

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

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

Civil Proceeding No. 15 of 2014

Bijay Kumar Moharana, aged about 40 years,
S/o- Sri Bauribandhu Moharana,
resident of Vill-Kokal,
P.O.-Gobabasta, P.S.-Cuttack Sadar, Dist-Cuttack.

... Petitioner

... Versus...

Kaberi Maharana, aged about 35 years,
W/o- Sri Bijay Kumar Moaharana
D/o-Trinath Maharana,
resident of Plot No. 63/2392, Satabdinagar, Unit-8,
P.S.-Khandagiri, Bhubaneswar-751003,
Dist-Khurda.
At present working as Assistant Professor,
college of Horticulture
At/P.O.-CA-Chipilima, Dist-Sambalpur-768025.

... Respondent

Date of Argument : 05.10.2015

Date of Judgment : 07.10.2015

J U D G M E N T

The petitioner-husband, Sri Bijay Kumar Moaharana 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-wife, Kaberi Maharana 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 in Mangala Mandap, Unit-VIII, Bhubaneswar on 12.12.2002 and out of their wedlock one male child namely Bibek Chandra

Moharana was born on 18.04.2006 at Bhubaneswar, who is presently residing with the respondent. It is the case of the petitioner that after two weeks of marriage, both of them went to Sweden at United Kingdom where he worked as a Consultant, British Telecommunication, Plc. According to the petitioner, during the month of August, 2011 while both of them were resided in New Jersey, United States of America, the respondent came back to Bhubaneswar on the plea to visit her parents and since then she has not returned to his company or gone to his house. After one month of her departure, he over telephone requested the respondent to join his company but she avoided it on different pleas. Thereafter several attempts have been from his side to bring back the respondent but all were in vain due to willful refusal of the respondent. It is averred by him that in the first week of January, 2012 he returned to India and on 15.01.2012 he had been to the parental home of the respondent to invite them for marriage ceremony of his younger brother and also to bring back the respondent. During such visit, the respondent imposed two conditions to join his society. They are:- firstly, in future the respondent shall not be asked either by him or by his parents to visit their village Kokal and secondly, he should be legally separately from his parents. When he told the said fact to her parents, they expressed their inability to solve the dispute and told him that it is upto the respondent to decide her future course of action and they would not interfere with the decision taken by her. It is further averred by him that either the respondent or her parents has not attended the marriage function of his brother. It is alleged by him that on 11.03.2012 he received a threat Email from the respondent, "Its 8 months since u paid a single paise for sonu..seems 3 of 7 criminals need to have a surprise date with Orissa police like u had with jersey city police." It is further averred by him that after receiving such message, he has filed petition U/s. 9 of the Act before this Court for restitution of his conjugal rights vide C.P. No. 211 of 2012 and after receiving notice the respondent entered her appearance through her advocate and filed her written statement wherein she made vulgar, wild and defamatory allegations against him and his family members.

Thereafter, the respondent filed an application U/s. 125 Cr.P.C. against him claiming maintenance of Rs. 50,000/- and litigation expenses of Rs. 10,000/- vide C.R.P. No. 93 of 2012 before this Court. It is further averred by him that he has periodically paid Rs. 12,71,000/- to the respondent out of which Rs. 8,71,000/- has been transferred from his account to the account of respondent. He has also opened a Life Insurance Policy in TATA AIG vide policy No. C-200971007 in the name of the respondent for which he is paying quarterly premium of Rs. 1,941/-. It is further averred by the petitioner that during the conciliation of both the proceeding, the respondent bluntly refused to join his company. It is further averred by the petitioner that the respondent after completing her M.Sc (A.G) presently working as Assistant Professor, College of Horticulture, Chipilima and is getting salary of Rs. 71,168/- per month. 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 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?
- (iii) To what other relief?

5. The petitioner in order to prove her case she, herself, has been examined P.W. 1 but did not chose to file any document on her behalf.

Point No.1

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-14 of her petition has stated that the respondent deserted him since August, 2011. The petition for divorce in this case is presented in the Court on 03.01.2014. 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. P.W. 1 has further stated that whenever he requested the respondent and her parents for their reunion, both the respondent and her parents bluntly refused the same. 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 August, 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 her to cruelty. This conduct of the respondent is a continuous for more than seven 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.2

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. Admittedly, there has been no cohabitation between the parties since August, 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 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 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 his vitality. It must be recognized that nothing is more fatal to marriage than disappointment in sexual intercourse. Further the petitioner has stated that on 15.01.2012 he had been to her parental home to invite her family members to attend his younger brother's marriage ceremony and also bring her to his house, the respondent imposed two conditions to join his company. They are:- firstly in future, she shall not be asked either by him or by his family members to visit their village Kokal and secondly he should be legally separated from his parents. Further the petitioner has stated that the respondent refused for any sexual relationship since August, 2011. Desexualizing the petitioner by the respondent for a continuous period of more than two years amounts to mental cruelty. Further from the evidence of the petitioner it is established that though several attempts have been made from the side of the petitioner to bring back the respondent, the respondent refused to join his company. Therefore, concatenating the aforesaid circumstances and back grounds, the respondent subjected the petitioner to cruelty which is one of grounds U/s. 13 (i-a) of the Hindu Marriage, Act.

Point No.3

To what other relief?

8. The petitioner has stated that the respondent after completing his M.Sc (Ag) is now working as Assistant Professor, College of Horticulture, Chipilima and is getting salary of Rs. 71,168/- per month. On the other hand, the petitioner has not disclosed his salary package or his income. From the evidence on record it is established that the petitioner hails from affluent

family and is working in abroad with sufficient income. Therefore, it is establish that the respondent is a man of means and having sufficient means. Keeping in view of the aforesaid income, status of the parties and cost of living, the respondent-wife is not entitled any alimony at presenti. However, the petitioner is directed to bear the educational and medical expenses of the son. He is directed to pay monthly maintenance of Rs. 6,000/-to the son. Hence 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. The petitioner is directed to bear the educational and medical expenses of the son. He is directed to pay monthly alimony of Rs. 6,000/- to the son.

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Dictated, corrected by me and is pronounced on this the 07th day of October, 2015.

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Witnesses examined for the petitioner:

P.W.1 Bijay Kumar Moharana

Witnesses examined for the respondent:

None

List of documents by petitioner:

Nil

List of documents by respondent:

Nil

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