

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

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

Civil Proceeding No. 773 of 2011

Leena Naik, aged about 31 years,
W/o- Jjitu Naik,
D/o-Pratap Naik,
Plot No. 203, Kolathia,
P.O.-Aiginia, P.S.-Khandagiri,
Dist-Khurda.

... Petitioner

... Versus...

Jitu Naik, aged about 37 years,
S/o-Buxi Naik,
Permanent resident of village-Baiginia,
P.S.-Fategarh, Dist-Nayagarh.

... Respondent

Date of argument : 08.08.2014

Date of order : 20.08.2014

ORDER

This order arises out of a petition u/s. 13 (1) (i) of the Hindu Marriage Act, 1955 (in short, the Act 1955) 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 that:-

The marriage of the petitioner with respondent was solemnized as per Hindu Custom and rites at M.I Colony Club, Unit-IX Flat, Near Kanak Durga Mangir, Bhubaneswar on 12.07.2008. She has averred that at the time of marriage, her father had given Rs.50,000/-, gold chain, 10 Nos. of gold rings,

a Hero Honda Passion Motor Cycle along with other household articles. The der-Tag started in their life when the Opp. Party and his family members demanded additional dowry and non-fulfillment thereof subjected to the petitioner with physical and mental torture and the respondent did not allow her to stay in his house and after staying four days there, the respondent and his sister Rekha and friend Anand Naik brought to her to Bhubaneswar without arranging a suitable shelter. She has further averred that her father after knowing the respondent had not made any arrangement to keep the petitioner with him at Bhubaneswar, allowed them to stay in his newly half built vacant house at Kolathia. She has further averred that during stay at Kolathia the respondent, his sister Rekha and his friend Ananda Naik, consistently tortured her both physically and mentally due to non fulfillment of additional dowry. She has further stated that on 17.07.2008, the respondent compelled her to establish illicit relationship with his friend Ananda but when she denied to it, the respondent along with his friend Ananda assaulted her mercilessly and after knowing the said fact, her father came and took her to his quarter within RCE Campus. She has further averred that several attempts have been made by her parents and brother but the respondent and his family members did not cooperate. She has further stated that the respondent consistently tortured her both physically and mentally for more dowry and when it is not fulfilled, the respondent deserted the petitioner on 26.08.2008. When the torture and cruelty by the respondent became unbearable she lodged an F.I.R. before Mahila P.S. which has been registered as Mahila P.S. Case No. 71/09 dated 30.06.2009 U/s. 498(A), 323, 294, 506, 354/34 IPC and Section. 4 of the D.P. Act which has been numbered as G.R. Case No. 1617/2009 before the learned S.D.J.M., Bhubaneswar and is pending for disposal. Hence, the petition for divorce.

3. The Opp. Party 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 P.W. 1.

6. The petitioner sought divorce on the grounds of respondent's desertion and cruelty. It is needless to say Section 13(1) of the Hindu Marriage Act, 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 7 of her petition has stated that the respondent deserted her since 26.08.2008. The petition of divorce in this case is presented in the Court on 12.09.2011. Thus, it is clearly established that the petition has been filed after completion of two years from the date as alleged by the petitioner. From the aforesaid 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 26.08.2008, meaning thereby that intentional permanent forsaking and abandonment of one spouse by the other without the others consent and without reasonable cause also meaning not permitting or allowing or facilitating cohabitation between the spouses. The respondent without any rhyme and reason deserted the petitioner and subjected her to cruelty. This conduct of the parties is a continuous one for last more than five 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. Demanding more dowry and when the petitioner protested it the respondent and his family members tortured her both physically and mentally spell cruel conduct of the respondent towards the petitioner. The petitioner has stated that the respondent forced her to keep illicit relationship with one Ananda. The

evidence of the petitioner remains unchallenged. Therefore, the petitioner could successfully establish the ground of cruelty which is also one of the ingredients u/s. 13 (1) 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. Since the petitioner has submitted during the course of the argument that she has no claim of alimony either permanent or monthly, I am desisted from granting such relief to the petitioner.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Dictated, corrected by me and is pronounced on this the 20th day of August, 2014.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1 Leena Naik

Witnesses examined for the respondent:

None

List of documents by petitioner:

Nil

List of documents by respondent:

Nil

JUDGE, FAMILY COURT,
BHUBANESWAR.