



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05-11-2025

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THE HONOURABLE MR.JUSTICE S. SOUNTHAR

CRP No. 5257 of 2025

1. M.Kumar

S/o. Manjan, No.40/1, 1st Street,
Vijayaragavapuram, Saligramam,
Chennai 93.

2.Nancy Basilica

D/o. Sebastin, No.78, Rasu Street,
Subam Nagar, Old Pallavaram,
Chennai 117.

Petitioner(s)

Vs

NIL

Respondent(s)

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India to set aside the order dated 24.07.2025 in OP.SR.No. 3223/2025 on the file of the Principal Judge, Family court at Chennai by allowing the Revision and thereby direct the Principal Judge Family court, Chennai to number the OP.SR.No. 3223/2025.

For Petitioner(s): Ms. Srividhya aravindan
For Ms. G.Charuvasine



ORDER

This civil revision petition is filed, challenging the order passed by the learned Principal Judge, Family Court, Chennai, rejecting the petition in OP Sr No.3223 of 2025 filed by the petitioner, seeking divorce under Section 10(A) of the Indian Divorce Act on the ground that the statutory minimum period of 2 years has not been completed on the date of presentation of the O.P.

2. The petitioner/ husband and the respondent/wife filed the above said petition seeking divorce under Section 10(A) of Indian Divorce Act on the ground of mutual consent. The marriage between the parties got solemnized on 13.05.2024 and the petition for divorce on the ground of mutual consent was filed on 11.06.2025. The said petition was rejected by the court below by citing Section 10(A) of Indian Divorce Act “**Dissolution of marriage by mutual consent**”, which says that the petition shall be filed only after two years of separation.

3. Section 10(A) of Indian Divorce Act reads as follows.

10 A. Dissolution of marriage by mutual consent.

(1) subject to the provisions of this Act and the rules made thereunder, a petition for dissolution of marriage may be presented to the District Court by both the parties to a marriage together, whether such marriage was solemnized before or after the commencement of



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the Indian Divorce (Amendment) Act, 2001 (51 of 2001), on the ground that they have been living separately for a period of 2 years or more, that they have not been able to live together and they have mutually agreed that the marriage should be dissolved.

(2) On the motion of both the parties made not earlier than six months after the date of presentation of the petition referred to in subsection (1) and not later than eighteen months after the said date, if the petition is not withdrawn by both the parties in the meantime, the court shall, on being satisfied, after hearing the parties and making such inquiry, as it thinks fit, that a marriage has been solemnized and that the averments in the petition are true, pass a decree declaring the marriage to be dissolved with effect from the date of decree.

4. The validity of the said section was challenged before the Kerala High Court in **Saumya Ann Thomas V. The Union of India** reported in **2010 KLT 1869** mainly on the ground that this stipulation offends the right to equality under Article 14 of Constitution of India, as it prescribed a longer period for persons covered under this Act, as against the prescribed time limit of one year under Hindu Marriage Act, Parsi Marriage and Special Marriage Act. Having agreed with the contention raised by the petitioner, the Division Bench of Kerala High Court held that the period prescribed under Section 10(A) of the Act shall be read down as one year. The relevant observation made by the Division Bench of Kerala High Court reads as follows.



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43. Having considered all the relevant circumstances, we are of the opinion that the stipulation of a higher period of two years of mandatory minimum separate residence for those to whom the Divorce Act applies, in contra-distinction to those similarly placed to whom Section.13B of the Hindu Marriage Act, Sec.32B of the Parsi Marriage and Divorce Act and Sec.28 of the Special Marriage Act would apply, offends the mandate of equality and right to life under Arts. 14 and 21 of the Constitution.

44. What is to be the consequent order is the next question. Applying the doctrine of severability as has been held in D.S.Nakara V. Union of India (1983 SC 130) we are satisfied that we will be well within the power of this court to read down such an unconstitutional of two years can be severed and can be read down to one year to bring it to be in conformity with the provisions of other laws to avoid the vice of unconstitutionality.”

45. We come back to the facts of the case. The marriage was solemnized on 06.04.2008. Separate residence commenced on 21.09.2008. Separate residence has been there for a period of exceeding one year on the date of application. A period of six months has already elapsed from the date of filing of the petition. We are satisfied, in these circumstances, that a decree for divorce can be granted as prayed for by the petitioners under Sec.10A of the Divorce Act.



5. In **Kusum Ingots & Alloys Ltd., V. Union of India** reported in **(2004) 6 SCC 254** the Hon'ble Apex Court has held that once a constitutional provision of a Statute is declared unconstitutional by any one of the High Courts in India, the said decision shall have effect through out the territory of India. The relevant observation of Apex Court reads as follows.

“ 21. A parliamentary legislation when receives the assent of the President of India and published in an official Gazette, unless specifically excluded, will apply to the entire territory of India. If passing of a legislation gives rise to cause of action, a writ petition questioning the constitutionality thereof can be filed in any High Court of the country. It is not so done because a cause of action will arise only when the provisions consequences to the petitioner. A writ court, it is well settled would not determine a constitutional question in vacuum.

22 . The court must have the requisite territorial jurisdiction. An order passed on writ petition questioning the constitutionality of a Parliamentary Act whether interim or final keeping in view the provisions contained in Clause (2) of Article 226 of the Constitution of India, will have effect throughout the territory of India subject of course to the applicability of the Act



6. Therefore, it is clear if a High Court in India declares a Parliamentary Legislation as unconstitutional or read it down, it will have force through out India. In so far as such declaration is concerned, the order passed by the High Court will have extraterritorial operation through out India. Since the stipulation under Section 10(A) of Indian Divorce Act has been read down as one year by one of the High Courts in India, the same shall be applicable through out the territory of India.

7. In view of the same, the reason given by the Family Court for returning the OP on the ground that two years period has not been completed from the date of separation, is not acceptable to this court. Therefore, the impugned order passed by the Trial Court needs interference.

8. Accordingly, this civil revision petition is allowed and the impugned order passed by the learned Principal Judge, Family Court, Chennai in OP SR No.3223 of 2025, dated 24.07.2025 is set aside. The concerned court is directed to number the OP SR No.3223/2025, if it is otherwise in order and dispose of the same in accordance with law. There shall be no order as to costs.

05-11-2025

Internet: Yes

Index: **Yes**

Neutral citation: **Yes**

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To

The Principal District Judge,
Family Court, Chennai.



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S.SOUNTHAR J.

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