

HIGH COURT FORM NO.(J) 2
HEADING OF JUDGMENT IN ORIGINAL SUIT/CASE
IN THE COURT OF THE ADDL. DISTRICT JUDGE -2(FTC), TINSUKIA

District : Tinsukia

Present : Sri B. Sutradhar(AJS),
 Addl. District Judge-2(FTC),
Tinsukia.

Title Suit (M) Case No. 127 of 2019

On Tuesday, the 6th day of April, 2021

Sri Deepan Kumar Handique(32 Yrs.),

S/o. Sri Puma Prasad Handique,

R/o. Simoluguri,

P.O. Navajyoti, P.S Bordumsa,

District Tinsukia, Assam.

..... Petitioner

-Versus -

Smt. Pori Gogoi,

W/o. Sri Deepan Kumar Handique,

D/o. Sri Gojen Gogoi,

R/o. No. 1 Upor Upon Gaon,

P.O, P.S. Kakapather,

Dist. Tinsukia, State - Assam.

.....Respondent

This suit came for final hearing on **25.03.2021** in the presence of :

For the Petitioner : Sri B. Mishra, Advocate,

For the Respondent : Ms. J. Bhuyan, Advocate.

And having stood for consideration to this day the Court delivered the following Judgment.

J U D G M E N T

1. This suit is filed by petitioner, Sri Deepan Kumar Handique, against the respondent Smt. Pori Gogoi, U/s. 13(1) (1-a) & (1-b) of the Hindu Marriage Act, 1955 for grant of decree of divorce by dissolving the marriage solemnized between the parties on 06/09/2009 at No. 1 Upon Uban Gaon, Kakapather, Tinsukia, Assam as per Hindu rites.
2. The brief case of the petitioner is that the petitioner and the respondent out of love and affection entered into social marriage on 06.09.2009 as per Hindu rites and rituals in presence of relatives, friends and well wishers of the sides at the parental house of the respondent at Upon Uban Gaon, Kakapather, Tinsukia, Assam. Thereafter the Petitioner took the respondent to his resident at Simoluguri, Bordumsa, Tinsukia and started their conjugal life. That first four months of their marital life at the matrimonial house was very much satisfactory and was filled up with lot of love, joy and affection. Thereafter the respondent started to work as private teacher at Simoluguri near the house of the Petitioner. During that period, the father of the Petitioner advised the Respondent to apply for the TET examination and he gave monetary help to prepare for the same. Accordingly, the Respondent did the same and in the year 2012, the respondent got appointment as government TET teacher and joined in a L.P School at Talap, and one month later she on mutual transfer appointed in a L.P School at Koilashpur Gaon near her matrimonial house. Thereafter the Petitioner noticed drastic change of behavior and nature of the Respondent towards himself and the family members. The Respondent also left the kitchen works as well as the regular household works. The Respondent also stopped taking care of the Petitioner and other family members and refused to do household works

and started to quarrel with the petitioner. The Petitioner tolerated all these behavior of the Respondent with a hope that reformation will take place and Respondent will realize her misdeeds and rectify herself.

3. That on 11.10.2013 a female child named Miss Krishtina Handique was born to the Respondent, presently aged about 5 years. After the birth of the child, the Petitioner spent some days peacefully but after few years the respondent again on adjustment transferred to another school at Dhola. After some months, the petitioner again noticed change in behavior of the Respondent. She used to return home late and became furious if the family members enquired about her delay. She even did not receive their phone calls. The Respondent also used to talk in mobile phone in law voice and private place and she deleted the call details. She did not told anything to the Petitioner when asked.
4. That since the year 2016 the Respondent instigated the Petitioner to live separately from the in-laws. But the Petitioner refused the same as he is the only male child and for his refusal, the Respondent began to create untoward incident in the matrimonial house. The brother and maternal uncle of the Respondent also gave pressure upon the Petitioner to live separately. But the Petitioner did not give any heed to it. The Petitioner for the sake of their growing up daughter made the Respondent understand that it will be difficult on their part to take care of their daughter without grand parents and live separately. The parents of the Respondent, father and mother of the Petitioner requested the Respondent not to insist for getting separate upon, which the Respondent reacted very badly and also used slang words towards the mother of the Petitioner and also threatened that she may at any time leave the matrimonial home. The parents of the Petitioner also tried to make understand the Respondent, but instead she used slang languages towards them and told her in-laws to vacate the house or to make alternate arrangement for preparation of their food. Thereafter the respondent

