

Arunkumar vs Priyadarsini V.U.

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Court : Kerala

Decided On : Dec-21-2022

Judge : Honourable Mr. Justice Anil K.Narendran,Honourable Mr.Justice Murali Purushothaman

Appeal No. : Mat.Appeal/40/2022

Appellant : Arunkumar

Respondent : Priyadarsini V.U.

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ANIL K.NARENDRAN & THE HONOURABLE MR.JUSTICE MURALI PURUSHOTHAMAN
WEDNESDAY, THE 21ST DAY OF DECEMBER 2022/30TH AGRAHAYANA, AGAINST THE JUDGMENT DATED 28.10.2021 IN O.P.NO.1993 OF 2014 OF THE FAMILY COURT, THIRUVANANTHAPURAM APPELLANTS/RESPONDENTS: 1 ARUNKUMAR, AGED 43 YEARS, S/O.RAVINDRAN, RESIDING AT SREEMURUKA NIVAS, THANNIMOODU, THANNIMOODU P.O., THIRUVANANTHAPURAM - 695 123. 2 RAVEENDRAN, AGED 66 YEARS, S/O.VISWAMBHARAN, RESIDING AT SREEMURUKA NIVAS,

THANNIMOODU, THANNIMMODU P.O., THIRUVANANTHAPURAM -
695 123. BY ADVS.N.M.MADHU C.S.RAJANI
RESPONDENT/PETITIONER: PRIYADARSINI V.U., AGED 36 YEARS,
D/O.USHAKAUMARI, P.P.SADANAM, MANGALATHUKONAM,
KATTACHALKUZH P.O., THIRUVANANTHAPURAM, PIN - 695 501.
BY ADVS.G.BIJU V.A.VINOD THIS MATRIMONIAL APPEAL HAVING
COME UP FOR ADMISSION ON 21.12.2022, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Anil K. Narendran, J.

The appellants are the respondents in O.P.No.1993 of

2014 on the file of the Family Court, Thiruvananthapuram, an original petition filed by the respondent herein-wife of the 1 st appellant, seeking return of gold ornaments and realisation of money. By the judgment and decree dated 28.10.2021, the Family Court allowed that original petition in part, and the 1 st appellant was directed to return 45 sovereigns of ornaments or its value on the date of petition, with interest at the rate of 6% per annum from the date of petition. The 1 st appellant was also directed to pay past and future maintenance at the rate of Rs.5,000/- each per mensem to the wife and the child; an amount of Rs.2,00,000/- with 6% interest, from the date of petition, to the respondent as compensation for the mental and physical harassments suffered by her at their hands; to execute a document releasing his half right over the property under document No.2815/2011 of Venganoor Sub Registry in favour of the respondent. Feeling aggrieved by the said

judgment and decree, the appellants are before this Court in

this appeal invoking the provisions under Section 19(1) of the Family Courts Act, 1984.

2. On 17.01.2022, when this appeal came up for

admission, this Court admitted the matter on file and issued consolidated notice to the respondent in the appeal and in I.A.No.1 of 2022. In I.A.No.1 of 2022, this Court granted an

interim order staying the operation of the impugned judgment

on condition that the appellants shall furnish security for the relief granted in (i) and (ii) within two months to the satisfaction of the Family Court. This Court also stayed the granting of maintenance to the respondent-wife for a period of two months. However, the appellants were directed to pay the maintenance awarded to the child.

3. During the pendency of this appeal, the matter was

referred for mediation before the Ernakulam Mediation Centre in the premises of this Court and the parties were directed to appear before the Mediator on 22.08.2022 at 10.30 a.m. However, the matter could not be settled in mediation. Thereafter, the parties have entered into an out of Court settlement. The terms and conditions of that settlement is reduced in writing, which is one dated 21.12.2022, and the same is placed on record as Annexure A1 along with I.A.No.3 of 2022. In terms of the terms and conditions in the

settlement, the 1st appellant and the respondent have filed I.A.No.3 of 2022, an application under Section 13B of the Hindu Marriage Act, 1955, seeking a decree for dissolving the marriage solemnised between them on 31.12.2011, on mutual consent. That Application is supported by I.A.No.4 of 2022 filed under Section 13B(2) of the Act, seeking an order to waive the statutory period.

4. The Apex Court in *Amardeep Singh v. Harveen*

Kaur [2017 (8) SCC 746] considered whether it is mandatory in all cases to wait for the statutory period under Section 13B(2) of the Act before allowing divorce on mutual consent. It was held that the provision was discretionary and not mandatory. The Apex Court held that the period can be waived if the Court is satisfied after considering the following:

i) the statutory period of six months specified in Section 13B(2), in addition to the statutory period of one year under Section 13B(1) of separation of parties is already over before the first motion itself; ii) all efforts for mediation/conciliation including efforts in terms of Order XXXIIA Rule 3 CPC/Section 23(2) of the Act/Section 9 of the Family Courts Act to reunite the parties have failed and there is no likelihood of success in that direction by any further efforts; iii) the parties have genuinely settled their differences

including alimony, custody of child or any other pending

issues between the parties;

iv) the waiting period will only prolong their agony.

5. Today when this matter is taken up for

consideration, we have interacted with the petitioners in I.A.No.3 of 2022, a joint petition filed under Section 13B of the Act. They have stated in categorical terms that the entire disputes between them have already been settled, and they have consented for a decree of divorce by mutual consent.

Since 26.11.2013, the 1st appellant-husband and the respondent-wife are living separately. Since the parties have genuinely settled their disputes in mediation and since they are living separately, we find that the cooling period of six months provided under Section 13B(2) of the Act will only prolong their agony. Therefore, we are satisfied that this is a fit case in which without waiting for the statutory period of six months under Section 13B(2) of the Act, the parties can be granted a decree of divorce by mutual consent.

6. In such circumstances, I.A.No.4 of 2022 is allowed

by waiving the statutory period of six months provided under Section 13B(2) of the Act and I.A.No.3 of 2022 is allowed by granting a decree of divorce by mutual consent under Section 13B of the Act, by dissolving the marriage solemnized

between the 1st appellant-husband and the respondent-wife on 31.12.2011 at SNDP Hall, Mangalathukonam. In terms of the terms and conditions of settlement agreement, the 1 st appellant has handedover a Demand Draft for Rs.9,89,000/- to the respondent-wife in open court.

7. Accordingly, the appeal is disposed of in terms of

the terms and conditions of settlement agreement dated 3 of 2022), which shall 21.12.2022 (Annexure A1 in I.A.No.4 form part of this judgment. The Family Court shall communicate a copy of this

judgment to the Sub Registrar, Venganoor.

Sd/- ANIL K. NARENDRAN, JUDGE Sd/- MURALI PURUSHOTHAMAN, JUDGE
AV/26/12 APPENDIX OF MAT.APPEAL 40/2022 PETITIONER ANNEXURES
Annexure A TRUE COPY OF THE QUESTIONNAIRE SUBMITTED BY
PETITIONER TO THE OFFICE OF THE ASSISTANT EXECUTIVE ENGINEER,
PWD BRIDGES SUB DIVISION, VIKAS BHAVAN, THIRUVANANTHAPURAM.
Annexure B TRUE COPY OF THE REPLY DATED Annexure A1 TERMS OF
SETTLEMENT ARRIVED BETWEEN THE PARTIES IN MAT.APPEAL NO.40 OF
2022 DATED 21.12.2022 Agreement MEMORANDUM OF AGREEMENT UNDER
SECTION 89 OF THE CODE OF CIVIL PROCEDURE

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