

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

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

Civil Proceeding No. 155 of 2012

Md. Nasim Anjar Khan, aged about 29 years,
S/o- Ishaque Khan,
Plot No. K-8/1041, Kalinga Vihar,
P.S.-Khandagiri, Bhubaneswar,
Dist-Khurda

... Petitioner

... Versus...

Zinal Zarene, aged about 27 years,
D/o- Sayad Rasid Imam,
At- Barapathar, P.O.-Buxi Bazar,
P.S.-Dargha Bazar,
Dist-Cuttack.

... Respondent

Date of argument : 18.08.2014

Date of order : 01.09.2014

ORDER

This order arises out of a petition u/s. 281 of Mahemmedan Law with prayer for restitution of her conjugal rights.

2. The fact of the case of the petitioner are as follows:-

The marriage of the petitioner with respondent was solemnized as per Muslim Customs and rites at Sadar Kazi, Cuttack on 09.10.2010. The petitioner has averred that prior to the marriage the respondent was a divorcee and her second marriage with the petitioner was based on love and affection between them and it was a dowry free marriage as he has bore all the expenses of marriage.. He has further averred that after marriage they lead a happy marital life for some days and thereafter, the respondent tortured him

both physically and mentally and also used slang languages at him. He has averred that the respondent has also assaulted him on silly matter and did not cook food and always insisted him to bring food from Star Hotels and regularly visiting Beauty Parlour, wore objectionable dresses, which is not permissible in Musulim Society and talked over phone in odd hours and when the petitioner objected it, the respondent man-handled and threatened to entangle him and his family members in false dowry cases. He has further averred that three months after marriage, the petitioner and his father came to Bhubaneswar to meet the respondent and seeing his father, the respondent became furious and abused him in slang languages. He has further averred that he tried his best to settle the disputes but all his efforts were in vain. He has further averred that he has taken the respondent to different places of Assam and Bangalore from 12.03.2012 to 27.03.2012 with intention to change her mind and they returned on 28.03.2012 to Bhubaneswar and the respondent advised him to take complete rest and both of them went to sleep and when the respondent got up at about 9 A.M., he found the respondent was not in the house and also found that door was locked from the outside and almirah and trunk were opened, clothes boxes were scattered and after some time he informed his friend Aditya Prasad, who came and broken the lock and rescued him. He has further averred that after that he has found that gold ornaments, silver ornaments and cash were missing. He has further averred that after missing of the articles he tried to contact the respondent over phone but the respondent had switched off her mobile and when he went to Cuttack found that the respondent was absent and her parents did not give him satisfactory reply. It is further averred that several attempts have been made for settlement of dispute, but the respondent and his family members did not cooperate. Since the respondent without any rhyme or reason deserted the petitioner and withdrew herself from the society of the petitioner, he has filed this present proceeding for restitution of conjugal right.

3. The respondent did not enter contest the petition and therefore, is set ex-parte.

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 withdrew herself from the society of 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 according to Muslim rites and customs on 09.10.2010 by Sadar Kazi at Cuttack. After marriage, they led happy conjugal life for some days and thereafter the respondent tortured him both physically and mentally by using slang language, assaulting him on silly matters, did not cook food and always insist to take food in Star Hotels, regularly visited Beauty Parlour, wear objectionable dresses and also taking over phone at odd hour for hours and when he objected it, the respondent man-handled and threatened him to entangle him and family members in false cases. On 28.03.2012 the respondent after locking the door from the outside went to her parental home taking the cash and gold and silver ornaments from his house. She has further stated that several attempts have been made from their side for restitution of their marital relationship, but the respondent and his family members did not cooperate, for which, the petitioner knocked at the door of the court for restitution of their conjugal rights. The above evidence of the petitioner remains unchallenged. Therefore, there is no reason to disbelieve her testimony.

6. From the above evidence of P.W.1, it is well forthcoming that, the respondent is his legally married wife and after marriage, they led their happy conjugal life for some days and thereafter, the respondent without any rhyme or reason withdrew herself from the society of the petitioner on some pretext

and she avoided for any relationship with the petitioner. The respondent without any rhyme or reason neglected the petitioner and did not take any steps for consummation of their marriage. It is the respondent, who is the author of the entire matrimonial dispute and their marriage is still subsistence. Therefore, the petitioner is entitled for restitution of conjugal rights as claimed for. Hence, ordered:

ORDER

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 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 1st day of September, 2014.

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BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1 Md. Nasim Anjar Khan

Witnesses examined for the respondent:

None

List of documents by petitioner:

Nil

List of documents by respondent:

Nil

JUDGE, FAMILY COURT,
BHUBANESWAR.