

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.T. SANKARAN

MONDAY, THE 8TH DAY OF JUNE 2015/18TH JYAISHTA, 1937

WP(C).No. 5911 of 2015 (L)

PETITIONER:

RAJESH RAJAN, AGED 27 YEARS
S/O. RAJAN, RAJANANDANAM, HOUSE NO.40
NETAJI NAGAR, PULAMON, KOTTARAKKARA
NOW WORKING AS ANALYSIS ENGINEER,
AXIS CADES (PVT) LTD., HAMBURG, GERMANY
REP. BY HIS FATHER AND POWER OF ATTORNEY HOLDER
K.S. RAJAN, S/O. SREEDHARAN, RAJANANDANAM,
HOUSE NO.40, NETAJI NAGAR, PULAMON, KOTTARAKKARA.

BY ADV. SRI.T.I.ABDUL SALAM

RESPONDENTS:

1. CHIEF REGISTRAR GENERAL OF MARRIAGES (COMMON),
THIRUVANANTHAPURAM - 695 001.
2. REGISTRAR OF MARRIAGES (COMMON),
TRISSUR- 680 001.
3. NEETHU VASANTH, D/O. VASANTHAN,
HOUSE NO.93, SUBHASH NAGAR
KOORKANCHERRY, TRISSUR - 680 571,
(HAILING FROM 3/582, MOOTHERY HOUSE,
CHAZHOOR PO, CHAZHOOR, TRISSUR)

R1 AND R2 BY SENIOR GOVERNMENT PLEADER
SRI.MANOJ P. KUNJACHAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
08.06.2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER'S EXHIBITS

- EXT P1: PHOTOCOPY OF THE MARRIAGE CONSENT LETTER (വിവാഹ പത്രിക) DATED 27.03.2014 ISSUED FROM THE SNDP BRANCH NO.1603, TRISSUR TOWN.
- EXT P2: PHOTOCOPY OF THE MARRIAGE CONSENT LETTER (വിവാഹ പത്രിക) DATED 11.04.2014 ISSUED FROM THE SNDP BRANCH NO.852, KOTTARAKKARA TOWN.
- EXT P3: PHOTOCOPY OF THE CERTIFICATE OF MARRIAGE DATED 26.08.2013 ISSUED BY THE 2ND RESPONDENT.
- EXT P4: PHOTOCOPY OF THE APPLICATION DATED 24-12-2014 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

AHZ/

“C.R.”

K.T.SANKARAN, J.

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Dated this the 8th day of June, 2015

JUDGMENT

The question involved in this Writ Petition is whether a marriage registered under the provisions of the Kerala Registration of Marriages (Common) Rules, 2008 could be cancelled at the instance of one of the parties to the alleged marriage on the ground that the marriage was not solemnized and the marriage certificate was obtained only to facilitate both parties to go abroad.

2. The petitioner states that he is working as an Analysis Engineer in a company in Germany. The averments in the Writ Petition, inter alia, are the following: During 2013, the parents of the petitioner came across the matrimonial profile of Neethu Vasanth, the third respondent. At that time, the third respondent was undergoing her medical studies in Valgograd State Medical University in Russia. She was expected to complete her studies by June, 2014. Since the profiles of the petitioner and the third

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respondent were found matching, on 25.8.2013, a marriage fixation ceremony was held at Das Continental Hotel, Thrissur. It was also decided to solemnize the marriage on 17.8.2014, by which time, the third respondent was expected to complete her studies in Russia. To show that the marriage was scheduled to be solemnized on 17.8.2014, the petitioner relies on 'Vivahapathrika' issued by the SNDP Sakha at Kottarakkara and Thrissur Town South (Exts.P1 and P2). For the purpose of marriage, the petitioner could take a leave for only three to four weeks and it was difficult to secure visa papers for the third respondent during such a short visit. In these circumstances, the parents of the third respondent advised the petitioner to secure a marriage certificate and apply for visa papers sufficiently early so that the petitioner could take the third respondent along with him to Germany immediately after solemnization of the marriage on 17.8.2014. Therefore, on 26.8.2013, on the next day on which the marriage was fixed, the petitioner, the third respondent and their parents went to the office of the Registrar of Marriages (Common), Thrissur and submitted an application for registration of the marriage and for obtaining the marriage certificate. Accordingly, Ext.P3 marriage certificate was issued by the Registrar of Marriages

