

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

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

Civil Proceeding No. 329 of 2012

Mohini Badajena @ Pradhan, aged about 21 years,  
W/o- Malaya Badajena,  
D/o-Late Benudhar Pradhan,  
Vill-Tinigharia, P.O.- Hadiakuda,  
P.S.-Jarada, Dist-Ganjam  
At present At/P.O.-Baramunda Mahima Ashram,  
P.S.-Khandagiri, Bhubaneswar,  
Dist-Khurda.

... Petitioner

... Versus...

Malaya Badajena, aged about 30 years,  
S/o-Sarat Badajena,  
Vill-Damodarpur,  
P.O.-Sarakantara, P.S.-Khandagiri,  
Dist-Khurda.

... Respondent

Date of Argument : 02.07.2015

Date of Judgment: 14.07.2015

J U D G M E N T

The petitioner- wife has filed a petition U/s. 13 of the Hindu Marriage Act, 1956 (in short the Act, 1956) praying for a decree of dissolution of her marriage with the respondent-husband on the ground of cruelty.

2. The admitted facts of the case of the parties are that their marriage was solemnized in Mahima Ashram, Khandagiri, on 06.05.2011 and since 03.08.2011 both have been living separately.

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

After few months of the marriage, the respondent and his family members demanded additional demand of dowry for the business of the

respondent and non fulfillment thereof she was subjected to torture both physically and mentally by the respondent and his family members and when the torture became unbearable she was forced to leave her matrimonial home and taken shelter in her parental home. It is the further case of the petitioner that the respondent and his family members have been forcibly kept the articles including utensils and gold ornaments given at the time of marriage by her family members. It is further stated by the petitioner that on 30.11.2011 she lodged an F.I.R. in the Mahila Police Station, Bhubaneswar against the respondent and his family members. On 03.12.2011 there was a settlement between both the families and witnesses and as per the agreement the respondent shall pay a sum of Rs. 2,00,000/- consisting of cash of Rs. 1,00,000/- and one cheque of Rs. 1,00,000/-. It is further averred by the petitioner that although she received a cheque amounting Rs. 1,00,000/- yet, not received the cash of Rs. 1,00,000/- till date and when she demanded for the same, the respondent and his family members threatened her to face dire consequences. According to the petitioner the marriage between them has already broken down irretrievably and irrevocably and since the torture and cruelty became unbearable, she has filed this proceeding for a decree of divorce on the ground of cruelty.

4. The respondent has filed his written statement denying all the allegations made by the petitioner against him. He has averred that the petitioner has deliberately and conveniently suppressed some material facts regarding her status and income. It is further averred by the respondent that on 03.08.2011 the petitioner left his house and since then she has been residing in her parental home. The respondent during her stay in his house did not pay any respect to him and his other family members for which he suffered mental agony. After creating disturbances in his family, the petitioner voluntarily left his house and with the interference both the family members and other gentlemen, there was an agreement between the parties before Notary Public, Bhubaneswar and as per the settlement he has paid an amount of Rs. 1,00,000/- to the petitioner vide money receipt dated 03.12.2011 and

his father namely Sarat Kumar Badajena has given a cheque bearing No. 003471 of Union Bank of India, Aigenia amountng Rs. 1,00,000/- to the petitioner towards her permanent alimony. It is further averred by the respondent that the petitioner has suppressed that fact before the Court and also by misrepresenting filed this case in order to harass him. According to the respondent he has already given her articles gifted at the time of marriage and the permanent alimony. It is further averred by the respondent that there was no demand of any money or articles at the time of the marriage. Therefore, the petition filed by the petitioner is liable to be dismissed.

5. From the aforesaid rival pleadings of the parties, the question that requires to be adjudicated is whether, there exists any cruelty on the part of the respondent to allow the divorce petition and whether the respondent is entitled for any monthly or permanent alimony in case of divorce is allowed?

