

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

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

Civil Proceeding No. 512 of 2014

Smt. Kalyani Mahapatra, aged about 50 years,  
W/o-Sri Narayan Mahapatra,  
D/o-Sri Kinei Senapati,  
Presently residing:- C/o- Kanhu Chanran Senapati,  
Qrs. No. Type-4/F, Block-II, Prison Colony, Behind Jharapada

Jail,

P.S.-Laxmisagar, Bhubaneswar,  
Dist-Khurda.

... Petitioner

... Versus...

Sri Narayan Mahapatra, aged about 54 years,  
S/o-Sri Golakh Chandra Mahapatra,  
Resident of Plot No.-1309, "Gaurang Bhawan",  
Mahandi Vihar, Post-Nayabazar, P.S.-Chaulianganj,  
Dist-Cuttack.

... Respondent

Date of Argument : 04.11.2015.

Date of Judgment : 06.11.2015

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 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 as per Hindu Custom and rites in Sithalo in the district of Cuttack on 21.04.1987 and out of their wedlock two sons namely Parthasarathi and Chitta Ranjan were born on 20.01.1988 and 28.10.1991 respectively. It is the case of the

petitioner that from the very beginning of the marriage, the respondent showed adamant behaviour towards her and also avoid for conjugal relation. He has also tortured her both physically and mentally on silly matters in presence of his parents and other family members. It is further averred by her that from the beginning, she faced a lot of difficulties for their maintenance by the respondent as the respondent was the only earning members who was working as physiotherapist in Army Medical Corps of Indian Army for which she decided to go for a job to support the respondent and for smooth management of the family. Thereafter she got a job as a Radiographer in Acharya Harihar Regional Cancer Centre at Cuttack and shifted to Cuttack along with her children. Since then the respondent with an ulterior motive told her to manage the family out of her own income. Several attempts have been made from her side to to settle the dispute between them but all were in vain. It is further averred by her that out of her own income she had purchased a plot of land i.e. Plot No. 1309 at Mahanadi Vihar Cuttack and constructed a two storied building thereon. According to the petitioner even she used to transfer all her salary to the bank account of respondent on each month but the respondent does not change his attitude towards her and her children. The petitioner has further averred that she suffered from breast cancer and had undergone amputation surgery followed by chemotherapy but the respondent did not express any sympathy towards her. The respondent also criticized her in front of his family members and friends for which she suffered mental agony and it is also not possible on her part to remain further with the respondent at the fag end of her life. It is further averred by the petitioner that one day the respondent abused and assaulted her in the kitchen regarding his lady assistant and when the children came, he has to assaulted them and thereafter asked them to leave the house i.e. Plot No. 1309, Mahandi Vihar, Cuttack. Finding no other alternative, she along with her children left the house and taken shelter in her younger brother's house at Bhubaneswar. Now both the sons are major and continuing their higher studies. It is further averred by the petitioner that since 29.10.2009 she has

been living separately from the respondent. According to the petitioner, the respondent is getting pension, besides, after retirement he is running a physiotherapy centre in the said house from which he is getting Rs. 1,00,000/- per month. Apart from that he is getting Rs. 30,000/- per month by letting out the house. Since the respondent debarred her from marital relationship, it is not possible for her to reside with the respondent, she has filed this proceeding seeking a decree of divorce on the grounds of desertion and cruelty. Hence, the divorce petition.

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 respondent deserted the petitioner?

(ii) 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?

5. The petitioner in order to prove her case she, herself, has been examined P.W. 1 and her brother namely Kanhu Charan Senapati as P.W.2 and relied on two documents. They are:- Ext. 1 is the Xerox copy of the office Identity Card of the P.W.2 and Ext. 2 is the Xerox copy of the Quarters Allotment letter.

**Point No.I**

Whether the respondent deserted the petitioner?

6. The petitioner sought divorce on the ground of respondent's desertion. It is needless to say Section 13(1) (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-21 of her petition has stated that the respondent deserted him since 29.10.2009. The petition for divorce in this case is presented in the Court on 01.11.2014. 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 evidence of the petitioner established the fact that the respondent has not taken any efforts for his reunion with the petitioner. Thus, from the 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 29.10.2009, meaning thereby that intentional permanent forsaking and abandonment of the petitioner by the respondent without the petitioner's consent and without reasonable cause also meaning not permitting or allowing or facilitating cohabitation between them. The respondent without any rhyme or reason deserted the petitioner and subjected her to cruelty. This conduct of the respondent is a continuous for more than nine 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.

**Point No.II**

Whether the circumstances and back grounds depicted of the narration in 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?

7. Now the next point for consideration is cruelty. Abusing and assaulting the petitioner in presence of the children, criticizing the petitioner in front of family members and friends, not taking care of the petitioner during her suffering from breast cancer, driving out her and her children from the house are the some of the facts and circumstances indicating the cruel conduct of the respondent on the petitioner respondent. Therefore, the petitioner could also establish the ground of cruelty and as such she is entitled to a decree of divorce both on the grounds of desertion and cruelty. 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 6<sup>th</sup> day of November, 2015.

JUDGE, FAMILY COURT,  
BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1 Smt. Kalyani Mahapatra

P.W.2 Kanhu Charan Senapati

Witnesses examined for the respondent:

None

List of documents by petitioner:

Ext. 1 Xerox copy of office Identity Card of the P.W. 2.

Ext. 2 Quarter allotment letter of P.W. 2

List of documents by respondent:

Nil

JUDGE, FAMILY COURT,  
BHUBANESWAR.