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(Common), Thrissur on 26.8.2013 showing that the marriage of the petitioner and the third respondent was solemnized on 25.8.2013.

3. It is stated in the Writ Petition that after the fixation of the marriage, the petitioner and the third respondent were interacting with each other and exchanging e-mails. While so, the relationship between the petitioner and the third respondent got strained due to various reasons. The relationship between the parents of the petitioner and that of the third respondent also got strained. It is stated that “due to incompatibility of temperament, approaches, attitude and mindsets, it was impossible for the petitioner to get united in marriage with the third respondent”.

4. The petitioner, represented by his power of attorney holder (K.S.Rajan, father of the petitioner), filed Ext.P4 application dated 24.12.2014 to the Registrar of Marriages (Common), Thrissur to cancel “the entries relating to the petitioner and respondent dated 26.8.2013 in the Marriage Register maintained by the Trichur Corporation under Kerala Registration of Marriages Rules (Common) 2008”. The application was filed under Rule 13(1) of the Kerala

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Registration of Marriages (Common) Rules, 2008. In the application it is stated thus:

“6. The Marriage Certificate was obtained bonafide, with no intention to commit any fraud upon anybody and in fact the suggestion for securing the Marriage Certificate came from the parents of the respondent and they secured the presence of respectable witnesses before the Marriage Registrar.”

5. It is stated that though the Registrar of Marriages received Ext.P4 application, he refused to entertain the same and returned the application to the petitioner. The relief prayed for in the Writ Petition is to issue a writ of mandamus or any other appropriate writ, order or direction directing the Chief Registrar General of Marriages (Common), Thiruvananthapuram and the Registrar of Marriages (Common), Thrissur (respondents 1 and 2) to exercise the jurisdiction under Rule 13 of the Kerala Registration of Marriages (Common) Rules, 2008, after receiving Ext.P4 application. There is also a prayer to direct the second respondent to cancel the entry in the Register of Marriages (Common) in the matter of Ext.P3 certificate exercising his power and authority under Rule 13 of the Kerala Registration of Marriages (Common) Rules, 2008.

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6. Notice issued in the Writ Petition to the third respondent was returned stating that there was no such addressee. Later, service of notice was completed by newspaper publication. There is no appearance for the third respondent.

7. Respondents 1 and 2 opposed the reliefs prayed for in the Writ Petition. It is submitted by the learned Government Pleader that Ext.P4 application submitted by the petitioner is not maintainable in law and Rule 13 cannot be invoked in a case of this nature.

8. The Kerala Registration of Marriages (Common) Rules, 2008 was published following the direction of the Supreme Court in **Seema v. Ashwani Kumar ((2006) 2 SCC 578 = 2006 (1) KLT 791 (SC))**, wherein the Supreme Court directed the States to frame rules to register the marriages. The Supreme Court held thus:

“15. As is evident from narration of facts, though most of the States have framed rules regarding registration of marriages, registration of marriage is not compulsory in several States. If the record of marriage is kept, to a large extent, the dispute concerning solemnisation of marriages

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between two persons is avoided. As rightly contended by the National Commission, in most cases non-registration of marriages affects the women to a great measure. If the marriage is registered it also provides evidence of the marriage having taken place and would provide a rebuttable presumption of the marriage having taken place. Though, the registration itself cannot be a proof of valid marriage per se, and would not be the determinative factor regarding validity of a marriage, yet it has a great evidentiary value in the matters of custody of children, right of children born from the wedlock of the two persons whose marriage is registered and the age of parties to the marriage. That being so, it would be in the interest of the society if marriages are made compulsorily registrable. The legislative intent in enacting Section 8 of the Hindu Act is apparent from the use of the expression "for the purpose of facilitating the proof of Hindu Marriages".

