

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

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

Civil Proceeding No. 833 of 2011

Sushil Kumar Sahoo @ Kuni, aged about 34 years,
S/o-Hrudananda Sahoo,
At-Baruan (B), P.S.-Bhuban,
Dist-Dhenkanal.

... Petitioner

... Versus...

Bharati Sahoo @ Jhuni, aged about 33 years,
W/o-Sushil Kumar Sahoo,
D/o- Dhaneswar Sahoo,
Resident of Or No. L-236,
Baramunda Housing Board Colony,
P.O./P.S.-Khandagiri, Bhubaneswar,
Dist-Khurda.

... Respondent

Date of Argument : 11.08.2014

Date of Judgment : 03.09.2014

J U D G M E N T

This order arises out of a petition u/s. 13 (1) (ia) (ib) of the Hindu Marriage Act, 1956 (in short, the Act 1956) praying for a decree of dissolution of marriage of the petitioner with the Opp. Party on the ground of desertion and cruelty.

2. The admitted facts of the parties are that their marriage was solemnized as per Hindu rites and customs at Hotel Crystal, Baramunda, Khandagiri, Bhubaneswar on 22.04.2009 and marriage reception was celebrated at Biju Pattnaik Energy Park at Bhubaneswar on 24.04.2009 and the respondent left her matrimonial home on 27.04.2009.

3. The case of the petitioner is that they have not consummated their marriage and on the date of 4th night i.e. on 25.04.2009 of marriage the

respondent disclosed before him that she was not willing to marry him but when her father threatened her "if she would not marry then he will commit suicide" and in order to save the life of her father she married to him. He has further averred that the respondent did not allow the petitioner to establish the relation with her. On the other hand, the respondent told him to live as a friend but not as husband and wife and if she be compelled for co-habitation she would commit suicide. He has further averred that on the next day morning, he disclosed this fact to his father and his father intimated it to the father of the respondent and on 27.04.2009, the father of the respondent came and in presence of his family members and friends the respondent disclosed that she was given marriage against her consent and not interested to continue her marital life with the petitioner. The father of the respondent giving assurance to the petitioner that the respondent would return to her matrimonial home after change of her mind. The petitioner has further averred that the respondent is an arrogant lady and she always wanted to dominate him and family members. He has further averred that when the respondent had left his company with her father had taken all her belongings including the jewellery given by both sides, relatives, clothing and other valuable articles with her. He has further averred that several attempts have been made by his parents, well-wishers and friends but in vain. Hence, the petition for divorce filed by the husband on the aforesaid grounds.

4. The Opp. Party has contested the proceeding by filing written statement. The specific case of the respondent is that, they have consummated their marital life on 25.04.2009 and 26.04.2009. She has stated that the petitioner is an arrogant, moody, rude and knows well how to create unpleasant situations to torture an innocent person. She has further stated that on 27.07.2009 the her father was called by the family members of the petitioner and held a meeting in his house where her father was insulted for which he went back to his house on his motorcycle and sometimes thereafter she was sent to her paternal home by the younger brother of the petitioner with her brief case containing clothes and dresses by a car which was being driving by

his younger brother and his brother dropped her in her parental home. She has further stated that on 27.04.2009 she was driven out only for more dowry and later it was informed by the petitioner and with that intention after several requests of her to visit her parental house, the petitioner did not come. She has further stated that during marriage her father had given gold ornaments approximately value of Rs. 1,00,000/-, cash of Rs. 1,70,000/- and other household articles which she had kept in the steel almirah and as she was driven out from her matrimonial home suddenly, she could not get time to collect and bring those at the time of her departure. She has further stated that the petitioner is getting salary of Rs. 30,000/- per month and apart from that he has landed property and he is able to maintain her. Although the parents, relatives and her well-wishers had taken several attempts for reunion, the petitioner refused to accept her. The petitioner with an ulterior motive filed this case for divorce and therefore, the same is liable to be dismissed.

5. From the aforesaid rival pleadings of the parties, the question that requires to be adjudicated is whether, there exists any desertion and cruelty on the part of the respondent to allow the divorce petition?

