

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2016

CORAM

THE HONOURABLE MR. JUSTICE B.RAJENDRAN

W.P.No.34934 of 2016

S.Abdul Rahman

... Petitioner

Vs

The Sub-Registrar-Triplicane
Office of the Sub-Registrar of Triplicane
Chennai.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus directing the respondent to waive 7 days from the time limit of 30 days mentioned under Section 16 of the Special Marriage Act, 1954 and consequently, direct him to register the marriage held between the petitioner and the petitioner's wife N.Jarina Banu on 30.05.2010 at 'Samuthya nala koodam, Mirbakshi ali Street, Royapettah, Chennai - 14.

For Petitioner : Mr.S.Saravanan

For Respondents : Mr.A.N.Thambidurai, Spl. G.P.

O R D E R

This writ petition has been filed seeking a writ of mandamus directing the respondent to waive 7 days from the time limit of 30 days mentioned under Section 16 of the Special Marriage Act, 1954 and consequently, direct him to register the marriage held between the petitioner and the petitioner's wife.

2. The petitioner has got married to one N.Jarina Banu on 30.05.2010, in 'Sammuthya nala koodam, Mirbakshi ali Street, Royapettah, Chennai - 14. The said marriage was solemnized by one S.K.Mohideen, and a Certificate from the Secretary, Akbar Basha Mosque & Burial Ground, Dr. Natesan Road, Chennai - 600 005 was also issued. According to the petitioner, the marriage is valid as per the stigma rendered under Muslim law. Pursuant to the wedlock, the petitioner had two children. The first child, i.e., A.Mohamed Adil, was born on 11.06.2011, in

Government Kasthuribai Gandhi Women and Children Hospital, Triplicane, Chennai 600 005, and the same was duly registered on 14.06.2011. The second child, i.e., A.Thasneem Kauser, was born on 07.03.2014, in Government Kasthuribai Gandhi Women and Children Hospital, Triplicane, Chennai 600 005, and the same was duly registered on 04.07.2015. Thereafter, as the petitioner wanted to take his family to his working place, 'Quartar', he obtained for Marriage Certificate to the Secretary, Government of Chief Kazi, Chennai, on 24.06.2015, for the solemnization of marriage that had taken place on 30.05.2010. Now, for the purpose of getting Visa, he needs a regular Marriage Certificate. Therefore, the petitioner had thought it fit to have the marriage duly registered under the Special Marriage Act and made an application.

3. As per the conditions laid down under Section 15 of the Special Marriage Act, 1954, a condition is imposed that the parties should make a publication seeking for no objection and after 30 days from the date of publication and if any objection is received, to conduct enquiry and then the certificate will have to be issued. Since the period of leave for the petitioner expires on 15.10.2016 and he has applied for the Certificate under Special Marriage Act, as early as on 21.09.2016 and the publication was also made on 21.09.2016 and the 30 days period expires only on 21.10.2016, the petitioner seeks waiver of 30 days notice by the concerned authorities, as otherwise, he will have to wait for one more year till he returns which, he normally will not get within one year period. Therefore, he seeks waiver of 7 days in place of 30 days.

4. Admittedly, through the wedlock, the petitioner has got two children and the marriage of the petitioner had already been duly registered by The Secretary, Government of Chief Kazi, Chennai. Learned counsel also relied upon the Division Bench judgment of the Kerala High Court in W.P.No.1760 of 2006 (CDJ 2007 Ker HC 130) wherein, in identical matter for the purpose of Visa, when the person got married and has got two children, the Honourable Kerala High Court held that if the parties are able to show sufficient materials, to satisfy the parentage of the children, then the authorities shall take steps to issue certificate by waiving the notice period.

5. Learned counsel for the respondent would only contend that it is a mandatory provision as contemplated under Section 16 of the Special Marriage Act. Further, as per Section 16 of the said Act, the petitioner should establish that the marriage has been duly and properly conducted and that is why, the objection has been sought for and normally it will not be waived.

6. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

7. It is clear that the petitioner got married to one N.Jarina Banu and out of their wedlock, they have got two children and the copy of their birth certificate had also been duly furnished. All the more, the petitioner had also furnished in the typed set of papers the Marriage Certificate obtained from The Secretary, Government of Chief Kazi, Chennai. In this regard, the Judgment rendered by the Division Bench of Kerala High Court is usefully extracted :

"In the matter of registration of marriage, the Act refers to two situations. One is in respect of solemnization of Special Marriages, as coming under Chapter II of the Act. Notice of intended marriage has to be there in the prescribed form and publication is mandatory. Thereby third parties get opportunity to raise objections about the proposed marriage. Chapter II of the Act, however, refers to registration of marriage celebrated in other forms. It could be seen from the Statement of Objects and Reasons that one of the intention in bringing the enactment to give opportunity to register the marriages and thereby confer benefits under the Act to the needy. Of course, the procedure for registration, spoken to by S.16 refers to the notice, but conspicuously the detailed formalities as prescribed for solemnization of a marriage are not there. This may lead to a presumption that the application and the registration is formal in nature and intended to ensure that there is no attempt to over reach the stringent stipulations, which are preconditions for a valid marriage, and there is no trifling with solemnity of marital relations.

8. We are satisfied that the present case, on facts, requires to be treated as a special case, as the counsel for the appellants has been able to highlight the extreme urgency in the matter. It is stated that the couple have two children. Prime facie the request therefore for a relaxation is not found objectionable.

9. The attempt should be to ensure that bona fides is spelt out. Therefore, we direct that if the appellants make available sufficient materials to show the parentage of the two children, referred to in the petitioner, the respondent will have authority to proceed with

the application forthwith. We think the rest of the conditions are thereby automatically taken care of. If such materials are placed, without waiting for the lapse of notice period, taking notice of the appellants' requirement to depart on 20th September 2006, appropriate certificate may be issued to them, as envisaged under Chapter III of the Act."

8. The case on hand is similar to that of the judgment referred above. Since the petitioner has also got already two children and their birth has also been duly registered and the fact that the petitioner has asked for only the waiver of the thirty days notice, I am of the view that the relief as sought for by the petitioner can be granted. However, it is for the authority concerned to verify whether the petitioner has satisfied the other conditions, required under Section 15 of the Special Marriage Act and consider his case in lieu of the judgment rendered by the Division Bench of Kerala High Court.

This writ petition is disposed with the above observations.
No costs.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

smi

To
The Sub-Registrar-Triplicane
Office of the Sub-Registrar of Triplicane
Chennai.

+1cc to Mr.S. Saravanan, Advocate, S.R.No.56722
+1cc to the Government Pleader, S.R.No.56919

SCD(CO)
EU(05/10/2016)

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