

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

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

Civil Proceeding No. 263 of 2012

Smt. Puspalata Sahoo, aged about 28 years,
W/o-Prasanta Kumar Sahoo,
D/o-Trilochan Sahoo,
Resident of Plot No. 214/1127, Ebaranga,
Sundarpada, P.O.-Old Town, Bhubaneswar-2,
Dist-Khurda.

... Petitioner

... Versus...

Prasanta Kumar Sahoo, aged about 34 years,
S/o-Narayan Sahoo,
Resident of village-Haladibasanta, P.O.-Kairi,
Via-Pipili, Dist-Puri.

... Respondent

Date of Argument : 17.11.2015

Date of Judgment : 30.11.2015

J U D G M E N T

The petitioner has filed a petition U/s. 18 of the Hindu Adoption and Maintenance Act, 1956 (in short, the Act 1956) for self and for her minor son claiming a monthly maintenance of Rs.7,000/- and litigation expenses of Rs. 10,000/- from the respondent.

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

The marriage of the petitioner with respondent was solemnized in Bhubaneswar on 21.02.2007 and out of their wedlock one male child was born on 01.02.2008. According to the petitioner they led a happy matrimonial life for four months. Thereafter the respondent started torturing her both physically and mentally. It is further averred by the petitioner that the respondent with the spell of liquor assaulted her in the late hours of night and

when the torture became unbearable she was forced to leave her matrimonial house and taken shelter in her parental home in the month of June, 2008. Seven months thereafter on the intervention of both family members and well-wishers, she returned her matrimonial home but the respondent did not change in his previous activities. The respondent also prevented her from taking food. He has also not allowed her to sleep in his room for which she has to sleep in the veranda. Her parents tried for amicable settlement of the disputes and when it became fruitless and the torture meted out by the respondent became unbearable, finding no other alternative and in order to save her life as well as the life of her minor son, she left her matrimonial house finally in the month of November, 2010. Thereafter several attempts have been made from her side to settle the dispute between them but all were in vain. She has also requested the respondent to send some money for their maintenance but the respondent refused for the same. Rather he has threatened for dire consequence. According to the petitioner she has no source of income to maintain herself and her minor son whereas the respondent has a poultry firm and owner of a tractor from which he is earning Rs. 17,000/- per month. Since the respondent having sufficient means will-fully neglected and refused to maintain them, who are her legally wedded wife and legitimate son respectively, the petitioner-wife is obliged to file the present petition claiming a monthly maintenance of Rs. 7,000/- for herself and for minor son and litigation expenses of Rs. 10,000/- 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 is the legally married wife and the minor male child is the legitimate son 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 Ext. 1 series. They are:- Ext. 1, 1/a, and 1/b are the RORs in Khata No. 147, 144, 146 in mouza Pamasara respectively and Ext. 1/C is the ROR in Khata No. 224 in mouza Kairi. The petitioner in her affidavit evidence has stated that she married to the respondent in Bhubaneswar on 21.02.2007 and out of their wedlock one male child was born on 01.02.2008. Her aforesaid statements have not been challenged. Thus, it can safely be concluded that the petitioner is the legally wedded wife and the minor male child is the legitimate son of the respondent.

5. P.W.1 has also stated that she was subjected to torture both physically and mentally by the respondent. The respondent also assaulted her with the spell of liquor in the late hours of night. The petitioner was also not allowed to sleep in her room for which she slept in the veranda. The respondent had not given food to her. When the tortures became unbearable as well as the settlement between them by her parents were in vain, she was forced to leave her matrimonial house with her minor son. Her aforesaid evidence gone unchallenged. Therefore, the petitioner 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 and her minor son. It is stated categorically by the petitioner that the respondent has a poultry firm and owner of a tractor from which he is earning Rs. 17,000/- per month whereas she is merely a housewife having no separate income and unable to maintain herself and her minor son. She has also stated that the respondent has not provided a single farthing to her since the date of leaving her matrimonial home. 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 and her minor son, 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. Though petitioner relied Ext. 1 series i.e. Xerox copies of some RORs yet, they are no way relate to the respondent. On the other hand, the petitioner has failed to file any document regarding the poultry firm and the ownership of the tractor by the respondent. Be that as it may, the Opp. Party is an able bodied man having potential to earn his livelihood. 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. 3,000/- per month to the petitioner-wife and Rs. 2,000/- to the minor son 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.3,000/- to the petitioner-wife and Rs. 2,000/- to the minor son from the date of filing of application i.e. on 21.07.2012. 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. 5,000/- to the petitioner-wife. Failure to carry out the order by the respondent, the petitioner is at liberty to levy execution through due process of law.

JUDGE, FAMILY COURT,
BHUBANESWAR.

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

JUDGE, FAMILY COURT,
BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1 Smt. Pusalata Sahoo

Witnesses examined for the respondent:

None

List of documents by petitioner:

Ext. 1 ROR in Khata No. 147 in mouza Pamassra,
Ext. 1/a ROR in Khata No. 144 in mouza Pamasara
Ext. 1/b ROR in Khata No. 146 in mouza Pamasara
Ext. 1/c ROR in khata No. 224 in mouza Kairi

List of documents by respondent:

Nil

JUDGE, FAMILY COURT,
BHUBANESWAR.