

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

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

Civil Proceeding No. 645 of 2015

Smt. Pinkilata Mallick @ Naik, aged about 36 years,  
W/o-Sri Jyoti Prakash Naik,  
D/o-Sri Laxmidhar Mallick,  
Resident of village-Nimapara, P.O.-Mohiuddinpur,  
P.O./Dist-Jagatsinghpur,  
At present residing at Room No. A-302, Moti Apartment,  
Satyanagar, P.S.-Kharvel Nagar, Bhubaneswar, Dist-Khurda.

... Petitioner

... Versus...

Sri Jyoti Prakash Naik, aged about 34 years,  
S/o-Sri Japahari Naik,  
Village-Nimapara, P.O.-Mohiuddinpur, P.S./Dist.- Jagatsinghpur  
At present residing at Plot No.-104 (P), Paradeep Colony, K-4,  
Kalinga Vihar, P.S.-Khandagiri, Bhubaneswar, Dist-Khurda.

... Respondent

Date of Argument : 20.04.2016

Date of Judgment : 23.04.2016

J U D G M E N T

The petitioner-wife has filed a petition U/s. 27 of the Special Marriage Act, 1954 (in short, the Act 1954) 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 before Marriage Officer, Bhubaneswar on 12.04.2004 vide Ext. 1 and out of the wedlock one male child namely Joy Prakash Naik was born on 04.05.2008 in P.P.T. Hospital, Paradeep. It is the further case of the petitioner that after solemnization of the marriage both of them resided together as husband and

wife in a rented house at Flat No. 201, Snehalata Apartment, Vivekananda Marg under Lingaraj police station, Bhubaneswar and led a happy conjugal life for two years and thereafter the respondent took her to his working place at Paradeep where he worked in a private company. It is alleged by the petitioner that the respondent after delivery of the male child started torturing her both physically and mentally. The Opp. Party also kept illicit relationship with other girls and women. It is further alleged by her that the Opp. Party assaulted her and her son with the spell of liquor. It is further alleged by her that since 08.10.2013 the respondent deserted them. Thereafter several attempts have been made from her side to bring back but all were in vain. Since the torture and cruelty by the respondent became in-tolerable she has filed this proceeding 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 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 and relied on one document i.e. Ext. 1 Marriage certificate bearing No. 132 of 2004 dated 12.04.2004.

6. The petitioner sought divorce on the grounds of respondent's desertion and cruelty. It is needless to say Section 27 (i) (b) of the Act, 1954 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-8 of his petition has stated that the respondent deserted her since 08.10.2013. The petition of divorce in this case is presented in the Court on 13.10.2015. 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 petitioner has stated that the respondent stopped keeping physical relationship with her since 08.10.2013 as she has kept illicit relationship with

other girls and women. She has further stated that several attempts have been made from her side for consummation of the marriage but the same could not be proficient. Thus, from the aforesaid tenor of evidence, it is as much as clear as noon day that there has been total liquidation of obligation of marriage between the parties since 08.10.2013, meaning thereby that intentional permanent forsaking and abandonment of one spouse by the respondent without the wives' consent and without reasonable cause also meaning not permitting or allowing or facilitating cohabitation between the spouses. The respondent without any rhyme or reason deserted the petitioner and subjected her to cruelty. This conduct of the parties is a continuous one for last more than two 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.

7. The residue point that remains to be discussed is cruelty. Torturing the petitioner and her minor son both physically and mentally with the spell of liquor, keeping illicit relationship with many girls and women and non-sexing the petitioner for more than two years which adds mental cruelty. Therefore, the petitioner could successfully establish the ground of cruelty which is also one of the ingredients u/s. 27 (1) (d) of the Act for granting a decree of divorce.

#### 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 and the marriage certificate bearing No. 132 of 2004 dated 12.04.2004 is hereby cancelled.

JUDGE, FAMILY COURT,  
BHUBANESWAR.

Dictated, corrected by me and is pronounced on this the 23<sup>rd</sup> day of April, 2016.

JUDGE, FAMILY COURT,  
BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1 Smt. Pinkilata Mallick @ Naik

Witnesses examined for the Opp. Party:

None

List of documents by petitioner:

Ext. 1 Marriage certificate bearing No. 132 of 2004 dated 12.04.2004

List of documents by Opp. Party:

Nil

JUDGE, FAMILY COURT,  
BHUBANESWAR.