

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM
&
THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN**

THURSDAY, THE 28TH DAY OF MAY 2015/7TH JYASHTA, 1937

Mat.Appeal.No. 482 of 2014 ()

**AGAINST THE JUDGMENT & DECREE DATED 31-10-2013 IN OP(HMA) 1813/2013
OF FAMILY COURT, ATTINGAL**

APPELLANT/PETITIONER:

**B. VIJAYAN NAIR
S/O. BALAN PILLA, PIRIYATHU VEEDU,
KARoor, PUTHENCODE P.O,
THIRUVANANTHAPURAM TALUK AND DISTRICT**

BY SRI. B. VIJAYAN NAIR (PARTY IN PERSON)

RESPONDENT/RESPONDENT:

**S. THANKAMONY AMMA,
AGED 52 YEARS
VIDHYA BHAVAN, VAVARAMBALM, POTHENCODE P.O
FROM MARANGATTU VEEDU, PATTATHINKARA, THONNAKKAL P.O
THIRUVANANTHAPURAM TALUK AND DISTRICT 695317**

**THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 28-05-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

AMG

**C.K. ABDUL REHIM, J.
&
K. RAMAKRISHNAN, J.**

Mat. Appeal No. 482 OF 2014

DATED THIS THE 28th DAY OF MAY, 2015

J U D G M E N T

K. Ramakrishnan, J:

Petitioner in OP (HMA) 1813/2013 of Family Court, Attingal is the appellant herein. The case was filed by the petitioner in the lower court for divorce on the ground of cruelty and desertion. Though respondent appeared in the lower court, she did not file any counter statement. However, the court below examined the petitioner as PW1 and respondent as RW1 and passed the impugned order stating that considering the circumstances the court is not inclined to grant divorce but invoking provision under Section 13A of the Act granted judicial separation. Aggrieved by the same the present appeal has been preferred by the appellant/ petitioner before the court below.

2. The appellant appeared in person. Though notice was served on the respondent, she did not appear. She remained absent.

3. The appellant submitted that though he had filed detailed affidavit along with I.A. 1300/2013 that was not considered by the court below and since the respondent did not file any objection the court below ought to have granted the relief claimed.

4. We have gone through the records. It is settled law that though respondent did not file any objection, unless the petitioner satisfies the court the grounds for divorce, court is not expected to pass a decree for divorce as claimed by the petitioner. We have gone through the deposition recorded by the court below. Nothing was recording in the deposition regarding the allegations in the petition or the nature of cross-examination also does not show that the allegations were controverted. It is seen from the records that the petitioner filed IA 1300/2013 along with an affidavit detailing the allegations of cruelty and

requesting to treat that affidavit as part his chief examination but no orders have been passed in that application by the court below also. There is no finding as such recorded by the court below as to whether the allegations of cruelty or desertion are made out or not as well. But simply invoked Section 13A and granted decree for judicial separation stating that the marital relationship between them has been irretrievably broken down. So under the circumstances we feel that the method adopted by the court below in disposing the petition appears to be not in accordance with law and the same is liable to be set aside and the matter has to be remitted to the court below for fresh disposal in accordance with law. So the Matrimonial Appeal is allowed the decree and judgment passed by the court in OP (HMA) 1813/2013 declining to grant a decree for divorce and granting a decree of judicial separation is set aside. The matter is remitted to the court below for fresh disposal. The family court is directed to give opportunity to the parties to adduce evidence and then pass

appropriate judgment after considering the evidence adduced by the parties in accordance with law. So the lower court also directed to expedite disposal of the matter as it is a remanded matter as expeditiously as possible at any rate within 3 months from the date of appearance of the parties in the lower court as directed by this court. Parties are directed to appear before the court below on 30-06-2015.

Office is directed to send back the records to the court below along with judgment of this court, immediately.

Sd/-

C.K. ABDUL REHIM, JUDGE.

Sd/-

K. RAMAKRISHNAN, JUDGE.

AMG

True copy

P.A. to Judge