

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

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

Civil Proceeding No. 8 of 2014

Sujata Sahoo, aged about 34 years,
W/o-Srikanta Padhy,
D/o- Surendranath Sahoo,
At present Bhaskar Sahi, Banamalipur,
P.S.-Balipatna, Bhubaneswar,
Dist-Khurda.

... Petitioner

... Versus...

Srikanta Padhy, aged about 46 years,
S/o-Bhagawan Padhy,
At-Lane-1, Road-2, Jagannath Vihar,
P.S.-Khandagiri, Baramunda,
Bhubaneswar, Dist-Khurda.

... Respondent

Date of Argument: 02.03.2015

Date of Judgment: 13.03.2015

J U D G M E N T

The petitioner has filed a petition U/s. 13 (i) (i-e) (i-a) (i-b) of the Hindu Marriage Act, 1955 (in short, the Act 1955) praying for a decree of dissolution of marriage of the petitioner with the respondent on the grounds of cruelty and desertion.

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 under Balipatna Police Station on 22.04.2000 and out of their wedlock one male child namely Suvendu Padhy was born on

28.03.2001. According to the petitioner, at the time of marriage, her father had given cash of Rs. 2,00,000/- and gold ornaments of 10 tolas and silver ornaments of 200 grams along with other household articles. After one year of marriage, the respondent and his parents demanded additional demand of a Maruti Car and when she showed her inability to fulfill their additional demand, the respondent and his parents started torturing her both physically and mentally. They also did not give proper food and medicines while she was pregnant. It is the further case of the petitioner that after few days of marriage, the respondent with the spell of liquor threatened, abused her in filthy languages and demanded money, being a Hindu wife with a hope to change in future tolerate the same but when the torture became unbearable, she was forced to leave her matrimonial home with her minor son on 30.06.2007 and taken shelter of her parental home. Since then she has been residing in her parental home with much financial hardship and unable to maintain herself and the study and other expenses of her minor son who is reading in Class-VIII in D.A.V. Public School at Bhubaneswar. She has further averred at the time of marriage, the respondent was the owner of an Industry. She has further stated that she had also lodged a complaint before H.R.P.C., Cuttack for settlement of the dispute and for their reunion but the respondent and his father avoided to receive the notice of H.R.P.C., Cuttack. The respondent also threatened her over phone and passing bad comments in public through his rowdy friends to humiliate her in public. Since the torture and cruelty by the respondent became in-tolerable the petitioner has filed this proceeding seeking a decree of divorce on the 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?

5. The petitioner in order to prove her case she, herself, has been examined P.W. 1 but did not chose to file any document on his behalf.

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-7 of his petition has stated that the respondent deserted him since 30.06.2007. The petition for divorce in this case is presented in the Court on 04.01.2014. Thus, it is clearly established that the petition has been filed after completion of two years from the date as alleged by the petitioner. 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 30.06.2007, meaning thereby that intentional permanent forsaking and abandonment of one spouse by the other without the others consent and without reasonable cause also meaning not permitting or allowing or facilitating cohabitation between the spouses. The respondent 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 six 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 and his family members towards her. Her statement is facsimile to the allegations 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. 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. Torturing the petitioner by the respondent and his family members both physically and mentally, threatening her with the spell of liquor after some days of marriage, avoiding

to receive the notice of H.R.P.C., Cuttack, threatening the petitioner over phone and passing comments by rowdy friends of the respondent to the petitioner in public 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. 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 is hereby declared dissolved with effect from the date of decree. The respondent is directed to pay permanent alimony of Rs. 10,00,000/-to the petitioner and also directed to bear all the educational and medical expenses of the minor son.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Dictated, corrected by me and is pronounced on this the 13th day of March, 2015.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1 Sujata Sahoo

Witnesses examined for the respondent:

None

List of documents by petitioner:

Nil

List of documents by respondent:

Nil

JUDGE, FAMILY COURT,
BHUBANESWAR.