

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

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

Civil Proceeding No. 434 of 2013

Sri Surendra Kumar Mishra, aged about 44 years,
S/o-Late Krushna Chandra Mishra,
At-Kunjabanagada, P.O./P.S-Dasapalla, Dist-Nayagarh
At present residing at Plot No. 1105-B, Mahavir Nagar,
Road No.3, Budheswari, P.S.-Laxmisagar, Bhubaneswar,
Dist-Khurda.

... Petitioner

... Versus...

Smt. Manoja Manjari Panda, aged about 30 years,
W/o- Sri Surendra Kumar Mishra,
D/o-Sri Gayadhar Panda,
Residing at Bamphu, P.S.-Kaima, P.S.-Jaraka, Dist-Jajpur
At present working as Sales Manager, MET Life Insurance Co. Ltd.
3rd Floor, Big Bazar, Bhubaneswar.

... Respondent

Date of Argument : 20.04.2016

Date of Judgment : 20.04.2016

J U D G M E N T

The petitioner-husband has filed a petition U/s. 27 of the Special Marriage Act, 1954 (in short, the Act 1954) praying for a decree of dissolution of his marriage with the respondent-wife on the grounds of desertion and cruelty.

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

The marriage of the petitioner with respondent was solemnized according to Special Marriage Act before Marriage Officer, Baragarh on 21.09.2001 vide Ext. 1 and out of their wedlock one female child namely Simron Mishra was born on 20.12.2003. It is the case of the petitioner that after marriage, the

respondent started misbehaving and abusing him and his parents in front of others and created unhealthy atmosphere in the family. It is alleged by the petitioner that the respondent during her stay went to her parental home without intimating him and his family members and stayed there for days together. The respondent during her stay did not do any household chore and also not taken care of the child for which he has to take care of the child. It is further alleged by the petitioner that the respondent after getting the job in the year 2009 returned home in late hours of night and when he requested her to come early, she became violent and scolded him in filthy languages. On 09.10.2010, the respondent without rhyme or reason went to her parental home along with the minor daughter without informing him and his family members. Thereafter several attempts have been from his side to bring her back along with the minor daughter but all were in vain. Since the torture and cruelty by the respondent became in-tolerable he has filed this proceeding 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 in order to prove his case he, himself, has been examined as P.W. 1 and relied on Ext.1 i.e. the marriage certificate bearing No. 21 of 2001.

6. The petitioner sought divorce on the grounds of respondent's desertion and cruelty. It is needless to say Section 27 (i) (b) of the Act, 1954 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-9 of his petition has stated that the respondent deserted her since 09.10.2010. The petition of divorce in this case is presented in the Court on 20.08.2013. 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 petitioner has stated that the respondent stopped keeping physical relationship with him since 09.10.2010 as he could not fulfill of illegal demand of money by the respondent towards repayment of the loan of her father. He has further stated that he has taken several attempts for consummation of the marriage requesting her to join with him but the same could not be proficient. Thus, from the aforesaid tenor of evidence, it is as much as clear as noon day that there has been total liquidation of obligation of marriage between the parties since 09.10.2010 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 more than three 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. Misbehaving him and his parents, not doing any household chores, not looking after the minor female child, visiting the parental home without informing him and his parents, returning home in the late hours of night after getting job in the year 2009 and refusing to return to the company of the petitioner are the circumstances sufficient enough to attribute mental torture perpetrated by the respondent on petitioner. Additionally, the respondent has non-sexed the petitioner for more than three years which adds mental cruelty. Therefore, the petitioner could successfully establish the ground of cruelty which is also one of the ingredients u/s. 27 (1) (d) of the Act for granting a decree of divorce.

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 marriage certificate bearing No. 21 of 2001 is hereby cancelled.

JUDGE, FAMILY COURT,
BHUBANESWAR.

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

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BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1 Sri Surendra Kumar Mishra

Witnesses examined for the Opp. Party:

None

List of documents by petitioner:

Ext. 1 Marriage Certificate bearing No. 21 of 2001

List of documents by Opp. Party:

Nil

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BHUBANESWAR.