

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

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

Civil Proceeding No. 442 of 2010

Rajesh Kumar Das, aged about 35 years,
S/o- Sridhar Das,
Qrs. No. E-179, Unit-VIII,
P.S.-Khandagiri, Bhubaneswar
Dist-Khurda.

... Petitioner

... Versus...

Smt. Rasmita Behera, aged about 33 years,
W/o-Rajesh Kumar Das,
D/o-Abhiram Behera,
Qrs. No. A.E.-3, Baramunda Housing Board,
P.S.-Khandagiri, Bhubaneswar,
Dist-Khurda.

... Respondent

Date of argument : 30.09.2014

Date of judgment : 13.10.2014

J U D G M E N T

This order arises out of a petition u/s. 13 of the Hindu Marriage Act, 1956 (in short, the Act 1956) praying for a decree of dissolution of marriage of the petitioner with the respondent on the grounds of desertion and cruelty.

2. The fact of the case of the petitioner are that:-

The marriage of the petitioner with respondent was solemnized as per Hindu custom and rites on 07.05.2006. The petitioner has averred that after marriage, they were residing at his father's quarter at Unit-VIII, Bhubaneswar. According to him, the respondent is headstrong and adamant lady and she

and her parents always instigated him to live separately from his family members. The petitioner being the only son when denied for the same, the respondent and her family members became violent day by day and the respondent started cruelty against him and his family members. The respondent quarrels with him and did not help his mother in household work like cooking etc. She also never uses to wear bangles and vermilion, which is the sign of a Hindu married lady. When he opposed the same, the respondent use to scold in very loud voice with an intention to defame him and his family members in the locality. Sometimes she threatens to commit suicide for which he and his family members live in a fear condition. The respondent many times goes upto the gate at night by putting her ornaments and wearing apparels in a suit case and from there she shouts that she is going to her father's house and in order to keep the prestige of the family, when he tried to solve the matter amicably, she comes inside the house and threw and broken all the utensils and furnitures. The petitioner has averred that after some days he arranged a separate mess in his working place at Cuttack and lived with the respondent in a rented house. When he was going to his office, the respondent comes to Bhubaneswar throughout and before his reaching in house, she returned. After some days he came to know that the respondent has got illicit relationship with a person since her childhood and after marriage she also keeps that affairs with him for which she frequently goes from Cuttack to Bhubaneswar. When the petitioner asked about the same, the respondent quarreled with him and left the rented house at Cuttack and took shelter in her father's house. After interference of his family members she again came to the quarter of his father. He has further averred that after passing some days the respondent gave birth a female child. On 04.03.2009 when he took the respondent to the Capital Hospital and consulted with a doctor bearing O.P.D. No. 69725, he came to know that the respondent is a psychiatric patient and on the same day after quarreling with him and his family members she left his house taking gold ornaments weighing 12 bhari valued at Rs. 1,80,000/- and cash of Rs. 5,000/- from his house and residing

at her parent's house leaving her female child with him. Several attempts have been made for their reunion but the respondent did not cooperate. Since the torture and cruelty by the respondent became un-tolerable he has filed this proceeding seeking a decree of divorce.

3. The respondent did not enter to 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 her case she, herself, 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-5 of his petition has stated that the respondent deserted her since 04.03.2009. The petition for divorce in this case is presented in the Court on 26.08.2009. 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. Now the next point for consideration is cruelty. Admittedly, there has been no cohabitation between the parties since 04.03.2009. 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. Marriage without sex is an anathema. 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. Further, the petitioner has stated that the respondent without any rhyme and reason withdrew herself from his society, for which, he is suffering mental agony. There is nothing to disbelieve the unchallenged evidence of the petitioner. Hence, it is ordered:

O R D E R

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 13th day of October, 2014.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1 Rajesh Kumar Das

Witnesses examined for the respondent:

None

List of documents by petitioner:

Nil

List of documents by respondent:

Nil

JUDGE, FAMILY COURT,
BHUBANESWAR.