

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

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

Civil Proceeding No. 236 of 2015

Smt. Bijaya Kumari Ray, aged about 34 years,  
W/o-Prabhat Keshari Swain,  
D/o-Late Lalit Madhab Ray,  
Plot No. 227, Saheed Nagar, P.O./P.S.-Saheed Nagar,  
Bhubaneswar, Dist.-Khurda.

... Petitioner

... Versus...

Sri Prabhat Keshari Swain, aged about 41 years,  
S/o-Late Gajendranath Swain,  
Plot No. 1356, VSS Nagar, P.O./P.S.-Saheed Nagar,  
Bhubaneswar, Dist.-Khurda.

... Respondent

Date of Argument : 20.01.2016

Date of Judgment: 28.01.2016

J U D G M E N T

The petitioner-husband has filed a petition U/s. 27 (I) (i-a) (i-b) of Special Marriage Act, 1954 (in short, the Act 1954) praying for a decree of dissolution of his marriage with the respondent-wife 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 before Marriage Officer, Bhubaneswar on 18.02.1999 vide marriage certificate bearing No. 45 of 1999 (Ext.1) and they have no issue out of their wedlock. According to the petitioner, soon after the marriage, the respondent started torturing her both physically and mentally with a view to extract money from her. The respondent also refused to keep physical relationship with her. It is

further averred by her that due to the various criminal cases against the respondent she has spent lots of money for his bail. She has also admitted and spent money for Drug Treatment-cum-Rehabilitation Centre but in spite of that the respondent has not changed his behaviour towards her. It is further averred by her that when the torture became unbearable finding no alternative she had left her matrimonial home on 04.01.2013 and since then she has been residing in her parental home. Thereafter several attempts have been made from her side to change the nature and character of the respondent but all were in vain. Rather, the respondent demanded money and abused her in obscene languages in Public. Since the torture and cruelty by the respondent became in-tolerable 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 Marriage Certificate, Ext. 2 and 2/a are the drug treatment-cum-rehabilitation center certificates, Ext. 3 and 3/a are the money receipts.

6. The petitioner sought divorce on the grounds of respondent's desertion and cruelty. It is needless to say Section 27 (i) (i-b) of the Act, 1954 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-5 of his petition has stated that the respondent deserted him since 04.01.2013. The petition of divorce in this case is presented in the Court on 20.04.2015. Thus, it is clearly established that the petition has been filed after completion of two years from the date as alleged by the petitioner. The petitioner has stated that the respondent stopped keeping physical relationship with her since 04.01.2013 as she could not

fulfill of illegal demand of money. She has further stated that she has taken several attempts for consummation of the marriage but the respondent avoided it and cohabitation ceased and there was constant torture for non fulfillment of illegal demand of the respondent, she was forced to leave her matrimonial home. Thus, from the aforesaid tenor of evidence, it is as much as clear as noon day that there has been total liquidation of obligation of marriage between the parties since 04.01.2013, 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 parties is a continuous one for last more than two 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. The residue point that remains to be discussed is cruelty. Torturing both physically and mentally, abusing and insulting in public places, entangling with various cases and consuming drugs and non-sexing the petitioner for last two years amounts to mental cruelty. Therefore, the petitioner could successfully establish the ground of cruelty which is also one of the ingredients U/s. 27 (1) (i-a) of the Act for granting a decree of divorce. Hence, it is ordered;

#### ORDER

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 and the marriage certificate bearing No. 45 of 1999 is hereby cancelled.

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Dictated, corrected by me and is pronounced on this the 28<sup>th</sup> day of January, 2016.

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BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1                      Smt. Bijaya Kumari Ray

Witnesses examined for the Opp. Party:

None

List of documents by petitioner:

Ext. 1                      Marriage Certificate

Ext. 2 & 2/a              Drug treatment-cum-rehabilitation center certificates

Ext. 3 & 3/a              Money receipts.

List of documents by Opp. Party:

Nil

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