

**Sreekanth Vs. Nil**

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**SooperKanoon Citation :** [sooperkanoon.com/1126990](http://sooperkanoon.com/1126990)

**Court :** Kerala

**Decided On :** Feb-07-2014

**Judge :** Honourable Mr.Justice Harun-Ul-Rashid

**Appellant :** Sreekanth

**Respondent :** Nil

**Judgement :**

IN THE HIGH COURT OF KERALAATERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE HARUN-UL-RASHID & THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS FRIDAY,THE7H DAYOF FEBRUARY201418TH MAGHA, 1935 OP (FC).No. 67 of 2014 (R)  
----- PETITIONERS : ----- 1. SREEKANTH.K., S/O.KRISHNA PILLAI AGED36YEARS, SREEVILASAM HOUSE, KUMMANNOOR, KIDANGOOR.P.O, KOTTAYAM DISTRICT2 MEERA.S, D/O.SIVASWAMY AGED29YEARS AMBADI HOUSE, PIRAVOMP.O., ERNAKULAM DISTRICT BY ADV.SRI.P.C.HARIDAS RESPONDENT(S):  
----- NIL THIS OP (FAMILYCOURT) HAVING COME UP FOR ADMISSION ON0702-2014, THE COURT ON THE SAME DAYDELIVERED THE FOLLOWING: OP (FC).No. 67 of 2014 (R) APPENDX PETITIONERS' EXHIBITS :  
EXT.P1 : TRUE COPY OF AGREEMENT DATED3005.2013 BETWEEN THE PETITIONERS  
EXT.P2 : TRUE COPY OF PETITION FILED UNDER S.13B OF THE HINDU MARRIAGE ACT  
EXT.P3 : TRUE COPY OF THE I.A.NO.1037/2013  
EXT.P4(2 IN NOS.) : TRUE COPIES OF THE PROOF AFFIDAVITS OF THE

PETITIONERS EXT.P5(2 IN NOS.) : TRUE COPIES OF THE DEPOSITIONS OF  
THE PETITIONERS EXT.P6(2 IN NOS.) : TRUE COPIES OF THE AFFIDAVITS  
DATED 24.01.2013 RESPONDENTS' EXHIBITS : NIL /TRUE COPY/ P.ATO  
JUDGE AV HARUN-UL-RASHID & ALEXANDER THOMAS, JJ.

----- O.P.(FC).No.67 of 2014 -----  
Dated this the 7th day of February, 2014

## **JUDGMENT**

### **Harun-UI-Rashid, J.**

The petitioners herein are the petitioners in O.P.No.555/2013 on the file of the Family Court, Pala. They filed a joint petition under Section 13B of the Hindu Marriage Act for dissolution of marriage on mutual consent.

2. Their marriage was solemnized on 08-09-2011. Due to mutual differences and incompatibility of temperament, the parties started living separately from 14.04.2012. The parties realised that there is no possibility for a joint life and their marriage is irretrievably broken. Therefore, they agreed to dissolve the marriage by mutual consent. The parties also settled all monetary claims in between them and an agreement was also executed on 30.05.2013.

3. The original petition was filed before the Family Court, Kottayam at Ettumanoor and subsequently the same was transferred to the Family Court, Pala.

4. The petitioners filed I.A.No.1037/2013 praying to take evidence of the petitioners, at the earliest and without waiting O.P.(FC).No.67 of 2014 2 for six months. Ext.P3 is a copy of the said I.A. It is submitted that Ext.P3 I.A. happened to be filed, since the 1st petitioner is working at Australia and he may not be available for giving evidence after the period of six months and that there is no chance for re-union. The parties also filed proof affidavits. The Family Court allowed Ext.P3 petition and permitted the parties to give evidence. Accordingly on 31.05.2013 both petitioners were examined before the court to substantiate their

evidence in the case.

5. By the time, six months period is over and original petition was transferred to the Family Court, Pala. It is submitted that the learned Judge of Family Court, Pala insisted personal appearance of the parties after the expiry of six months, though the parties were examined at the time of presentation of the petition and they were pressing for dissolution of marriage. It is also pointed out that normally if evidence of parties taken at the time of filing of the joint petition, appearance of the parties after expiry of six months are not insisted for. The case was posted to 30.11.2013 for appearance of the parties. On that date, the counsel for the parties submitted that both parties are sticking to their decision to dissolve the marriage on mutual consent and they O.P.(FC).No.67 of 2014 3 have no intention to retract from it. It is further submitted that, however the learned Judge insisted for appearance of parties and adjourned the case to 25.01.2014. On 24.01.2014 both petitioners filed proof affidavits stating their decision to dissolve the marriage. The affidavits are produced and marked as Ext.P6. It was stated that they were prepared to give evidence as insisted by the court. A submission was made that the parties have no change in their mind and they are pressing for dissolution of marriage. It is also submitted that the 1st petitioner is working at Australia and he has come to Kerala on a short leave for appearing before the court due to the insistence of the court. Therefore, the petitioner appeared before court to take evidence. It is submitted that unless the evidence is taken without delay, he would be put to much difficulties. The 2nd petitioner is also working outside Kerala and she is also facing difficulties as that of the 1st petitioner.

6. It is submitted that the learned Judge without ordering to take evidence, adjourned the case to 07.02.2014 for counseling of parties and to 12.02.2014 for further appearance of the parties before the court. It is pointed out that insistence for appearing on 07.02.2014 is against the O.P.(FC).No.67 of 2014 4 directions issued by this Court in similar case. Learned counsel pointed out the decision reported in Saji.T.Varghese v. State of Kerala [2010(3) KLT804 in which this court observed that the personal presence of such applicants/spouses in the application for dissolution of marriage by mutual consent need not be unnecessarily insisted by the Court, that after the period of waiting, a second motion need only be made

and the same be made by the counsel on their behalf and the presence of the parties need not be insisted for to tender evidence. It is also contended that this Court in Shibukumar v. Athira [2012(1) KLJ344 deprecated the procedures of the Family Courts by sending the parties in petitions for divorce on mutual consent for counseling again and again. Now the apprehension of the petitioner is that even on 12.02.2014, there is no guarantee that proceedings would be completed and the petitioner would be relieved from personal appearance before the court.

7. In the fact and circumstances of the case, this court is of the view that the further proceedings continuing before the Family Court, Pala can be completed in the absence of the petitioners, in the presence of their counsel. Family Court need not insist for appearance of the parties on 12.02.2014 or O.P.(FC).No.67 of 2014 5 on any other dates. The Family Court shall dispose of Ext.P2 original petition within a period of one month from the date of receipt of copy of this judgment. The original petition is disposed of as above. Sd/- HARUN-UL-RASHID, JUDGE Sd/- ALEXANDER THOMAS, JUDGE AV /True Copy/ P.A to Judge

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