quite occasionally creates untoward incident in the house with silly matters and thereby the life of the petitioner and his parents become miserable, further she threatened to commit suicide or she will file divorce case against the petitioner. The Respondent even did not behave properly with the relatives, friends and neighbouring people of the Petitioner and as such, they stopped visiting their house. The Respondent also neglected to look after her minor daughter. Her mother in law was looking after their daughter since her birth.

5. The Respondent on her own without informing the Petitioner or any one of his family members went to her parental house and reside therein as per her own wish. On asking her plan by the petitioner prior to her leaving, the respondent became furious and told that she is an independent woman and the petitioner and his family are backward thinking people, she will do anything as per her own wish and nobody should interfere in her life.
6. Though the Respondent on 19.02.2018 went to her school but she did not return to her matrimonial home. On enquiry, at first the Petitioner could not contact the respondent and could not know her whereabouts but later he came to know that the Respondent went to her paternal home and she informed that she will never come back to her matrimonial home. Then immediately, the Petitioner went to her parental home and asked her to return back to her matrimonial home for the sake of her minor child. But she replied that she has nothing to do with her minor child and refused to come back. Then the Petitioner come back to his home with a broken heart. Though the Petitioner several times went to the paternal house of the Respondent to bring back her, but the respondent flatly refused to return back as the petitioner has failed to fulfilled her demands and it is impossible for her to live with the Petitioner. The parents of the Petitioner as well as his relatives also tried to convince the Respondent to bring her back to her matrimonial house, but they also failed to do so.

7. But surprisingly on 25.02.2018, the Respondent had lodged an FIR before the Bordumsa Police Station against the Petitioner vide Bordumsa P.S Case no. 12/18 U/s. 498(A) IPC and the said case is still under investigation. The Respondent also filed another case under the provisions of Domestic Violence Act against the Petitioner vide D.V Case No. 09/2018 pending in the Court of Ld. N. Kashyap, J.M 1st Class, Tinsukia for disposal.
8. From the whole incident, the Petitioner as well as his family members suffered severe mental harassment. From the conduct of the Respondent, it is apparent that the Respondent has no intention to return to her matrimonial home to continue her conjugal life. That since 19.02.2018, the Respondent did not bother to enquire the well being of her minor daughter, whom she left at her matrimonial home, nor she showed any intention to return back to her matrimonial home. Since then the marriage bond between the Petitioner and the Respondent have totally broken down and there is no remote chances of their re-union and restore the conjugal life and as such the Petitioner has filed this divorce petition.
9. Presently, the Respondent is working as TET teacher in Umeswar L.P. School at Dhola and earning a salary of Rs. 25,000/- (Approx.) from her service.
10. The cause of action of this case arose on 06.09.2009 being the date of marriage, when the Respondent began to work as private teacher in the venture-school, in the year 2012, when the Respondent get appointed as government TET Teacher and joined in a L.P School situated at Talap, Doomdooma and after one month when she was transferred to a L.P School at Koilashpur Gaon, on 11.10.2013 being the date when the Respondent gave birth a female child, since 2016 when the Respondent began to ask the petitioner to live separately from the in-laws in a separate house, on 19.02.2018 being the date when the Respondent left her matrimonial home, on 25.02.2018 being the date when the Respondent had lodged an FIR before the Bordumsa Police Station against the

petitioner and subsequent filing of Domestic Violence Act against the Petitioner vide D.V Case No. 09/2018 and every date or dates of mental harassment committed by the Respondent till the time of filing of this instant Divorce Petition.

