

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

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

Civil Proceeding No. 300 of 2010

Rajendra Mishra, aged about 37 years,
S/o-Bipin Bihari Mishra,
At/Vill.-Jalbang, P.O.-Raisuan,
Dist.-Keonjhar,
At present residing at-3/B, PC-Plaza, Bhomikhal,
Town-Bhubaneswar, Dist-Khurda.

... Petitioner

... Versus...

Smt. Jayashree Panda, aged about 31 years,
W/o-Rajendra Mishra,
Presently residing C/o-Muralidhar Panda,
Editor of Orissa State Journal of Ophthalmology,
Plot No. 4500/5 (In front of Jagannath Ashram)
Maheswar Colony, Tankapani Road,
P.S.-Baranga, Town-Bhubaneswar,
Dist-Khurda.

... Respondent

Date of Argument : 19.08.2014

Date of Judgment : 03.09.2014

J U D G M E N T

This order arises out of a petition u/s. 13 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 desertion and cruelty.

2. The admitted facts of the parties are that their marriage was solemnized in Hotel Swosti at Bhubaneswar on 25.11.2007. The respondent has been staying separately from the petitioner since 04.05.2008. The petitioner is working in Maruti Company and was posted at Ranchi at the time of marriage.

3. The case of the petitioner is that after marriage both of them went to the

village of the petitioner to live in a joint family. The respondent who hails from an urban nuclear family was unable to adjust herself in the house of the petitioner and from the first day she insisted him to take her with him to his service place at Ranchi. On the date of reception the respondent wanted to know from him how soon she would be free from the joint family. After making necessary arrangements when he wanted to take the respondent and his mother with him, she refused to accompany him and wanted for his transfer to Bhubaneswar. On 04.05.2008 the respondent went with her parents to her parental home at Bhubaneswar for a formal visit but after that the respondent did not return to his house or joined with him at his service place either at Bhubaneswar where the respondent got his transfer or at Kolkata where he is presently employed and till date she has been residing with her parents and refused to join with him. He has further contended that the family members of the respondent had never disclosed before marriage that the respondent is mentally ill for which she had undergone treatment. After marriage, the respondent showed violent nature and misbehaved, abused and disregarded every family members of the petitioner during her stay in his house. He has further contended that the respondent used to visit her parental home and remained at Bhubaneswar for long stretches of time within her short stay of six months and never allowed the petitioner for any type of conjugal relation with her. He has further averred that the respondent had filed several cases against him such as U/s. 125 Cr.P.C. claiming maintenance and U/s. 498(A) against the petitioner to harass him and prior to that the petitioner had filed a petition U/s. 9 of the Hindu Marriage Act. He has averred that by filing different cases without any reasonable cause the respondent had shown her cruel behavior at him. Hence, the petition for divorce filed by the husband on the aforesaid two grounds.

4. The specific case of the respondent is that, after seven to eight days of the marriage, the petitioner has tortured her physically and mentally for demand of additional dowry of Rs.4,00,000/- and when she showed her inability to give such amount, the father-in-law and her sister in law Tiki Mishra abused her in

filthy languages and the sister-in-law of the petitioner gave her two blows and when she fell down, her father-in-law and mother-in-law and sister-in law gave her fist blows and kicks and they also threatened her to kill her by setting fire and taken away her mobile phone. Respondent has admitted, she filed criminal case vide G.R.No.2300/2009 against the petitioner and his family members as the torture and cruelty on her became unbearable. After driven out from her matrimonial home, the respondent was also assaulted by the petitioner at her parental house. She has further stated that the petitioner has filed a case under Sec.9 of Hindu Marriage Act and when the said case was pending, the petitioner has filed this present case which shows the malafide intention in order to fulfill his ill desire. The respondent has further stated that on 03.05.2008, the in-laws of the respondent severely assaulted her and they were in a mood to give the marriage of the petitioner with Alice. She has further stated that the petitioner, his parents and one Chittaranjan Mishra forcibly took her ornaments and Chittaranjan Mishra and Bijayalaxmi Mishra kept the signature of the respondent in two blank papers. Respondent has further averred that at the time of marriage, her parents had given cash of Rs.3,30,000/-, gold ornaments, furnitures and other house hold articles and a cash of Rs.1,00,000/- for T.V., fridge and other household articles as per demand. The respondent has averred that due to torture and cruelty by the petitioner and his family members, she suffered irreparable loss and injury which cannot be compensated in any manner. She has further stated that she has pulled well for three days in her matrimonial home but on the fourth night when the petitioner was talking to somebody on mobile phone on the roof of his building and when she asked about it, the petitioner slapped on her check and warned her to stay away without interfering such matter. She has further stated that petitioner got annoyed on her many times and she remained silent due to social prestige and dignity of both the family. She has further averred that she was also attempted to kill setting fire by pouring kerosene. According to her, the petitioner and his family members driven her out without any justifiable cause and since then she took the shelter of her father. All the attempts made by her