9. Rule 6 of the Kerala Registration of Marriages (Common) Rules, 2008 (hereinafter referred to as 'the Rules') provides that all marriages solemnized in the State after the commencement of the Rules shall compulsorily be registered irrespective of religion of the parties. However, marriages, the registration of which is compulsory under any other statutory provisions, need not be registered under

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the Rules of 2008. The registration of marriages solemnized prior to the date of commencement of the Rules shall be optional. The marriages shall be registered under the Rules with the Local Registrar within the local area of whose jurisdiction the marriage is solemnized. The Local Registrar shall maintain a Register of Marriages (Common) in Form No.III. Rule 9 provides that the parties to a marriage shall prepare a memorandum in duplicate in Form No.I appended to the Rules along with one set of photos and shall submit the same to the Local Registrar within a period of forty five days from the date of solemnization of their marriage. The memorandum shall be signed by both the parties to the marriage and two other persons who witnessed the marriage. In the case of a marriage solemnized as per religious rites, a copy of the certificate of marriage issued by the religious authority concerned or a declaration from a Gazetted Officer/Member of Parliament/Member of Legislative Assembly/ Member of Local Self Government Institution in Form No.II may be considered as a document in proof of the marriage. Rule 10 provides for registration of marriages after one year of the solemnization of marriage, in which case, a memorandum shall be filed together with a declaration from a Gazetted Officer/Member of

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Parliament/Member of Legislative Assembly/ Member of Local Self Government Institution in Form No.II or with any other document to prove the solemnization of marriage to the satisfaction of the Registrar General concerned. The Registrar General means the Registrar General of Marriages (Common) appointed under Rule 4, while the Local Registrar means Local Registrar of Marriages (Common) appointed under Rule 5 of the Rules. Rule 11 provides for the procedure for registration of marriage. The parties to the marriage shall personally appear before the Local Registrar prior to the registration of the marriage and they shall put their signature in the space provided for the purpose in the Register of Marriages (Common). Thereafter, the Local Registrar shall record in the Register of Marriages (Common) to the effect that the marriage has been registered and he shall put his signature and affix the office seal. The Local Registrar is given the power to make such further enquiry as he deems fit, where any doubt arises regarding the correctness of any entry in the memorandum. Rule 11(1) provides that the entries relating to each marriage shall be given registration numbers consecutively for each calendar year and separate registers shall be maintained for each calendar year. Sub-rule (3) of

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Rule 11 provides that the Local Registrar shall forward the duplicate copies of the memorandum received in a month to the Registrar General concerned before the 10th day of every subsequent month. The originals of the memorandum received by the Local Registrar and duplicate copies forwarded to the Registrar General concerned shall be filed as permanent records.

10. Rule 13 provides for correction and cancellation of entries, which reads as follows:

“13. Correction and cancellation of entries.-- (1) If the Local Registrar is satisfied either *suo motu* or on application by the parties, that any entry in the Register of Marriages (Common) is erroneous in form or substance or has been fraudulently or improperly made, he shall subject to conditions in sub-rule (2), make suitable corrections including cancellation of registration, noting the evidence for such corrections in the margin of the Register of Marriages (Common), without any alteration of the original entry and shall sign the marginal entry with the date of correction or cancellation and shall forward the particulars of the corrections to the Registrar General concerned.

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(2) All corrections in material particulars like name, age, date, etc., and cancellation shall be done only with the sanction of the Registrar General concerned:

Provided that no such correction or cancellation shall be made without affording a reasonable opportunity of being heard to the parties concerned.

