

Assam Schedule VII. Form No.132.

HIGH COURT FORM NO. (J) 2

HEADING OF JUDGMENT ON ORIGINAL SUIT/CASE

District - **Udalguri**

In the Court of the **Addl. District Judge, Udalguri.**

Present : **Smti. Nirmali Talukdar, A.J.S.**

Udalguri.

Friday, the **02nd** day of **August, 2019**

Title Suit (D) Case No. **13** of **2018**

1. Gita Mochahari

Plaintiff (s)
Petitioner (s)

Versus

1. Ireneus Daimari

Defendant (s)
Opposite Party

(I) Give date or dates This appeal coming on this day (or having been heard on)
20-07-19

In the presence of

Mr. Tarun Ch. Boro

Advocate(s) Plaintiff (s)
----- for -----
Pleader (s) Petitioner (s)

None appeared

Advocate(s) Defendant (s)
-----for -----
Pleader (s) Opposite Party

and having stood for consideration to this day, the Court delivered the following judgment:

T.S.(D) 13/2018.**J U D G M E N T**

1. This is a suit under Section 10 of the Indian Divorce Act 1869, for a decree of divorce by dissolution of marriage between the petitioner and the respondent.
2. The petitioner's case, in brief, is that both the petitioner and the respondent are Christian by religion and on 09-01-16, they registered their marriage at St. Theresa's Catholic Church, Ambagaon. After registration of the marriage their social marriage was solemnized according to the prevailing customs and rites in the society. According to the petitioner after the solemnization of marriage though they left together but the respondent does not have the potency to sex with the petitioner and could not provide her physical satisfaction. When the petitioner asked the respondent about his impotency, he used to torture her physically and mentally. The petitioner bearing such mental and physical torture stayed in the house of the respondent for about one month. But when there is no improvement the impotency of the respondent the petitioner left the house of the respondent. Thereafter she went to Guwahati to take course of teachers training at Kharguli DBI. After a few days the respondent started to threaten the petitioner over phone. Then having no way out the petitioner returned to her parental home. Thereafter, the respondent forcefully took her to matrimonial home where she stayed for a few days by tolerating all sorts of mental torture. Thereafter, on 10-01-17, the petitioner left the house of the respondent and joined as a teacher at Holy Kid English School at Baljuli, Sonitpur. But the respondent and his family members threatened the petitioner by various way then the petitioner out of fear left the Holy Kid English School and went to Arunachal where she is now working as a teacher at private school. The petitioner has stated that there is no chance of re-union between the parties due to the impotency of the respondent. Hence, the petitioner has filed the instant suit praying for dissolution of

marriage. The petitioner by working hard labour meet the basic needs to lead a normal live. On the other hand the respondent is a rich man having tea garden of about 6 Bighas, paddy field about 6 Bighas and betel nut garden over 2 Bighas of land.

3. The respondent has filed his written statement denying the suit of the petitioner. According to the respondent after five months of marriage the petitioner was conceived but she aborted the fetus by taking medicines with help of her mother keeping the respondent. The respondent would come to know about the fact when enquired about the excessive bleeding of the petitioner. Since abortion the petitioner lost the power of consummation and started becoming angry often. During the last part of November, 2016, the petitioner and the respondent went before a doctor in a private nursing home at Udalguri as the petitioner was not conceived again after the abortion where the doctor after preliminary examination suggested more medical examination of the petitioner. All medical documents however kept by the petitioner and as such respondent his not in a position to submit any documents in this regard. The respondent is a potent person. In order to remove the doubt of fertility, he underwent medical checkup at IHR an Institute of Human Reproduction at Guwahati. After preliminary examination the doctor found nothing wrong at the respondent and advice him to come with his wife to which the petitioner did not respond. According to the respondent the petitioner herself is suffering from the problem of incapable of consummation and to cover the fact is not willing to stay with the respondent. The respondent has stated that he is not a rich man having tea garden and betel nut garden. He is a member of a NGO and getting a lump sum amount of Rs. 6000/- only. He jointly owned 6 Bighas of cultivable land with his mother and brother. The respondent has no permanent work to do. Beside joint cultivation and working for the NGO he works as a daily wage earner.

4. The respondent has stated that the petitioner has filed this petition with an intention to harass the respondent without genuine grounds and as such the petition is liable to be rejected.
5. Upon pleadings of the parties the following issues were framed in the suit:-

Issues

- (1) Whether the opposite party had treated the petitioner with cruelty?
 - (2) Whether the petitioner is entitled to get a decree of divorce?
 - (3) To what relief(s), the parties are entitled?
6. After framing of the issues from the stage of evidence the respondent remained absent in the suit and therefore the suit proceeded ex-parte against the respondent.
 7. The petitioner has submitted evidence of 4(four) PWs to prove her case and exhibited no document.
 8. I have heard arguments learned counsel for the petitioner and also gone through the evidence on record in its entirety.

