

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

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

Civil Proceeding No. 881 of 2013

Sri Rajat Kumar Choudhury, aged about 37 years,
S/o- Late Rabindranath Choudhury,
of Plot No. 1093, Khandagiri Bari,
Ghatikia, P.O./P.S.-Khandagiri, Bhubaneswar,
Dist-Khurda.

... Petitioner

... Versus...

Smt. Satyabhama Pattnaik, aged about 33 years,
W/o-Sri Rajat Kumar Choudhury,
D/o-Sri Satyanarayan Pattnaik,
of Village-Bhagabanpur, P.O.-Patrapada,
P.S.-Khandagiri, Dist-Khurda
At present-M.I.G.-342, Kalingavihar,
Patrapada, P.S.-Khandagiri,
Dist-Khurda.

... Respondent

Date of argument : 07.08.2014

Date of order : 16.08.2014

ORDER

The petitioner has files this application Under Sec.9 of Hindu Marriage Act with prayer for restitution of his conjugal rights with the respondent.

2. The admitted facts of the case of the parties are that their marriage was solemnized on 05.02.2010 and out of their wedlock one male child was born to them.

3. The facts of the case of the petitioner are that after marriage they led a happy conjugal life for some days. In the month of April 2010 the respondent was found absent minded and talking with someone over the mobile phone and her behaviour towards his family members as well as towards him has

been changed. He has averred that the respondent showed abnormal behaviour to the petitioner and did not do the household work properly. The respondent became adamant and arrogant in the house and also commanded the family members of the petitioner. He has further averred that the respondent did not cooperate for cohabitation and started misbehaving him in each and every day. He has further averred that due to bad relationship with other person prior to the marriage, the respondent is not happy with him and making false allegation against him and his family members before her parents for which the parents and family members of the respondent threatened the petitioner and abused him in filthy language. The petitioner has further averred that the respondent due to difference of opinion did not want to stay in the house of the petitioner and always threatened the petitioner to commit suicide. He has further averred that on 12.07.2010 the respondent left the house of the petitioner with an intention not to join with him forever. It is further averred that several attempts have been made for settlement of dispute, but the respondent and his family members did not cooperate. Since the respondent without any rhyme and reason deserted the petitioner, he has filed this present proceeding for restitution of conjugal right.

4. The respondent entered contest the proceeding and filed written statement. The facts of the case of the respondent are that, the petitioner with an ulterior motive has filed this proceeding without any justifiable cause. The respondent denied allegation made by the petitioner against her. Two months after the marriage, she came to know that the petitioner is a habitual drunkard and unemployed person and being influenced by her mother and sister always has tortured her both physically and mentally and due to prestige of her in-laws family she did not disclose the said fact to others with a hope that he would change his behaviour one day. She has further averred that at the time of filing of this proceeding the respondent was residing with the petitioner in the rented house separately from other family members of the petitioner and therefore, the present petitioner is not maintainable.

5. The following points are to be determined for adjudication of the case:

- (i) Whether the respondent without any rhyme and reason deserted the petitioner and avoided for any conjugal relationship?
- (ii) Whether the petitioner is entitled for restitution of conjugal rights as claimed for?

6. The petitioner in order to prove his case he, himself, examined has been as P.W. 1. On the other hand, the respondent examined herself, as R.W. 1 and relied on two documents i.e. Ext. A is the Xerox copy of discharge certificate and Ext. B is the Xerox copy of the Birth Certificate.

7. The petitioner in her evidence has supported the facts as stated in his plaint and has stated that the respondent voluntarily left his house. He has further stated that the respondent did not allow him to see his son. He has further stated that several attempts have been made by him and his family members but the respondent did not agree to join his company. He has further stated that he cannot say the name of the person to whom the respondent had bad relation and the respondent disclosed before him that she is not interested to reside with him in the month of July, 2011 and as per the demand of the respondent he hired a house on rent in village Nuagaon and resided there with the respondent. The respondent stayed there for two days in the said rented house and thereafter the father of the respondent came and took her away to his house. The respondent has filed a criminal case against him and other family members vide G.R. Case No. 3842/2011 alleging torture on her. He has further stated that he is not willing to keep the respondent with him now.

