

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

FRIDAY, THE 17TH DAY OF JANUARY 2020 / 27TH POUSHA, 1941

WP(C).No.410 OF 2020 (A)

PETITIONER:

DIGIN VARGHESE,
AGED 30 YEARS,
S/O. VARGHESE, MAMMOOTTIL HOUSE,
KANJIRAPPALLY P.O., KOTTAYAM-686507.

BY ADV. SRI.ARUN MATHEW VADAKKAN

RESPONDENT:

THE MARRIAGE OFFICER (SUB REGISTRAR),
OFFICE OF THE SUB REGISTRAR, KANJIRAPPALLY,
KOTTAYAM DISTRICT-686507.

ADV.VINEETHA B., GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
17.01.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

This writ petition is filed seeking the following reliefs:

“(i) Issue a writ in the nature of Mandamus commanding the respondent to register the marriage between the petitioner and Sheenu E. Joseph without waiting for the notice period of 30 days to expire.

(ii) Issue a writ of mandamus or any other writ, order or direction directing the respondent, to solemnize the marriage of the petitioner, with Sheenu E. Joseph.

(iii) Issue a writ of mandamus or any other writ, order or direction directing the respondent, to pass orders, or issue a Marriage Certificate to the petitioner, immediately on solemnization of his marriage with Sheenu E. Joseph.”

2. Heard the learned counsel for the petitioner and the learned Government Pleader appearing for the respondent.

3. The learned counsel for the petitioner submits that the petitioner has given notice of intended marriage with one Sheenu E. Joseph, who is a citizen of the United States under the Special Marriage Act, 1954 (for short ‘the Act’). It is stated that the date of the notice is 01.01.2020. However, the intended bride has to leave for the United States on 26.01.2020 and therefore, the period of 30 days as stipulated in the Act is liable to be waived for the solemnization of the marriage on any date before 26.01.2020.

4. The learned counsel places reliance on decisions of the Division Bench of this Court in [2007 (1) KLT 247], [2004 (1) KLT 687] and in [2007 (2) KLT 270] and also a recent decision of the Madras High Court in W.P.(C).No.5037/2018 in support of the contention that the period of notice is liable to be waived.

5. The learned Government Pleader, on the other hand, contends that the decisions relied on by the learned counsel for the petitioner are in respect of the registration of marriage already solemnized under Section 16 of the Act. It is submitted that in the instant case, the notice given by the petitioner is under Section 5 of the Act of an intended marriage to be solemnized. Referring to the provisions of Section 5, 6, 7, 9, 11 & 12 of the Act, it is submitted by the learned Government Pleader that in case of a marriage to be solemnized under the Act in terms of Section 12, the 30 days of notice is mandatory and that the solemnization has to be in accordance with the provisions of Section 12 of the Act. It is stated that, it is only in cases where marriages were solemnized under the customary of religious rites and were required to be registered under the Act that the courts have directed waiving of the period as provided under Section 16 and that the said decisions are not applicable in the instant case.

After considering the contentions advanced on either side and after

hearing the arguments raised, I find that the notice required under Section 5 of the Act is for solemnization of the marriage and that there is no power vested in the Marriage Registrar or any Officer of the department to waive the statutory period of 30 days as provided for the solemnization of the marriage. In the above view of the matter, the prayers sought for in the writ petition cannot be granted and the same is accordingly dismissed.

sd/-

ANU SIVARAMAN

JUDGE

np

APPENDIX

PETITIONER'S/S EXHIBITS:

EXHIBIT P1 TRUE COPY OF THE SAID NOTICE DATED
01/01/2020 SUBMITTED BEFORE THE MARRIAGE
OFFICER FOR KOTTAYAM DISTRICT AND
KANJIRAPPALLY SUB REGISTRAR OFFICE.

EXHIBIT P2 TRUE COPY OF THE FLIGHT TICKET OF SHEENU
E. JOSEPH AND HER PARENTS.

RESPONDENT'S/S EXHIBITS: NIL