11. The respondent has contested the suit and submitted the written statement to negate the suit of the petitioner.
12. That the suit is not maintainable in law as well as facts as the ingredients necessary to establish a case under section 13(1)(1-a) and (1-b) are not available in his petition. That the above mentioned suit is not filed as required under the law. That the contents of para no. 1 and 2 are admitted, being true. But it is submitted that the date of marriage is wrongly given. It should have been 7th July 2010. That the contents of para no. 3 is admitted being matter of fact. That the contents of para no. 4 is admitted. But it is submitted that their matrimonial life was very much satisfactory upto six months. That the contents of para no. 5 is admitted by the respondent. But it is submitted that the respondent begun to work as a private Teacher after one and half month of her marriage. That the contents of para no. 6 and 7 are admitted by the respondent. That the contents of para no. 8 and 9 are denied by the respondent as she had properly did her household works without any default. That the contents of para no. 10 is admitted. That the contents of para no. 11 is denied by the Respondent. It is submitted that due to heavy official works, sometimes the respondent compelled to come back to her house lately from the school. In such occasions the petitioner became furious and suspicious and misbehaved the respondent. That the contents of para no. 12 is strictly denied by the respondent. That the contents of para no. 13, 14 and 15 are misleading one. It is submitted that both petitioner and respondent with their mutual consent had decided to take a rented house at Dhola for their suitable communication to their work place and for the schooling of their child also. That the contents of para no. 16, 17, 18, 19, 20, 21 and 22 are denied by the respondent. That the contents of para no.

23 and 24 are admitted. But it is submitted that on 19.02.2018, the respondent was forcefully driven out from matrimonial home by her mother-in-law by keeping the minor child in her custody. Thereafter having no way the respondent went to her parental home and lodged an Ejahar at Bordumsa police station, which was accordingly registered as Bordumsa P.S Case No. 12/2018, U/s. 498(A) IPC.

13. That the contents of para nos. 25,26,27,28,29,30 and 31 are specially denied by the respondent. It is submitted that, after coming back to her parental home the respondent had made contact with her husband over mobile phone and talked to her minor daughter and requested him to give back to her minor daughter in several times. It is further submitted that on 8th day of December 2018 both the parties i.e petitioner and respondent had made a mutual agreement by sorting out all the differences existing between them at the Court premises at the advice of the Ld. J.M.F.C, N. Kashyap Court on the date of Lok Adalat. By accepting the advice with honour the Respondent got ready to go to her matrimonial without any hesitation. But the mother in law of the respondent opposed and threatened over mobile phone that she will left her home if the respondent come back to her matrimonial home. But the petitioner did not protest his mother.

14. That the contents of para no. 32 is admitted by the respondent. But it is submitted that, the minor daughter now been residing with the respondent as per order of the Ld. J.M.F.C since the month of July, 2019. As such a huge expenses is borne by the respondent for the welfare of the child, like school fees, medication, food, clothing etc. That the contents of para no. 33 is denied by the respondent. But it is submitted that after forcefully driven out the respondent from the matrimonial by her mother in law on 19.02.2018, the respondent had lodged an Ejahar before Bordumsa Police Station on 25.02.2018 against the Petitioner and her in-laws. And subsequently, filed a Domestic Violence Case by seeking the custody of her minor daughter.

15. That the respondent begs to state her as follows:-

That, on 23.03.2018, the respondent has approached to the respected District Welfare Officer, Tinsukia, Assam by filing a written application mentioning few incidents of Domestic Violence committed to her by the respondent and in-laws. The Hon'ble District Welfare Officer accordingly reported the matter to the Ld. Court to register a case against the Petitioner under Domestic Violence Act, 2005 and accordingly, the case was registered as D.V Case No. 09/2018. The respondent further begs to state all the incidents of domestic violence committed to her by the respondent and in-laws. That on 6th July, 2010, the respondent got married to the Petitioner at Simaluguri Gaon, P.O. Navajyoti, P.S Bordumsa, in the District of Tinsukia, Assam out of their love and affection. That about after six months of their marriage her husband Sri Deepen Kumar Handique and her mother in law Smt. Rangila Handique were started to torture the respondent by both physically and mentally with very pretty matters. Moreover, her mother-in-law physically assaulted her in several times in presence of her husband who silently saw the incident by supporting his mother. Moreover, during her pregnancy period when she was serving as a Assistant Teacher in the year 2013 at Kailashpur L.P School, Kakopathar, her mother in law tortured her by not providing any food sometimes, but not frequently, near about fifty (50) days, by willingly locking the kitchen. As such the respondent was unable to take any food and compelled to beg food from Smt. Nanda Devi Bhujel Changmai, of Kailashpur, after school period, who was the Head Mistress of Kailashpur L.P School. That sometimes when the respondent was late returning from school, as because of school meeting and other heavy official works her mother in law and her husband doubted and abused her by using slang languages and they pressurized the respondent to leave her job. When the respondent sometimes talked to someone over mobile phone her in-laws specially her mother in law insulted her by doubting with someone, when the respondent protested such type

