



2026:KER:28555

MAT.APPEAL NO. 826 OF 2025

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IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MRS. JUSTICE J. NISHA BANU
&
THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN
TUESDAY, THE 31ST DAY OF MARCH 2026 / 10TH CHAITHRA, 1948

MAT.APPEAL NO. 826 OF 2025

[AGAINST THE JUDGMENT DATED 23.06.2025 IN OP NO.1247
OF 2024 OF FAMILY COURT, THALASSERY]

APPELLANT:

DYNA SCARIA @ THRESIAMMA
AGED 28 YEARS
D/O. SCARIA N.S., PSYCHOLOGIST, NAGAMATTATHIL
HOUSE, THONDIYIL AMSOM DESOM, THONDIYIL P.O.,
IRITTY TALUK, KANNUR DISTRICT,, PIN - 670673

BY ADVS.
SMT.GISA SUSAN THOMAS
SMT.G.ASHWINI
SMT.A.R.DIVYA

RESPONDENT:

VERNIN VARKEY @ JOHN
AGED 31 YEARS, S/O. VARKEY KU., TEAM LEADER
LOGISTIC WORKS, KOLAKKAL HOUSE, PAYAM P.O., EDOOR,
ARALAM AMSOM DESOM, IRITTY TALUK, KANNUR DISTRICT,
PIN - 670704

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON
18.03.2026, THE COURT ON 31.03.2026 DELIVERED THE FOLLOWING:

**JUDGMENT****'CR'**

Shoba Annamma Eapen, J:

This appeal is filed by the wife, who is the second petitioner in the original petition, challenging the judgment and decree dated 23.06.2025 on the file of the Family Court, Thalassery, disallowing the prayer for dissolution of marriage under Section 10-A of the Divorce Act, 1869. The appellant and the respondent are wife and husband respectively.

2. The marriage between the parties was solemnised on 13.05.2023 at St.Mary's Forane Church, Edoor as per the rites and rituals prevailing in the Roman Catholic Christian Community. Subsequently, their marriage was also registered before the Local Registrar of Marriage, Aralam Grama Panchayath on 03.06.2023. After marriage, the appellant and respondent resided together as husband and wife in the matrimonial home. Thereafter, owing to differences between the parties, the appellant left the matrimonial home. Despite conciliation efforts undertaken by both families, the appellant and the respondent mutually decided to separate, as they were unable to lead a harmonious married life. Subsequently,



Annexure A1 original petition was filed seeking divorce by mutual consent before the family court. After the cooling period of six months, the parties underwent counselling and the attempt for reunion was not materialised. Thereafter, Annexures A2 and A3 proof affidavits were filed before the family court. The appellant deposed in tune with the affidavit filed by her. While recording the statement, the respondent deposed that there is no indifference between the couple, but they are living separately for no reason for more than a year. The family court dismissed the original petition, observing that the respondent had stated that they were living separately without any valid reason, and further finding that there was no mutual consent between the parties. Aggrieved by this, the wife has filed this appeal.

3. We have heard the learned counsel for the appellant. Though notice was served on the respondent, he had chosen not to appear before this Court.

4. Learned counsel for the appellant produced the certified copy of the original petition filed before the family court, the sworn affidavit and the depositions of PWs.1 and 2 and submitted that the respondent-husband has categorically stated that he wanted divorce. But the family court, without considering the



afore aspects, had dismissed the original petition by not granting divorce.

5. Learned counsel for the appellant also relied on the judgment of the Madras High Court in **In Re: A.C.Mathivanan & Another** [2016 KHC 4077] and submitted that the court should not ask reason for not staying together in a petition of mutual consent divorce and is duty bound to allow divorce in a petition under Section 10A of the Divorce Act filed by the Family court.

6. We have considered the arguments raised by the learned counsel for the appellant.

7. It is an admitted fact that the appellant and respondent had filed Annexure A1 petition under Section 10(A) of the Divorce Act,1869 before the Family Court, Thalassery. After the cooling period of six months, they filed Annexures A2 and A3 separate proof affidavits. They were also examined as PWs.1 and 2 before the Family Court. PW1 deposed as follows:-