father for settlement of dispute, were in vain. Thereafter, when the respondent tried to enter into the house of the petitioner, they did not allow her and abused her in filthy languages. Therefore, the respondent has prayed for dismissal of the case.

5. From the aforesaid rival pleadings of the parties, the questions that require to be adjudicated is whether, there exists any desertion and cruelty by respondent towards the petitioner and his family member and secondly, whether the petitioner is entitled for a decree of divorce ?

6. The petitioner in order to buttress his case he, himself, has been examined as P.W.1, his mother as P.W. 2 and one Purna Chandra Das as P.W. 3 and one Padmalochan Sahoo as P.W.4. The respondent in order to nix the allegation of the petitioner she, herself, has been examined as R.W. 1, her father as R.W.2 and her brother as R.W.3.

7. The petitioner in his evidence has stated that after marriage they lived as husband and wife in his house in village Jalabanga in a joint family, but from the inception of the marriage, the respondent picked up quarrel with him and with other family members and forced him to take her to Ranchi to his service place and after arranging the accommodation at Ranchi, when the petitioner told the respondent to go to Ranchi with his mother, the respondent suddenly got furious and abused him in filthy language. He has further stated that the respondent is arrogant, proud and short tempered woman and always misbehaved him being a daughter of a doctor. He has further stated that the respondent is mentally ill and she was treated by different doctors prior to their marriage and she suppressed her disease to him. He has stated that the respondent most of the time used to visit her parents house and stayed there for about 15 to 20 days without his consent. He has further stated that since 04.05.2008 the respondent deserted him and has been staying at her parents house at Bhubaneswar without any reasonable cause and deprived of the conjugal rights. He has stated that the respondent hardly stayed in his house for about one month physically. He has further stated that several attempts have been made from his side for conciliation of the dispute, which failed.

8. P.W.2 mother of the petitioner, P.W.3 and P.W.4 the neighbor of the petitioner have fully supported the facts and evidence adduced by the petitioner stating that the respondent without any rhyme or reason tortured the petitioner both mentally and physically and withdrew herself from the society of the petitioner without any justifiable cause.

9. R.W.1 in her evidence has stated regarding the manner which she was tortured by the petitioner in her matrimonial house. She has stated that the petitioner and his family members used to assault her without any rhyme or reason and tried to kill her by pouring kerosene in order to fulfill their desire for marriage of the petitioner with one Alice to whom he has got love affairs. She has further stated that without any justifiable cause, the petitioner drove her from his house and debarred her from any conjugal rights. R.W.2 the father of the respondent and R.W.3 the brother of the respondent have fully corroborated the evidence of the R.W.1. They have stated that the petitioner and his family members tortured the respondent both physically and mentally for non-fulfillment of additional demand of dowry and they deserted the petitioner without any sufficient cause.

10. The petitioner sought divorce on the grounds of respondent's desertion and cruelty. It is needless to say Section 13(1) (ib) 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 8 of his petition has stated that the respondent deserted him since 04.05.2008. The petition of divorce in this case is presented in the Court on 20.09.2010. Thus, it is clearly established that the petition has been filed after completion of two years from the date as alleged by the petitioner. In other words the factum of parties living separately for two years from each other is established. Now the next question for consideration is whether the wife has intention to bring cohabitation permanently to an end animus deserendi because in essence desertion means the intentional permanent forshaking and abandonment of one spouse by the other without that other's consent and without reasonable cause. It is a total repudiation of

the obligation of marriage. Desertion is not the withdrawal from a place of abode, but from a state of things. The intention to snap the tie of sacrosanct marriage for all times to come has to be apparent from the conduct. If a spouse abandons the other for a temporary period under certain circumstance without intending to cease the cohabitation permanently. It will not amount to desertion.

11. 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.

