the salary certificate of the respondent is indicative and suggestive of the fact to get a decree of divorce without paying any money to the respondent. The salary of the respondent is so meager it is not possible on a part of the respondent to support herself keeping in view of the present day cost of living. Therefore, the minimum requirement for present day cost of living per month is Rs. 10,000/-. So, the petitioner is directed to pay the balance amount of Rs. 3,400/- per month to the respondent. The respondent is aged about 36 years old at the time of filing of the present petition i.e. 07.11.2012 and therefore, by now she is aged about 39 years old. Life expectancy of a woman in Indian climate is about 70 years. Therefore, the petitioner is directed to pay permanent alimony of Rs. 10,00,000/- (Rupees ten lakhs) to the respondent. Accordingly, this issue is also answered in favour of the respondent. Hence, it is ordered.

ORDER

The suit and the same be decreed 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 subject to payment of Rs. 10,00,000/- (Rupees ten lakhs) to the respondent towards her permanent alimony.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Dictated, corrected by me and is pronounced on this the 24th day of March, 2015.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1 Sri Laxmidhar Panda

Witnesses examined for the respondent:

None

List of documents by petitioner:

Ext.1 Salary Certificate of the respondent.

List of documents by respondent:

Nil

JUDGE, FAMILY COURT,
BHUBANESWAR.