

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM
&
THE HONOURABLE MRS. JUSTICE MARY JOSEPH**

MONDAY, THE 19TH DAY OF OCTOBER 2015/27TH ASWINA, 1937

Mat.Appeal.No. 46 of 2014 ()

**AGAINST THE ORDER DATED 11-09-2013 IN OP 54/2013 of
FAMILY COURT, KALPETTA**

APPELLANT/PETITIONER:

**MERLIN JOSEPH,
AGED 30 YEARS, D/O.JOSEPH, PAMBAKADACHALIL HOUSE
GOVINDHAMOOLA, THOVARIMALA P.O, NENMENI AMSOM DESOM,
SULTHANBATHERY TALUK, WAYANAD DISTRICT**

BY ADV. SRI.S.M. PRASANTH

RESPONDENT/RESPONDENT:

**TITTO M.J.,
AGED 31 YEARS, S/O.JOSE,
MUTHOLIKKAL HOUSE, CHENMALODE POST
THARUIODE AMSOM DESOM, VYTHIRI TALUK
WAYANAD DISTRICT 670 146**

**BY ADVS. SMT.SARITHA THOMAS
SRI.SAJEEVAN KURUKKUTTIYULLATHIL**

**THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 19-10-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

AMG

**C.K. ABDUL REHIM, J.
&
MARY JOSEPH, J.**

Mat. Appeal No. 46 OF 2014

DATED THIS THE 19th DAY OF OCTOBER, 2015

J U D G M E N T

C.K. Abdul Rehim, J:

This matrimonial appeal is filed by the petitioner before the Family Court, Kalpetta in OP No.54/2013. The respondent herein is the respondent before the court below. A petition for dissolution of marriage, filed by the appellant under Section 10 (ix) & (x) of the Divorce Act, 1869 based on the ground of alleged cruelty attributed against the respondent herein, was dismissed by the Family Court through the impugned judgment. This appeal is filed against the dismissal of the said application.

2. During pendency of the appeal this court referred the parties for attempting mediation, to the Ernakulam Mediation Centre. A report of the Mediator submitted to this court would indicate that the matter was settled on mediation and the terms of the settlement was incorporated

into an agreement executed between the parties. A 'Memorandum of Settlement' drawn under Section 89 of Code of Civil Procedure signed by both parties and their respective counsel, is produced along with the report of the Mediator. The 'Memorandum of Settlement' would indicate that both parties have agreed to file a joint petition for divorce under Section 10 A of the Divorce Act, by filing necessary petitions before this court.

3. The parties have accordingly filed IA No.3747/2015 under Section 10 A of the Divorce Act, 1869, seeking for a decree of divorce based on mutual consent. The above application was filed before the Registry of this court on 09-12-2014.

4. This court takes note of the fact that the statutory waiting period of 6 months under Section 10 A of the Act, since the date of filing of the application, stands expired. The 1st petitioner in the application, who is the appellant in the matrimonial appeal, is personally present before this court on today. When we made enquiries she expressed her

firm determination to pursue the joint application filed under Section 10 A and expressed the view that there is no change in the attitude of her desire to dissolve the marriage by mutual consent under Section 10 A of the Divorce Act. An affidavit sworn to by the 2nd petitioner, who is respondent in the appeal, executed before the Consulate of India in Dubai and attested by the Consul General of India on 11-08-2015 is produced. It is stated that the marital relationship had been irretrievably broken and that the parties are living separated for the last several years. It is also mentioned that there is no possibility of reunion. Hence it is sought for a decree of divorce on mutual consent.

5. Taking note of the affidavit filed by the 2nd petitioner/respondent and the statement given by the 1st petitioner/appellant, we are convinced that there exist sufficient grounds to grant a decree of dissolution of marriage on the basis of the joint application submitted on mutual consent.

6. Under the above mentioned circumstances the above appeal is hereby disposed of by setting aside the impugned decree passed by the Family Court, Kalpetta in OP No.54/2013, dated 11-09-2013 and by passing a decree declaring the marriage between the parties as dissolved under Section 10 A of the Act, with effect from today.

Sd/-

C.K. ABDUL REHIM, JUDGE.

Sd/-

MARY JOSEPH, JUDGE.

AMG

True copy

P.A. to Judge