

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

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

Civil Proceeding No. 42 of 2015

1. Smt. Brahmotree Biswal, aged about 28 years,
W/o-Prasant Pradhan,
At/P.O.-Badandha, P.S.-Rasol,
Dist-Dhenkanal.
2. Prachurya Pradhan, aged about 5 years,
D/o-Prasant Pradhan,
At/P.O.-Badandha, P.S.-Rasol,
Dist-Dhenkanal,
Petitioner No.2 being minor represented through her mother
guardian petitioner No.1, Smt. Brahmotree Biswal.

... Petitioners

... Versus...

Sri Prasant Pradhan, aged about 31 years,
S/o- Golekha Pradhan,
Permanent resident of Vill./P.O.-Dera Colony,
Talcher, Dist-Angul,
Presently residing at Kedia House, Vivekananda Marg near
Mausima Mandir, Kalpana Square, P.S.-Laxmisagar,
Bhubaneswar, Dist-Khurda.

... Respondent

Date of Argument : 25.08.2015

Date of Judgment : 26.08.2015

J U D G M E N T

The petitioner No.1-wife 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 her marriage with the respondent-husband on the grounds of desertion and cruelty.

2. The facts of the case of the petitioner No.1 are as follows:-

The marriage of the petitioner No.1 with respondent was solemnized as

per Hindu Custom and rites at Babandha under Rasol police station in the district of Dhenkanal on 22.04.2008 and out of their wedlock one female child (petitioner No.2) was born in Deepali Nursing Home, Dhenkanal on 12.05.2010. According to the petitioner No.1 at the time of marriage, the respondent impersonating him as a Post-Graduate in History and working in a top net worker of Vinsion was getting Rs. 80,000/- per month. Apart from that they have much landed properties and a vehicle servicing centre with spare parts shop and also a building at Dera, from which they are getting Rs. 50,000/- per month. It is averred by the petitioner No.1 that her father at that time of marriage has given cash of Rs. 2,00,000/-, gold ornaments and household articles as per the demand of the respondent and his family members. After marriage, she came to know that the respondent is not doing service in Vinsion and has no income from the aforesaid sources. Rather they conducted the marriage by borrowing hand loan. It is alleged by the petitioner No.1 that after few days of marriage, the respondent withdrawn Rs. 1,50,000/- from her accounts for day to day expenditure. It is further alleged by her that it was decided before marriage that she would continue her education at Revenshaw College but all were in vain. It is further averred by the petitioner No.1 that after some days of marriage, the respondent and his family members started torturing her both physically and mentally due to their additional demand of dowry of Rs. 2,00,000/-. It is further alleged by the petitioner No.1 that during her pregnancy the respondent and his family members did not provide her proper nursing and food for which her father took her to his house for her delivery. According to her, her father had incurred all the expenses of delivery charges. After birth of the female child the respondent and his family members did not visit her and the newly born baby. Several attempts have been made from her side to take her along with her female child to her matrimonial home and when the respondent and his family members did not respond it, she went to her matrimonial home along with her female child. According to her while staying in her matrimonial home, the respondent and his family members neglected her minor child when she

was suffering from severe dehydration and on her request her father and brother took her to her parental home. In the month of July, 2011 the respondent brought her along with her child to Bhubaneswar from Angul with an assurance not to torture her again. The respondent taking Rs. 1,00,000/- from the father of the petitioner No.1 proposed to start a business by running a private company name and style M/s. Palliance Marketing Ltd. and requested the petitioner No.1 to become one of the directors of the company and when the petitioner No.1 denied it, she was subject to torture both physically and mentally. The respondent also abused her in un-parliamentary languages and bitten her in a closed room. Subsequently, as the respondent black-mailed the younger sister, she joined in the company of the respondent. The respondent cheated the general public through his company and when she came to know about it she asked the respondent to recall her membership but she was assaulted by the respondent. It is further averred by the petitioner No.1 that during their Goa visit, the respondent forced her to dance in the hotel and when she refused, the respondent gave threat to murder her. The respondent also demanded a Honda City Car. It is further averred that the respondent has illicit relationship with the Receptionist of his company. The respondent also abused her in front of his office staff as the torture of the respondent became intolerable she filed an FIR against the respondent and his family members and that case is pending. It is further averred that the respondent deserted her in the month of Nov. 2013 at Gayatree Enclave, Kalpana Square, Bhubaneswar. It is further averred that there was no sexual relationship between them from November, 2013. Hence, the petitioner No.1 filed the present petition for 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 No.1 in order to prove her case she, herself, has been examined P.W. 1 but did not chose to file any document on her behalf.

6. The petitioner No.1 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 No.1 for a continuous period of not less than two years immediately preceding the presentation of the petition. The petitioner No.1 at paragraph-15 of her petition has stated that the respondent deserted him since November, 2013. The petition for divorce in this case is presented in the Court on 20.01.2015. Thus, it is clearly established that the petition has been filed before completion of two years from the date as alleged by the petitioner No.1. Thus, the ground of desertion held not established.

7. Now the next point for consideration is cruelty. Admittedly, there has been no cohabitation between the parties since November, 2013. From the unchallenged evidence of the petitioner No.1, it is clearly established that the respondent without any rhyme or reason willfully withdrew the cohabitation with the petitioner No.1. There is no evidence on record that denial of sexual intercourse is the result of sexual weakness of the respondent disabling him from having a sexual union with the petitioner No.1 but it was willfully refused by the respondent. The result, is frustration and misery to the petitioner No.1 due to denial of normal sexual life and hence cruelty. 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 woman'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 woman's brain, develops her character and trebles her 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 refused for any sexual relationship since Nov. 2013. Desexualizing the

petitioner No.1 by the respondent for a continuous period of more than one year amounts to mental cruelty. Additionally, from the unchallenged testimony of petitioner No.1, it is established that the respondent and his family members tortured both physically and mentally for non fulfillment of their additional demand of dowry of cash and Honda City Car in as much as forced the petitioner No.1 to dance in bar of a hotel at Goa. Thus, the petitioner No.1 could establish the ground of cruelty which is one of grounds U/s. 13 (i-a) of the Hindu Marriage, Act. Hence, it is ordered;

O R D E R

The petition is allowed ex-parte in favour of the petitioner No.1. A decree of divorce is passed and the marriage between the petitioner No.1 and the respondent is hereby declared dissolved with effect from the date of decree. The respondent is directed to bear all the medical, educational and marriage expenses of the daughter.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Dictated, corrected by me and is pronounced on this the 26th day of August, 2015.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1 Smt. Brahmotree Biswal

Witnesses examined for the respondent:

None

List of documents by petitioner:

Nil

List of documents by respondent:

Nil

JUDGE, FAMILY COURT,
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