

Antony Cheriyan vs Sheeba Thomas

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Court : Kerala

Decided On : Jul-31-2023

Judge : Honourable Mr. Justice a.Muhammed Mustaque,Honourable Mrs. Justice Sophy Thomas

Appeal No. : Mat.Appeal/246/2014

Appellant : Antony Cheriyan

Respondent : Sheeba Thomas

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A.MUHAAMED MUSTAQUE & THE HONOURABLE MRS. JUSTICE SOPHY THOMAS
MONDAY, THE 31ST DAY OF JULY 2023 / 9TH SRAVANA, 1945
MAT.APPEAL NO. 246 OF 2014 I.A.NO.913/2013 IN OP(DIV)
1001/2011 OF FAMILY COURT, ALAPPUZHA

APPELLANT/PETITIONER/RESPONDENT: ANTONY CHERIYAN,
AGED 33 YEARS, S/O.CHERIYAN KUNJU, KOCHUKUTTIKKAL,
PURAKKADU P.O., ALAPPUZHA DISTRICT. BY ADVS. SRI.JOMY
GEORGE SRI.SEBASTIAN THOMAS
RESPONDENT/RESPONDENT/ORIGINAL PETITIONER: SHEEBA

THOMAS VATTAKKERIYIL HOUSE, THAKAZHY P.O., ALAPPUZHA, NOW WORKING AT INDIAN CENTRAL SCHOOL, KUWAIT, P.O.BOX 1589, HAWALLI, KUWAIT. THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 31.07.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: Mat.Appeal No.246/2014 2

J U D G M E N T

A.Muhamed Mustaque, J.

The appellant was the respondent in OP No.1001 of 2011. The

original petition was filed by the respondent for divorce and monetary claim. The appellant was set exparte. Thereafter, an application was filed to condone a delay of six months and 17 days and to set aside the ex parte decree. Consequent upon dismissing the application for condonation of delay, the application for setting aside the ex parte decree was also dismissed.

2. Though notice has been served on the respondent, none appears.

3. The appellant was working in Kuwait and the respondent

was also working in Kuwait. It appears that notice was taken out by publication in local dailies in Kerala. After the ex parte decree, the respondent remarried. Now the appellant does not want to contest the decree of divorce granted. But the appellant has a serious contest against the monetary claim raised by the respondent.

4. It is to be noted that the respondent was well aware of the address of the appellant in Kuwait. No attempt was made to serve notice on the appellant at the address available in Kuwait. Mat.Appeal No.246/2014 3 Taking the publication in newspaper having circulation in Kerala, it cannot be said, sufficient service of notice was effected, in as much as the appellant is residing in Kuwait. In such circumstances, we are of the view that the appeal has to be

allowed. The impugned order is set aside. However, in view of the stand taken by the appellant, we affirm the decree of divorce granted. The parties are permitted to contest the case in regard to the monetary claims. The parties are directed to appear before the Family Court, Alappuzha on 11.09.2023. If the respondent does not appear, the Family Court, Alappuzha, shall attempt to serve notice on the respondent through her former counsel and in any other address available with the counsel.

The appeal stands allowed as above. A.MUHAMED MUSTAQUE SOPHY THOMAS DSV/- Mat.Appeal No.246/2014 4 APPENDIX OF MAT.APPEAL NO.246/2014 PETITIONERS ANNEXURES: ANNEXURE A1 TRUE COPY OF THE B-DIARY IN OP(DIV)NO.1001/2011 OF THE FAMILY COURT, ALAPPUZHA. ANNEXURE A2 TRUE COPY OF THE ORDER DATED 31.01.2014 PASSED BY THE FAMILY COURT IN I.A.NO.914/2013. RESPONDENTS EXHIBITS : NIL

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