

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

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

Civil Proceeding No. 700 of 2015

Sri Samir Kanta Adhikari, aged about 33 years,
S/o-Sri Keshab Adhikari,
At/P.O.-Gopalpur Sasan, P.S.-Sorada, Dist-Ganjam.
At present residing at Salia Sahi, Binayak Nagar, P.O.-RRL,
P.S.-Nayapalli, Dist-Khurda.

... Petitioner

... Versus...

Smt. Saraswati Naik, aged about 28 years,
W/o-Sri Samir Kanta Adhikari,
D/o-Sri Subash Chandra Naik,
At-Boripadar, P.O.-Motabadi, P.S.-Buguda, Dist-Ganjam.
At present residing at Charibatia New Colony, P.S.-Choudwar,
Dist-Cuttack.

... Respondent

Date of Argument : 26.04.2016

Date of Judgment : 27.04.2016

J U D G M E N T

The petitioner-husband 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-wife 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 in Salia Sahi Basti, Bhubaneswar on 10.02.2008 and out of their wedlock one female child namely Krutika Adhikari was born. It is the further case of the petitioner that prior to the marriage, he intimated the respondent about the illness of his parents and after hearing such, the

respondent agreed for the same and accordingly, marriage was solemnized. It is alleged by the petitioner that the respondent is an adamant, arrogant, selfish and short tempered and unfaithful lady. It is alleged by the petitioner that after marriage, the respondent did not do any household chores and created disturbances on silly matters for which his family life became ruined. She has also not looked after his ailing parents. It is further alleged by him that the respondent also insisted him for living separately from his ailing parents and when he denied it, the respondent started creating disturbances in the family. It is further alleged by him that the respondent after getting job of teacher fled away from his house on 26.01.2012 without intimating him and his family members and started residing in her parental home and thereafter lodged an FIR before the Sorada Police Station vide P.S. case No. 74 dated 21.06.2015 against him and his family members. Thereafter several attempts have been made from his side to bring her back but all were in vain due to willful refusal of the respondent and her family members. Since the torture of respondent became unbearable, finding no alternative he 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 his case he, himself, has been examined P.W. 1, his father namely, Sri Keshab Adhikari as P.W. 2 and his sister namely Smt. Kabita Nayak as P.W. 3 but chose not to file any document on his behalf.

6. The petitioner sought divorce on the grounds of respondent's desertion and cruelty. It is needless to say Section 13 (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-8 of his petition has stated that the respondent deserted him since 26.01.2012. The petition of divorce in this case is presented in the Court on 03.11.2015. 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 him since 26.01.2012 as the respondent fled away from his house without intimating him and his family members and started residing in her parental home. He has further stated that he has taken several attempts for consummation of the marriage requesting her to join with his company but the same could not be proficient. P.W. 2 and 3 supported the aforesaid statement of the P.W. 1, the petitioner. 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 26.01.2012 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 the spouses. The respondent without any rhyme or reason deserted the petitioner and subjected him 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. Not doing any household chores, not looking after the ailing parents of the petitioner, creating disturbances on silly matters, insisting the petitioner for living separately from his old and ailing parents, filing of cases against the petitioner and his family members and fleeing away without any imitation to the petitioner and his family members are the circumstances sufficient enough to attribute mental torture perpetrated by the respondent on petitioner. Additionally, the respondent has non-sexed the petitioner for more than three years which adds mental cruelty. 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 27th day of April, 2016.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Witnesses examined for the petitioner:

P.W. 1 Sri Samir Kanta Adhikri
P.W. 2 Sri Keshab Adhikari
P.W. 3 Smt. Narahari Nayak

Witnesses examined for the respondent:

None

List of documents by petitioner:

Nil

List of documents by respondent:

Nil

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