

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

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

Civil Proceeding No. 100 of 2011

Smt. Manjulata Panda, aged about 51 years,
W/o- Sri Sarbeshwar Panda,
At/P.O.-Khandasahi, P.S.-Salepur, Dist-Cuttack,
At present-AE/35, V.S.S. Nagar, P.O./P.S.-Mancheswar,
Dist-Khurda.

... Petitioner

... Versus...

Sri Sarbeshwar Panda, aged about 55 years,
S/o-Late Chintamani Panda,
At-Mallikesharpur, P.O.-Palaei Derakundi, P.S.-Chandol,
Dist-Kendrapara
At present:- C/o-Duryodhan Patsahani,
Patasahani Colony, Rasulgarh,
P.S.-Mancheswar, Dist-Khurda.

... Respondent

Date of Argument : 03.11.2015

Date of Judgment: 04.11.2015

J U D G M E N T

The petitioner-wife has filed a petition U/s. 18 of the Hindu Adoption and Maintenance Act, 1956 (in short, the Act 1956) claiming monthly maintenance of Rs. 4,000/- from the respondent-husband.

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 on 06.03.1979 and out of their wedlock one female child was born. According to petitioner, during her stay, the respondent with the spell of liquor tortured her and her daughter mercilessly. He has also not given food and clothing to them. On 20.08.2001 when the torture became

unbearable she was forced to leave the house of the respondent and taken shelter of her parental home. It is further averred by the petitioner that she has given the marriage of her daughter out of her own arrangement. The respondent since the date of desertion has not been providing any farthing to her. The petitioner has further averred that the respondent has also married another lady namely Kalpana Mishra, D/o-Nursing Chandra Mishra of Susua, Cuttack in the year 2003 and was staying with that lady in Patsahni Colony under Mancheswar Police Station. The petitioner has averred that when she along with her mother went to the house of the respondent, they found that the respondent was blessed with a child through Kalpana Mishra and the said Kalpana Mishra was not allowed them to enter into the house. According to her, she is merely a house wife and having no source of income and she is unable to maintain herself. The respondent is working as Guard in O.S.C.V after his retirement and is getting Rs. 4,000/- per month, besides he is getting pension of Rs. 4,500/- per month. Apart from that he is getting Rs. 36,000/- per annum from agriculture. Since the respondent having sufficient means will-fully neglected and refused to maintain her, who is his legally wedded wife, the petitioner is obliged to file the present petition claiming a monthly maintenance of Rs.4,000/- from the respondent.

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

The following points are formulated to resolve the controversy:-

- (i) Whether petitioner is the legally married wife and the petitioner has sufficient cause to live separately from the respondent?
- (ii) Whether the respondent having sufficient means has neglected or refused to maintain the petitioner and the petitioner has no independent source of income?
- (iii) What would be the quantum of maintenance to be allowed to the petitioners, if point No. 1 and 2 are answered in their favour?

4. The petitioner in order to prove her case she, herself, has been examined P.W. 1 and placed reliance on three documents. They are:- Ext. 1 is the copy

of the order sheet of S.D.J.M., Bhubaneswar in G.R. Case No. 2176 of 2006 along with the FIR, Ext. 2 is the paper publication dated 31.05.2006 in daily News Paper Sambad and Ext 2/a is the relevant news item and Ext. 3 is the information obtained under R.T.I. Act regarding the pension of the respondent.

5. The petitioner while being examined as P.W. 1 has stated that she married to the respondent on 06.03.1979 and out of their wedlock one female child was born to whom she has given marriage. Her aforesaid statements have not been challenged. Thus, it can safely be concluded that the petitioner is the legally wedded wife of the respondent.

6. She has also stated that during her stay with the respondent she and her daughter were subjected to torture both physically and mentally by the respondent with the spell of liquor and when the torture became unbearable she was forced to leave the house of the respondent on 20.08.2001. She has further stated that the respondent has also married another lady namely Kalpana Mishra, D/o-Nursing Chandra Mishra of Susua, Cuttack in the year 2003 and was staying with that lady in Patsahni Colony under Mancheswar Police Station. She has further stated that when she along with her mother went to the house of the respondent, they found that the respondent was blessed with a child through Kalpana Mishra and the said Kalpana Mishra did not allow them to enter into the house. Therefore, it can safely be concluded that the petitioner has sufficient cause to live separately from the company of the respondent. Being the husband it is his foremost duty to maintain his legally married wife. From the evidence of the P.W. 1 it is forthcoming that she is merely a house wife and as such she has no sufficient means to support herself.

7. The next question for consideration is, whether the respondent has sufficient means and he has willfully neglected and refused to maintain the petitioner. It is stated categorically by the petitioner in her affidavit evidence that the respondent is working as Guard in O.S.C.V after his retirement and is getting Rs. 4,000/- per month, besides he is getting pension of Rs. 4,500/- per

month. Apart from that he is getting Rs. 36,000/- per annum from agriculture. From Ext. 3, it is establish that the respondent is getting pension of Rs. 5470/- per month with effect from 01.07.2009 as per revised service pension. The petitioner did not chose to file any document in proof of the other sources of income of the respondent as claimed. Thus, from Ext. 3, it is established that the respondent having sufficient means willfully neglected and refused to maintain the petitioner, who has no sufficient means to support herself. Therefore, the respondent is liable to provide maintenance to the petitioner.

8. The next question for consideration is the quantum of maintenance. Considering the cost of living and other attendant circumstances, in as much as, the income of the respondent and claim of the petitioner, I feel in the ends of justice and equity, a sum of Rs. 1,000/- per month to the petitioner would be just and proper, which according to me, would not allow the petitioner to lead a princely and luxury life and also at the same time it would not put the respondent to any vagrancy. Hence ordered;

O R D E R

The petition is allowed ex-parte in favour of the petitioner. The respondent is directed to pay a monthly maintenance of Rs. 1,000/- to the petitioner from the date of filing of application i.e. from 06.07.2006. The respondent is further directed to clear up the arrear maintenance within two months hereinafter. He is also directed to pay the current monthly maintenance within the 1st week of the succeeding month. Besides that the respondent is also directed to pay litigation expenses of Rs. 2,000/- to the petitioner. Failure to carry out the order by the respondent, the petitioner is at liberty to levy execution through due process of law.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Dictated, corrected by me and is pronounced on this the 4th day of November, 2015.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Witnesses examined for the petitioners:

P.W.1 Smt. Manjulata Panda

Witnesses examined for the respondent:

None

List of documents by petitioners:

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| No. | Ext. 1 | Copy of the order sheet of S.D.J.M., Bhubaneswar in G.R. Case 2176 of 2006 along with the FIR |
| | Ext. 2 | Paper publication dated 31.05.2006 in daily News Paper Sambad |
| | Ext 2/a | Relevant news item |
| | Ext. 3 | Information obtained under R.T.I. Act regarding the pension of the respondent. |

List of documents by respondent:

Nil

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