

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

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

Civil Proceeding No. 100 of 2015

Sandeep Kar, aged about 33 years,
S/o.- Srikanta Kar,
At-Plot No. 1047 (P), Nayapalli upper lane,
P.S.-Nayapalli, Bhubaneswar,
Dist-Khurda.

... Petitioner

... Versus...

Monalisa Rath, aged about 30 years,
W/o-Sandeep Kar,
D/o-Trinath Rath, Plot No. 44/5, Behind Falcon House,
Laxmisagar, P.S.-Laxmisagar, Bhubaneswar,
Dist-Khurda.

... Respondent

Date of Argument : 29.07.2015

Date of Judgment: 30.07.2015

J U D G M E N T

The petitioner 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 his marriage with the respondent on the grounds of desertion and cruelty.

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 at Bhabanipatna on 22.02.2011 and consummated their marriage in the house of the petitioner at Bhubaneswar. According to the petitioner, they lead a happy conjugal life for few months and in the month of May, he came to know about the pregnancy of the respondent. It is further averred by the petitioner that on 28.06.2011 the respondent went to her parental home without intimating him and his parents. It is the further case

of the petitioner that in the month of November, 2011 without informing him and without his consent, the respondent aborted the pregnancy. It is further averred by the petitioner that from the month of June, 2011, he tried to bring back her in order to lead happy conjugal life but on every occasion, she avoided by making some false plea or other. Thereafter several attempts have been made from his side by his parents and relatives but all were in vain. On 25.05.2011 he, his father along with some of his relatives went to the parental home of the respondent to bring her back but she refused to join in his company. Finding no other alternative, he has filed a petition U/s. 9 of the Hindu Marriage Act before this Court for restitution of conjugal rights vide C.P. No. 209 of 2014 wherein the respondent did not appear personally in spite of specific direction by this Court on 22.10.2014 and 28.11.2014 respectively for which she has been set ex-parte on 07.01.2015. It is further averred by the petitioner that when the respondent is not interest to lead happy conjugal life with him, he has filed an application for withdrawal of the case with liberty to file the case for dissolution of his marriage and consequent upon his application, this court has been pleased to allow his application and granted leave to file a case for dissolution of his marriage. Since the respondent debarred him from any marital relationship, he has filed this proceeding seeking a decree of divorce on the grounds of desertion and cruelty.

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 desertion and 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 three documents. They are:- Ext. 1 is the certified copy of the petition for restitution of conjugal rights, Ext. 2 is the certified copy of the withdrawal petitioner with leave to file the divorce petition and Ext. 3 is the certified copy of the order sheet passed in C.P. No. 209 of 2014.

6. The petitioner sought divorce on the grounds of respondent's desertion and cruelty. 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-3 of his petition has stated that the respondent deserted him since 28.06.2011. The petition for divorce in this case is presented in the Court on 16.02.2015. Thus, it is clearly established that the petition has been filed after completion of two years from the date as alleged by the petitioner. 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 28.06.2011, meaning thereby that intentional permanent forsaking and abandonment of one spouse by the other without the others consent and without reasonable cause also meaning not permitting or allowing or facilitating cohabitation between the spouses. The respondent without any rhyme or reason deserted the petitioner and subjected him to cruelty. This conduct of the respondent is a continuous for last four 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.

7. Now the next point for consideration is cruelty. Admittedly, there has been no cohabitation between the parties since 28.06.2011. 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. 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 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 his 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 refused for any sexual relationship since 28.06.2011. Desexualizing the petitioner by the respondent for a continuous period of four years amounts to mental cruelty which is one of grounds U/s. 13 (i-a) of the Hindu Marriage, Act. 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 30th day of July, 2015.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1 Sandeep Kar

Witnesses examined for the respondent:

None

List of documents by petitioner:

Ext. 1 Certified copy of the petition for restitution of Conjugal rights

Ext. 2 Certified copy of withdrawal petition with leave to file the divorce petition

Ext. 3 Certified copy of the order sheet passed in C.P. 209 of 2014

List of documents by respondent:

Nil

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