

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

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

Civil Proceeding No. 269 of 2012

Choudhury Nishikanta Sahoo, aged about 35 years,
S/o-Nityananda Sahoo,
Present and permanent address-Plot No. 977/1479,
Behind City Bus Stand- Jhunjhawala Garden,
Ashok Nagar, Bhubaneswar-751009, Dist-Khurda.

... Petitioner

... Versus...

Smt. Prajna Paramita Sahoo, aged about 35 years,
W/o- Choudhury Nishikanta Sahoo,
D/o- Abinash Sahoo,
Present and permanent address- Plot No. 297,
District Centre, Chandrasekharapur,
Bhubaneswar-751016.

... Respondent

Date of Argument : 30.06.2015

Date of Judgment : 30.06.2015

J U D G M E N T

The petitioner-husband has filed a petition U/s. 13 (1) (i-a) (i-b) of the Hindu Marriage Act, 1955 (in short, the Act 1955) read with 7 of the Family Courts Act, 1984 read with Rule 5 of the Family Court Rules, 2010 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 that his marriage with respondent was solemnized as per Hindu Custom and rites at Bhubaneswar on 14.12.2006 and out of their wedlock one child namely Aditya Choudhury was born on 02.12.2007. It is the case of the petitioner that at the time of marriage he was working as Software Engineer in IT Company (HP) at Bangalore whereas the respondent was working as Bank Officer in Canara Bank, Cuttack.

According to the petitioner after marriage, he went to his service place at Bangalore on 09.01.2007. It is further averred by the petitioner that his family members provided a car with driver to the respondent for her commutation Bhubaneswar from Cuttack. The parents of the petitioner were looking after their male child the absence of the respondent. On 02.12.2008 i.e. on the first birth day of the child was celebrated in his house to which the parents of the respondent along with other guests were invited. In the Birthday party, the respondent raised complaint that her parents were not treated properly, for that, the respondent started misbehaving him and his family members. It is further averred by the petitioner that during the first two years of marriage, he had given Rs. 1,00,000/- to the respondent for her expenses excluding three times hospitalization cost of Rs. 55,000/-. The respondent's motive was to avail all the facilities from him without spending a single pie from her salary. The respondent made several allegations against his parents. She had also made allegations against them that they are keeping her away from her husband. During the month of May, 2009 when his parents went to discuss with the parents of the respondent, the respondent insulted them and warned them not come to her house again. In the month of June, 2009 the respondent got her transfer to Banagalore and joined his company. At that time the parents of the respondent accompanied her to Bangalore by flight and the petitioner had met their flight tickets charges. The parents of the respondent left Bangalore for Bhubaneswar with the male child some days thereafter. In the month of December, 2009 when his mother went to the parental home of the respondent to celebrate the second birth day ceremony of the child, the respondent over telephone rebuked his mother from Banagalore and warned her not to visit her parental home and talked with her son. After hearing it from his mother, when he asked the respondent, she got annoyed and assaulted the petitioner. The respondent also told the petitioner to leave her house immediately lest she should file false complaint case against him. The respondent also refused to share bed with him and if he will make any attempts, she shall file false case against him and his family members. It is further averred by the petitioner that

the respondent during her stay at Bangaloure started torturing him on silly matters. In the month of August, 2010 he got his transfer to USA and when he persuaded her to join with him along with the child for betterment of the child, she turned down his request and forced him to return to India. In the month of October, 2010 he came back to India after quitting his job and started searching for a job at Bhubaneswar in order to take care of his son. In the month of June, 2011 the respondent got her transfer to Bhubaneswar and for her smooth transportation, he and his family members went to Bangalore and when they were on the way to Bhubaneswar the respondent misbehaved him and his parents along with his minor son very roughly. The respondent is in habit of making false allegations against him and his parents on trivial issues. On 28.06.2011 the respondent over telephone instructed her parents to lodge a false police complaint against the petitioner and his parents when they were coming to Bhubaneswar from Bangalore. The petitioner and his parents and the minor child when got down at Bhubaneswar Railway Station, they were man handled by the respondent and her father and the respondent forcibly taken away the minor child to her parental home. Thereafter he went to her parental home to bring her back and to stay in a rented house but the respondent refused. The petitioner made several attempts to bring the respondent back but all were in vain. Since the torture and cruelty by the respondent became intolerable the petitioner has filed this proceeding seeking a decree of divorce on the grounds 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.

6. The petitioner in order to prove his case he, himself, has been examined as P.W.1 who supported the averments made in the petition. The petitioner sought divorce on the grounds of respondent's desertion and cruelty. It is needless to say Section 13 (i-b) of the Act, 1955 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 (W) of his affidavit evidence has stated that the respondent deserted her since 28.06.2011. The petition of divorce in this case is presented in the Court on 24.07.2012. 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. P.W.1 In his evidence, has narrated the facts and circumstances of his marriage and subsequent conduct of cruelty of the respondent on him and his parents. Admittedly, there has been no cohabitation between the parties since 02.12.2009. From the unchallenged evidence of the petitioner, it is clearly established that the respondent without any rhyme or reason willfully withdrew the cohabitation with the petitioner. There is no evidence on record that denial of sexual intercourse is the result of sexual weakness of the respondent disabling her from having a sexual union with the petitioner but it was willfully refused by the respondent. The result is frustration and misery to the petitioner due to denial of normal sexual life and hence cruelty. 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 man'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 a man's brain, develops his character and trebles his vitality. It must be recognized that nothing is more fatal to marriage than disappointment in sexual intercourse. Further, the petitioner has stated that

the respondent without any rhyme and reason withdrew herself from his society since 28.06.2011, for which, he is suffering mental agony. There is nothing to disbelieve the unchallenged evidence of the petitioner. Therefore, the petitioner could successfully establish the ground of cruelty which is also one of the ingredients u/s. 13 (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.

JUDGE, FAMILY COURT,
BHUBANESWAR.

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

JUDGE, FAMILY COURT,
BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1 Choudhury Nishikanta Sahoo

Witnesses examined for the respondent:

None

List of documents by petitioner:

Nil

List of documents by respondent:

Nil

JUDGE, FAMILY COURT,
BHUBANESWAR.