

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

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

Civil Proceeding No. 514 of 2014

Sebati Murmu, aged about 48 years,
W/o.- Kanhu Charan Beshra,
D/o-Maisa Murmu,
At-Qrs. No. F-135, Block-23,
AT/P.O.-I.R.C. Village, P.S.-Nayapalli,
Bhubaneswar, Dist-Khurda.

... Petitioner

... Versus...

Kanhu Charan Behera, aged about 50 years,
S/o-Late Gardi Beshra,
At-Anlasuti (Mahalisahi),
P.O.-Bahanada, P.S.-Khunta, Dist-Mayurbhanja,
At present-Farashi, office of G.A. Department Caretaker
Branch, Orissa, Secretariat,
Bhubaneswar, Dist-Khurda.

... Respondent

Date of Argument : 06.10.2015

Date of Judgment : 16.10.2015

J U D G M E N T

The petitioner-wife has filed a petition U/s. 13 (1) 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 desertion.

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 at Anlasuli in the district of Mayurbhanja on

05.03.1986 and out of their wedlock one female child namely Sandhya Rani Beshra was born on 14.07.1987, who has already given marriage. According to the petitioner, she is serving as Jamadar in the office of C.A. III Branch G.A. Department whereas the respondent is serving as Farashi in the Caretaker Branch G.A. Department, Bhubaneswar. After marriage, both of them resided together in the quarters allotted to her at Bhubaneswar. During their stay, the respondent developed illicit relationship with one Saban Mahalik with whom he started residing at Bharatpur Basti. The respondent is not returning to the company of the petitioner despite all her sincere efforts. When all efforts from her side went in vain, she has filed the present petition seeking 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 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?

(iii) 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.(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-4 of her affidavit evidence has stated that the respondent deserted

her since 25.06.2013. The petition for divorce in this case is presented in the Court on 10.11.2014. Thus, it is clearly established that the petition has been filed before completion of two years from the date as alleged by the petitioner. Therefore, the ground of desertion held not established.

Point No.(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?

7. Admittedly, there has been no cohabitation between the parties since 12.02.2012. 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. The petitioner has further stated that the respondent ceased cohabiting her because of respondent's living with another lady namely Saban Mahalik of Baharatpur Basti. 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 his character and trebles his vitality. It must be recognized that nothing is more fatal to marriage than disappointment in sexual intercourse. Therefore, the petitioner

could establish the ground of cruelty, which is one of grounds for divorce U/s. 13 of the Act of 1955.

Point No.(iii)

To what other relief if point?

8. The petitioner in her petition as well as in her affidavit evidence has stated that as she is a service holder and she has no claim whatsoever against the respondent. In view of above statement of the petitioner, she is not entitled for any alimony from the respondent. 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 16th day of October, 2015.

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BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1 Sebatu Murmu

Witnesses examined for the respondent:

None

List of documents by petitioner:

Nil

List of documents by respondent:

Nil

JUDGE, FAMILY COURT,
BHUBANESWAR.