

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

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

Civil Proceeding No. 485 of 2012

Smt. Harapriya Rath @ Panda, aged about 27 years,
W/o.- Chita Ranjan Panda,
D/o-Iswar Chandra Rath,
At-Nilakanthapur, Charishree,
P.S.-Puri Sadar, Dist-Puri.

... Petitioner

... Versus...

1. Chita Ranjan Panda, aged about 39 years,
S/o. Brajabandhu Panda,
At-Haridaspur,
P.O.-Naharkanta, P.S.-Balianta,
Dist-Khurda,
At present B-30, Chandaka Industrial Estate,
Near Infosys, P.O.-KIIT,
Bhubaneswar-24, Odisha.
2. Bandana Mishra, aged about 38 years,
D/o-Brajabandhu Mishra,
At present B-30, Chandaka Industrial Estate,
Near Infosys, P.O.-KIIT,
Bhubaneswar-24, Odisha.

... Respondents

Date of Argument: 03.03.2015

Date of Judgment : 17.03.2015

J U D G M E N T

The petitioner has filed a petition u/s. 13 (1) of the Hindu Marriage Act, 1955 (in short, the Act 1955) praying for a decree of dissolution of her marriage with the respondent No.1 on the grounds of desertion and cruelty.

2. The facts of the case of the petitioner are that her marriage with respondent No.1 was solemnized as per Hindu Custom and rites in Ashribad Mandap, V.S.S. Nagar, Bhubaneswar on 05.02.2010. According to the petitioner at the

time of marriage, her father and other relatives had given cash of Rs. 1,10,000/- along with gold and silver ornaments and other household articles amounting Rs. 2,50,000/- to the respondent No.1. After fourth day of marriage the respondent No.1 remained absent from the house and used to stay in his office at Teera Tarang Prakashan, B-30, Chandaka Industrial at Patia, Bhubaneswar. When she asked the other respondents about the absence of the respondent from house, she was told not to make any such query about respondent No.1. She was mentally shocked due to continuous absence of the respondent No.1 from house. During her short span of stay there, the respondent No.1 and his family members demanded additional demand of Rs. 3,00,000/- for purchasing a Alto Car. On 16.02.2011 i.e. after eleven days of marriage, the respondent No.1 met with an accident and was admitted in KIMS Hospital, Bhubaneswar for his treatment for nine days. During these period she came to know that the respondent No.1 has extra marital relationship with a lady namely Mrs. Bandana Mishra, the sister-in-law of respondent No.1's elder brother (Manoj Panda). There she also came to know that the respondent No.1 has been residing with Bandana Mishra as husband and wife at her resident at Patia prior to her marriage. She has further stated that her father had given Rs. 10,000/- for the medical expenses of the respondent No.1. After discharge from the hospital when she requested the respondent No.1 to come back to Haridaspur to her matrimonial house, the said Bandana Mishra and respondent No.1 refused to come and went to stay in their house at Patia. After two days of discharge from the hospital when she had gone to the house of Bandana Mishra to look after the respondent No.1, she came to know that the Bandana Mishra and the respondent No.1 were living in single bedroom and residing like spouse. They were also running a printing and publishing business in her house in the name and style M/s. Teera Tarang Prakashan and M/s. Teera Tarang Printers Publication wherein the respondent No.1 had invested huge amount of money for the said business. When she requested the respondent No.1 to come with her to reside at Haridaspur, the said Bandana Mishra demanded her of Rs. 3,00,000/- in order to get her husband back. Finding no alternative, she came back to her matrimonial home at Haridashpur and informed the said facts to other in-laws

