

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

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

Civil Proceeding No. 411 of 2010

Sri Pratap Kumar Sisugoswami, aged about 43 years,
S/o-Sri Harekrushna Sisugoswami,
Vill.-Bentapur Jagir,
P.S.-Balianta,
Dist-Khurda.

... Petitioner

... Versus...

Smt. Diptimayee @ Nirupama Sisugoswami, aged about 32 years,
W/o- Pratap Kumar Sisugoswami,
D/o- Late Gopal Chandra Mohapatra,
Vill.-Atala, P.O.-Jayapur,
P.S.-Balianta, Dist-Khurda.

... 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) praying for a decree of dissolution of his marriage with the respondent-wife on the grounds 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 in village Atala under Balianta Police Station in the district of Khurda on 28.04.2003. According to the petitioner, after marriage, the respondent expressed her inability to stay in the joint family and insisted him to leave her in her parental home. It is the case of the petitioner that after two months of marriage, the respondent told him and his parents that "Tume sabu badmas chhota loka, Mu tumaku pane dei gharaku palaibi, Athare Rahibi nahi". The respondent without

any rhyme or reason went to her parental home without intimating him on 15.05.2007. Thereafter, he went to her parental home to bring her back but he refused to join with his company. It is further averred by the petitioner that in order to harass him, the respondent filed an FIR against him and his family members U/s. 498(A), 506, 34 IPC and 4 D.P. Act vide P.S. Case No. 192 on 31.10.2007. Thereafter several attempts have been made from his side to settle the disputes between them but all were in vain. Since the torture and cruelty by the respondent became in-tolerable 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- 7 of his affidavit evidence has stated that the respondent deserted her since 15.05.2007. The petition of divorce in this case is presented in the Court on 18.07.2009. 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 respondent refused to join the company of the petitioner in spite of his several attempts for their reunion. The respondent left her matrimonial home without the consent of the petitioner. 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 15.05.2007, 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 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. P.W.1 In his evidence, has narrated the facts and circumstances of his marriage and subsequent cruelty made by the respondent on him and his parents. Admittedly, there has been no cohabitation between the parties since 15.05.2007. 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 15.05.2007, 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 Pratap Kumar Sisugoswami

Witnesses examined for the respondent:

None

List of documents by petitioner:

Nil

List of documents by respondent:

Nil

JUDGE, FAMILY COURT,
BHUBANESWAR.