7. The petitioner in order to buttress her case she, herself, has been examined as P.W.1 and her mother as P.W. 2 and relied on three documents. They are:- Ext. 1 is the Xerox copy of the FIR lodged in Mahila Police Station, Ext. 2 is the Xerox copy of the list of articles given at the time of marriage and Ext. 3 is the marriage invitation card. The respondent in order to nix the allegation of the petitioner he, himself, has been examined as R.W. 1 and his father as R.W 2 and relied on four documents. They are:- Ext. A is the money receipt dated 03.12.2011, Ext. A/1 is the signature of the petitioner, Ext. B is the agreement dated 03.12.2011, Ext. B/1 to B/8 are the signatures of the petitioner, Ext. C is the list of return of articles dated 02.12.2011, Ext. C/1 is the signature of the petitioner, Ext. D is the money receipt dated 06.12.2011, Ext. D/1 and D/2 are the signatures of the petitioner.

8. The petitioner sought divorce on the ground of cruelty. It deems appropriate to examine the concept of cruelty both in English and Indian Law, in order to evaluate whether petitioner's petition based on the ground of cruelty deserves to be allowed or not.

9. The petitioner while being examined as P.W. 1 has stated that she was tortured both physically and mentally for non fulfillment of additional demand

of dowry and as the torture was beyond her petulance, she was forced to leave her matrimonial home with her mother who arrived there making a telephonic call from her. P.W. 2, the mother of the petitioner deposed in same faction. Although the respondent and his father while being examined as R.W. 1 and 2 respectively renayed the dowry tortured on P.W. 1 yet, they could not subscribe any reason for petitioner's leaving her matrimonial life within three of the marriage. In the present day society, demand of dowry is proliferating against newly married bride at the hands of her husband and in-laws. Unless there was torture on P.W. 1, she would not have ordinarily left her matrimonial home. My aforesaid conclusion is further compounded from the agreement executed by the parties vide Ext. B. From Ext. C it can well be inferred that the relation between the petitioner and the respondent was so embittered that their marriage cannot be retrieved. Thus, it is apparently established that the marriage between the parties being dead both emotionally and practically and therefore, continuance of marriage alliance between the parties will not beneficiary to the either party rather, it will be more tortuous to create mental agony and thus, it is a fit case to snap out the marital relation between the parties.

10. Now the next point for consideration is permanent alimony. As per the agreement vide Ext. B the petitioner admitted to have received Rs. 1,00,000/- out of the agreed amount of Rs. 2,00,000/-. The respondent stated that he has already paid Rs. 2,00,000/- and file the money receipt vide Ext. C. Be that as it may, an agreement cannot curtail the statutory right of a party. The respondent while being examined as R.W. 1 has stated that there was no denial of two square meals to the petitioner apart from clothing and etc. while the petitioner was residing with him at his residence. The respondent has also a building and three acres of landed property. The petitioner is aged about 24 years. Life expectancy of a marriage woman in the Indian climate is 70 years. A square meal can available at Rs. 30/-. If that amount would be taken into consideration, a minimum amount of Rs. 2,000/- per month is required for the petitioner for her subsistence. Keeping all these facts and circumstances

of the case, I direct the respondent to pay a sum of Rs. 10,00,000/- towards permanent alimony. Accordingly, this issue is also answered in favour of the respondent. Hence, it is ordered.

O R D E R

The suit and the same be decreed 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 subject to payment of permanent alimony of Rs. 10,00,000/- to the petitioner by the respondent.

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Dictated, corrected by me and is pronounced on this the 14<sup>th</sup> day of July, 2015.

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Witnesses examined for the petitioner:

P.W.1                      Mohini Badajena @ Pradhan  
P.W. 2                      Bishnu Pradhan

Witnesses examined for the respondent:

R.W.1                      Malaya Badajena @ Pradhan  
R.W. 2                      Surat Kumar Badajena

List of documents by petitioner:

Ext. 1                      Xerox copy of the FIR lodged in Mahila Police Station  
Ext. 2                      Xerox copy of the list of articles given at the time of marriage  
Ext. 3                      Marriage Invitation Card

List of documents by respondent:

Ext. A                      Money receipt dated 03.12.2011  
Ext. A/1                      Signature of the petitioner  
Ext. B                      Agreement dated 03.12.2011  
Ext. B/1 to B/8              Signatures of the petitioner on Ext. B  
Ext. C                      List of return of articles dated 02.12.2013  
Ext. C/1                      Signature of the petitioner  
Ext. D                      Money receipt dated 06.12.2011  
Ext. D/1 & D/2              Signatures of the petitioner on Ext. D

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