12. In the instant case, it is borne out from the pleading and on the evidence on record from the side of the petitioner that the respondent-wife mal-treated not only to the petitioner and her parents and friends. P.W. 3 at paragraph-11 of his cross examination has admitted that he had not seen when the respondent-wife gave slap to the petitioner. Therefore, the question that respondent's mal-treating the petitioner is not correct. On the other hand, the respondent-wife also asserted that she was turned out from house by the petitioner-husband and her in-laws after assaulting her as their additional demand of Rs. 4,00,000/- could not be fulfilled by her and her parents. The respondent wife has all along made consistent allegations that the petitioner has some affairs with Alice. Even she has stated the said fact in reply to the pleader notice sent to her by the petitioner. The petitioner could not challenge the said fact. The respondent-wife has further stated when she told the said fact, to her parents-in-law, she was assaulted. That aspect of her statement has not been demolished. The extramarital relation of the petitioner with Alice was ascertained by the respondent on the third night of the marriage, when the

respondent found the petitioner talking with Alice over phone on the roof. The respondent has stated that when she questioned to the said fact to the petitioner, the latter, intimidated her. The record further borne out that the petitioner filed a petition U/s. 9 of the Act, 1955 for restitution of conjugal rights with the respondent before filing of the present proceeding. The petitioner did not pursue that application. This could show the conduct of the petitioner that he is not at all interested for restitution of conjugal rights with the respondent. Even then, there has been no attempt made by the petitioner to convene any panchayat to make an attempt by him to join the respondent with him. It is further evident from the evidence of P.W. 4 that the respondent was going to her father's house with consent of husband and in-laws. Therefore, it is apparent that on 03.05.2008 or 04.05.2008, the respondent had gone to her parental house with the consent either of husband or parents-in-law. Thus, by making one sentence allegations that the respondent has deserted him, no court can grant a decree of divorce on the ground of desertion without an attempt has not made by the husband to secure his wife to the matrimonial home. On the contrary from the evidence of the respondent, nay, from her pleading, it is amply established that the respondent did not return to her matrimonial home due to wrong committed by the petitioner i.e. keeping intimacy with Alice and secondly, mal-treatment by petitioner and his parents for non fulfillment of their additional demand of dowry of Rs. 4,00,000/-. Thus, the ground of desertion held not established.

13. Now, the next point for consideration is cruelty. The petitioner attributed cruelty against the respondent that she misbehaved him and his parents and dealt slap to him before the friends and thereby humiliated him. It is also the case of the petitioner that from the next day of the marriage, the respondent insisted him to take her to his working place at Ranchi, so that, she would be free from joint family life. It is also let into evidence that the respondent was mentally ill before marriage and that fact has been concealed to him. P.W. 3 has denied that the respondent has ever dealt any slap to the petitioner. The petitioner on his own accord has arranged accommodation at Ranchi in order to

take the respondent with him. If that be accepted, one must fail to understand why the wife will be furious, if that was her demand and the petitioner fulfilled her demand. About mental illness, no material evidence is adduced by the petitioner about the mental illness of the respondent. On the contrary, the evidence of the respondent clearly demonstrates that she was tortured by the petitioner, his parents and sister, when she denied to bring their additional demand of Rs. 4,00,000/- from her father. The respondent has also soon after returned to her parents house lodged an FIR alleging torture on account of additional demand dowry and that case was much before filing of the present case. The respondent-wife has clearly admitted that she is not willing to return to the company of the petitioner as she apprehends danger to her life. Her apprehension is natural, especially, when she complained of petitioner's intimacy with Alice. When the wife complained about the persistent demand of dowry from her husband and her parents in law, the wife has reasonable apprehension arising from the conduct of the husband that she was likely to be physically harmed and there was reasonable justification of wife's refusal to live with the husband. Therefore, though the respondent wife living separately, she cannot be said to have deserted the petitioner. It is in fact the petitioner himself who appears to be at fault. In these circumstances, the petitioner cannot succeed in obtaining the decree of divorce on the ground of desertion and cruelty. Hence, ordered;

ORDER

The petition of the petitioner is dismissed on contest without cost.

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 Rajesh Mishra
P.W.2 Anjali Mishra
P.W.3 Purna Chandra Dash
P.W.4 Padmalochan Sahoo

Witnesses examined for the respondent:

R.W.1 Jayashree Panda
R.W.2 Muralidhar Panda
R.W.3 Dhiraj Kumar Panda

List of documents by petitioner:

Nil

List of documents by respondent:

Nil

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