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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MRS. JUSTICE PREETA A.K.

FRIDAY, THE 12TH DAY OF JUNE 2026/22ND JYAISHTA, 1948

MAT. APPEAL NO.501 OF 2024

AGAINST THE JUDGMENT DATED 02.02.2024 IN O.P.NO.381 OF 2021
OF FAMILY COURT, MUVATTUPUZHA

APPELLANT (S)/RESPONDENT:

VIJAY R. NAIR
AGED 48 YEARS
S/O.LATE RAGHUTHAMAN ANIR, NOW RESIDING AT QTR NO.12/A,
TYPE-3, SECTOR-6, ORDNANCE FACTORY ESTATE, CHANDRAPUR
DISTRICT, MAHARASHTRA., PIN - 442501

BY ADV.DR.SEBASTIAN CHAMPAPPILLY
BY ADV.DR.ABRAHAM P.MEACHINKARA
BY ADV.SRI.GEORGE CLEETUS
BY ADV.SMT.ANNIE GEORGE
BY ADV.SMT.MARGARET MAUREEN DROSE
BY ADV.SMT.SWATHI KRISHNA P.H.
BY ADV.SMT.RINCY R.

RESPONDENT (S)/PETITIONER:

LIJITHA
AGED 37 YEARS
D/O.RAVEENDHARAN PILLAI, (W/O. VIJAY NAIR), PATHIYALIL
HOUSE, ERAMALLOOR P.O., KOTHAMANGALAM, ERNAKULAM
DISTRICT, PIN - 686691

BY ADV.SMT.A.PARVATHI MENON
BY ADV.SRI.P.SANJAY
BY ADV.SRI.BIJU MEENATTOOR
BY ADV.SMT.INDIRA.K.P.
BY ADV.SRI.PAUL VARGHESE (PALLATH)
BY ADV.SRI.KIRAN NARAYANAN
BY ADV.SRI.RAHUL RAJ P.



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BY ADV.SRI.MUHAMMED BILAL.V.A
BY ADV.SMT.MEERA R. MENON
BY ADV.SMT.BASILA BEEGAM
BY ADV.SMT.DEVIKA S. PRASAD

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON
12.06.2026, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



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“C.R.”**J U D G M E N T****Dr. A.K. Jayasankaran Nambiar, J.**

This Mat. Appeal impugns the judgment dated 02.02.2024 of the Family Court, Muvattupuzha in O.P.No.381 of 2021.

2. The brief facts necessary for disposal of this Mat. Appeal are as follows:

The Original Petition aforementioned was filed by the wife of the appellant herein seeking a divorce under Section 13 (I) (i-a) and (i-b) of the Hindu Marriage Act, 1955 on the ground of cruelty and desertion and for maintenance under Section 25 of the Hindu Marriage Act. The case of the respondent/wife before the court below was that her marriage with the appellant was solemnized on 06.09.2019 at her house as per Hindu religious ceremonies. At the time of her marriage, she was a student and the appellant herein was working as a Technical Chargeman in Ordnance Factory, Chandrapur under the Ministry of Defence. It was her case that the attitude of the appellant and his mother towards her was not a friendly one and that they had insulted her as well as her family by citing their inability to pay dowry before the marriage. She was also subjected to teasing in front of others and belittled in other ways. It was her case that barely three months after her marriage, she became pregnant, and she was



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taken to her house for delivery. On 17.06.2010, she gave birth to a female child. Although after the confinement period, she was taken back to Chandrapur, the appellant and his mother continued to ill-treat and torture her for dowry. Not able to suffer the insults anymore, the respondent's father had apparently paid Rs.5,00,000/- to the appellant and a further amount of Rs.3,00,000/- on a later date. When despite receiving the said amounts, the appellant continued to ill-treat her, she informed her parents of her inability to live with the appellant and thereupon her parents came to Chandrapur and took her and the child to their house at Eramalloor on 29.06.2011 where they have been residing ever since.

