

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

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

Civil Proceeding No. 159 of 2015

Dr. Manisha Kar, aged about 44 years,
W/o.- Mr. Indranil Sen,
At-119/1, Shyam Nagar Road, Poddar Plaza, Block-B,
Flat No. 18, Kolkata-700055.
At present Flat No. 1-081 in Tower-1, Cosomopolis,
Dumduma near N.H.-5, Khandagiri, Bhubaneswar,
Dist-Khurda-751019

... Petitioner

... Versus...

Indrani Sen, aged about 47 years,
S/o-Abhoy Pada Sen,
At-119/1, Shyam Nagar Road, Poddar Plaza,
Block-B, Flat No. 18, Kolkata-700055.
At present Senior Consultant, IBM Pvt. Ltd., DLF IT Park,
Tower No.1, 2nd Floor, Rajarhat New Town, Kolkata-700156

... Respondent

Date of Argument : 29.09.2015

Date of Judgment : 30.09.2015

J U D G M E N T

The petitioner-wife has filed a petition U/s. 10 of the Hindu Marriage Act, 1955 (in short, the Act 1955) read with Section 7 of the Family Courts Act praying for a decree of judicial separation on the ground of cruelty.

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

The marriage of the petitioner with respondent was solemnized before the Marriage Officer Calcutta and 24-Pgs. North and South on 16.07.1997 vide marriage certificate (Ext. 1) and out of their wedlock one female child namely Ayonika Sen was born on 12.08.2002. According to the petitioner

after marriage, she was subjected to torture both physically and mentally by the respondent for several times. It is the case of the petitioner that due to such repeated torture on her and on her daughter she was forced to join as an Associate Professor in AIIMS, Bhubaneswar on 21.08.2012 vide Ext.2. It is averred by her that while living in Bhubaneswar the respondent sometimes came to her and tortured both physically and mentally on her and on her minor daughter and when it became unbearable, she reported the matter to Mahila Police Station on 02.03.2015 and there was a settlement between them at the intervention of the Mahila Police. In the settlement, the respondent promised not to torture her and her minor daughter further but the respondent on 07.02.2015 gave threatening message to her. He has been sending vulgar messages to her mobile phone. It is further averred by her that since her joining in AIIMS, Bhubaneswar they have no conjugal relationship between them. Since the torture became unbearable by the respondent, she has filed this proceeding seeking a decree of judicial separation on the ground of cruelty.

3. The respondent did not enter contest the petition and therefore, is set ex-parte.

4. The only point formulated for determination of the case:-

(i) 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 judicial separation?

5. The petitioner in order to prove her case she, herself, has been examined P.W. 1 and relied on two documents. They are Ext. 1 is the Marriage Certificate and Ext. 2 is the present employment of the petitioner as Associate Professor in the department of physiology in All India Institute of Medical Science, Bhubaneswar.

6. The question that requires to be adjudicated is whether the circumstances and back grounds depicted in the narration in the petitioner's

case constitute cruelty by the respondent on the petitioner and if so, whether the petitioner is entitled for decree of judicial separation?

7. The petitioner sought judicial separation on the ground of respondent's cruelty. P.W. 1 has stated that due to torture of the respondent she was compelled to leave her matrimonial home on 21.08.2012 and joined in AIIMS Bhubaneswar. P.W. 1 has nowhere asserted the nature and extent of ill-treatment of the respondent. It is imperative to assert the nature and extent of ill-treatment when the wife complains of constructive desertion by her husband. In *Bipin Chandra Vrs. Prabhavati* reported in 1956 SCR 838. It has been led down as under:-

“It is imperative to assert the nature and extent of ill-treatment or beating when the wife complains of constructive desertion by her husband. The question of desertion cannot be decided by merely enquiring which party left the matrimonial home first. The husband may live in the place but make it impossible for his wife to live there and if in that state of things the wife leaves the matrimonial home, it can be said to be desertion by the husband of the wife. In deciding the question of desertion the Court has to look at the conduct of both the parties. In deed there is no substantial difference between a husband leaving his wife with animus deserendi and a husband who by his conduct with like intention brings cohabitation to an end by virtually compelling his wife to depart from the matrimonial home. But it is not every conduct of the husband. It must be of a grave and convincing character. A line of demarcation must be drawn between blame-worthy conduct causing unhappiness to the other spouse and conduct equivalent to dismissal from consortium.”

8. In a matter of domestic quarrel between husband and wife, it is hardly possible to adduce ocular evidence. This is generally true. But, at the same time, a mere allegation and more so, when it is so vague cannot necessarily be an answer to the petition. It should be sufficient for the wife just to make an

allegation of ill-treatment and get out of the matrimonial home. This will be abhorrent to the conception of a Hindu marriage. Where direct evidence is not available, it is an absolute requirement that the petition must contain the allegations with precision and with all necessary details.

9. Evidently, in a matrimonial dispute, when the relations between the spouses have become bitter, in their respective versions by the spouses there is bound to be some exaggeration. It is, therefore, a settled rule of law that the matrimonial offence must be established to the satisfaction of the Court beyond reasonable doubt, and though not as a matter of law, as a rule of prudence, independent corroboration of the version of the parties is sought. Such corroboration, however, need not be of direct testimony, it must be obtained from the conduct of the parties and the surrounding circumstances.

10. Herein in the instant case, there is lack of direct evidence regarding allegations with precision and with all necessary details so as to construe the cruel conduct of the respondent on the petitioner in as much as constructive desertion of the husband compelling the petitioner to leave the company of the respondent. There is also no corroborative evidence to establish the allegations of the petitioner. In the fact situation, I suavely say that the petitioner cannot be allowed to the relief claim in absence of patent evidence so as to create a statutory ground for presentation of a divorce petition in future. Hence, it is ordered;

ORDER

The petition filed by the petitioner stands dismissed.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Dictated, corrected by me and is pronounced on this the 30th day of September, 2015.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1 Dr. Manisha Kar

Witnesses examined for the respondent:

None

List of documents by petitioner:

Ext. 1 Marriage Certificate

Ext. 2 Present employment of the petitioner as Associate Professor in the Department of Physiology in All India Institute of Medical Science, Bhubaneswar

List of documents by respondent:

Nil

JUDGE, FAMILY COURT,
BHUBANESWAR.