(3) On getting sanction under sub-rule (2), the Local Registrar shall effect the correction or cancellation, as the case may be, in the Register of Marriages (Common).

(4) An amount of rupees one hundred shall be charged as fee for making corrections in the Register of Marriages (Common) other than clerical mistakes.

(5) In every case in which an entry is corrected or cancelled under this Rule, intimation thereof shall be sent to the parties to the marriage and the Local Registrar shall make a report giving necessary details to the Registrar General concerned.”

11. Under sub-rule (1) of Rule 13, the Local Registrar has jurisdiction for correction and cancellation of entries and for

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cancellation of registration, either suo motu or on application. The jurisdiction under Rule 13 can be exercised if an entry is erroneous in form or substance or has been fraudulently or improperly made. The jurisdiction to be exercised under sub-rule (1) of Rule 13 is subject to conditions in sub-rule (2), which provides that all corrections in material particulars like name, age, date etc. and the cancellation shall be done only with the sanction of the Registrar General concerned. No such correction or cancellation shall be made without affording a reasonable opportunity of being heard to the parties concerned. When the parties make an application jointly stating that their marriage was solemnized and when they produce proof of the same, the Local Registrar is duty bound to register the marriage. The power of correction is regarding any mistake in the marriage certificate. The mistakes may be either those committed by the Local Registrar while making the entries in the certificate; or the mistakes may be those mistakes which the parties committed while submitting the memorandum for registration. Cancellation of the entries can be made only if the Local Registrar is satisfied that an entry in the Register of Marriages (Common) is erroneous in form or substance or has been fraudulently or improperly made. There is no

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case for the petitioner that he had any intention to commit any fraud. Registration of a marriage to secure visa would be made only on the volition of the parties to the alleged marriage. They cannot get those entries cancelled once they changed their mind. The authority under the Rules exercises a very serious function of registering marriages. A marriage certificate is a permanent record. The authorities under the Rules are expected to keep the records as permanent records. The entries made in the memorandum and which were later carried out in the Marriage Register cannot be altered except on the ground of errors or on the ground that the entries were fraudulently or improperly made. The parties who submitted the memorandum in Form No.I with a declaration that the details shown therein are true to the best of their knowledge and belief cannot turn round and say that the said declaration was made for a particular purpose and, therefore, the entries are liable to be corrected and the registration is liable to be cancelled. The entries in the Marriage Register and the marriage certificate are not liable to be corrected at the whims and fancies of the parties to the marriage. The corrections are to be carried out only in the manner provided under Rule 13 of the Rules. Wide powers are given to the Local Registrar for correction of entries

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and for cancellation of entries and registration. There may be instances where an entry relating to marriage was fraudulently made and the victim thereof is entitled to approach the Registrar for cancellation of the entries or registration. In the case of such fraudulent acts, one of the parties to the marriage may be a victim of fraud. But the parties to the marriage cannot approach the Local Registrar and say that for a particular purpose they made a false entry and since that purpose could not be achieved, they want to rescind from the declaration. That is not the jurisdiction to be exercised by the Local Registrar under Rule 13. That is not the liberty provided to the parties to the marriage to apply before the Local Registrar for correction and cancellation of the entries.

12. The remedy of the petitioner lies elsewhere and he cannot make any application under Rule 13 of the Rules for the purposes mentioned in the application. It is relevant to note that the petitioner has not approached the Local Registrar under Rule 13 on his own. He has executed a power of attorney for that purpose. I do not think that a power of attorney holder of one of the parties to the marriage would be entitled to make an application under Rule 13. A power of

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attorney holder would not be entitled to say that an entry in the Register of Marriages (Common) or in the memorandum for registration is erroneous and therefore the entry is to be corrected or the registration is liable to be cancelled. A party to a marriage cannot relegate the right to apply under Rule 13 to a power of attorney holder.

For the aforesaid reasons, the Writ Petition is dismissed.

(K.T.SANKARAN)
Judge

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