

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

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

Civil Proceeding No. 259 of 2012

Saikrishna Jena, aged about 20 years,
W/o- Arya Amitav Priyadarsi,
D/o- Hemanta Kumar Jena,
Vill/P.O.-Koro,
P.S.-Nikirai, Dist-Kendrapara,
At present residing Plot No. 490,
Lane-7, Nuasahi, Nayapalli, Bhubaneswar-12,
Dist-Khurda.

... Petitioner

... Versus...

Arya Amitav Priyadarsi, aged about 24 years,
S/o-Raghunath Samal,
At Plot No. 18/44, M.I.G-2, BDA Colony,
P.S.-Chandrasekharapur, Bhubaneswar,
Dist-Khurda.

... Respondent

Date of argument : 16.08.2014

Date of order : 22.08.2014

O R D E R

This order arises out of a petition u/s. 27 of Special Marriage Act, 1954 (in short, the Act 1954) praying for a decree of dissolution of marriage of the petitioner with the respondent on the grounds of desertion and cruelty.

2. The fact of the case of the petitioner are that:-

The marriage of the petitioner with respondent was solemnized before the Marriage Officer Khurda at Bhubaneswar on 17.08.2010 vide Marriage Certificate bearing No. 575/10 (Ext. 1) without the knowledge of their parents and their marriage has not been consummated as they have been living

separately from the date of marriage. After marriage, differences arose between them which could not be resolved and as such they have been living separately since the marriage i.e. 17.08.2010. She has averred that after some days when the parents of the respondent knew about the marriage, some family disputes arose between both the parties for which they had failed to consummate their marriage. She has further averred that several attempts have been made by herself and the respondent to settle the dispute but in vain. She has further averred that both parties have filed a case U/s. 27 of Special Marriage Act for dissolution of their marriage before this Hon'ble Court vide C.P. No. 500/2011 but later the respondent did not take any steps in the said case. Rather threatened her to blame through electronic media. Since the torture and cruelty by the respondent became intolerable she has filed this proceeding seeking a decree of divorce.

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 her case she, herself, has been examined P.W. 1.
 6. The petitioner sought divorce on the grounds of respondent's desertion and cruelty. It is needless to say Section 27 (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 2 of her petition has stated that the respondent deserted her since 17.08.2010. The petition of divorce in this case is presented in the Court on 17.07.2012. Thus, it is clearly established that the petition has been filed before completion of two years from the date as alleged by the petitioner. Thus, the ground of desertion held not established.
 7. The residue point that remains to be discussed is cruelty. From the evidence of P.W. 1, it is clearly established that there was no sexual

cohabitation between them since the date of marriage. Marriage without sex is an anathema. 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 women'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 women's brain, develops her character and trebles her vitality. It must be recognized that nothing is more fatal to marriage than disappointment in sexual intercourse. Sex plays important role in matrimonial life and cannot be separated from other factors leading to a successful married life. Therefore, conduct of husband or wife which renders the continuance of cohabitation and performance of conjugal duties impossible amounts to such cruelty. Therefore, the petitioner could successfully establish the ground of cruelty which is also one of the ingredients u/s. 27 (1) (d) 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. 575/10 is hereby canceled.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Dictated, corrected by me and is pronounced on this the 22nd day of August, 2014.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1 Saikrishna Jena

Witnesses examined for the respondent:

None

List of documents by petitioner:

Ext. 1 Marriage Certificate bearing No. 575/2010.

List of documents by respondent:

Nil

JUDGE, FAMILY COURT,
BHUBANESWAR.