3. It was the further case of the respondent that she had preferred a complaint against the appellant and his mother under Section 498A of the Indian Penal Code, and the said case was pending before the Judicial First Class Magistrate Court, Kothamangalam as C.C.No.520 of 2012. She also filed M.C.No.234 of 2011 for maintenance and O.P.No.1498 of 2011 for divorce before the Family Court, Ernakulam. However those cases came to be settled through the intervention of mediators and a compromise agreement was drawn up between the parties. According to her, the appellant did not honour the compromise agreement and refused to pay any amount towards maintenance of the respondent and her child. It was under those circumstances that she was constrained to prefer the present O.P. for a decree of divorce as also for a decree of permanent alimony/maintenance from the appellant.



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4. Before the court below, although the appellant entered appearance through counsel, there was no objection filed on his behalf to the O.P. and no oral or documentary evidence was adduced on his behalf before the court below. The Family Court therefore proceeded to record the oral testimony of the respondent as PW1 and marked Exts.A1 to A7 documents on her side. Thereafter they proceeded to hear the learned counsel on either side and allow the original petition holding the marriage between the appellant and the respondent that was solemnized on 06.09.2019, as dissolved on the grounds of cruelty and desertion under Section 13 (1) (i-a) and (i-b) of the Hindu Marriage Act with effect from 02.02.2024. The appellant herein was also directed to give permanent alimony of Rs.20,00,000/- to the respondent within one month from the date of decree, with the rider that if the said amount was not paid within the time aforesaid, the respondent could realize the said amount with 6% interest from the appellant and his assets.

5. This appeal by the appellant/husband was filed with a delay of 12 days. Although the delay was condoned on 12.02.2025, there was no order passed by this Court staying the operation of the judgment and decree of the court below. Despite an attempt at mediated settlement of the disputes between them, the parties were not able to come to any kind of settlement either. On the contrary, it is seen that during the pendency of this appeal, the respondent remarried on 14.09.2025 as is evident from the marriage certificate dated 13.12.2025 produced by the appellant along with an interlocutory application to receive additional documents in the Mat.



Appeal.

6. At the time of hearing of the Mat. Appeal, the learned counsel for the appellant Dr. Sebastian Champappilly would contend that the subsequent marriage of the respondent, that was contracted during the pendency of his Mat. Appeal before this Court, has necessarily to be seen as void and that the respondent could not rely on the said remarriage to contend that his appeal against the grant of divorce had become infructuous. As regards the award of permanent maintenance to the respondent by the court below, the learned counsel would submit that the award of such a huge amount towards permanent maintenance came about solely because the appellant did not get an effective opportunity to adduce evidence before the court below, and in view of the changed circumstances whereby the respondent has now remarried, he is entitled to invoke the provisions of Section 25(3) of the Hindu Marriage Act and seek a cancellation/reduction of the alimony amount awarded by the court below.

7. Per contra, it is the submission of Smt.Parvathy Menon, the learned counsel appearing for the respondent that the contention that the second marriage of the respondent is void, is wholly devoid of merit. She points out that the bar under Section 15 of the Hindu Marriage Act did not arise in the instant case because, admittedly, there was a delay of 12 days in filing the present appeal. She points out that the bar against remarriage arises only in cases where the appeal is filed within the time granted under



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the Act, and since in the instant case, the appeal was not filed within the time granted under the Act, but with a delay of 12 days, the subsequent marriage of the respondent albeit after the condonation of delay in the appeal cannot be said to be void or unlawful. On the issue of grant of permanent alimony, she would submit that while it is a fact that no evidence was led on behalf of the appellant before the court below, that was solely on account of the lapses on the part of the appellant for which the respondent or the court below could not be blamed. She also contends that the court below had relied on the oral and documentary evidence led by the respondent to find in her favour on the issue of permanent alimony.

