

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

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

Civil Proceeding No. 495 of 2011

Sri Bichitrananda Mallick, aged about 40 years,  
S/o- Ghanashyama Mallick,  
Plot No. 16(A), Station Square,  
P.O./P.S.-Kharevelnagar,  
Unit-3, Bhubaneswar, Dist-Khurda.

... Petitioner

... Versus...

Hiranmayi Mallick, aged about 33 years,  
D/o-Khageswar Mallick,  
At/P.O.-Indupur, P.S./Dist-Kendrapara,  
Presently residing at Plot No. 16(A),  
Station Square, P.O./P.S.-Kharvelnagar,  
Unit-3, Bhubaneswar, Dist-Khurda.

... Respondent

Date of argument : 05.09.2014

Date of order : 22.09.2014

O R D E R

The petitioner has files this application Under Sec.9 of Hindu Marriage Act with prayer for restitution of her conjugal rights.

2. The case of the petitioner is that he married to the respondent as per Hindu rites and customs in Gatyatri Mandap, Unit-9, Bhubaneswar on 18.02.2005 and out of their wedlock one female child namely Aknkhya was born on 17.12.2006 at Deepak Nursing Home, Bhubaneswar. He has averred that the respondent after marriage frequently went to her parental home and when he objected for the same the respondent started quarrelling and blaming him and his family members in public. He has also stated that there was no physical relationship between them during her stay at his house and whenever he wanted to keep physical relation with her, the respondent

strongly objected for the same. The respondent has also insisted him to live separately from his family members after obtaining share from his family members and she also insisted him to reside in her parental home. On 16.05.2005 the respondent went to her parental home without his consent and the consent of his family members and did not return and when he went to her parental home to bring back her, the respondent bluntly refused to come with him. Rather the respondent threatened him for divorce and to marry another person to which the other family members of have supported it. He has averred that on 17.12.2006 when the respondent gave birth a female child in Deepak Nursing Home Bhubaneswar, the respondent and her brother did not allow him to see the respondent and the newly born baby. He has further averred that the respondent did not come immediately when his father died on 09.06.2010 but the respondent came with his elder brother and stayed with the family of his elder brother in same roof but she did not come to live with him and till date she is residing with the family of his elder brother. According to the petitioner the respondent has left his company since 16.05.2005 and since then they have no physical relationship. It is further averred that several attempts have been made for settlement of dispute. Since the respondent without any rhyme or reason deserted the petitioner, he has filed this present proceeding for restitution of conjugal right.

3. The respondent did not contest the proceeding. Hence, she has been set ex parte and ex parte hearing has been taken up.

4. The following points are to be determined for adjudication of the case:

- (i) Whether the respondent is the legally married wife of the petitioner?
- (ii) Whether the respondent without any rhyme or reason deserted the petitioner and avoided for any conjugal relationship?
- (iii) Whether the petitioner is entitled for restitution of conjugal rights as claimed for?

5. The petitioner in order to prove his case he, himself has been examined as P.W.1. P.W.1 in his evidence has supported the averments made in his petition. P.W.1 has stated that his marriage with the respondent was solemnized on 18.02.2005 according to Hindu rites and customs and out their

wedlock one female child was born on 17.12.2006 in Deepak Nursing Home, Bhubaneswar. After marriage, they led a conjugal life for some period and after that the respondent tortured him both mentally and physically and debarred the petitioner for any conjugal relationship. He has stated that the respondent without any rhyme or reason left the matrimonial home since 16.05.2005 and despite attempts from his side, the respondent did not resume her conjugal relationship with him for which, the petitioner is facing trouble in absence of the respondent. From the above evidence of P.W.1, it is well established that, respondent is his legally married wife and after marriage they led their happy conjugal life for some months and thereafter, the respondent did not take any initiative for continuation of their marital relationship. Rather, on some pretext, she avoided any relationship with the petitioner. The respondent without any rhyme or reason deserted the petitioner and did not take any steps for consummation of their marriage for which he suffered from mental agony. Thus, it is the respondent, who is the author of the entire matrimonial dispute. Therefore, the petitioner is entitled for restitution of conjugal rights as claimed for. Hence, ordered:

O R D E R

The petition filed by the petitioner for restitution of conjugal rights is allowed ex parte against the respondent. A decree of restitution of conjugal rights is hereby passed in favour of the petitioner. The respondent is hereby directed to join with the company of the petitioner in her matrimonial home within fifteen days from the date of this order. Any deviation to comply the order of the Court, the petitioner is at liberty to take further action through due process of law.

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Dictated, corrected by me and is pronounced on this the 22<sup>nd</sup> day of September, 2014.

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BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1        Bichitrananda Mallick

Witnesses examined for the respondent:

None

List of documents by petitioner:

Nil

List of documents by respondent:

Nil

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BHUBANESWAR.