8. The respondent in her affidavit evidence has stated that she married to the petitioner on 05.02.2010 and at the time of marriage, her parents have given Rs. 1,00,000/-, gold and silver ornaments weighing 70 and 20 grams and all other household articles and valuable and they led happy conjugal life for eight months. She has stated that after two months of marriage she came to know that the petitioner is a habitual drunkard and unemployed person. She has further stated that being instigated by her mother-in-law and sister-in-law the respondent tortured her both physically and mentally but in order

to hide the prestige and dignity of her in laws she has not disclosed before anybody about such torture. She has further stated that she was blessed with a male child in Capital Hospital, Unit-6 at Bhubaneswar on 14.01.2011 vide Exts A and B. Due to constant instigation by her in laws and disturbance created in the house, the petitioner took a rented house at Nuagaon under Sampur mouza in the month of 2011 where they both have lived. She has further stated that she is willing to return the company of the petitioner for the future of her son. She has further stated that she is now working as a teacher in Vista Gurukul School and is getting Rs. 1,500/- per month and her parents have tried to resolve the controversy between them.

9. Section 9 of the Hindu Marriage Act 1955 provides that when either spouse, without any reasonable cause withdrawn from the society of the other, the aggrieved party may apply by petition for restitution of conjugal rights and the court on being satisfied of the truth of the statements made in such petition and there is no legal ground why the application should not be granted may decree restitution of conjugal rights accordingly. The explanation to the said section speaks that where a question arises whether there has been reasonable excuse for withdrawal from the society, the burden of proving reasonable excuse shall be on the person who has withdrawn from the society. However the explanation to section-9 does not make any change and that initial burden to prove the allegation on the basis of which restitution of conjugal rights is sought is on the person who comes to the court. In this case, the petitioner who approached the court for a judgment and decree in his favour on the assertion that the respondent had withdrawn from his society without any reasonable excuse, the burden of proof in the proceedings lies on the petitioner to prove those averments made by him to get a decree in his favour. Hence, the petitioner who alleges withdrawal without reasonable cause failed to lead evidence, he may not be in a position to satisfy the court regarding the truth in the pleadings, hence he has to lead evidence, then the burden will be shifted to the respondent to establish reasonable excuse.

10. The case of the husband is that the wife has deserted him with an

intention to bring cohabitation permanently to an end. In a case of desertion factum as well as animus desrendi is on the petitioner and he or she has to establish beyond reasonable doubt to the satisfaction of the court, the desertion throughout the entire period of one year before the petition as well that desertion was without just cause.

11. P.W. 1, the petitioner merely stated that the respondent has deserted him in order to bring the marital relation to an end and he did not want to keep her with him now. R.W. 1, the wife has deposed that she is willing to join with the petitioner, not only for herself but also for the future welfare their son. Therefore, from the statements of these two witnesses, it is established that despite the willingness of the respondent to rejoin the company of the petitioner, the petitioner did not agree to keep her. The petitioner has therefore, not satisfied the court of his sincerity in wanting to resume cohabitation with the respondent. Additionally, the petitioner charged his wife with infidelity. It is, therefore, clearly established that the petitioner does not really seek the company of the wife but commences a proceeding seeking a decree for restitution of conjugal rights only to clothe himself with the right to prosecute a proceeding, for judicial separation or divorce in future.

12. There can be nothing which can be expose a wife to greater peril than the society of husband and who has charged her with infidelity. That imputation is unfounded does not diminish the danger, if the husband has faith is its truth. And, a husband who makes an accusation which he knows to be false is more unscrupulous and so could be more ruthless. The vocation which the imputation itself may cause to a sensitive wife endowed with gentle disposition is a mere shadow of greater hazard which vindication pretends. And so, there would be cruelty producing the fear of grave danger which continuance in the matrimonial home normally involves. Thus, considering the facts and circumstances of the case and character of the petitioner, it would be inhumane to grant restitution. Hence, ordered.

O R D E R

The petition filed by the petitioner for restitution of conjugal rights is dismissed on contest, but in the circumstance without any cost.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Dictated, corrected by me and is pronounced on this the 16th day of August, 2014.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1 Sri Rajat Kumar Choudhury

Witnesses examined for the respondent:

R.W.1 Smt. Satyabhama Pattnaik

List of documents by petitioner:

Nil

List of documents by respondent:

Ext. A Xerox copy of discharge/referral Certificate

Ext. B Xerox copy of Birth Certificate.

JUDGE, FAMILY COURT,
BHUBANESWAR.