8. On a consideration of the rival submissions, and on a re-appreciation of the evidence in this case, we find that in view of the subsequent marriage contracted by the respondent, albeit during the pendency of this appeal, the Appeal, to the extent it impugns the order of the court below granting divorce to the respondent, has now become infructuous. We might, in this connection, observe that we cannot accept the interpretation sought to be placed by the learned counsel for the appellant on the provisions of Section 15 of the Hindu Marriage Act that, if one of the parties to a marriage that has been dissolved by a decree of divorce, marries again during the pendency of an appeal that is filed within time, it would render the subsequent marriage *void ab initio* in view of the provisions of Section 5(i) read with Section 17 of the Hindu Marriage Act, 1955. Section 15 of the Hindu Marriage Act only clarifies that when a marriage has been dissolved by a decree of divorce, and if an appeal has



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been preferred within the period permitted by the Statute, it would be unlawful for either party to the marriage to marry again. It is significant, as has been noticed in the judgments of the Supreme Court in **Leela Gupta v. Laxmi Narain and Ors. - [(1978) 3 SCC 258]** as followed in **Krishnaveni Rai v. Pankaj and Anr. - [AIR 2020 SC 1156]**, that merely because either party to the marriage is prohibited from contracting a second marriage for a certain period, it could not be said that despite there being a decree of divorce for certain purposes, the first marriage subsists or is presumed to subsist. In other words, an incapacity for second marriage for a certain period does not have the effect of treating the former marriage as subsisting. This settled position in law would suffice to reject the argument of the learned counsel for the appellant that the second marriage was void since it was bigamous in nature.

9. We also notice that the instant appeal was filed not within the period of limitation under the Act but with a delay of 12 days, which was subsequently condoned by this Court. At any rate, since the bar under Section 15 of the Hindu Marriage Act applies only if there is an appeal filed within the period of limitation and not afterwards upon condonation of delay in filing the appeal, we are of the view that the bar will not come to the aid of the appellant to contend that the second marriage of the respondent was, in any way, unlawful. In that context, it is also significant that in the instant appeal, there was no interim order of stay granted by this Court restraining the respondent from remarrying during the pendency of the appeal.



10. The upshot of the aforesaid discussion is that, to the extent the present appeal impugns the decree of dissolution of marriage on the ground of cruelty and desertion, the appeal has become infructuous. The appeal, to that extent, is therefore dismissed as infructuous.

11. On the issue of award of permanent alimony of Rs.20,00,000/- to be respondent, we find, as rightly pointed out by the learned counsel for the appellant, that the finding of the court below was rendered in the absence of any evidence adduced on behalf of the appellant. While under normal circumstance, this Court would have been loathe to accept the request of the appellant for a remand of this issue to the court below for fresh adjudication, we find that, in the light of the changed circumstances where the respondent has contracted a second marriage during the pendency of this appeal, the issue of entitlement of the respondent to permanent alimony and the quantification thereof, would have to be necessarily gone into by the court below as and when an application under Section 25(3) of the Hindu Marriage Act is preferred before it by the appellant. That being the case, we deem it appropriate to set aside the judgment and decree of the court below, to the extent it awards permanent alimony of Rs.20,00,000/- to the respondent, and remit the matter to the court below for a fresh adjudication on the said issue after affording the parties an opportunity to lead evidence before it. While doing so, we would also request the Court below to complete the fresh adjudication on this issue within two months from the date of receipt of a copy of the judgment.



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The Mat. Appeal is thus partly allowed.

Sd/-
DR. A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/-
PREETA A.K.
JUDGE

prp/



APPENDIX OF MAT. APPEAL NO.501 OF 2024

PETITIONER'S ANNEXURES:

ANNEXURE A1 THE COPY OF THE APPLICATION PREFERRED BY THE APPELLANT BEFORE THE PUBLIC INFORMATION OFFICER OF THE COCHIN DEVASWOM BOARD DATED 18-10-2025

ANNEXURE A2 FORWARDING LETTER DATED 22-10-2025

ANNEXURE A3 THE LETTER ISSUED BY THE DEVASWOM MANAGER/STATE PUBLIC INFORMATION OFFICER, CHOTTANIKKARA DEVASWOM DATED 29-10-2025

ANNEXURE A4 CERTIFICATE OF MARRIAGE AS OBTAINED ONLINE

ANNEXURE A-2 (a) TRUE ENGLISH TRANSLATION OF ANNEXURE A-2

ANNEXURE A-3 (a) TRUE ENGLISH TRANSLATION OF ANNEXURE A-3

RESPONDENTS ANNEXURES: NIL.

//TRUE COPY//

P.S. TO JUDGE