"ഞാൻ 1-ആം ഹർജിക്കാരനാണ്. 2-ആം ഹർജിക്കാരി എന്റെ ഭാര്യയാണ്. 13/5/2023-ൽ ക്രിസ്ത്യൻ മതാചാരപ്രകാരം എടുർ St.Mary's Feroan Church -ൽ വെച്ചു വിവാഹം നടത്തി. വിവാഹം രജിസ്റ്റർ ചെയ്തിട്ടുണ്ട്. ആ സെർട്ടിഫിക്കറ്റാണ് എന്നെ കാണിച്ചത്. Marked as Ext.A1. 08/06/2024 മുതൽ ഞങ്ങൾ വേറിട്ട്



താമസിക്കുന്നു. ഞങ്ങൾ യാതൊരു കാരണവും ഇല്ലാതെയാണ് വേറിട്ട് താമസിക്കുന്നത്. നിങ്ങൾക്ക് നിങ്ങളുടെ ഭാര്യയുമായി ഒരുമിച്ച് താമസിക്കാൻ താല്പര്യം ഉണ്ടോ (Q) No answer.

ഞാൻ എന്റെ സ്വന്തം താല്പര്യപ്രകാരം കൊടുത്ത ഹർജിയാണിത്. എനിക്ക് യാതൊന്നും ഭാര്യയിൽ നിന്നും ലഭിക്കാനില്ല. Divorce വേണം. കൂടുതൽ എന്തെങ്കിലും പറയാനുണ്ടോ (Q) ഇല്ല (Ans) .”

Translated portion is as follows:-

“I am the 1st petitioner. The 2nd petitioner is my wife. The marriage was conducted on 13/05/2023 at St. Mary’s Forane Church, Edoor as per Christian religious rites. The marriage has been registered. That certificate was shown to me, Marked as Ext. A1. We have been residing separately since 08/06/2024. We are residing separately without any reason. Do you wish to live together with your wife? (Q)

No answer.

This is a petition filed of my own free will. I have nothing to receive from my wife. Need divorce. Do you have anything more to say? (Q) No (A).”

The appellant herein also deposed as PW2 in tune with the affidavit filed by her.

8. On a perusal of the judgment of the Family Court as well as the deposition of PW1, it is seen that PW1 had deposed before the trial court that they are living separately for no reason. Then, the Family Court posed a question "നിങ്ങൾക്ക് നിങ്ങളുടെ ഭാര്യയുമായി



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ഒരുമിച്ച് താമസിക്കാൻ താല്പര്യം ഉണ്ടോ? (Q) No Answer.” [Translated portion: “Do you wish to live together with your wife? (Q) No answer.”] The aforesaid question remained unanswered. But, during examination he had stated that he wants divorce. In a petition filed under Section 10A, the Family Court is required to make such inquiry as it thinks fit, that a marriage has been solemnised and that the averments in the petition are true and to pass a decree declaring the marriage to be dissolved with effect from the date of decree. Admittedly, Annexure A1 joint petition was filed by the appellant and the respondent. During examination, the respondent had categorically stated that he wants divorce. The Family Court ought to have looked into the aspects of whether there was a valid marriage, a mutual consent petition is filed by the parties and whether they are agreeable for a divorce.

9. In the present case, both the wife and the husband, who are the appellant and the respondent respectively, had clearly stated before the Family Court that both of them want divorce. Therefore, there was no reason for the Family Court to conclude that there was no mutual consent. Hence, the finding that one of



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the parties had withdrawn consent, and that a decree of divorce by mutual consent could not be granted, is unwarranted.

10. In the present case, there is no withdrawal of any consent as seen from the depositions of PWs.1 and 2. Hence, the Family Court ought not have dismissed the petition for divorce. Considering the aforesaid facts of the case, we are inclined to grant a decree of divorce.

The Mat.Appeal is allowed. The impugned judgment and decree of the Family Court in O.P.No.1247/2024 are set aside. The marriage between the appellant/wife and the respondent/husband solemnized on 13.05.2023 is dissolved from the date of this judgment.

Sd/-

**J. NISHA BANU
JUDGE**

sd/-

**SHOBA ANNAMMA EAPEN
JUDGE**

MBS/



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APPENDIX OF MAT.APPEAL NO. 826 OF 2025

PETITIONER ANNEXURES

Annexure A1	CERTIFIED COPY OF THE O.P.NO. 1247/2024 FILED BY THE APPELLANT AND RESPONDENT BEFORE THE FAMILY COURT, THALASSERY DATED 25.10.2024
Annexure A2	CERTIFIED COPY OF DEPOSITION OF THE APPELLANT
Annexure A3	CERTIFIED COPY OF DEPOSITION OF THE RESPONDENT