

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

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

Civil Proceeding No. 319 of 2012

Sri Sunil Kumar Misra, aged about 37 years,
S/o.- Subhas Chandra Misra,
Plot No.-1077, Tarini Nivas,
Tankapani Road, Chilipokhari, Sibanagar,
P.O.-Bhubaneswar-2, P.S.-Badagada,
Dist-Khurda.

... Petitioner

... Versus...

Smt. Rita Rath, aged about 35 years,
W/o- Sunil Kumar Misra,
Plot No. 1077, Chilipokhari,
Sibanagar, P.S.-Badagada, Bhubaneswar,
Dist-Khurda.
At present-D/o-Dwarikanath Rath,
At-Dera Street, Gunupur,
Dist-Rayagada.

... Respondent

Date of Argument : 20.04.2015

Date of Judgment : 05.05.2015

J U D G M E N T

The petitioner has filed a petition U/s. 13 of the Hindu Marriage Act, 1955 (in short, the Act 1955) praying for dissolution of marriage his marriage with the respondent 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 Custom and rites at Puri on 18.06.1998. After marriage both of them lived together in his house at Bhubaneswar for a short period of one month and thereafter the respondent went to her parental home at Gunupur. The

respondent during her stay in his house did not co-operate for consummation of marriage. When he tried for the same, the respondent became furious and scolded him without any rhyme or reason in each time. The respondent also uttered filthy languages to him. She also did not do any household work during her stay. On 21.07.2000 and subsequent thereafter he had gone to the parental home of the respondent to bring her back but all his attempts were in vain. It is the further case of the petitioner that the respondent got C.T. Training at Gunupur and now she is working as Sikhyakarmi at Srirampur under Gunupur Block in the district of Rayagada and is staying in her parental home. According to the petitioner the respondent being misguided by her parents did not come to his company. Since the torture and cruelty by the respondent has become in-tolerable and as the respondent debarred the petitioner from any marital relationship, he has filed this proceeding seeking a decree of divorce on the ground 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.

6. The petitioner sought divorce on the grounds of respondent's desertion and cruelty. It is needless to say Section 13(1) (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-17 of his petition has stated that the respondent deserted him since 20.07.1998. The petition for divorce in this case is presented in the Court on 22.08.2012. 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 his marriage has never been consummated ever since the marriage was solemnized despite his urge for

marital cohabitation with the respondent. Thus from the aforesaid tenor of the evidence, it is as much as clear as noon day that there has been total liquidation of obligation of marriage between the parties since 18.06.1998, 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 fourteen 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 next 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 cruel conduct of the respondent on him. Admittedly, there has been no cohabitation between the parties since 18.06.1998 i.e from the date of marriage due to willful refusal of the respondent. 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 18.06.1998, 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;

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 5th day of May, 2015.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1 Sri Sunil Kumar Mishra

Witnesses examined for the respondent:

None

List of documents by petitioner:

Nil

List of documents by respondent:

Nil

JUDGE, FAMILY COURT,
BHUBANESWAR.