

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

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

Civil Proceeding No. 869 of 2011

Sri Jitendra Panda, aged about 35 years,  
S/o.- Late Purusottam Panda,  
At/P.O.-Sangalai Sasan,  
P.S.-Pipili, Dist-Puri.

... Petitioner

... Versus...

Smt. Purnima Panda, aged about 39 years,  
W/o. Jitendra Panda,  
D/o-Jayakrushna Panda,  
Vill.-Sundhi Sahi, Balakati,  
P.S.-Baliana, Dist-Khurda.

... Respondent

Date of Argument: 03.03.2015

Date of Judgment : 18.03.2015

J U D G M E N T

The petitioner has a filed a petition u/s. 13 (1) (i-a) of the Hindu Marriage Act, 1955 (in short, the Act 1955) 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 as follows:-

The marriage of the petitioner with respondent was solemnized as per Hindu Custom and rites in the village of the respondent at Sundhisahi, Balakati in the district of Khurda on 09.06.2008 and out of their wedlock one male child namely Abhisek Panda was born in the Capital Hospital, Bhubaneswar on 26.01.2010. According to the petitioner it is a dowry less marriage. After marriage, both of them resided in his house at village

Sangalaisasan for a period of one month. The respondent during her stay did not do any household work for which her mother had to do all the household work. The respondent also used filthy languages and assaulted him and his mother. She has also disrespected him and his family members without any rhyme or reason. After one month of the marriage, she had left his house and stayed at Sundisahi, Balakati. Thereafter several attempts have been made from his side to bring her back to his house but all were in vain. When all attempts have been failed, finding no alternative he had gone there and started residing at Sundisahi, Balakati. During his stay there, the respondent did not prepare food for him for which most of the time he used to take his meal in the hotel. Several times the respondent threatened him to put him in false dowry torture cases. It is the further case of the petitioner that he has purchased all the household articles in the name of respondent after three months of marriage. After birth of the male child the respondent has not taken care of the newly born baby for which he had to do all the work of the child for which he was not able to perform his day to day business work. He has further stated that the respondent used to go out of the house without informing him and returned home after three to four hours. When he asked, the respondent became more violent and assaulted him and told her that "moro bahuta ghaita athare achanti, besi pati kale tanku lagai tate murder karibi". He has further stated that the respondent has got illicit relationship with some noted criminals in the locality for which he apprehended to be murdered by the respondent at any point of time. It is further averred that at the time of marriage it was suppressed that the respondent was five years older than him. According to him, in order to change the attitude of the respondent towards him and his family members, he has taken her to different places, given lot of money, costly gold ornaments and sarees on different occasions and also taken her to different star hotels for lunch and dinner but all were in vain. On 20.11.2011 when he persuaded the respondent to return back to his native village, the respondent had thrown

away all the household articles and threatened to murder him. Finding no alternative he has left the house at about 10 P.M. Since the torture and cruelty by the respondent became intolerable and as the respondent debarred him from any marital relationship, he has filed this proceeding seeking a decree of divorce.

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 cruelty on the part of the respondent to allow the petition for divorce and whether the respondent is entitled for alimony either permanent or monthly?

5. The petitioner in order to prove his case he, himself, has been examined P.W. 1.

6. The petitioner sought divorce on the ground of respondent's cruelty. He has deposed about the maltreatment of the respondent towards him. His statement is facsimile to the allegation 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. Admittedly, there has been no cohabitation between the parties since 20.11.2011. From the unchallenged evidence of the petitioner, it is clearly established that the respondent without any rhyme or reason willfully withdrew the cohabitation with the petitioner. 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. 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 refused to return his company since 20.11.2011 and thrown out the belongings of the house and threatened to murder him. 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 when is examined in ferreted eyes and on such examination I am satisfied that the petitioner could able to establish the same. Hence, it is ordered;

7. The next point for consideration is that whether the respondent is entitled for alimony either permanent or monthly. It is admitted by the petitioner that he is a businessman. He has also admitted that he had lunch and dinner to the respondent in Star Hotels in as much as presented costly gold ornaments and sarees on different occasions. Therefore, the petitioner is an affluent man. The respondent is aged about 39 years old at the time of filing of the present petition i.e. 25.11.2011 and therefore, by now she is aged about 43 years old. The life expectancy of a woman in Indian climate is 70 years. Keeping in view of the affluence of the petitioner and spiraling rise of essential commodities, the respondent in order to maintain the standard of life which the petitioner was providing her when she was residing with him will come around Rs. 20,000/- per month. It is would be just and proper to grand permanent alimony of Rs. 50,00,000/- to the respondent. Besides, he is also directed to bear the medical, education and marriage expenses of the son. He also directed to return the dowry articles given at the time of marriage.

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 subject to payment of Rs. 50,00,000/-. Besides, he is also directed to bear the medical, education and marriage expenses of the son. He also directed to return the dowry articles given at the time of marriage.

JUDGE, FAMILY COURT,  
BHUBANESWAR.

Dictated, corrected by me and is pronounced on this the 18<sup>th</sup> day of March, 2015.

JUDGE, FAMILY COURT,  
BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1 Sri Jitendra Panda

Witnesses examined for the respondent:

None

List of documents by petitioner:

Nil

List of documents by respondent:

Nil

JUDGE, FAMILY COURT,  
BHUBANESWAR.