

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.T. SANKARAN

&

THE HONOURABLE MR. JUSTICE BABU MATHEW P. JOSEPH

THURSDAY, THE 19TH DAY OF MARCH 2015/28TH PHALGUNA, 1936

Mat. Appeal No. 953 of 2014 (F)

AGAINST THE JUDGMENT IN OP(DIV) NO. 145/2013 of FAMILY COURT, ALAPPUZHA
DATED 21-08-2014

APPELLANTS/PETITIONERS:

1. ROSAMMA @ PUSHPA ZACHARIA, AGED 44 YEARS
D/O. CHACKO ZACHARIA, KIZHAKKE AMBIYAYAM
EDATHUVA P.O., KUTTANADU, ALAPPUZHA DISTRICT.
2. THOMAS SEBASTIAN @ TOMY, AGED 50 YEARS
S/O. DEVASSIA, THOOMBUNGAL, FATHIMAPURAM
CHANGANASSERY-686 538, KOTTAYAM DISTRICT.

BY ADVS. SRI.K.R.AVINASH (KUNNATH)
SRI.ABDUL RAOOF PALLIPATH
SMT.MIJI JOHN

ADV. SRI.C.H.ABDUL RASAC

RESPONDENT:

NIL

THIS MATRIMONIAL APPEAL HAVING COME UP FOR ADMISSION ON
19.03.2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**K.T.SANKARAN &
BABU MATHEW P. JOSEPH, JJ.**

Mat. Appeal No.953 of 2014 (F)

Dated this the 19th day of March, 2015

JUDGMENT

K.T.Sankaran, J.

The appellants filed O.P.(Div.)No.145 of 2013 on the file of the Family Court, Alappuzha under Section 10A of the Divorce Act. The Original Petition was filed on 2.2.2013. After the period of six months, on 25.5.2014, both the appellants/petitioners filed I.A.Nos.747 of 2014 and 748 of 2014 to advance the case and to grant divorce. The affidavit accompanying the applications were sworn to by appellant No.2, the husband, for and on behalf of his wife as well. The case was advanced to 28.6.2014. On that day, both the appellants/petitioners appeared before Court. The Court directed them for counselling. Later when the petition was moved, the Court below dismissed the same on the ground that eighteen months' period was over from the date of filing of the Original Petition. The judgment passed by the court below dismissing the Original Petition (Divorce) is under challenge in this Matrimonial Appeal.

2. Heard the learned counsel for the appellants. The court below dismissed the application on hyper-technical grounds. The

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parties to the marriage want a divorce by mutual consent, as provided under Section 10A of the Act. They jointly moved the application after the period of six months and before the period of eighteen months. It is true that the affidavit was filed by the husband for and on behalf of the wife as well. Both the parties are the petitioners in the application. Both of them were present before Court. It was not necessary for the Court to have directed them for counselling. Later when they appeared before Court, the Court said that eighteen months was over. To our mind, the view taken by the court below was unjust.

Accordingly, Matrimonial Appeal is allowed, the judgment passed by the court below is set aside and O.P.(Div) No.145 of 2013 is allowed and a decree dissolving the marriage between Rosamma @ Pushpa Zacharia and Thomas Sebastian @ Tomy is granted with effect from today.

(K.T.SANKARAN)
Judge

(BABU MATHEW P. JOSEPH)
Judge

ahz/