

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

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

Civil Proceeding No. 32 of 2014

Smt. Reena Das, aged about 32 years,
W/o-Sri Suresh Kumar Patra,
Village-Kendua, P.O.-Bodapalsa,
P.S.-Sadar Raisuan, Dist-Keonjhar.
At present Qrs. No.-Type-II-216, Old A.G. Colony, Unit-IV,
P.S.-Kharavelnagar, Bhubaneswar, Dist-Khurda.

... Petitioner

... Versus...

Sri Suresh Kumar Patra, aged about 37 years,
S/o-Sri Bidyadhar Patra,
Village-Kendua, P.O.-Boda Palasa,
P.S.-Sadar Raisuan, Dist-Keonjhar.

... Respondent

Date of Argument : 12.04.2016

Date of Judgment : 20.04.2016

J U D G M E N T

The petitioner-wife, Smt. Reena Das has filed a petition U/s. 13 of the Hindu Marriage Act, 1955 (in short, the Act 1955) praying for a decree of dissolution of her marriage with the respondent-husband, Sri Suresh Kumar Patra on the grounds of desertion and cruelty.

2. The admitted facts of the case of the parties are that their marriage was solemnized on 01.07.2006. Further both the parties have been residing separately since 14.06.2008 as stated by the petitioner and from 20.06.2008 as stated by the respondent.

3. The fact of the case of the petitioner, in nut-shell, is that though her father had given cash of Rs. 1,00,000/-, gold ornaments, Hero Honda motor cycle, T.V. Fridge, washing machine and other household articles yet, after six to seven months of marriage, she was subjected to torture both

physically and mentally by the respondent and his family members due to non fulfillment of their additional demand of Rs. 2,00,000/- to invest in the business of the respondent. Since then the respondent did not take her care and abused her in abusive languages. The other family members have also compared her with their other daughter-in-laws. It is alleged by her that even though she has done all the household chores yet, they have not provided sufficient food and clothing to her. It is further alleged by her that the respondent at the instance of his family members left her at Kasipur (Keonjhar) where his elder brother is residing and did not visit her for months together and also not taken her care. On 06.04.2008 upon her intimation to her father, he came to the matrimonial home for settlement of the disputes but the respondent demanded his previous demand and when he showed his inability to fulfill the same, her father was threatened to face dire consequence. On 14.06.2008 the respondent by taking some plea or other abused her in filthy language and when she protested it, the respondent drove her out from his house in presence of other family members and villagers. The respondent also threatened to kill her if she will return his house. Since then she has been residing in her parental home at Bhubaneswar. Thereafter several attempts have been made from her side to settle the disputes but all were in vain due to willful refusal of the respondent and his family members. Since the respondent debarred her from marital relationship, she has filed this proceeding seeking a decree of divorce on the grounds of desertion and cruelty.

4. The respondent-husband filed W.S. nixing all the allegations made by the petitioner against him. He has raised objection as regards to the maintainability of the proceeding on the ground of lack of cause of action and jurisdiction of this court as their marriage was solemnized at Gambharia in the district of Keonjhar. The specific case of the respondent is that from the day one of the marriage, the petitioner was exposing her superiority as she was possessing equal qualification with the respondent and also refrains from helping any other family members in any domestic work. Despite her arrogance his family members never insisted her to work

as she was to adjust the new situation. It is averred by the respondent that the petitioner very often visits her brother's house in absence of his family members. It is averred by him that on 20.06.2008 the father of the petitioner visited his house and took the petitioner for a short stay in his house. According to him, as the petitioner was born and brought up in Bhubaneswar and accustomed to city life, she was not interested to reside in remote village areas. It is further averred by him that he is ready and willing to take back the petitioner to his company unconditionally. It is the further case of the respondent is that he and his family members had made all efforts to save his marriage but the petitioner and her family members bent upon to break the marriage by hook or crook and hence, the petition of the petitioner is liable to be dismissed.

5. The questions that require to be adjudicated are as follows:-

- (I) Whether the petition is maintainable?
- (II) Whether there exists any desertion and cruelty on the part of the respondent-wife to allow the petition for divorce?

6. The petitioner in order to buttress her case she, herself, has been examined as P.W.1 and relied on one document i.e. Ext. 1 is the list of the articles given at the time of marriage and Ext. 1/a is the signature of the father of the respondent on Ext. 1. In order to negate the claim of the petitioner the respondent, himself, has been examined as R.W. 1 and one Sri Harihar Patra as R.W. 2 and one Sri Purosottam Mohanta as R.W. 3 and placed reliance on one document i.e. Ext. A is the purchase receipt of jewellery presented to the petitioner at the time of marriage.

Point No.(I)

Whether the petition is maintainable?

7. The respondent questioned the territorial jurisdiction of this court on the ground that their marriage was solemnized at Gamabharua in the district of Keonjhar and their last resident was at Kendua under Sadar police station in the district of Keonjhar, the Family Court Keonjhar is competent to decide the matter. The petitioner would contend that on the date of presentation of

the present petition, she was residing with her father in Qrs. No. Type-II, Old A.G. Colony, Unit-IV, under Kharavelnagar police station, Bhubaneswar in the district of Khurda. The cookie-cutter to the aforesaid contretemps is Section 19 of the Act. 1955. The said section spells out the local jurisdiction of the Court to entertain matrimonial proceedings and Section 19 (iii-a) caters our need. It speaks that ***in case the wife is the petitioner, where she is residing on the date of presentation of the petition, petition under this Act shall be presented to the district Court within the local limits of whose ordinary original civil jurisdiction.*** As per the averments of the respondent in his W.S. at paragraph-9 it is pellucid that “on 20.06.2008 the father of the petitioner visited the house of the respondent and took her with him to Bhubaneswar on the pretext of visit to their house for short term” and as such, it can irrefragably be said that the petitioner was residing at Bhubaneswar on the date of presentation of the petition on 27.01.2014 and therefore, this court has jurisdiction to entertain the petition and as such, the aforesaid excoriation of respondent does not buy him much water.

