

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

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

Civil Proceeding No. 96 of 2014

Puja Sharma, aged about 33 years,
S/o-Shib Kumar Sharma,
D/o- Kalish Chandra Joshi,
At-Ramchandrapur Bazar, P.O./P.S.-Jatni,
Dist-Khurda.

... Petitioner

... Versus...

Shib Kumar Sharma, aged about 39 years,
S/o-Mahavir Prasad Sharma,
Resident of At-268/8, G.T. Road,
3rd Floor, Narayani Niwas Apartment,
Lilua, Hawrh, P.S.-Belur, West Bengal,
Howarh-711004.

... Respondent

Date of Argument : 04.12.2015

Date of Judgment : 15.12.2015

J U D G M E N T

The petitioner-wife, has filed a petition U/s. 13 (1) (i-a) of the Hindu Marriage Act, 1955 (in short, the Act 1955) praying for a decree of dissolution of her marriage with the respondent-husband on the ground of cruelty.

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

The petitioner married to the respondent according to the Hindu rites and customs in Lilua under State of West Bengal on 20.06.2005 and out of the wedlock two daughters namely Isita and Swati were born on 04.09.2006 and 22.03.2009 respectively. According to the petitioner her father had fulfilled all the demand of the respondent and his family members. It is

averred by the petitioner after completion of marriage both of them resided at Narayani Apartment. It is further averred by the petitioner that after birth of the her second daughter she was subject to torture both physically and mentally by the respondent as to why she gave birth of two daughters. They have demanded additional demand of dowry of lakhs of rupees and when the torture became unbearable she was forced to leave the house of the respondent along with her minor children on 20.12.2012. Thereafter several attempts have been made from her side to settle the disputes but all were in vain. It is further averred by the petitioner that the respondent is businessman and is earning lakhs of rupees per month besides, he gets commission from stock exchange. Since it is not possible on her part to reside with the respondent due to cruel conduct of the respondent, she has filed the present petition for seeking a decree of divorce on the ground of 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 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?
- (ii) Whether the petitioner is entitled for any alimony either permanent or monthly if point No.1 is answered in favour of the petitioner?

5. The petitioner in order to prove her case she, herself, has been examined P.W. 1 but did not chose to file any document on her behalf.

6. The petitioner while being examined as P.W.1 supported the averments made in the petition. From the unchallenged testimony of the petitioner, it is established that there has been no cohabitation between the parties since 20.12.2012. From the unchallenged evidence of the petitioner, it is clearly established that the respondent without any rhyme or reason willfully

withdrew the cohabitation with the petitioner. There is no evidence on record that denial of sexual intercourse is the result of sexual weakness of the respondent disabling him from having a sexual union with the petitioner but it was willfully refused by the respondent. The result, is frustration and misery to the petitioner due to denial of normal sexual life and hence cruelty. Sex is the foundation of marriage and without a vigorous and harmonious sexual activity it would be impossible for any marriage to continue for long. It cannot be denied that the sexual activity in marriage has an extremely favourable influence on a woman's mind and body. The result being that if he does not get proper sexual satisfaction it will lead to depression and frustration. It has been said that the sexual relations when happy and harmonious vivifies a woman's brain, develops her character and trebles her vitality. It must be recognized that nothing is more fatal to marriage than disappointment in sexual intercourse.

7. The petitioner has also stated that after birth of the her second daughter she was subject to torture both physically and mentally by the respondent as to why she gave birth of two daughters. She has further stated that the respondent and his family members have also demanded additional demand of dowry of lakhs of rupees and when the torture became unbearable she was forced to leave the house of the respondent along with her minor children on 20.12.2012. Therefore, concatenating the aforesaid circumstances and back grounds I have no hesitation to conclude that the petitioner could able cruelty of the respondent on him and the cruel conduct was so deleterious, it was impossible on the part of the petitioner to reside with the respondent and such, it is a fit case for grant a decree of divorce to the petitioner.

Point No.(ii)

8. The next point for consideration is whether the petitioner is entitled for any alimony either monthly or permanent if point No.1 is answered in her favour?

Though the petitioner has categorically stated that the respondent is businessman and is earning lakhs of rupees per month besides, he gets commission from stock exchange which gone unchallenged as there has been cross examination yet failed to file any document to vouchsafe it. Therefore, I am not inclined to give any maintenance either permanent or monthly to the petitioner and her minor children at presenti. 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.

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Dictated, corrected by me and is pronounced on this the 15th day of December, 2015.

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Witnesses examined for the petitioner:

P.W.1 Puja Sharma

Witnesses examined for the respondent:

None

List of documents by petitioner:

Nil

List of documents by respondent:

Nil

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