

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

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

Civil Proceeding No. 623 of 2013

Dillip Kumar Mohanty, aged about 46 years,  
S/o-Aparti Charan Mohanty,  
At/P.O.-Kalinga Vihar, P.S.-Tommando,  
Bhubaneswar, Dist-Khurda.

... Petitioner

... Versus...

Smt. Kalyani Raj, aged about 43 years,  
W/o-Dillip Kumar Mohanty,  
D/o-Sri Prasan Raj,  
Vill.-Sainkula, P.O.-Udala,  
Dist-Mayurbhanj.

... Respondent

Date of Argument : 17.11.2015

Date of Judgment : 30.11.2015

J U D G M E N T

The petitioner-husband, 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-wife on the grounds of desertion and cruelty.

2. The facts of the case of the petitioner are as follows:-

It is the case of the petitioner that his marriage with the respondent was solemnized according to the Hindu rites and customs in Bhubaneswar on 30.04.2002 and out of their wedlock one male child was born on 25.09.2004. According to the petitioner, the respondent is an arrogant, egoist, self-centered and cruel lady. The respondent during her stay in his house abused him and his family members in filthy languages. She did not perform her marital obligations during her stay in his house. She has also insisted him to

return to her parental home. It is further averred by him that the respondent had also threatened to commit suicide and to implicate him and his family members in criminal cases. She has also avoided for conjugal relations and preferred to sleep alone by locking the door. On 15.06.2010 the respondent voluntarily left his house leaving the minor son with him in order to make relationship with her boyfriend. Thereafter several attempts have been made from his side to bring her back but all were in vain. It is further averred by the petitioner that the respondent had already taken all the gold ornaments and gift articles brought by her at the time of marriage along with the ornaments given to her from his side. It is further averred by him that his minor child is also deprived of his rights. Since it is not possible on his part to reside with the respondent due to cruel conduct of the respondent towards him and his family members, he has filed the present petition for 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?

5. The petitioner in order to prove his case he, himself, has been examined P.W. 1 but chose not file any document on his 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-11 of his petition has stated that the respondent deserted him since 15.06.2010. The petition for divorce in this case is presented in the Court on 16.12.2013. 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 her reunion with the petitioner. It is further established that the respondent avoided for sexual relation 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 15.06.2010, 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 him to cruelty. This conduct of the respondent is a continuous for more than three 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. Not performing her marital obligations, abusing the petitioner and his family members in filthy languages, avoiding for conjugal relation with the petitioner, sleeping alone by locking the door, threatening to commit suicide and to file criminal cases against the petitioner and his family members, insisting the petitioner to return to her parental home, not taking the care of the minor child are some of the facts and circumstances indicating the cruel conduct of the respondent on the petitioner. Therefore, the petitioner could also establish the ground of cruelty and as such he 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 30<sup>th</sup> day of  
November, 2015.

JUDGE, FAMILY COURT,  
BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1          Dillip Kumar Mohanty

Witnesses examined for the respondent:

None

List of documents by petitioner:

Nil

List of documents by respondent:

Nil

JUDGE, FAMILY COURT,  
BHUBANESWAR.