6. The petitioner in order to buttress his case he himself, has been examined as P.W.1 and his father as P.W. 2. The respondent in order to nix the allegation of the petitioner she, herself, has been examined as R.W. 1 and her father as R.W.2.

7. The petitioner sought divorce on the grounds of respondent's desertion and cruelty. It is needless to say Section 13(1) (b) of the Hindu Marriage Act, 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 6 of her petition has stated that the respondent deserted her since 27.04.2009. The petition of divorce in this case is presented in the Court on 25.10.2011. Thus, it is clearly established that the petition has been filed after completion of two years from the date as alleged by the petitioner. Therefore, the petitioner could able to prove the

factum of two years separation of the respondent from him on the date of filing of the petition. For proving the offence of desertion, two essential conditions must be there namely (i) the factum of separation and (ii) the intention to bring the cohabitation permanently to an end (*animus deserendi*). Similarly two elements are essential so far as deserted spouse is concerned: (1) the absence of consent and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home.

8. The Supreme Court in the case of *Lachman Utamchan Kirpalani Vrs. Meena*, relying upon the of quoted decision i.e., observed *Bipinichandra Jaisinghbahi Shah reported in AIR 1957 SC 176* observed that the burden of proving desertion-the "*factum*" as well as the "*animus deserendi*" is on the petitioner, and he or she has to establish beyond reasonable doubt, to the satisfaction of the Court, the desertion throughout the entire period and that such desertion was without any just cause. In other words, even if the wife, where she is the deserting spouse, does not prove just cause for her living apart, the petitioner-husband has still to satisfy the Court that the desertion was without just cause.

9. In the instant case, it is borne out from the pleading and from the evidence on record from the side of the petitioner that the respondent wife disclosed before the petitioner that she married him against her will in order to save the life of her father and did not cooperate for consummation of the marriage and on the following morning, he reported it to his family members and his fther informed to the father of the respondent, who came to their house on 27.04.2009 and took the respondent with him assuring the petitioner and his family members that the respondent will return to her matrimonial home after she would be refreshed in his house. He has further stated that some days thereafter, there was a meeting in the Ganesh Temple, Khandagiri and in the said meeting as no consensus agreement reached between the parties about resumption of marriage, the gentries present in the meeting suggested for mutual divorce. The respondent wife led evidence contrary by stating that the brother of the petitioner left her in her parental

home by a Car on the alleged date. Her aforesaid statement cannot be accepted when the father of the respondent was admitted that there was a meeting in the house of the petitioner on 27.04.2009 and in that meeting the petitioner made certain allegation against the respondent for not cooperating for cohabitation. The marriage was solemnized on 22.04.2009 had the respondent consummated the marriage, there would not have any meeting on 27.04.2009 and the petitioner would not have made such allegations against the respondent. It, therefore, appears natural that it is the father of the respondent who had taken the respondent with him for a change of mind of the respondent and thereafter, the respondent did not return to the company of the petitioner even attempts have been made by the petitioner for reunion. Therefore, it is in fact the respondent, who has abandoned the company of the petitioner with a clear intention to forshake the marriage. Therefore the ground of desertion is established.

10. Now the next point for consideration is cruelty. Admittedly, the marriage was not consummated as is evident from the evidence of the parties. Had marriage consummated the petitioner would not have raised such an allegation. 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. Hence, it is ordered:

ORDER

The petition of the petitioner is allowed with cost. 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 petitioner is directed to pay permanent alimony of Rs. 15,00,000/- (Rupees fifteen lakhs) only to the respondent and cost of Rs. 10,000/- towards litigation charges.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Dictated, corrected by me and is pronounced on this the 3rd day of September, 2014.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1 Sushil Kumar Sahoo

P.W. 2 Hrudananda Sahoo

Witnesses examined for the respondent:

R.W.1 Bharati Sahoo

R.W.2 Dhaneswar Sahoo

List of documents by petitioner:

Nil

List of documents by respondent:

Nil

JUDGE, FAMILY COURT,
BHUBANESWAR.