

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

THURSDAY, THE 10TH DAY OF JUNE 2021 / 20TH JYAISHTA, 1943

WP(C) NO. 11652 OF 2021

PETITIONERS:

- 1 THOMAS KUTTY JOSEPH,
AGED 52 YEARS,
S/O.T.T.JOSEPH, THYPARAMPIL HOUSE, KEEKOZHOOOR,
PATHANAMTHITTA DISTRICT, KERALA, NOW RESIDING AT 58,
HAWKINS STREET, SHEPPARTON, VIC 3630, AUSTRALIA
REP.BY HIS POWER OF ATTORNEY, JOSE KOSHY, AGED 63 YEARS,
S/O.P.J.KOSHY, KUZHIPARAMBIL ARUPARYAYIL, AMICHAKARY PO,
CHATHENKERY, THIRUVALLA, PATHANAMTHITTA DISTRICT KERALA.
- 2 BLOSUM THOMAS @ BLOSUM ABRAHAM,
D/O.MR. P.C. ABRAHAM, PARAKKULATHU, EDAMON, KOLLAM
DISTRICT, KERALA, NOW RESIDING AT 58, HAWKINS STREET,
SHEPPARTON, VIC 3630, AUSTRALIA
REP.BY HIS POWER OF ATTORNEY, JOSE KOSHY, AGED 63 YEARS,
S/O.P.J.KOSHY, KUZHIPARAMBIL ARUPARYAYIL, AMICHAKARY PO,
CHATHENKERY, THIRUVALLA, PATHANAMTHITTA DISTRICT KERALA.

BY ADVS.
JACOB P.ALEX
JOSEPH P.ALEX
MANU SANKAR P.

RESPONDENTS:

- 1 LOCAL REGISTRAR OF MARRIAGES
(COMMON), CHERUKOLE GRAMA PANCHAYAT, (SECRETARY,
CHERUKOLE GRAMA PANCHAYAT) OFFICE OF CHERUKOLE GRAMA
PANCHAYAT, CHERUKOLE P.O., KOZHENCHERRY, PATHANAMTHITTA
PIN 689 614.
- 2 REGISTRAR GENERAL OF MARRIAGE (COMMON),
PATHANAMTHITTA (DEPUTY DIRECTOR OF PANCHAYAT,
PATHANAMTHITTA) OFFICE OF DEPUTY DIRECTOR OF PANCHAYAT,
MINI CIVIL STATION, PATHANAMTHITTA PIN 689 645

OTHER PRESENT:

GP-- PAUL ABRAHAM V . ADV MANILAL SUKUMARAN FOR
R1 .

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
10.06.2021, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

JUDGMENT

Dated this the 10th day of June 2021

This Writ Petition is filed, inter alia, to direct the respondents to process Ext.P3 memorandum submitted by the petitioners for registration of their marriage through video conferencing.

2. The petitioners have averred in the writ petition that their marriage was solemnised on 30.6.1997 as evidenced by Ext.P1 Marriage Certificate. They have three children born in their wedlock. The petitioners were employed in the United Arab Emirates. In June 2018, the petitioners migrated to Australia on a temporary visa. Unfortunately, due to a change in the immigration rules of that country, they are unable to get permanent residence. The Immigration Authorities have insisted for a certificate of registration of the marriage of the petitioners, to process their application

for permanent status. Ergo, the petitioners have submitted Ext.P3 memorandum, through their power of attorney holder, before the 1st respondent, seeking registration of their marriage under the Kerala Registration of Marriages (Common) Rules, 2008 (in short 'Rules'). They are unable travel to India due to the travel restrictions imposed in Australia because of the COVID-19 pandemic. The petitioners have been informed by their power of attorney holder that the 1st respondent, as a condition precedent to process the memorandum, is insisting that the petitioners have to personally appear before him and subscribe their signatures in the relevant registers. This Court in ***Mathew T.K. v. Secretary, Registrar of Marriage (2020 (4) KHC 456)*** and a plethora of precedents has held that the registration of marriage can be conducted through video conferencing. The petitioners are prepared to appear through video conferencing and have authorised their power of attorney holder to subscribe their signatures. Hence, the Writ Petition.

3. Heard Sri.Jacob P Alex, learned counsel appearing for the petitioners, Sri. Manilal, the learned Standing counsel appearing for the 1st respondent and the learned Government Pleader appearing for the 2nd respondent.

