

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

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

Civil Proceeding No. 621 of 2014

Dr. Subodh Kumar Das, aged about 43 years,  
S/o-Late B.K. Das  
Flat No. 14, Block-1, Metro City Apartment Nayapalli,  
Bhubaneswar, Dist-Khurda.

... Petitioner

... Versus...

Mrs. Pragati Choudhury, aged about 40 years,  
W/o- Dr. Subodh Kumar Das,  
D/o-Gourahari Choudhury,  
Flat No. 30, Block-5, Metro City Apartment Nayapalli,  
Bhubaneswar, Dist-Khurda.

... Respondent

Date of Argument : 06.08.2015

Date of Judgment : 21.08.2015

J U D G M E N T

The petitioner-husband has filed a petition U/s. 13 (1) (i-a) of the Hindu Marriage Act, 1955 (in short, the Act 1955) praying for a decree of dissolution of his marriage with the respondent-wife 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 at Berhampur on 11.03.2000 and out of their wedlock one male child was born on 19.06.2001. According to the petitioner the respondent during her stay did not perform her marital obligation. It is alleged by the petitioner that the respondent always scolded him in obscene

languages without rhyme or reason for which he did not perform his duty properly. During her stay in his house the respondent never takes his case. Even she did not prepare a cup of tea for him in the morning for which several times he has taken his breakfast and lunch in the canteen. She has also not allowed him to keep any physical relation with him since last seven years for which he has been suffering from mental agony. It is further alleged by him that the respondent several times assailed his character alleging that he has illicit relationship with other females including family members. On each and every day she has created unpleasant situation in the family. It is further averred by the petitioner that many times the respondent made allegations by saying that he is trying and putting black magic on her for which he has also suffered mental agony. The respondent also alleged that he wanted to harm her by putting poison in her food. Due to such act of the respondent he is afraid of losing his mental balance and apprehending danger to his life to lead any conjugal life with the respondent. It is further alleged by the petitioner that on 07.12.2014 the respondent agreed for dissolution of their marriage by a mutual consent but some days thereafter she has refused for the same. Since the respondent debarred him from any marital relationship, he has filed this proceeding seeking a decree of divorce on the ground of cruelty. According to the petitioner the cause action arose within the jurisdiction of the Court as they last resided in Flat No. 14, Block-1, Metro City Apartment, Nayapalli, Bhubaneswar.

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 his case he, himself, has been examined P.W. 1 but did not chose to file any document on his behalf.
6. The petitioner sought divorce on the ground of respondent's cruelty.

Admittedly, there has been no cohabitation between the parties since last seven years. 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 her 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 man'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 man's brain, develops his 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 since last seven years. Desexualizing the petitioner by the respondent for a continuous period of four years amounts to mental cruelty which is one of grounds U/s. 13 (i-a) of the Hindu Marriage, Act.

7. The petitioner has not let into any evidence about the income of the respondent as well as his income. Therefore, this court is handicapped in passing any appropriate relief to the wife. However, if she so advised may, assert her statutory right either U/s. 25 of the Act, 1955 or under Section 125 of Cr.P.C. As regards to the minor son is concerned, the petitioner is directed to bear all the educational, medical and marriage expenses till removal of his inability to maintain himself. 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 subject to the stipulation to bear all the educational, medical and marriage expenses till removal of his inability to maintain himself.

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Dictated, corrected by me and is pronounced on this the 21<sup>st</sup> day of August, 2015.

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Witnesses examined for the petitioner:

P.W.1 Dr. Subodh Kumar Das

Witnesses examined for the respondent:

None

List of documents by petitioner:

Nil

List of documents by respondent:

Nil

COURT,

JUDGE, FAMILY

BHUBANESWAR.