of misbehavior/insulting, the mother in law of the respondent aggressively assaulted her physically. That nobody of their family member even her husband also took any care and importance to her even at the time of her ill-health. They compelled her to cook and serve food to them. That on 11th October, 2013, a female child was born to the respondent namely, Smt. Krishtina Handique who is now residing with her. As per order of the Ld. Court, JMFC, N. Kashyap, Tinsukia, vide D.V case no. 09/2018, the custody of the minor girl was given to the respondent by considering her welfare. At present, the minor child has been continuing her education in a new school namely, Max Public School at Dhola, in the District of Tinsukia, Assam as before without any break. The respondent has been looking after all welfare of the minor child by spending huge money for her education as well as health etc. That on 11th October, 2015, on the day of birthday celebration of her daughter the mother of the petitioner badly misbehaved the mother and brother of the respondent and later on driven out them. The incident took place in presence of her husband, Sri Deepen Kumar Handique but he remained as silent observer. Thereafter, in the month of November, 2015, her mother in law and her husband physically assaulted the respondent as she was talking with one of her colleague about D.E.L.E.D assignment and she took the assignment from him in front of her boundary gate, surprisingly, her mother in law repeatedly slapped her for three times and told her to leave home without any delay. That in between many Domestic Violence incidents were committed to the respondent by the petitioner and his family members in several times. But the respondent silently tolerated the same by thinking about the future of her minor daughter. That later on, on 18.02.2018, at about 9 P.M, her mother in law without any reason forcefully snatched the jewelleryes from the respondent which were given to her by them at the time of marriage, and threatened her to leave matrimonial home and on the next day i.e on 19.02.2018, her mother in law forcefully drove out the respondent from matrimonial home by keeping the minor child with her

custody. Later on the daughter came to her custody as per order of the Ld. J.M.F.C, Court vide D.V Case no. 09/2018. Since then the respondent had been residing at her parental home alongwith her daughter, situated at Kakopathar.

16. By concealing the above facts the Petitioner/husband filed the above facts to get rid of his responsibilities. He is liable to bear a permanent alimony of Rs. 15,00,000/- (Fifteen Lakhs) if the husband /petitioner seek divorce against the consent of the respondent. As the petitioner is bound to bear the expenditure relating to education, health and future establishment(including marriage of his daughter). That the respondent has been bearing Rs. 10,000/- (Rupees Ten Thousand) only per month for the child including cost of education, cost of medicine, cost of food, cost of clothes and other cosmetic etc. The petitioner is bound to bear half of the expenditure i.e Rs. 5000/- per month for the child.
17. Upon considering the material on record that my Id. predecessor had framed the following issues as mentioned here-in-under :
- (i) Whether the suit has cause of action or not?
 - (ii) Whether the Respondent has treated the Petitioner with cruelty ?
 - (iii) Whether the respondent has deserted the petitioner or not ?
 - (iv) Whether the petitioner is entitled to get decree of divorce as prayed for?
 - (v) What relief or reliefs, the parties are entitled to under the Law and fact?
18. I have heard the Ld. Counsels of both sides and gone through the material evidence on record to decide the suit.