4. The learned Standing Counsel submitted that the first respondent has only a limited role in the matter, by just transmitting the memorandum to the second respondent - the competent authority - which he would do, if directed.

5. Human race is going through difficult times, due to the pandemic, but life cannot be brought to a grinding halt in this unprecedented era. We have to devise ways and means to reconcile with these times and the law and its procedure by adopting to innovative ways, including the use of technology which is in consonance with law. The world over has effectively used technology to march forward with life.

6. It is undisputed, that the petitioners are husband and wife as evidenced by Ext.P1 and P2 certificates. They have also executed Exts.P4 and P5 powers of attorney in

favour of their agent, who has submitted Ext.P3 memorandum for registration of marriage. It is not practically possible for the petitioners to travel all the way from Australia during this turbulent period, to subscribe their signatures in the registers of the respondents. Strict enforcement of the procedure cannot be insisted upon in this extra-ordinary situation. In the peculiar facts and circumstances of the case, I am of the considered opinion that the petitioners have to be permitted to register their marriage through video conferencing and be represented through their power of attorney and if needed even subscribe their signatures on such applications and other documents by using digital signature which would fulfill the statutory requirements.

In the result, in exercise of the powers of this Court under Article 226 of the Constitution of India, I dispose the Writ Petition by issuing the following directions:

- (i) The 1st respondent shall forthwith transmit Ext.P3 memorandum

to the 2nd respondent – the competent authority – for registration of the marriage of the petitioners.

(ii) The Power of Attorney holder of the petitioners shall produce a copy of Exts.P4 and P5 and file an undertaking/affidavit before the 2nd respondent stating that he is duly authorised by the petitioners to sign in the marriage register and all such other applications and documents, for and on behalf of the petitioners 1 and 2.

(iii) The 2nd respondent on receipt of Ext.P3 memorandum shall permit the power of attorney holder of the petitioners to subscribe his signature, for and on behalf of the petitioners, in

all the relevant registers, applications and documents contemplated under the rules.

(iv) The 2nd respondent shall, if felt necessary, interact with the petitioners through video conferencing, on any suitable platform to be arranged at the instance of the petitioners, and if felt necessary obtain an undertaking from the petitioners with their digital signatures by e-mail or a physical copy to be send by courier service to the 2nd respondent.

(v) On being convinced of the identity of the petitioners and that they have authorised their agent to act on their behalf, the 2nd respondent shall register the marriage of the petitioners

and, thereafter, issue the Marriage Certificate in Form IV of the Rules, as expeditiously as possible, to the Power of Attorney holder of the petitioners.

(vi) The Power of Attorney holder of the petitioners is permitted to produce a copy of this judgment before the respondents 1 and 2 for due compliance.

Sd/-

C . S . DIAS

JUDGE

APPENDIX OF WP(C) 11652/2021

PETITIONER'S EXHIBITS:

Exhibit P1	TRUE COPY OF THE MARRIAGE CERTIFICATE DATED 30.6.1997 ISSUED BY CHURCH OF GOD INDIA.
Exhibit P2	TRUE COPY OF THE CERTIFICATE DATED 15.3.2021 ISSUED BY THE CONSUL, INDIAN CONSULATE AT MELBOURNE, AUSTRALIA.
Exhibit P3	TRUE COPY OF THE MEMORANDUM FOR REGISTRATION OF MARRIAGE IN FORM NO.1 SUBMITTED BY PETITIONERS BEFORE THE 1ST RESPONDENT ALONG WITH RECEIPT.
Exhibit P3(A)	TRUE COPY OF THE CASH RECEIPT DATED 24.5.2021 ISSUED FROM THE OFFICE OF CHERUKOLE GRAMA PANCHAYAT.
Exhibit P4	TRUE COPY OF THE POWER OF ATTORNEY DATED 30.4.2021 ISSUED BY 1ST PETITIONER.
Exhibit P5	TRUE COPY OF THE POWER OF ATTORNEY DATED 30.4.2021 ISSUED BY 2ND PETITIONER.
Exhibit P6	TRUE COPY OF THE JUDGMENT IN PRADEEP KODIVEEDU CLETUS V. LOCAL REGISTRAR OF MARRIAGE 2018 (1) KHC 280