

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

THURSDAY ,THE 15TH DAY OF NOVEMBER 2018 / 24TH KARTHIKA, 1940

WP(C) .No. 36749 of 2018

PETITIONER:

NUSRATH BANU V. ,
D/O SAIFUDHEEN VALAN HOUSE
VAZHIKKADAVU
MALAPPURAM DISTRICT.

BY ADVS.
SRI.P.VENUGOPAL
SMT.T.J.MARIA GORETTI

RESPONDENT:

MARRIAGE OFFICER (SUB REGISTRAR) ,
OFFICE OF THE SUB REGISTRAR, EDAKKARA
EDAKKARA PO
MALAPPURAM DISTRICT
PIN-679 331.

SRI.SAIGI JACOB PALATTY,SR.GOV'T.PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
15.11.2018, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ALEXANDER THOMAS, J.

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W.P. (C) No.36749/2018
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Dated this the 15th day of November, 2018

J U D G M E N T

Prayers in the above Writ Petition (Civil) are as follows:-

- i) *Issue a writ of mandamus or such other writ, order or direction commanding the respondent to solemnize and register the marriage of the petitioner on 19.11.2018 as applied for under Exhibit P1, accepting Exhibit P3 & P4 documents as proof of divorce of her earlier marriage*
- ii) *Issue any other appropriate writ, order or direction as the petitioner prays from time to time and this Hon'ble Court may deem fit and necessary to issue in the interest of justice.*

2. Heard Sri.P.Venugopal learned counsel appearing for petitioner and Sri.Saigi Jacob Paletty Senior Government Pleader appearing for respondent.

3. The petitioner, who is a Muslim had earlier contracted a marriage with one Anshad, who is also a Muslim and due to incompatibilities, the petitioner had secured divorce in that marital relationship on the basis of talaq pronounced by the said Sri.Anshad.

Ext.P3 is the certificate issued by the *mahal* committee concerned evidencing the factum of pronouncement of talaq by her former husband. Ext.P4 is the agreement entered into between the petitioner and her former husband in regard to the settlement of all matrimonial disputes between the parties. Thereafter, now the petitioner intends to marry one Sri.Shellas Khan.M.S., who is now settled in United State of America and for that purpose, Ext.P1 notice of intended marriage was given by them to the respondent marriage Officer so as to effectuate the solemnization and registration of the marriage in accordance with the provisions contained in the Special Marriage Act. The proposed marriage is scheduled to be held on 19.11.2018. The grievance of the petitioner is the respondent Marriage Officer is insisting that the petitioner should produce copy of the decree of the competent court to evidence that she had secured divorce from her former husband. According to the petitioner, the said insistence is an impossibility, as the dissolution of the marriage was

rendered on the basis of the provisions contained in the Muslim Customary Law and therefore, it is impossible to get a decree from the Civil Court to evidence that aspect. However, the petitioner has produced Ext.P3 certificate issued by the Mahal Committee concerned to evidence the factum of the dissolution of the marriage with her former husband on the basis of talaq pronounced by him. The matter in issue is no longer res integra and is fully covered in favour of the petitioner on the basis of dictum laid down by this Court in Abdul Khader Suhud v.State of Kerala 2007 KHC 3397 : 2007 (1) KLT 400 and Fathima Sheriff and another v. Sub Registrar, Ernakulam and another 2018 (5) KHC 91 :2018(4)KLT SN 13 case No.13 wherein it has been held that under Muslim Personal Law, a Muslim could validly divorce his wife without resorting to proceedings before the Civil Court or Family Court and that therefore, the insistence by the Marriage Officer that the divorced Muslim lady should necessarily produce decree of divorce evidencing her dissolution of the Muslim marriage for solemnizing and

registering the second marriage, is unjustified and that the respondent Marriage Officer can act on the basis of the certificate issued by the competent Jamaath Committee to evidence the factum of the said dissolution of marriage on the basis of rendering of the talaq, etc. Accordingly, it is ordered that the respondent Marriage Officer shall not insist that the petitioner should produce the copy of the decree of the Civil Court/Competent Court to evidence the factum of divorce in respect of her first marriage. The respondent Marriage Officer may consider and act upon documents such as Ext.P3 certificate issued by the Mahal Committee concerned and Ext.P4 agreement entered into between the petitioner and former husband, etc. Further it is ordered that the respondent Marriage Officer shall take further steps for the solemnization and registration of the marriage of the petitioner with the person mentioned in Ext.P1 notice in accordance with the provisions contained in the Special Marriage Act, and will take steps to solemnize and register the said marriage, if the said request in

Ext.P1 is otherwise in order. It is made clear and ordered that the respondent Marriage Officer cannot refuse to solemnize and register the marriage of the petitioner on the basis of Ext.P1 merely on the ground that the petitioner has been unable to produce decree of the Civil Court or Competent Court to evidence the factum of dissolution of her first marriage with her former husband.

With these observations and directions, the above Writ Petition (Civil) will stand finally disposed of.

SAS/15/11/2018

//TRUE COPY//

P.A.TO JUDGE

Sd/-

ALEXANDER THOMAS

JUDGE

APPENDIX

PETITIONER'S EXHIBITS:

- EXHIBIT P1 TRUE COPY OF THE NOTICE OF INTENDED MARRIAGE
GIVEN BY THE PETITIONER TOGETHER WITH THE
DATA SHEET ATTACHED TO IT
- EXHIBIT P2 TRUE COPY OF THE ACKNOWLEDGMENT FOR THE
NOTICE OF INTENDED MARRIAGE ISSUED BY THE
RESPONDENT
- EXHIBIT P3 TRUE COPY OF THE CERTIFICATE ISSUED BY THE
"MUHIMATUL ISLAM SANGHAM" TO THE PETITIONER
- EXHIBIT P4 TRUE COPY OF THE AGREEMENT EXECUTED BY THE
PETITIONER AND HER FORMER HUSBAND DATED
15.6.2012