

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

FRIDAY, THE 7TH DAY OF JULY 2023 / 16TH ASHADHA, 1945

WP(C) NO. 21638 OF 2023



PETITIONER:

ARUN A
AGED 37 YEARS
(BRITISH PASSPORT NO 123030205)
S/O ARJUNAN K, CHIRATHILA VEEDU, KARAKULAM PO,
THIRUVANANTHPURAM,, PIN - 695564
BY ADV P.ANOOP (MULAVANA)

RESPONDENT:

THE MARRIAGE OFFICER (SUB-REGISTRAR)
KARAKULAM, THIRUVANANTHAPURAM DISTRICT, PIN - 695564
BY ADV ADVOCATE GENERAL OFFICE KERALA
SRI.B.S.SYAMANTAK, GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
07.07.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

HIGH COURT OF KERALA
CERTIFIED COPY



P.V.KUNHIKRISHNAN, J.
=====
WP(C) No. 21638 OF 2023
=====
Dated this the 7th day of July 2023

J U D G M E N T

The above writ petition is filed with the following prayers;

“ i. Issue a writ of mandamus or any other appropriate writ, order or direction, directing the respondent herein to solemnize the marriage by accepting Ext-P10 notice immediately under Special Marriage Act in accordance with the provision contained in the said Act by taking note of Ext P8 divorce decree.

ii. Declare that the respondent is duty bound to accept Ext-P8 and to allow the petitioner for registering his marriage under Special Marriage Act.

iii. Grant such other reliefs as this Honorable Court would deem fit and proper.

iv. Dispense with production of filing translation of vernacular documents ” (SIC)

2. The petitioner was an Indian citizen earlier and



now he is a British citizen which is evident by Exts.P3 and P4 British passports. The petitioner married one Anjana in the year 2011 and subsequently because of difference of opinion between them, a divorce application was filed before the Family Court in HM Courts and Tribunal Services in U.K., which is evident by Ext.P6. It is submitted that the HM Court heard the matter in detail and passed the decree of divorce absolute on 30.11.2022 as evident by Ext.P8. The petitioner wanted to remarry and hence submitted a notice of intended marriage under the Special Marriage Act, 1954 to the respondent herein as per Ex.P10. The grievance of the petitioner is that, the respondent is not acting upon Ext.P10 notice. The petitioner herein sent a legal notice to the respondent as evident by Ext.P11. Even then, there is no response. Hence, this writ petition is filed.

3. Heard the learned counsel for the petitioner and the learned Government Pleader.

4. The learned counsel for the petitioner submitted that in similar circumstances, this Court



delivered Ext.P14 judgment and hence similar directions may be passed in this case also.

5. The learned Government Pleader made available the instructions received from the respondent, it is stated that the petitioner has not produced the single status certificate and also the petitioner has not disclosed the fact that he is a foreign citizen. It is also submitted that the divorce certificate produced before the Marriage Officer is not clear.

6. This Court considered the contentions of the petitioner and the respondent. This Court also perused Ext.P14 judgment, it will be better to extract the relevant portion of Ext.P14 and the same is extracted hereunder;

6. Having regard to the need of the hour to have definite rules for recognition of foreign judgments in personal and family matters, particularly in matrimonial disputes, in ***Y. Narasimha Rao v. Y. Venkata Lakshmi, (1991) 3 SCC 451***, the Apex Court has interpreted Section 13 of the Code of Civil Procedure as follows:

“20. From the aforesaid discussion the following



rule can be deduced for recognising a foreign matrimonial judgment in this country. The jurisdiction assumed by the foreign court as well as the grounds on which the relief is granted must be in accordance with the matrimonial law under which the parties are married. The exceptions to this rule may be as follows: (i) where the matrimonial action is filed in the forum where the respondent is domiciled or habitually and permanently resides and the relief is granted on a ground available in the matrimonial law under which the parties are married; (ii) where the respondent voluntarily and effectively submits to the jurisdiction of the forum as discussed above and contests the claim which is based on a ground available under the matrimonial law under which the parties are married; (iii) where the respondent consents to the grant of the relief although the jurisdiction of the forum is not in accordance with the provisions of the matrimonial law of the parties.”

