

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

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

Civil Proceeding No. 426 of 2014

Smita Mallick, aged about 33 years,  
W/o.- Yogesh Dhameja,  
Presently resided at Plot No. 104, Phase-2,  
Satyasai Enclave, Kolathia, P.O.-Khandagiri,  
P.S.-Khandagiri, Bhubaneswar,  
Dist-Khurda.

... Petitioner

... Versus...

Yogesh Dhameja, aged about 36 years,  
S/o-Late Sobraj Dhameja,  
Resided at Plot No. 201, Yashodhara Enclave,  
Saheed Nagar, P.S.-Saheed Nagar,  
Bhubaneswar, Dist-Khurda.

... Respondent

Date of Argument : 29.09.2015

Date of Judgment : 30.09.2015

J U D G M E N T

The petitioner-wife has filed a petition U/s. 13 (1) (i-a) 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 ground of 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 in Gurudwar at Puri on 08.07.2010. According to the petitioner the respondent impersonating him working in a Multinational Company and was getting Rs. 70,000/- per month married her. The respondent and his family members also suppressed the fact of his earlier

marriage. It is averred by her that her after marriage as per demand of the respondent her father had given cash of Rs. 2,00,000/- one gold chain and a gold bracelet to the respondent. It is alleged by the petitioner that after four months of marriage, the respondent and his family members had demanded Rs. 3,00,000/- and when she showed her inability to fulfill the same, she was subjected to torture both physically and mentally. The respondent also used to scold her in obscene languages on silly matters. The respondent is also avoiding from cohabiting with her, when she urged for the same and he showed the prescriptions of a doctor indicating his incapacity to cohabit and that the respondent concealing the said fact married her which created mental agony to her. It is also alleged by her that his earlier marriage was dissolved due to impotency of the respondent. The respondent also abused and insulted her in front of the guests and family members by calling a characterless girl. It is averred by her that before marriage, she worked as B.Tech Engineer but after marriage, the respondent also did not allow her to go to outside the house for which she has lost her job. It is further alleged by her that though the respondent was earning Rs.1,00,000/- per month but did not give any money for her personal expenses for which she has to dependent upon her father. The respondent also did not allow her to wear new dress and saree on the ground that she has no child. The respondent and his family members have mortgaged all her jewellery in Muthoot Finance Ltd, Jayadev Vihar Branch without her consent and the respondent spent the money by taking alcohol and in his amusements. In the month of July, 2014 the respondent after assaulting her severely sent her to her parental home by an auto rickshaw. On 08.09.2014 the respondent informed the brother of the petitioner over phone not to send the petitioner to his house and threatened to take action if anybody come to his house. Since the respondent debarred her from marital relationship, she has filed this proceeding seeking a decree of divorce on the ground of cruelty.

3. The respondent did not enter contest the petition and therefore, is set ex-parte.

4. The following points are formulated for determination of the case:-
  - (i) Whether the circumstances and back grounds depicted in the narration of the petitioner's case constitute cruelty by the respondent on the petitioner and if so, whether the petitioner is entitled for a decree of divorce?
  - (ii) To what other relief?
5. The petitioner 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.

**Point No.1**

Whether the circumstances and back grounds depicted in the narration of the petitioner's case constitute cruelty by the respondent on the petitioner and if so, whether the petitioner is entitled for decree of a divorce?

6. The petitioner sought divorce on the ground of respondent's cruelty. Admittedly, there has been no cohabitation between the parties since the date of their marriage. 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. Though the petitioner has stated that the respondent is an impotent and incapacity of keeping sexual relation yet, she failed to file any document to that effect. Thus, 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 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. 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 the date of their marriage. Desexualizing the petitioner by the respondent for a continuous period of four years amounts to mental cruelty. Further from the evidence of the petitioner it is established that the respondent used to assault the petitioner due to non fulfillment of their additional demand of dowry of Rs. 3,00,000/-. It is further established that the respondent impersonating her as working in Multinational Company and was getting Rs. 70,000/- per month married the petitioner, mortgaging the jewellery of the petitioner without her consent and spending the money in alcohol and in merry making, suppressing the fact of her earlier marriage, abusing and insulting her before guests and family members by calling the petitioner as characterless and finally driven her out from his house after assaulting her in the month of July, 2014 by an auto rickshaw to her parental home constitute cruelty which is one of grounds U/s. 13 (i-a) of the Hindu Marriage, Act for divorce.

**Point No.2**

To what other relief?

6. The petitioner has stated that the respondent is getting Rs. 1,00,000/- per month which is gone unchallenged as the respondent has been set ex-parte. Keeping in view of the income of the respondent, status of the parties and spiraling rising of essential commodities a sum of Rs. 20,00,000/- (Rupees Twenty Lakhs only) is allowed towards permanent alimony to the petitioner. 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 and the respondent is directed to pay permanent alimony of Rs. 20,00,000/- (Rupees Twenty Lakhs only) to the petitioner.

JUDGE, FAMILY COURT,

BHUBANESWAR.

Dictated, corrected by me and is pronounced on this the 30<sup>th</sup> day of September, 2015.

JUDGE, FAMILY COURT,  
BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1        Smita Mallick

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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