members. During her stay in her matrimonial home her brother-in-law-Manoj Panda and his wife Swastika Panda tortured her both physically and mentally due to their additional demand of dowry of Rs. 3,00,000/-. On 19.04.2010 when she had gone to meet her husband in the house of Bandana Mishra, there the respondent No.1 and Bandana Mishra scolded her in filthy languages and assaulted her but due to sake of the marriage she tolerated the same. Taking her simplicity, the respondent No.-1, manage to obtain a written undertaking stating various untrue things there on 20.04.2010. She has further stated that believing to get back her husband and to lead a happy conjugal life she signed on the paper. Thereafter she came to her matrimonial home at Haridaspur. On 11.06.2010 the respondent No.1 came to his house at Haridaspur and persuaded her to go to her parental home and given her assurance to lead a happy conjugal life after her return. Believing such assurance of the respondent No.1 she left her matrimonial home to parental home on 14.06.2010 and while leaving the respondent No. 1 had given her assurance that he would come and take her back after 10-15 days but the respondent No.1 did not come to take her back. When she contacted the respondent No.1 over phone, he did not respond her calls. Thereafter when she contacted her in-laws members, they told her if she would not fulfill their additional demand of dowry of Rs. 3,00,000/- the respondent No.1 would not accept her as his wife. Several attempts have been from her side to settle the dispute but all were in vain. When all of their attempts have been failed she along with her parents went to her matrimonial home at Haridaspur on 10.09.2010 but the brother of the respondent No.1 namely Manoj Panda and sister-in-law Swastika Panda did not allow her to get inside the house and scolded them in front of villagers. At the relevant time, the respondent No.1 over phone threatened her not to stay in his house as his brother and sister-in-law did not want to stay with her. In the month of November, 2010 she along with her parents and other relatives went to the house of the respondent No. 1 at Haridaspur to settle the matter but petitioner refused to accept her and told her that he wants a divorce. Since the torture and cruelty by the respondent has become in-tolerable and as the respondent No.1

debarred her for any marital relationship, she has filed this proceeding seeking a decree of divorce on grounds of desertion and cruelty.

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 and whether the petitioner is entitled to get alimony either permanent or monthly?

5. The petitioner in order to prove her case she, herself, has been examined P.W. 1 and relied some documents i.e. Ext. 1 is the Xerox copy of the FIR, Ext. B is the copy of the zimanama, Ext. 3 to 3/g are the RORs.

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, 1955 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-11 of his petition has stated that the respondent No.1 deserted her since 14.06.2010. The petition for divorce in this case is presented in the Court on 10.12.2012. Thus, it is clearly established that the petition has been filed after completion of two years from the date as alleged by the petitioner. The petitioner has stated that the respondent No.1 deserted her after fourth night of the marriage and did not return to her company despite her repeated attempts. She has further stated that the respondent No.1 was living with Bandana Mishra as husband and wife and after his marriage with the present petitioner he continued to stay with Bandana Mishra in her house at Patia and was running business of Printing and Publishing. 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 14.06.2010, meaning thereby that intentional permanent forsaking and abandonment of the respondent No.1 by the petitioner without the petitioner's consent and without reasonable cause also meaning not permitting or allowing or facilitating cohabitation between the spouses. The respondent No.1 without any rhyme or reason deserted the petitioner and subjected her to cruelty. This conduct of the parties is a continuous one for more than two 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. She has deposed about the maltreatment of the respondent No.1 and his family members towards her for nonfulfillment of their additional demand of dowry of Rs. 3,00,000/- on the complaint of the petitioner a criminal case was registered against the respondent No.1 U/s. 498 (A) etc. and petitioner has received some articles in the garb of initiation of the criminal case. Her statement is facsimile to the allegations made in petition which have gone unchallenged as there has been no cross examination since the respondents have 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. 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. Living in adultery having extra marital relationship with Bandana Mishra, prior to the marriage and after marriage, demanding additional demand of dowry of Rs. 3,00,000/-, and refusing to join in the company of 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.

8. The next question for consideration is about grant of alimony either permanent or monthly. From the evidence of P.W. 1, it is established that the respondent No.1 is running two Printing and Publishing units. The petitioner was aged about 27 years in the year 2012. Therefore, by now she is aged about 30 years old. The life expectancy of a woman in Indian climate is 70 years. Had the marriage been survived, the respondent No.1 would have maintained the petitioner up 70 years of the petitioner or more. When the respondent No.1 is running two printing and publication units, he might have substantial income. Apart from that he has also vast landed property wherein he has a share. Keeping that in view and the price of the essential

commodities and separate housing, the minimum supporting financial need is Rs. 15,000/- per month. Hence, the permanent alimony is fixed at Rs. 40,00,000/-. 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 No.1 is hereby declared dissolved with effect from the date of decree subject to payment of Rs. 40,00,000/- towards permanent alimony to the petitioner by the respondent No.1.

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Dictated, corrected by me and is pronounced on this the 17th day of March, 2015.

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Witnesses examined for the petitioner:

P.W.1 Smt. Harapriya Rath @ Panda

Witnesses examined for the respondents:

None

List of documents by petitioner:

Ext. 1 Copy of the FIR

Ext. 2 Copy of the Zimanama

Ext. 3 to 3/g RORs

List of documents by respondents:

Nil

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