It is thus evident that though the general rule is that a foreign matrimonial judgment can be recognized in India only if the jurisdiction assumed by the foreign court as well as the grounds on which the relief is



granted are in accordance with the matrimonial law under which the parties are married, such judgments can be accepted as conclusive in India where the respondent voluntarily and effectively submits to the jurisdiction of the forum and consents to the grant of the relief although the jurisdiction of the forum is not in accordance with the provisions of the matrimonial law of the parties. As stated above, the materials on record indicate beyond doubt that the petitioner and his divorced wife have voluntarily and effectively submitted to the jurisdiction of the UAE Personal Status Court and consented to grant divorce to each other, although the jurisdiction of the said forum is not in accordance with the provisions of the matrimonial law applicable to them. In the circumstances, I am of the view that the courts in India have to recognise Ext.P4 divorce certification.

7. In the result, the writ petition is allowed. Ext.P5 communication is quashed and the respondent is directed to solemnize the marriage, for which notice has been issued by the petitioner under the Special Marriage Act, in accordance with the provisions contained in the said Act.”



7. After going through the above judgment, I think, there can be a direction following the dictum in the above judgment. Therefore, this writ petition is allowed in the following manner;

i. There will be a direction to respondent to solemnize the marriage based on Ext.P10 notice, if it is otherwise in order immediately under the Special marriage Act, in accordance with the provisions contained in the said Act by taking note of Ext.P8 divorce decree.

ii. The petitioners will produce a certified copy of this judgment, along with a copy of this writ petition before the respondent for compliance.

Sd/-

P.V.KUNHIKRISHNAN

JUDGE

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APPENDIX OF WP(C) 21638/2023

PETITIONER EXHIBITS :

- EXHIBIT P1** TRUE COPY OF THE AADHAR CARD OF THE PETITIONER
- EXHIBIT P2** A TRUE COPY OF THE REGISTRATION CERTIFICATE ISSUED BY THE CONSULATE GENERAL OF INDIA, BIRHINGAM DATED 02.12.2020
- EXHIBIT P3** A TRUE COPY OF THE CERTIFICATE OF NATURALIZATION ISSUED TO THE PETITIONER BY SECRETARY OF STATE ,HOME OFFICE LONDON AS A BRITISH CITIZEN DATED 10.11.2020
- EXHIBIT P4** A TRUE COPY OF THE BRITISH PASSPORT OF THE PETITIONER DATED 02.12.2020
- EXHIBIT P5** TRUE COPY OF THE CERTIFICATE OF MARRIAGE OF THE PETITIONER AND THE SAID ANJANA DATED 22.12.2011
- EXHIBIT P6** A TRUE COPY OF THE DIVORCE APPLICATION FILED BY THE PETITIONER DATED 27.01.2022
- EXHIBIT P7** A TRUE COPY OF THE NOTICE OF PROCEEDINGS DATED 27.01.2022
- EXHIBIT P8** A TRUE COPY OF THE DECREE OF THE FAMILY COURT IN HM COURTS AND TRIBUNAL SERVICES DATED 30.11.2022
- EXHIBIT P9** A TRUE COPY OF THE CERTIFICATE OF NATURALIZATION ISSUED TO THE SAID ANJANA BY SECRETARY OF STATE, OFFICE OF LONDON DATED 10.11.2020
- EXHIBIT P10** A TRUE COPY OF THE ACKNOWLEDGEMENT NOTICE OF INTENDED MARRIAGE ISSUED BY DEPT. OF REGISTRATION KERALA, DATED 15.05.2023
- EXHIBIT P11** A TRUE COPY OF THE LEGAL NOTICE ISSUED BY THE ADVOCATE DATED 25.05.2023
- EXHIBIT P12** A TRUE COPY OF THE POSTAL RECEIPT DATED 26.05.2023
- EXHIBIT P13** A TRUE COPY OF THE ACKNOWLEDGMENT CARD DATED 27.05.2023
- EXHIBIT P14** A TRUE COPY OF THE JUDGMENT IN WP(C)NO. 26008/2016 DATED 23.09.2016



EXHIBIT P15

A TRUE COPY OF THE RETURN AIR TICKET
OF THE PETITIONER DATED 12.02.2023

// True Copy // PA To Judge



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