Discussion, Decision & Reasons thereof:

19. The petitioner has adduced his evidence as PW.1 and the evidence of his mother, Smt. Rangila Handique as PW.2 and the evidence of his father, Sri Purna Prasad Handique as PW.3 in this suit and it is evident that they have testified in a similar and identical manner as that of the contents of the petition, which is narrated above, as such, their evidence on affidavit is not repeated here for sake of brevity.
20. The Petitioner has filed the following documents during the course of hearing of the case –
- (i) Xerox copy of all orders dated 18.04.2018 to dated 01.07.2019 and complaint petition of Misc D.V case no. 09/18 pending in the court of the Ld. N. Kashyap, Ld. J.M F.C 1st Class, Tinsukia,
 - (ii) Xerox copy of order dated 15.07.2009 passed by the Hon'ble Gauhati High Court in CrI. Pet. 792/2019,
 - (iii) Xerox copy of experience certificate issued by the Principal of Adarsha Jatiya Vidyalay dated 24.01.2011.

ISSUE NO. 1

21. With regard to the issue no. 1 i.e. 1)Whether the suit has cause of action or not? The Petitioner stated that the cause of action of this case arose on 06.09.2009 being the date of marriage, when the Respondent began to work as private teacher in the venture-school, in the year 2012, when the Respondent get appointed as government TET Teacher and joined in a L.P School situated at Talap, Doomdooma and after one month when she was transferred to a L.P School at Koilashpur Gaon, on 11.10.2013 being the date when the Respondent gave birth a female child, since 2016 when the Respondent began to ask the petitioner to live separately from the in-laws in a separate house, on 19.02.2018 being the date when the Respondent left her matrimonial home, on 25.02.2018 being the date

when the Respondent had lodged an FIR before the Bordumsa Police Station against the Petitioner and subsequent filing of Domestic Violence Act against the Petitioner vide D.V Case No. 09/2018 and every date or dates of mental harassment committed by the Respondent till the time of filing of this instant Divorce Petition. There is averment from one side and denial from other side. So, there is cause of action of the suit. Hence, the said issue is decided affirmative and in favour of the Petitioner.

ISSUE NO. 2

22. With regard to the issue no. 2 i.e. ii) Whether the Respondent has treated the Petitioner with cruelty ? It is submitted in the evidence that in the year 2012, the respondent got appointment as government TET teacher and joined in a L.P School at Talap, and one month later she on mutual transfer appointed in a L.P School at Koilashpur Gaon near her matrimonial house. Thereafter the Petitioner noticed drastic change of behavior and nature of the Respondent towards himself and the family members. The Respondent also left the kitchen works as well as the regular household works. The Respondent also stopped taking care of the Petitioner and other family members and refused to do household works and started to quarrel with the petitioner. The Petitioner tolerated all these behavior of the Respondent with a hope that reformation will take place and Respondent will realize her misdeeds and rectify herself.
23. That on 11.10.2013 a female child named Miss Krishtina Handique was born to the Respondent, presently aged about 5 years. After the birth of the child, the Petitioner spent some days peacefully but after few years the respondent again on adjustment transferred to another school at Dhola. After some months, the petitioner again noticed change in behavior of the Respondent. She used to return home late and became furious if the family members enquired about her delay. She even did not receive their phone calls. The Respondent also used to talk in mobile phone in law voice and private place and she

deleted the call details. She did not told anything to the Petitioner when asked.

24. That since the year 2016 the Respondent instigated the Petitioner to live separately from the in-laws. But the Petitioner refused the same as he is the only male child and for his refusal, the Respondent began to create untoward incident in the matrimonial house. The brother and maternal uncle of the Respondent also gave pressure upon the Petitioner to live separately. But the Petitioner did not give any heed to it. The Petitioner for the sake of their growing up daughter made the Respondent understand that it will be difficult on their part to take care of their daughter without grand parents and live separately. The parents of the Respondent, father and mother of the Petitioner requested the Respondent not to insist for getting separate upon which the Respondent reacted very badly and also used slang words towards the mother of the Petitioner and also threatened that she may at any time leave the matrimonial home. The parents of the Petitioner also tried to make understand the Respondent, but instead she used slang languages towards them and told her in-laws to vacate the house or to make alternate arrangement for preparation of their food. Thereafter the respondent quite occasionally creates untoward incident in the house with silly matters and thereby the life of the petitioner and his parents become miserable, further she threatened to commit suicide or she will file divorce case against the petitioner. The Respondent even did not behave properly with the relatives, friends and neighbouring people of the Petitioner and as such, they stopped visiting their house. The Respondent also neglected to look after her minor daughter. Her mother in law was looking after their daughter since her birth. The respondent side did not cross-examine the witnesses and as such, the evidence is intact. Hence, the said issue is decided affirmative and in favour of the Petitioner.