Point No.(II)

Whether there exists any desertion and cruelty on the part of the respondent-wife to allow the petition for divorce?

8. The petitioner sought divorce on the grounds of 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 has stated that the respondent deserted him since 14.06.2008. The petition for divorce in this case is presented in the Court on 27.01.2014. The respondent disputed the date of desertion as 20.06.2008. In either case, from the aforesaid evidence of the parties, nay pleadings of the parties it is steer clear that they have living separately more than two years as on the date of presentation of the petition i.e. on 27.01.2014. Therefore, the petitioner could able to prove the factum of two years separation of the

respondent from him on the date of filing of the petition. For proving the offence of desertion, two essential conditions must be there namely (i) the factum of separation and (ii) the intention to bring the cohabitation permanently to an end (*animus deserendi*). Similarly two elements are essential so far as deserted spouse is concerned: (1) the absence of consent and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home.

9. The Supreme Court in the case of *Lachman Utamchan Kirpalani Vrs. Meena*, relying upon the of quoted decision i.e., observed *Bipinichandra Jaisinghbahi Shah reported in AIR 1957 SC 176* observed that the burden of proving desertion-the "*factum*" as well as the "*animus deserendi*" is on the petitioner, and he or she has to establish beyond reasonable doubt, to the satisfaction of the Court, the desertion throughout the entire period and that such desertion was without any just cause. In other words, even if the wife, where she is the deserting spouse, does not prove just cause for her living apart, the respondent- husband has still to satisfy the Court that the desertion was without just cause.

10. The petitioner has stated that she was being mal-treated by her husband and his other family members for additional demand of dowry of Rs. 2,00,000/-, on her intimation, her father went to her matrimonial home to settle the dispute but no positive result was achieved and thereafter her father took her to his house for change of the situation. The petitioner during her cross examination has stated that she stayed two years in her matrimonial home and had never made any complaint about the additional demand of Rs. 2,00,000/- by the respondent after the marriage, so also not made any complaint regarding physical torture on her by the respondent for non fulfillment of additional demand of dowry. She has also admitted she has not made any complaint regarding assault on her on 14.06.2008 and she voluntarily came to her father's house. However, later to shroud the truth stated that she was driven out by the respondent from his house which cannot be accepted on the lone ground that there was no such pleading in her petition. She has also admitted that she had not made any

efforts for settlement of the disputes nor filed any proceeding for restitution of conjugal rights. The respondent all through took the defence that there was no mal-treatment for non fulfillment of additional demand of dowry of Rs. 2,00,000/- much less any dowry. The respondent has further stated nay, pleaded that he made several attempts for settlement of the dispute but the same could not proficient as the petitioner does not want to leave in a village. There was no effective cross examination to this aspect of the evidence of the respondent. On the other hand, the evidence is alluded from the cross examination of the petitioner that on 17.01.2014 one Harihar Patra, the mediator, her father-in-law, elder brother and maternal uncle of the respondent visited her house. Although it is depose by the petitioner that on that these persons visited her parental home yet, they created gandagolo but the enigmatic part of the evidence is that no such complaint was lodged before police and that her ipsi-dixit statement has not been corroborated by her own family members and therefore, sine-dubio it can be concluded that this part of her evidence is perfidious. In fine, there was no justification for the petitioner leave apart from the respondent. The respondent is all along willing to accept the petitioner. Therefore, there is lack of animus *deserendi* on the part of the respondent to bring the cohabitation permanently to an end. In the fact situation, the ground of desertion crumbles to its ground.

11. The next point remains to be discussed is cruelty. The petitioner has stated that the respondent and his family members meted out torture on her due to non fulfillment of their additional demand of dowry and drove her out from their house. There is no corroborative evidence to her statement. In course of discussion, in the previous paragraph of this judgment, it has been observed that the aforesaid allegations of the petitioner are vague and general and therefore perfidious for the reasons delineated herein before which I do not like to repeat lest repetition should lose the charm of the hearing. To put paid discussion on cruelty, the petitioner has singularly baffled to establish the same. Therefore, the petitioner is not entitled to the reliefs as claimed.

12. Since, the petition filed by the petitioner for divorce under the Act is dismissed, Section 27 of the Act does not lie because decree of dismissal will not fall within the meaning of 'decree'. In that view of the matter, the claim and counter claim for return of properties presented at or before or after marriage stand disposed of. Hence, it is ordered;

O R D E R

The petition of the petitioner for divorce is dismissed on contest but without any cost.

JUDGE, FAMILY COURT,
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Dictated, corrected by me and is pronounced on this the 20th day of April, 2016.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1 Smt. Reena Das

Witnesses examined for the respondent:

R.W.1 Sri Suresh Kumar Patra

R.W. 2 Sri Harihar Patra

R.W. 3 Sri Purosottam Mohanta

List of documents by petitioner:

Ext. 1 List of articles given at the time of marriage.

Ext. 1/a Signature of the father of the respondent on Ext. 1

List of documents by respondent:

Ext. A Purchased receipt of jewellery presented to the petitioner at the time of marriage.

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