

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

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

Civil Proceeding No. 837 of 2011

Jyotshna Manjari Patalsingh, aged about 34 years,
W/o-Prabhat Kumar Dalabehera,
D/o-Dambarudhara Patalsingh,
At Plot No. 232, Phase-I, Dumduma Housing Board Colony,
Bhubaneswar-19, P.S.-Khandagiri, Dist-Khurda.

... Petitioner

... Versus...

Prabhat Kumar Dalabehera,
S/o-Late Bhajaman Samantray,
At-Samantara Sahi, Badagada, P.S.-Badagada,
Bhubaneswar, Dist-Khurda.
Office address- Orissa Housing Corporation Ltd.,
UTI Building, Near Ram Mandir, Bhubaneswar.

... Respondent

Date of Argument : 02.12.2015

Date of Judgment : 04.12.2015

J U D G M E N T

The petitioner-wife, has filed a petition U/s. 13 of the Hindu Marriage Act, 1955 (in short, the Act 1955) praying for a decree of dissolution of her marriage with the respondent-husband on the grounds of desertion and cruelty.

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

It is the case of the petitioner that her marriage with the respondent was solemnized according to the Hindu rites and customs on 22.06.2004 and they have no child out of their wedlock. According to the petitioner, her father had fulfilled all the demands of the respondent and his family members at the time of marriage. It is averred by her that they have no conjugal relationship

since the date of marriage due to refusal of the respondent for which she suffered mental agony. When she tried to know about it from the respondent, he avoided it. The respondent and his family members tortured her on silly matters as well as for non-fulfillment of their additional demand of dowry. They have insulted her in presence of others. It is further averred by her that during her stay in her matrimonial house, the respondent did not take her care. Since it is not possible on her part to reside with the respondent due to cruel conduct of the respondent towards her and his family members, she has filed the present petition seeking for a decree of divorce on the grounds of desertion and cruelty.

3. Though the respondent filed his written statement yet, subsequently, he did not enter contest the petition and therefore, is set ex-parte.

4. The following points are formulated for determination of the case:-

(i) Whether the respondent deserted the petitioner?

(ii) Whether the circumstances and back grounds depicted in the narration of the petitioner's case constitute cruelty by the respondent on the petitioner and if so, whether the petitioner is entitled for a decree of divorce?

5. The petitioner in order to prove his case he, himself, has been examined P.W. 1 but chose not file any document on his behalf.

Point No.I

Whether the respondent deserted the petitioner?

6. The petitioner sought divorce on the ground of respondent's desertion. It is needless to say Section 13(1) (i-b) of the Act, 1955 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-13 of his petition has stated that the respondent deserted her since 30.12.2004. The petition for divorce in this case is presented in the Court on 28.10.2011. Thus, it is clearly established that the petition has been filed after completion of two years from the date as alleged by the petitioner. The evidence of the petitioner established the fact that the respondent has not taken any efforts for her reunion with the petitioner. It is further established that the respondent avoided for sexual relation with the petitioner. Thus, from

the tenor of the evidence, it is as much as clear as noon day that there has been total liquidation of obligation of marriage between the parties since 30.12.2004, meaning thereby that intentional permanent forsaking and abandonment of the petitioner by the respondent without the petitioner's consent and without reasonable cause also meaning not permitting or allowing or facilitating cohabitation between them. The respondent without any rhyme or reason deserted the petitioner and subjected him to cruelty. This conduct of the respondent is a continuous for more than three years. There is also blink chance of their reunion. Therefore, it is a fit case to snap out the marital relation between parties by passing a decree of divorce. In other words the petitioner could establish the ground of desertion.

Point No.II

Whether the circumstances and back grounds depicted of the narration in the petitioner's case constitute cruelty by the respondent on the petitioner and if so, whether the petitioner is entitled for a decree of divorce?

7. Now the next point for consideration is cruelty. From the unchallenged testimony of the petitioner, it is established that there has been no cohabitation between the parties since 30.12.2004. 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 him 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 woman's mind and body. The result being that if she 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 woman'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. Additionally, torturing the respondent both physically and mentally due to non fulfillment of additional demand of dowry, insulting the petitioner in public, not taking care of the petitioner by the respondent are some of the facts and circumstances indicating the cruel conduct of the respondent on the petitioner. Therefore, the petitioner could also establish the ground of cruelty and as such he is entitled to a decree of divorce both on the grounds of desertion and cruelty. 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 4th day of December, 2015.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1 Jyotshna Manjari Patalsingh

Witnesses examined for the respondent:

None

List of documents by petitioner:

Nil

List of documents by respondent:

Nil

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