

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

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

Civil Proceeding No. 461 of 2013

Kusuma Panda, aged about 40 years,  
S/o-Krushna Panda,  
Resident at-Jagannath Basti Behera Sahi,  
Nayapalli, P.S.-Nayapalli, Bhubaneswar,  
Dist-Khurda.

... Petitioner

... Versus...

Krushna Panda, aged about 50 years,  
S/o- Udayanath Panda,  
Resident at-Subudhipatna, P.O.-Badukul,  
P.S.-Balugaon, Dist-Khurda.

... Respondent

Date of Argument : 05.08.2015

Date of Judgment : 21.08.2015

J U D G M E N T

The petitioner-wife has filed a petition U/s. 13 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 since last twenty years and out of their wedlock three male children namely Rakesh, Raju and Silu were born. It is the case of the petitioner that after marriage, the respondent started torturing her both physically and mentally and did not take her care and the care of her children and driven her out from his house. It is averred by the petitioner that the respondent married to one Jyostna in Lingaraj Temple, Bhubaneswar for last six years and lived with her as his wife. It is further averred by the petitioner that since the date of desertion she is maintaining herself and her children by

running a beetle shop near hotel Crown square, Nayapalli, Bhubaneswar. She sent pleader notice to the respondent on 19.08.2013 but the respondent did not respond it till 04.09.2013. Since the respondent debarred her from any marital relationship and married for the second time to Jyotsna, finding no alternative she 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 cruelty on the part of the respondent to allow the petition for divorce?

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.

6. The petitioner sought divorce on the ground of respondent's cruelty. Admittedly, there has been no cohabitation between the parties since the year 2005. 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 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 she 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. Desexualizing the petitioner by the respondent for a continuous period of ten years amounts to mental cruelty.

Additionally, the respondent has also married for the second time and lived with her second wife for last six years. When the respondent has contacted a second marriage in itself is an act of causing mental torture and tantamounts to cruelty for the purpose of Section 13 of the Act and hence the petitioner could establish the ground of cruelty 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. 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 21<sup>st</sup> day of August, 2015.

JUDGE, FAMILY COURT,  
BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1      Kusuma Panda

Witnesses examined for the respondent:

None

List of documents by petitioner:

Nil

List of documents by respondent:

Nil

JUDGE, FAMILY COURT,  
BHUBANESWAR.