

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

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

Civil Proceeding No. 90 of 2011

Raja Kishore Gochhayat, aged about 38 years,
S/o-Sahadev Gochhayat
of Bhanapur, P.O.-Kurujang,
Via-Konark, Dist-Puri
At present residing at Plot No. 144,
Rasulgarh, Bhubaneswar, P.S.-Mancheswar,
Dist-Khurda.

... Petitioner

... Versus...

Bharati Jena (Gochhayat), aged about 30 years,
W/o-Raja Kishore Gochhayat
D/o-Balaram Jena,
At/P.O.-Balianta, P.S.-Balianta,
Dist-Khurda.
At present residing in the above address.

... Respondent

Date of Argument : 24.11.2014

Date of Judgment : 26.11.2014

J U D G M E N T

This order arises out of a petition u/s. 13 (1) 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 ground of cruelty.

2. The facts of the case of the petitioner are that:-

The marriage of the petitioner with respondent was solemnized as per Hindu Custom and rites in Qrs. No. 79/9, Phase-II, Sailashree Vihar, Bhubaneswar on 27.11.1997 and they have not consummated their marriage

due to refusal of the respondent on the plea of menstrual cycle in the fourth night and even after eight days thereafter. According to the petitioner, after Astamangala both of them came to the parental home of the respondent at Bhubaneswar and stayed there for two days and during stay there the respondent also avoided for consummation of marriage on the ground of lack of accommodation. After two days the petitioner went to his service place at Puri where he is working as a teacher in a private Institution but the respondent did not accompany him on the plea of treatment with a good doctor and taking medicine to rectify her menstrual problems. After interference of other family members of the petitioner, the respondent returned to her matrimonial home with her so called uncle Binoy Nayak @ Umesh Chandra Nayak in the first week of February, 1998. In spite of his request, the respondent did not disclose her illness or agree to take treatment with doctor in the locality. It is further averred by the petitioner that to avoid further disturbance in his family, he was forced to send the respondent to her parental home in the last part of the month of February, 1998 and this process continued till the 1st week of May, 2003 and the respondent could not ascertain the reason why the respondent is not allowing him for consummation. It is further averred by the petitioner that the respondent hardly visiting his house for fifteen days in every five to six months intervals and returned to her parental home and during her stay in his house, the respondent did not do any household work, cook food and also refused for any marital relationship with him. On 26.05.2003 at about 4 A.M. the respondent left his house and went somewhere without any information to him and his family members. On the next morning he searched her everywhere but could not trace her even in the parental home of the respondent. In the month of March, 2004 he could ascertain that the respondent is in her parental home at Bhubaneswar and when he tried to meet her, her parents concealed her appearance in the house but later with much difficulties and with intervention of some of his relatives, he met her on 11.05.2004 at Bhubaneswar and seeing her when he asked her advanced stage of pregnancy, the respondent disclosed

her sexual relationship with the so called uncle Binoy @ Umesh Nayak prior to the marriage and her elopement from his house and staying at Rangamatia with said Binoy @ Umesh Chandra Nayak in a rented house as his wife and her pregnancy is out of the said sexual relationship with Binoy. She also gave copies of her treatment with a doctor on 16.04.2004 for problem of carrying and other pathological test reports after pregnancy and also expressed her desire to reside with said Binoy for which the petitioner return back with humiliation. Later he came to know that the respondent gave birth a male child on 24.09.2004 and the said Binoy has declared the name of the petitioner as father of the said child for which apprehending danger from the side of the respondent, he lodged a report in the Konark P.S. on 28.09.2004. The respondent also filed a petition before Mahila Commission with false allegations against him and his family members which is now subjudice. The petitioner found an envelope in the house of the respondent containing a xerox copy of the affidavit sworn by said Umesh Chandra Nayak as father of the child and on further inquiry, he came to know that Binoy @ Umesh Chandra Nayak refused to accept her and the baby for which the respondent has filed a case against him in the Laxmisagar Police Station bearing P.S. Case No. 402/04 dated 12.11.2004 and later the said case was dismissed by the learned S.D.J.M, Bhubaneswar on compromise. Since the torture and cruelty by the respondent became in-tolerable the petitioner 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?

5. The petitioner in order to prove his case he, himself, has been examined P.W. 1 and relied on some documents i.e. Ext. 1 is the Xerox copy of the statement of the respondent, Ext. 2 is the Xerox copy of the Station Diary, Ext. 3 is the Notice from the Women Commission, Ext. 4 is the Entire order sheet and Ext. 5 is the Xerox copy of the F.I.R.

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. Now the next point for consideration is cruelty. Admittedly, there has been no cohabitation between the parties since 27.11.1997. 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 as she has extra marital relation with Binoy @ Umesh Chandra Nayak. 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 her character and trebles her 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 without any rhyme and reason left his house since 26.05.2003. There is nothing to disbelieve the unchallenged evidence of the petitioner. 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.

Repeatedly avoiding for consummation since the date of marriage and living with one Binoy @ Umesh Chandra Nayak 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;

O R D E R

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.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Dictated, corrected by me and is pronounced on this the 26th day of November, 2014.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1 Raja Kishore Gochhayat

Witnesses examined for the respondent:

None

List of documents by petitioner:

Ext. 1 Xerox copy of the statement of the respondent

Ext. 2 Xerox copy of the Station Diary

Ext. 3 Xerox copy of the notice from Women Commission.

Ext. 4 Entire order sheet

Ext. 5 Xerox copy of the F.I.R.

List of documents by respondent:

Nil

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BHUBANESWAR.