ISSUE NO. 3

25. With regard to the issue no. iii i.e. Whether the respondent has deserted the petitioner or not? It is stated that the Respondent on her own without informing the Petitioner or any one of his family members went to her parental house and reside therein as per her own wish. On asking her plan by the petitioner prior to her leaving, the respondent became furious and told that she is an independent woman and the petitioner and his family are backward thinking people, she will do anything as per her own wish and nobody should interfere in her life. Though the Respondent on 19.02.2018 went to her school but she did not return to her matrimonial home. On enquiry, at first the Petitioner could not contact the respondent and could not know her whereabouts but later he came to know that the Respondent went to her paternal home and she informed that she will never come back to her matrimonial home. Then immediately, the Petitioner went to her parental home and asked her to return back to her matrimonial home for the sake of her minor child. But she replied that she has nothing to do with her minor child and refused to come back. Then the Petitioner come back to his home with a broken heart. Though the Petitioner several times went to the paternal house of the Respondent to bring back her, but the respondent flatly refused to return back as the petitioner has failed to fulfilled her demands and it is impossible for her to live with the Petitioner. The parents of the Petitioner as well as his relatives also tried to convince the Respondent to bring her back to her matrimonial house, but they also failed to do so. But surprisingly on 25.02.2018, the Respondent had lodged an FIR before the Bordumsa Police Station against the Petitioner vide Bordumsa P.S Case no. 12/18 U/s. 498(A) IPC and the said case is still under investigation. The Respondent also filed another case under the provisions of Domestic Violence Act against the Petitioner vide D.V Case No. 09/2018 pending in the Court of Ld. N.

Kashyap, J.M 1st Class, Tinsukia for disposal. Hence, the said issue is decided affirmative and in favour of the Petitioner.

ISSUE NO. 4 & 5

26. With regard to the issue no. iv i.e Whether the petitioner is entitled to get decree of divorce as prayed for? and (v) What relief or reliefs, the parties are entitled to?. From the whole incident, the Petitioner as well as his family members suffered severe mental harassment. From the conduct of the Respondent, it is apparent that the Respondent has no intention to return to her matrimonial home to continue her conjugal life. That since 19.02.2018, the Respondent did not bother to enquire the well being of her minor daughter, whom she left at her matrimonial home, nor she showed any intention to return back to her matrimonial home. Since then the marriage bond between the Petitioner and the Respondent have totally broken down and there is no remote chances of their re-union and restore the conjugal life and as such the Petitioner has filed this divorce petition. Presently, the Respondent is working as TET teacher in Umeswar L.P. School at Dhola and earning a salary of Rs. 25,000/- (Approx.) from her service. The respondent side declined to cross-examine the witnesses and as such there is nothing to discard the evidence of the Petitioner side which is also supported by the other witnesses. During hearing the respondent side did not claim any alimony. The respondent is also found a service holder. Hence, the said issue is decided affirmative and in favour of the Petitioner.
27. Today, after going through the evidence adduced by the petitioner and his witness, I find that the petitioner has proved his case. I am satisfied that the marriage between the petitioner and the respondent has irretrievably broken down and there is no possibility of reconciliation between them. There is nothing to discard the evidence of the petitioner and the issues are decided in affirmative. Therefore, the petitioner deserves to be given a decree, as prayed for. Accordingly, the marriage between the petitioner, Sri Deepan Kumar Handique, and the respondent

Smt. Pori Gogoi stands dissolved U/s. 13(1) (1-a) & (1-b) of Hindu Marriage Act 1955. The prayer for divorce is granted.

28. The suit is disposed of contested without cost.

29. Prepare a decree accordingly.

30. Given under my hand and seal of this Court on this the 6th day of April, 2021.

Dictated and corrected by me.

(B. Sutradhar)
Addl. District Judge-2(FTC),
Tinsukia.

(B. Sutradhar)
Addl. District Judge-2(FTC),
Tinsukia

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