

Shereena Vs Shadim

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Court : Kerala

Decided On : Jan-31-2024

Judge : Honourable Mrs. Justice Anu Sivaraman, Honourable Mr. Justice C. Pratheep Kumar

Appeal No. : OP (FC)/10/2024

Appellant : Shereena

Respondent : Shadim

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN & THE HONOURABLE MR. JUSTICE C. PRATHEEP KUMAR
WEDNESDAY, THE 31ST DAY OF JANUARY 2024 / 11TH MAGHA, 1945 OP (FC) NO. 10 OF 2024 AGAINST THE ORDER/JUDGMENT OP 1469/2021 OF FAMILY COURT, ATTINGAL PETITIONER/PETITIONER:

SHEREENA AGED 31 YEARS D/O. SHEREEFUDEEN, NOUFAL MANZIL, CHENKIKUNNU, NAGAROOOR, KILIMANOOOR, NAGAROOOR VILLAGE, THIRUVANANTHAPURAM DISTRICT, HAVING PERMANENT ADDRESS AT SHEREENA MANZIL, ERATTAKULAM,

PULLUPANA P.O., KUMMIL VILLAGE, KADAKKAL, KOTTARAKKARA TALUK, KOLLAM DISTRICT. REPRESENTED BY HER POWER OF ATTORNEY HOLDER, LAILA BEEGAM, AGE 55, W/O. SHEREEFUDEEN, SHEREENA MANZIL, ERATTAKULAM, PULLUPANA P.O., KUMMIL VILLAGE, KADAKKAL, KOTTARAKKARA TALUK, KOLLAM DISTRICT., PIN - 691536 BY ADV SHAJIN S.HAMEED

RESPONDENT/RESPONDENT: SHADIM AGED 36 YEARS S/O. AZIZ MUSTHAFA, SUMAYYA MANZIL, YETTINKADAVU, KADAKKAL P.O., KOLLAM DISTRICT., PIN - 691536 THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON 31.01.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 31st day of January, 2024

Anu Sivaraman, J.

Heard the learned counsel for the petitioner. Though notice was taken out to the respondent, it is returned stating that the respondent has left India.

2. The learned counsel for the petitioner submits that the marriage

between the petitioner and the respondent was solemnized on 09.10.2011 as per Islamic rites. It is stated that due to cruelty of the respondent, the petitioner had terminated the marriage by pronouncing khula on 13.10.2021. Ext.P2 original petition was filed before the Family Court, Attingal as O.P. No.1469/2021 for declaration of resolution of marriage between the petitioner and the respondent by way of khula pronounced by her on 13.10.2021. The respondent appeared and filed objection to Ext.P2 in September, 2022. However, even though IAs were filed for expeditious disposal of the case, the matter had not been taken up.

3. It is submitted that a Division Bench of this Court in Asbi K.N. v. Hashim M.U. [2021 (6) KHC 159] has clearly formulated guidelines to

be followed in a petition filed to endorse an extrajudicial divorce under the Muslim Personal Law. It is stated that once a prima facie satisfaction is reached by the Court that extrajudicial divorce has been effected by talaqnama, khulanama or talaq-e-tafweez and it is found that there was communication of such intention to resolve the marriage between the parties, then the Family Court shall dispose of the petition within one month from the date of appearance of the respondent.

4. It is further submitted that another Division Bench of this Court in

Twaha Salman v. Hafsath [2023 KHC Online 10389] has held that where a khulanama is pronounced and if there is any valid contention by the respondent that has to be agitated in separate proceedings before the Family Court, the declaration of extrajudicial divorce cannot be kept pending only because there is an objection raised.

5. We had sought for a report from the Family Court where it is stated

that after mediation, the case is posted for petitioner's evidence and that such evidence has not been recorded and the commissioner's report has not been received back so far.

6. Having considered the contentions advanced and in view of the

guidelines formulated by this Court in Asbi K.N. v. Hashim M.U., we

are of the opinion that only a summary enquiry as to whether there was a valid pronouncement of khula is required and that there will be no necessity for a full fledged trial in a case where a khula is pleaded by the petitioner.

7. In the above view of the matter, we are of the opinion that the

reasons stated for the delay in disposing of the application cannot be countenanced. There will, accordingly, be a direction to the Family Court, Attingal to follow the guidelines formulated by this Court in Asbi K.N. v. Hashim M.U. and to dispose of Ext.P2 original petition filed by the petitioner after summary enquiry

within a period of one month from the date of receipt of a copy of this judgment.

This OP(FC) is ordered accordingly. Sd/- ANU SIVARAMAN, JUDGE Sd/- C. PRATHEEP KUMAR, JUDGE NP APPENDIX OF OP (FC) 10/2024 PETITIONER'S EXHIBITS Exhibit-P1 TRUE COPY OF THE POWER OF ATTORNEY DATED FAVOR OF HER MOTHER. Exhibit-P2 TRUE COPY OF THE ORIGINAL PETITION O.P.NO.1469/2021 FILED BY THE PETITIONER ON Exhibit-P3 TRUE COPY OF THE OBJECTION FILED BY THE RESPONDENT DURING SEPTEMBER 2022 IN O.P.NO.1469/2021 ON THE FILE OF THE FAMILY COURT, ATTINGAL. Exhibit-P4 TRUE COPY OF THE PETITION I.A.NO.2/2023 IN O.P.NO.1469/2021 FILED ON 08/09/2023 BEFORE THE FAMILY COURT, ATTINGAL. RESPONDENT'S EXHIBITS: NIL

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