

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

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

Civil Proceeding No. 302 of 2014

Sri Chandrabhanu Sahoo, aged about 39 years,
S/o-Bhagaban Sahoo,
Qrs. No. EB-84, Badagada Brit Colony,
P.O./P.S.-Badagada, Bhubaneswar,
Dist-Khurda.

... Petitioner

... Versus...

Smt. Binati Sahoo, aged about 34 years,
W/o-Sri Chandrabhanu Sahoo,
D/o-Bhagabat Sahoo,
Gola Mahammad Patna,
P.O.-Bhaskar Sahi, Banamalipur, P.S.-Balipatna,
Dist-Khurda.

... Respondent

Date of Argument : 01.02.2016

Date of Judgment: 02.02.2016

J U D G M E N T

The petitioner-husband has filed a petition U/s. 13 (I) (i-a) (i-b) of Hindu Marriage Act, 1955 (in short, the Act 1955) 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 as per Hindu rites and customs in the parental home of the respondent on 05.07.2003 and out of their wedlock one female child namely Tejaswini was born in Municipality Hospital, Bhubaneswar on 23.05.2004. According to the petitioner, in the fourth night of the marriage the respondent insisted him for

living separately apart from his other family members and when he tried to convince her that he being the eldest son, he has some duty towards his family members, the respondent bluntly refused to stay with his family members. The respondent also avoided for keeping physical relationship with him. It is averred by the petitioner that on the date of Saptamangala when both of them visited to the parental home of the respondent, her parents insisted him to be the domestic son-in-law of their family and also to cut off all the relationship with his family members and when he denied it, the father of the respondent threatened for dire consequences. It is further averred by him that the respondent and his family members by paltering off a graduate conducted the marriage with him. The respondent during her stay in his house abused, insulted and misbehaved him and his parents and created disturbances in the family on silly matters. She has also not done the household chores. In the month of August, 2003 when the respondent was carrying for eight months, her parents forcibly took her to their house despite his and his family member's denial. During delivery he bore all the medical charges. During celebration of 21st day of the child in her parental home, she and her family members misbehaved him and his parents. Even they have not allowed to see the newly born baby. Once, the respondent also assaulted his mother in front of his family members and thereafter lodged a written report before the Mahila Police Station, Bhubaneswar and as per decision there, both of them stayed together at Plot No. 110/342, Mahavir Nagar, Samantarapur, Bhubaneswar and during their stay there, the respondent frequently went to her parental home without intimating him. On 05.03.2010 the respondent forced him to bring share of Rs. 5,00,000/- from his father's retirement benefit and when he denied it, the respondent became violent and told him that she knows how to recover her share from his father's property. On 06.03.2010, the respondent lodged a written report before Mahila Police Station, Bhubaneswar U/s. 498(A), 294, 506, 34 of IPC read with U/s. 4 of the DP Act vide P.S. Case No. 24/10 against him and his family members with an intention to put pressure on him to be the domestic son-in-law and the Mahila Police arrested

his brother on 07.03.2010. The Mahila Police had seized all of his household articles and given in zima of the respondent. On 07.05.2010 the respondent without intimating him with the help of police by breaking the lock took all the household articles from the rented house after preparing of a seizure list. It is further averred by him that they have no physical relationship with each other since 05.03.2010. Since the torture and cruelty by the respondent became intolerable 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 certified copy of the FIR, Ext. 2 is the certified copy of the charge sheet, Ext.3 and 3/a are the certified copy of the seizure lists, Ext. 4 and 4/a are the certified copy of the zimanams.

6. The petitioner sought divorce on the grounds of respondent's desertion and cruelty. It is needless to say Section 13 (i) (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-25 of his petition has stated that the respondent deserted him since 05.03.2010. The petition of divorce in this case is presented in the Court on 04.08.2014. 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 05.03.2010 as he could not fulfill the illegal demand of the respondent. He has further stated that he has taken several attempts for consummation of the marriage but the respondent avoided it and cohabitation ceased. 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 05.03.2010, 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. Abusing, insulting, creating disturbances and misbehaving him and his family members, manhandling the mother of the petitioner, filing of criminal cases against him and his family members, insisting to live separately from his other family members and also insisting him to be the domestic son-in-law by the respondent and her family members 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. 13 (1) (i-a) of the Act for granting a decree of divorce. Hence, it is ordered;

O R D E R

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 2nd day of February, 2016.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1 Sri Chandrabhanu Sahoo

Witnesses examined for the Opp. Party:

None

List of documents by petitioner:

Ext. 1 Certified copy of the FIR,

Ext. 2 Certified copy of the charge sheet.

Ext. 3,3/a & 3/b Certified copy of the seizure lists,

Ext. 4 and 4/a Certified copy of the zimanamas.

List of documents by Opp. Party:

Nil

JUDGE, FAMILY COURT,
BHUBANESWAR.