

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

FRIDAY, THE 25TH DAY OF MAY 2018 / 4TH JYAISHTA, 1940

WP(C).No. 15763 of 2018

PETITIONERS :

- 1 DEENU GEEVARGHESE
CHARUVALA PUTHENVEEDU, MANNOOR,
VAYALALA POST, ANJAL, KOLLAM DISTRICT.
- 2 LINO MATHEW JACOB
PUTHENPURACKAL HOUSE, VAYALALA POST,
ANJAL, KOLLAM DISTRICT.

BY ADVS.SRI.M.SASINDRAN
SRI.JOMY K. JOSE

RESPONDENTS/RESPONDENTS:

1. THE SUB REGISTRAR (MARRIAGE OFFICER UNDER THE SPECIAL
MARRIAGE ACT, 1954)CHADAYAMANGALAM - 691 534,
KOLLAM DISTRICT.
2. STATE OF KERALA REPRESENTED BY SECRETARY TO GOVERNMENT,
DEPARTMENT OF REGISTRATION, SECRETARIAT,
THIRUVANANTHAPURAM -695 001.

BY SENIOR GOVERNMENT PLEADER SRI.S.GOPINATHAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 25-05-2018, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

bp
25/5/2018

APPENDIX

PETITIONER(S) ' EXHIBITS

- EXHIBIT P1- A TRUE COPY OF THE CERTIFICATE OF MARRIAGE
ISSUED BY THE CHURCH.
- EXHIBIT P1(A) - A TRUE COPY OF THE MARRIAGE INVITATION CARD OF
THE PETITIONERS.
- EXHIBIT P2- A TRUE COPY OF THE PASSPORT OF THE 1ST
PETITIONER.
- EXHIBIT P3- A TRUE COPY OF THE PASSPORT OF THE 2ND
PETITIONER.
- EXHIBIT P4- A TRUE COPY OF THE CONFIRMATION LETTER OF THE
EXAMINATION.
- EXHIBIT P5- A TRUE COPY OF THE TICKET ISSUED BY THE KUWAIT
AIRWAYS,
- EXHIBIT P6- A TRUE COPY OF THE PRINTOUT TAKEN CONSEQUENT
TO THE SUBMISSION ON ONLINE APPLICATION FOR
REGISTRATION OF MARRIAGE, SUBMITTED ON
07/05/2018.
- EXHIBIT P7- A TRUE COPY OF THE ACKNOWLEDGMENT OF
MARRIAGE REGISTRATION.
- EXHIBIT P8- A TRUE COPY OF THE FORM, UNDER THE 4TH
SCHEDULE.

RESPONDENT'S EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp
25/5/2018

A.MUHAMED MUSTAQUE, J.

W.P.(C).No.15763 of 2018

Dated this the 25th day of May, 2018

JUDGMENT

The petitioners got married in accordance with the ceremonies of Mar Thoma Cyrian Church on 5.4.2018. This is evident from Ext P1 certificate issued by Mar Thoma Cyrian Church. The petitioners are legally wedded husband and wife in accordance with personal law. The petitioners also produced single status certificate as well. It is also evident from the passport that the petitioner had single status prior to the marriage. First petitioner is working in the United States. He submitted an application for registration of marriage in terms of Section 15 of the Special Marriage Act 1954. This application was submitted on 7.5.2018. In accordance with Section 16 of the Act, such marriage will be registered only on expiry of 30 days. The first petitioner has to leave for United States on 2.6.2018.

2. The petitioners now approaches this court seeking direction to the 1st respondent to register the marriage before 1.6.2018.

3. It is to be noted in terms of procedure for registration as referred under Section 16, that after 30 days of period, the registrar on being satisfied that all the conditions mentioned in Section 15 are fulfilled, would enter his satisfaction in a marriage certificate in the form specified in the first schedule. The certificate will have to be signed by parties to the marriage along with three witnesses. These formalities are indispensable. The petitioner will have to sign the certificate of the marriage along with three witnesses.

4. The issue in this case is that the first petitioner cannot remain in India beyond 2.6.2018 and therefore he would not be in a position to sign the certificates. Law also does not allow the signing of certificate in any other manner.

5. In this case, State rejected the plea of the petitioner stating that the procedure as prescribed under the provisions in Section 15 and 16 of the Act are mandatory in nature and therefore, the petitioners will have to wait till 6.6.2018 for registering such marriage. The question is whether the provision is mandatory and the 30 days period can be waived

or not.

6. Special Marriage Act is an enactment for registering special form of marriage. There are two methods of registration of marriage under the Special Marriage Act. First of such method is solemnization of special marriage as referred in Section 4. For such marriages, notice of intended marriage has to be given at least for a period of not less than 30 days immediately from the preceding date of the intended marriage. This is essentially to verify about objections in regard to the proposed marriage. As seen from Section 7 any person before the expiry of 30 days can object to such marriage on the ground that it would contravene one or more conditions as referred in Section 4. If one analyses Section 4 to 7, it can be seen that stipulation of 30 days is mandatory and it cannot be waived at all. However, the second form of registration of marriage is more of formality. In fact, for registration of marriage which was celebrated in other forms as referred in Section 15, a satisfaction has to be entered by the registering officer is whether a ceremony of marriage has

W.P.(C).No.15763 of 2018 : 4 :

been performed between parties and they are living together as husband and wife ever since. No doubt, other conditions as referred under Section 15 also will have to be satisfied. But those conditions will have to be complied even for an solemnization of marriage in accordance with the personal law, applicable to the parties. Especially in this case, party belongs to Christian community and they cannot have more than one spouse at the time of solemnization of their marriage. That being the fact, it can be seen that paramount consideration for registration of marriage under Section 15 is the satisfaction whether the ceremony of marriage has been performed in any other form or not. Church authorities already issued a certificate certifying that marriage has been solemnized in accordance with ceremonies of the church. Though this court cannot say that, the provisions as such is not mandatory but in case of extreme urgent cases to uphold the liberty and right of the citizen, certainly the court can reduce the hardship or inconvenience that may result if the parties were directed to strictly follow the mandatory period of 30 days.

W.P.(C).No.15763 of 2018 : 5 :

While weighing the inconvenience and hardships, paramount consideration is being the satisfaction of the marriage being solemnized in other form, this court is of the view that the petitioner can be permitted to register the marriage on or before 1.6.2018. This direction is to avert hardships or inconvenience likely to be caused rather than relaxing the statutory provision as above. When citizens rights are put against the statutory provisions, court will have to strike a balance between such right and statutory provision. Therefore, this court is of the view, considering the peculiar facts and circumstances of the case, the petitioner can be permitted to register the marriage prior to 1.6.2018 subject to any objections being raised within the statutory period. This view is also fortified from the views taken by the Division Bench of this court in **Y.John Lukose and another v. The District Registrar (2006 KHC 1798)**. Therefore, the first respondent is directed to register the marriage before 1.6.2018. It is made clear that if any objections received thereafter within the statutory period certainly would have

W.P.(C).No.15763 of 2018 : 6 :

such impact on registration and registrar would be at liberty to take any decision including cancellation of registration granted. The registrar need to issue certificate of registration only after the statutory period.

**A.MUHAMED MUSTAQUE,
JUDGE**

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