

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

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

Civil Proceeding No. 67 of 2011

Samarendra Kumar Bairiganjan, aged about 34 years,
S/o- Brundabana Bairiganjan,
Vill-Khandagiri,
Dist-Khurda.

... Petitioner

... Versus...

Nalini Parida, aged about 28 years,
D/o-Late Somanath Parida,
Vill.-Ghatikia, P.S.-Khandagiri,
Bhubaneswar, Dist-Khurda

... Respondent

Date of Argument: 02.03.2015

Date of Judgment : 17.03.2015

J U D G M E N T

The petitioner has filed a petition U/s. 13 of the Hindu Marriage Act, 1955 (in short the Act, 1955) read with 151 C.P.C. 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 that their marriage was solemnized as per Hindu rites and custom in the residence of the respondent on 12.07.2007. The marriage was fixed within seven days for which he and his family members could not know about the respondent and his family members. According to the petitioner on 15.07.2007 on the day of marriage reception, the respondent instead of staying inside the house found wandered in the courtyard in presence of invitees and relatives. When his family members brought it to the notice of the family members of the respondent who were present there, the brother of the respondent namely Santan and her uncle agreed to take the respondent to his house with them. The father of

the petitioner suggested the brother of the respondent not to take the respondent with him on that day for the sake of prestige of both the families. Accordingly the brother of the respondent took the respondent to his house on the next day i.e. on 16.07.2007. Thereafter he consulted with the local doctors regarding the treatment of the respondent but there is no result, for which he advised the brother of the respondent to take her to Cuttack for better mental treatment. Accordingly, the respondent with her brother had gone to Cuttack and consulted the doctor on 25.07.2007. As she was abnormal, doctor advised him to admit the respondent in private Nursing Home for few days. He returned home on that day and after arranging money he went on the next day and admitted her into Sahara Nursing Home, Kathagola Road, Mangalabag. There she stayed for fifteen days and during her hospitalization, she was looked after the expert physicians but there was no sign of development and she was discharged on 10.08.2007 and returned to her parental home with her brother. It is further averred that he has borne all the medical expenses. He came to know from doctors that the respondent was suffering from mental disorder since her child hood. He has further averred that in order to harass him knowing the said fact by her family members made her marriage with him. It is not possible on his part to live with the respondent due to her intermittently mental disorder, he advised the Bhadroloks to settle the matter amicable between them. The mediators after feeling the life and fate of the petitioner advised the brother of the respondent as there was no scope and hope for reconciliation it was better to file a mutual divorce between the parties before the Hon'ble Court but he did not agree for the same in order to harass him and his family members. He has further stated that he has also tried to return back the marriage gift and presentation as per their list given to him at the time of marriage with the help of local gentlemen, and well-wishers for amicable settlement but in vain. When all his attempts to settle the dispute between them failed, he has filed this proceeding for dissolution of his marriage with the respondent by passing a decree of divorce on the ground of cruelty.

3. The respondent contested the proceeding by filing W.S. and denied all the allegations made by the petitioner against her. The case of the respondent is that the petition is not maintainable in the eye of law and the petition is not in accordance in the provision of law. She has averred that the strained relationship between her and the petitioner was due to lack of fulfillment of the additional demand of dowry of the petitioner. According to her she was always ready and willing to discharge all her marital obligation as a Hindu wife. She does not intend to break the marital relationship between her and the petitioner. Thus, she submitted the petition be dismissed.

4. From the aforesaid rival pleadings of the parties, the questions that require to be adjudicated is whether, there exists any cruelty on the part of the respondent to allow the divorce petition?

5. The petitioner in order to buttress his case he, himself, has been examined as P.W.1 and one Pyari Mohan Parida as P.W. 2. The respondent in order to nix the allegations of the petitioner, she, herself, has been examined as R.W. 1 and her brother namely Sanatan Parida as R.W. 2. Both the petitioner and the respondent did not chose to file any documentary evidence on their behalf.

6. The petitioner sought divorce on the ground of mental cruelty and the mental cruelty attributed due to deprivation of sex due to mental disorder of the respondent. The petitioner has singularly failed to file any medical paper much less failed to examine to the doctor to prove the mental disorder of the respondent. Be that as it may, non resumption of cohabitation from the date of reception till the departure of the respondent from her matrimonial home and thereafter till date is a mental 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. Thus, the ground of cruelty is established. Hence, it is ordered;

O R D E R

The petition of the petitioner is allowed on contest. 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 payment of Rs. 5,00,000/- to the respondent towards her permanent alimony.

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

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List of witness on behalf of petitioner

P.W. 1 Sri Samarendra Kumar Bairiganjan

P.W. 2 Pyari Mohan Parida

List of witness on behalf of respondent

R.W. 1 Nalini Parida

R.W. 2 Sanatan Parida

List of exhibits on behalf petitioner

Nil

List of exhibits on behalf of respondent

Nil

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