

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 1ST DAY OF JUNE 2015/11TH JYAISHTA, 1937

W.P.(C).No.13276 of 2015 (H)

PETITIONER(S):-

DEVIKA RAJ, AGED 25 YEARS, D/O. RAJENDRAN PILLAI,
RESIDING AT T.C.8/1976(3),
BN-434.A, BAPUJI NAGAR, PONGUMOODU,
MEDICAL COLLEGE P.O., THIRUVANANTHAPURAM-695011.

BY ADVS.SRI.R.S.KALKURA
SRI.M.S.KALESH
SRI.HARISH GOPINATH
SMT.R.BINDU

RESPONDENT(S):-

1. STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
DEPARTMENT OF REGISTRATION, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695001.
2. THE INSPECTOR GENERAL OF REGISTRATION,
VANCHIYOOR, THIRUVANANTHAPURAM-695035.
3. THE SUB REGISTRAR (MARRIAGE OFFICER),
PATTOM, THIRUVANANTHAPURAM-695025.

R1 TO R3 BY GOVERNMENT PLEADER SRI.S.JAMAL.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
01-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS:-

- EXHIBIT P1: TRUE COPY OF THE RELEVANT PAGES OF THE PASSPORT
ISSUED BY THE PASSPORT OFFICER, THIRUVANANTHAPURAM
IN THE NAME OF THE PETITIONER.
- EXHIBIT P2: THE TRUE COPY OF THE RELEVANT PAGE OF THE PASSPORT
OF SANDEEP DEVANATHA PILLAI.
- EXHIBIT P3: TRUE COPY OF THE ONLINE NOTICE SUBMITTED BY THE
PETITIONER UNDER THE SPECIAL MARRIAGE ACT.
- EXHIBIT P4: THE TRUE COPY OF CIRCULAR NO.R.R.3-25537/00 DATED 8.8.2014
ISSUED BY THE SECOND RESPONDENT.
- EXHIBIT P5: TRUE COPY OF THE STATEMENT IN LIEU OF CERTIFICATE OF
NON-IMPEDIMENT ISSUED BY THE FOREIGN AFFAIRS TRADE AND
DEVELOPMENT, CANADA DATED 27.3.2015.
- EXHIBIT P6: TRUE COPY OF THE AFFIDAVIT DULY SWORN BY
SANDEEP DEVANATHAPILLAI BEFORE THE NOTARY PUBLIC.
- EXHIBIT P7: THE TRUE COPY OF THE JUDGMENT DATED 9.12.2014 IN
WPC NO.32876 OF 2014.
- EXHIBIT P8: TRUE COPY OF THE JUDGMENT IN WPC NO.29057 OF 2014
DATED 5.11.2014.

RESPONDENT(S)' EXHIBITS:-

NIL.

Vku/-

[true copy]

K. Vinod Chandran, J

W.P.(C).No.13276 of 2015-H

Dated this the 01st day of June, 2015

JUDGMENT

The petitioner, an Indian citizen, desires to enter into a marriage with one Sandeep Devanatha Pillai, who is a person of Indian origin; but now a Canadian citizen. The petitioner, residing under the jurisdiction of the 3rd respondent, made an application for contracting the said marriage under the Special Marriage Act, 1954. An objection was raised by the 3rd respondent, allegedly on the ground that the marriage is intended to be entered into with a Canadian citizen and, hence, the provisions of the Special Marriage Act cannot be invoked.

2. In fact, the said issue was already considered by this Court in ***Rajeev v. State of Kerala* [2001 (1) KLT 578]**, which relied on a decision of High Court of Himachal Pradesh in ***Marian Eva v. State of Himachal Pradesh* [AIR 1993 Himachal Pradesh 7]**. The Court categorically found that the Special Marriage Act does not contain any prohibition for solemnisation of the marriage, if one of the parties is a foreigner. Another

learned Single Judge of this Court also found to the same effect in Exhibit P8 judgment.

3. A reading of the provisions of the Special Marriage Act would also indicate that, Section 4 contemplates a marriage between “any two persons” could be solemnized under the Act; if the conditions specified therein are fulfilled. To satisfy the officer of the conditions stated therein, the intending bridegroom has also given Exhibits P5 and P6. Exhibit P5 indicates that there is no provision as per the Canadian law for issuance of a certificate that a Canadian citizen is free to marry and that such a certificate is not required under the Canadian law. Exhibit P6 is the affidavit given by the intending bridegroom, which indicates that he satisfies the conditions in sub-clauses (a) to (d) of Sections 4 of the Act.

4. It is also relevant that, by Exhibit P4 the Government had answered a clarification made by the Inspector General of Registration and specifically indicated after citing the aforesaid decisions that the word “person” used in Section 4 of the Special Marriage Act does not indicate either one of the

parties or both the parties should be citizens of India. The said communication is also accepted by Exhibit P4.

5. The learned Government Pleader contends that there is no Marriage Officer appointed by the Government of India in the Embassy of India at Canada and there is no provision for sending a communication as required under sub-section (3) of Section 6 of the Act.

6. Sub-section (3) of Section 6 requires only that when either of the parties to an intended marriage is not permanently residing within the local limits of the Marriage Officer, then the Marriage Officer of the district in which either of the parties have their residence should be informed of the marriage.

7. In the present case, the petitioner, a citizen of India, is a resident within the jurisdiction of the 3rd respondent. The Canadian citizen, who she intends to marry, is not having permanent residence in India and even if a Marriage Officer is appointed by the Government of India in its Embassy at Canada, there would be no requirement of informing such Marriage

Officer, since the intending bridegroom is a Canadian citizen. In such circumstance, the application of the petitioner shall be accepted and notice shall be given by the 3rd respondent as required under the Act and the petitioner permitted to contract the marriage as intended by her, which shall be registered under the Act.

The writ petition is allowed.

Sd/-
K.Vinod Chandran
Judge.

vku/-

[true copy]