

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

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

Civil Proceeding No. 536 of 2011

Mitanjali Baliarsingh, aged about 36 years,
W/o.- Aswini Kumar Behera,
At/P.O.-HIG-16, Satyasai Enclave,
P.S.-Khandagiri, Dist-Khurda.

... Petitioner

... Versus...

Aswini Kumar Behera, aged about 42 years,
At present working as Asst. professor, Agronomy
B-24, Krishna Garden Complex, Barbari, Jagamara,
P.S.-Khandagiri, Dist-Khurda.

... Respondent

Date of Argument : 03.01.2015

Date of Judgment: 13.01.2015

J U D G M E N T

This order arises out of a petition u/s. 13 of the Hindu Marriage Act, 1955 (in short, the Act 1955) read with amendment Act, 1976 praying for a decree of dissolution of marriage of the petitioner with the respondent 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 on 20.06.1991. According to the petitioner after marriage they led conjugal life for about 12 years and out of their wedlock one daughter and one son were born. It is the further case of the petitioner that after three to four months of marriage, the respondent demand money sent her to her parental home for bring dowry though the respondent has refused to accept any dowry at the time of marriage. The respondent has also abused

her and her parents in filthy languages and on several occasions, he assaulted her and her children in public and on many times had driven out her from the house in the mid night. During her stay with the respondent, she along with her children were subjected to torture as a result of which she and her children remained in starvation without any food. When she along with her children were taking food, the respondent poured wine on food and on protest the respondent assaulted her and had driven her out from the house. On 11.05.2003 the respondent with the spell of liquor abusing her and her children and driven out them. Since then she and her children are living separately from the respondent. Several attempts have been made from her side to settle the dispute but all were in vain. Since the torture and cruelty by the respondent has become in-tolerable and as the respondent debarred the petitioner from any marital relationships, she has filed this proceeding seeking a decree of divorce.

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 her case she, herself, has been examined as P.W.1 who supported the averments made in the petition. The petitioner sought divorce on the grounds of respondent's desertion and cruelty. 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-9 of her petition has stated that the respondent deserted her since 11.05.2003. The petition of divorce in this case is presented in the Court on 03.07.2004. Thus, it is clearly established that the petition has been filed before completion of two years from the date as alleged by the petitioner. Thus, the ground of desertion held not established.

6. The residue point that remains to be discussed is cruelty. P.W.1 in her evidence, has narrated the facts and circumstances of her marriage and subsequent cruelty made by the respondent to her and his children. Abusing, assaulting the respondent in public, pouring liquor in food and driving out the petitioner along with the children from the house in the mid night spell cruel conduct of the respondent towards the petitioner. Therefore, the petitioner could successfully establish the ground of cruelty which is also one of the ingredients u/s. 13 (1) (i-a) of the Act for granting a decree of divorce. 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 13th day of January, 2015.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1 Mintanjali Baliarsingh

Witnesses examined for the respondent:

None

List of documents by petitioner:

Nil

List of documents by respondent:

Nil

JUDGE, FAMILY COURT,
BHUBANESWAR.