DISCUSSION, DECISION AND REASONS THEREOF:

Issue no 1

9. According to the petitioner the accused used to torture her physically, abuse her using slang language and caused mental harassment.
10. The petitioner has examined four witnesses including herself as PW1. In her evidence submitted in affidavit PW1, the petitioner has stated that her husband/respondent is unable to consummate the marriage. When she

asked him about his impotency he started to torture her physically and mentally using slang languages. Finally she left the matrimonial home and went to Guwahati but the respondent used to threaten her over phone and started to torture her mentally. When she returned back to her parental home the respondent forcibly took her to her matrimonial home. She again left her matrimonial home and joined as a teacher in a school at Sonitpur but due to the threatening given to her by the respondent and his family members over phone she had to left her job at Sonitpur and fearing injury to her life she left for Arunachal where now she has been working as a teacher in a private school.

11. PW2 Phulmoti Mochahari is the mother of the petitioner. She has also deposed corroborating the evidence of the petitioner.

12. PW3 Sukur Daimari and PW4 Ropen Daimari have also deposed that the petitioner was subjected to physical and mental torture by her husband/respondent for which she had to left for Arunachal Pradesh. The respondent has not cross-examined the PWs and as such failed to demolish the credibility of their testimony. As such the evidence adduced by the petitioner has been accepted in toto and if find nothing to disbelieve their testimony. Now the question is whether the physical and mental torture meted out to the petitioner is sufficient to bring home the ground of cruelty under Section 10 of Indian Divorce Act.

13. Section 10(1)(x) of Indian Divorce Act is read as follows:

Grounds for dissolution of marriage.—(1) Any marriage solemnized, whether before or after the commencement of the Indian Divorce (Amendment) Act, 2001 (51 of 2001), may, on a petition presented to the District Court either by the husband or the wife, be dissolved on the ground that since the solemnization of the marriage, the respondent —

.....

(x) has treated the petitioner with such cruelty as to cause a reasonable apprehension in the mind of the petitioner that it would be harmful or injurious for the petitioner to live with the respondent.

14. The term cruelty has not been defined anywhere in the act. What has been transpired from the provision enumerated under Section 10(1)(x) of Indian Divorce Act that for the purpose seeking divorce on the ground of cruelty the petitioner has to be treated with such cruelty as to cause a reasonable apprehension in the mind of the petitioner that it would be harmful or injurious for the petitioner to live with the petitioner.
15. In the decision reported in **A. Jayachandra Vs. Aneel Kaur, AIR 2005 SC 534**, the Hon'ble Supreme Court has stated that to constitute cruelty, the conduct complained of should be "grave and weighty" so as to come to the conclusion that the petitioner spouse cannot be reasonably expected to live with the other spouse. It must be something more serious than "ordinary wear and tear of married life."
16. In the instant case the respondent failed to consummate marriage with the petitioner because of his impotency and whenever he was asked about it he used to torture the petitioner physically and caused mental torture to her using slang languages. When the petitioner went to Guwahati for teachers training he compelled her to return back to her home by threatening her over phone. He again forcibly took her to his house against her will. Finally she had to left for Arunachal Pradesh fearing injury to her live because of the threatening given by the respondent. This clearly shows the conduct of the respondent with the petitioner is something more serious than original wear and tear of married life. The conduct of the respondent to forcing the petitioner to live with him against her will though he is unable to consummate the marriage and also threatening her over phone constantly sufficient to cause a reasonable apprehension in the mind

of the petitioner that it would be harmful or injurious for the petitioner to live with the respondent. In that view of the matter Issue No. 1 is decided in affirmative and in favour of the petitioner.

Issue No. 2: Whether the petitioner is entitled to get a decree of divorce:

17. In view of the discussion on Issue no. 1, it is found that the respondent had treated the petitioner with such cruelty as to give a reasonable apprehension in the mind of the petitioner that it would be harmful or injurious to the petitioner to live with the respondent. Moreover, both parties are living separately for more than two years since 10-01-17. Hence, the petitioner is entitled to get a decree of divorce. Accordingly Issue No. 2 is decided in affirmative and in favour of the petitioner.

Issue No. 3: To what relief(s) the parties are entitled to?

18. In view of my discussions and decisions on the foregoing Issue No.1 and 2, I find and hold that the petitioner is entitled to decree of divorce on the ground of cruelty. On the other hand, the respondent is not entitled to any relief. Hence, the issue No.3 is answered in the affirmative and in favour of the petitioner.

19. In the result, the petitioner's suit stands decreed uncontested without costs.

20. Let a decree of divorce be prepared dissolving the marriage between the parties registered on 09-01-16.

21. Given under my hand and seal of this court on this the 02nd day of August, 2019 in the open court.

Dictated and Corrected

(N. Talukdar)
Addl. District Judge
Udalguri

(N. Talukdar)
Addl. District Judge
Udalguri.