

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

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

Civil Proceeding No. 249 of 2013

1. Sakta Mishra, aged about 36 years,
 2. Shreeyansha Mishra, aged about 8 years
- Sl. No. 1 and 2 are wife and daughter of the Santosh Kumar Mishra respectively
Petitioner No.2 being the minor represented through her mother guardian, petitioner No.1.
Both are residing at Plot No. 4, Jayadurga Nagar,
P.S.-Laxmisagar, Dist-Khurda.

... Petitioner

... Versus...

Santosh Kumar Mishra, aged about 39 years,
S/o-Late Satyabadi Mishra,
Plot No. 1548, Lane-1, Bhakta Madhu Nagar,
Gandamunda, P.S.-Khandagiri, Bhubaneswar,
Dist-Khurda.

At present working as Manager,
Bajaj Allianz Life Insurance Company Ltd.,
Puri Branch, Nayak Plaza Complex, 1st Floor,
Grand Road, At/P.O./P.S./Dist.-Puri, Pin-752001.

... Respondent

Date of Argument : 30.11.2015

Date of Judgment : 08.12.2015

J U D G M E N T

The petitioner No.1 has filed a petition U/s. 18 and 20 of the Hindu Adoption and Maintenance Act, 1956 (in short, the Act 1956) for self and for her minor daughter claiming a monthly maintenance of Rs.60,000/- respectively from the respondent.

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

The marriage of the petitioner No.1 with respondent was solemnized in Bhubaneswar on 08.12.2004 and out of their wedlock one female child (petitioner No.2) was born on 12.12.2005. According to the petitioner No.1 although her mother had fulfilled all the demand of the respondent and his family members at the time of marriage yet she was subjected to torture both physically and mentally for non-transfer of a piece of homestead land situated at Jayadurganagar, Bhubaneswar in the name of respondent. It is the further case of the petitioner No.1 the respondent and his family members had driven her out from their house on 28.02.2007 and since then she has been residing in her parental home. It is averred by the petitioner No.1 she and her child has been getting interim maintenance of Rs. 8,000/- and Rs. 5,000/- in C.P. No. 479 of 2011 upto January, 2013. According to the petitioner No.1 she has no source of income to maintain herself and her minor daughter whereas the respondent is working as Branch Manager Bajaj Allianz Life Insurance Co. Ltd., Puri Branch and is getting Rs. 80,000/- per month, besides, he is getting Rs. 40,000/- per month from house rent. Since the respondent having sufficient means will-fully neglected and refused to maintain them, who are her legally wedded wife and legitimate daughter respectively, the petitioner-wife is obliged to file the present petition claiming a monthly maintenance of Rs. 60,000/- for herself and for minor son from the respondent.

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

The following points are formulated to resolve the controversy:-

- (1) Whether petitioner No.1 is the legally married wife and the minor daughter (petitioner No.2) is the legitimate daughter of the respondent and petitioner has sufficient cause to live separately from the respondent?
- (2) Whether the respondent having sufficient means has neglected and refused to maintain the petitioner and her minor son?

(3) What would be the quantum of maintenance to be allowed to the petitioner, if point No. 1 and 2 are answered in her favour?

4. The petitioner in order to prove her case she, herself, has been examined P.W. 1 and placed reliance on two documents. They are:- Ext. 1 and 1/a are the Xerox copies of RORs in respect of the landed property of the Opp. Party and Ext. 2 is the Xerox copy of salary certificate of the respondent. The petitioner in her affidavit evidence has stated that she married to the respondent 08.12.2004 and out of their wedlock one female child (petitioner No.2) was born on 12.12.2005. Her aforesaid statements have not been challenged. Thus, it can safely be concluded that the petitioner is the legally wedded wife and the minor female child is the legitimate daughter of the respondent.

5. P.W.1 has also stated that she was subjected to torture both physically and mentally by the respondent for non-transfer of a piece of homestead land situated at Jayadurganagar, Bhubaneswar in the name of respondent. It is the further case of the petitioner No.1 the respondent and his family members had driven her out from their house on 28.02.2007 and since then she has been residing in her parental home. Her aforesaid evidence gone unchallenged. Therefore, the petitioner No.1 has sufficient cause to live apart from the respondent and as such she is entitled to get maintenance from the respondent.

6. The next question for consideration is whether the respondent has sufficient means and refused to maintain the petitioner No.1 and her minor daughter (petitioner No.2). It is stated categorically by the petitioner that the respondent is working as Branch Manager Bajaj Allianz Life Insurance Co. Ltd., Puri Branch and is getting Rs. 80,000/- per month, besides, he is getting Rs. 40,000/- per month from house rent whereas she is merely a housewife having no separate income and unable to maintain herself and her minor daughter. She has also stated that she and her child has been getting interim maintenance of Rs. 8,000/- and Rs. 5,000/- respectively in C.P. No. 479 of 2011 upto January, 2013 and thereafter, the respondent has not provided a

single farthing to them. This facts and circumstance is clearly suggestive of the facts that the respondent having sufficient means not only willfully neglected but also refused to maintain the petitioner No.1 and her minor daughter (petitioner No.2), who have no sufficient means to support themselves. Therefore, the respondent is liable to provide maintenance to the petitioner and her minor son.

7. The next question for consideration is the quantum of maintenance. From Ext. 1 it is established that a plot of land stands recorded in the name of respondent under Bhubaneswar Tahasil. It is further established from Ext. 1/a that respondent and his family members have landed property under Bhubaneswar Tahasil. The Xerox copy salary certificate filed under Ext. 2 shows that the respondent is getting more than Rs. 50,000/- per month after all statutory deductions. Be that as it may, the Opp. Party having sufficient income neglect to maintain the petitioners. Considering the cost of living and other attendant circumstances, in as much as, the income of the respondent, I feel in the ends of justice and equity, a sum of Rs. 16,000/- per month to the petitioner-wife (petitioner No.1) and Rs. 6,000/- to the minor daughter (petitioner No.2) would be just and proper, which according to me, would not allow to petitioner and her minor son 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. 16,000/- to the petitioner-wife (petitioner No.1) and Rs. 6,000/- to the minor daughter (petitioner No.2) from the date of filing of application i.e. on 16.05.2013. The respondent is further directed to clear up all 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. The respondent is further directed to pay litigation expenses of Rs.10,000/- to the petitioner-wife. The interim maintenance if any paid earlier shall be adjusted. Failure to

carry out the order by the respondent, the petitioner No.1 is at liberty to levy execution through due process of law.

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Dictated, corrected by me and is pronounced on this the 8th day of December, 2015.

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Witnesses examined for the petitioner:

P.W.1 Sakta Mishra

Witnesses examined for the respondent:

None

List of documents by petitioner:

Ext. 1 & 1/a RORs in respect of landed property of the Opp. Party

Ext. 2 Xerox copy of the salary certificate of the Opp. Party

List of documents by respondent:

Nil

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