

(2009) 06 KL CK 0031
In the High Court Of Kerala
Case No : WP (C) No. 14660 of 2009 (B)

Nishana Mol N.

APPELLANT

Vs

Alappuzha Municipality and Another

RESPONDENT

Date of Decision : 26-06-2009

Acts Referred:

Kerala Registration of Marriages (Common) Rules, 2008 — Rule 9

Citation : AIR 2009 Ker 203 : (2010) 1 DMC 18 : (2009) 3 ILR (Ker) 270 : (2009) 2 KLJ 789 : (2009) 3 KLT 251 : (2011) 7 RCR(Civil) 704

Hon'ble Judges : Thottathil B. Radhakrishnan, J

Bench : Single Bench

Advocate : Rajit, for the Appellant; M.K. Chandramohan Das (S.C.), for the Respondent

Judgement

Thottathil B. Radhakrishnan, J.—In view of the directions of the Apex court in Smt. Seema Vs. Ashwani Kumar, , the Government of Kerala issued the Kerala Registration of Marriages (Common) Rules, 2008, hereinafter referred to as the "Common Rules", The question raised in this writ petition is as to whether both the parties to the marriage have to be present in person before the authority for registration of a marriage under the Common Rules. The marriage of the petitioner was solemnized on 8.3.2009, The couple submitted the memorandum for registration of their marriage, in Form No.1 prescribed under the Common Rules before the Local Registrar, an officer so appointed in terms of Rule 5 of the common Rules. The petitioner says that the certificate of marriage issued by the religious authority concerned, as document in proof of the marriage, and other relevant materials were produced along with the memorandum. The husband of the petitioner returned to a foreign country where he works. The petitioner complains that the Local Registrar is insisting on the presence of both the parties to the marriage for registration. That complaint is not disputed, but is corroborated by the submissions on behalf of the respondents.

2. The learned counsel for the petitioner argued that in view of the provisions in

Rule 9 of the Common Rules, there is no compulsion that both the parties to the marriage should be present before the Local Registrar. He justifies that view on the common Rules by pointing out that the registration under the common Rules cannot constitute a marriage but such registration is intended only to evidence a marriage which is solemnized otherwise.

3. Per contra, the learned counsel for the respondents submitted that the insistence on the appearance of both the parties to the marriage is only to exclude possible fraud.

4. In *Seema* (supra), it was laid down that if the record of marriage is kept, to a large extent, dispute concerning solemnization of marriages could be avoided. If marriage is registered, it provides evidence of marriage having taken place and would provide a reputable 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, though such registration has great evidentiary value. Taking note of the views of the National Commission for Women that in most cases non-registration of marriages affects the women to a great measure, it was held that it would be in the interest of the society that marriages are made compulsorily registrable. It was accordingly that directions were issued for framing rules, following which, the Rules in hand were made.

5. Rule 6 of the Common Rules states that all marriages solemnized in the state, after the commencement of the Rules, shall compulsorily be registered irrespective of religion of the parties; except in cases where the marriage is compulsorily registrable under any other statutory provision or registration of such marriage is optional under any other statutory provisions and has been so registered. Therefore, the Common Rules 5 in no manner, deal with the solemnization of marriage but only provide for registration of marriages which are solemnized otherwise. Law recognises solemnization of marriage as per religious rites and solemnization before marriage officers appointed under statutory provisions like the Special Marriage Act, 1954, These factors are, in no way, affected by the coming Into force of the Common Rules, Sub-rule 3 of Rule 9 provides that in the case of a marriage solemnized before a Marriage officer appointed under any statutory provisions, the entries made in the Register of Marriages or any other register maintained for that purpose and certified by the Marriage officer may be the document in proof of the marriage for the purpose of registration of the marriage under the common Rules. As regards a marriage solemnized as per religious rites, a copy of the certificate of marriage Issued by the religious authority concerned may be a document in proof of the marriage. These provisions in the common Rules are noticed to ensure that the Rules are framed in such a manner that a mere registration under those Rules does not amount to a marriage.

6. With the aforesaid in mind, adverting to Rule 9(1) of the Common Rules, the parties to a marriage are required to prepare a memorandum in duplicate in

Form No.1 as appended to the Rules along with two separate sets of photos and submit the same to the Local Registrar within a period of forty-five days from the date of solemnization of their marriage. The memorandum for registration of marriage is required to be accompanied by certain documents and also two separate sets of photos, a registration fee is also prescribed, A procedure by way of a declaration from a Gazetted Officer/Member of Parliament/Member of Legislative Assembly etc. is prescribed in cases where marriages solemnized after the commencement of the Rules, in respect of which no memorandum is filed within the period of forty-five days and a period of one year has not expired from the date of such solemnization. Rule 10 provides for registration of marriage after one year on payment of fine etc, Rule 11 provides that on receipt of the memorandum, the Local Registrar shall verify the entries in the memorandum for its accuracy and completeness, and enter the particulars thereof in the Register of Marriages (Common) to be maintained in the prescribed form. Issue of certificate of marriage etc, follows. The Common Rules do not specifically provide for the appearance of both the parties to the marriage, before the Local Registrar, for the purpose of submitting the memorandum for registration of marriage or for any other purpose. The provisions clearly show that the presence of both the parties to the marriage is not necessary.

7. More Importantly, sub-rule 2 of Rule 11 provides that the Local Registrar may, for reasons to be, recorded, in writing, reject the memorandum for registration if it is not in proper form or not accompanied by the requisite fee and shall intimate the reason to the parties concerned, within a period of thirty days from the date of such rejection. Rule 13 provides for correction and cancellation of entries on application or suo motu. Any decision of the Local Registrar can be subjected to an appeal before the Registrar General concerned under Rule 16 and such appellate decision could be challenged in revision before the Chief Registrar General under Rule 17, These provisions show that in the event of the Local Registrar being doubtful of any material provided in support of the memorandum for registration, he can consider the reliability of such material but such power does not extend to any adjudication as to the factum of marriage. However, having regard to the objects sought to be achieved by the making of the Rules following the directions in Seema (supra), it is appropriate that in cases where the Local Registrar has reasonable doubt as to the, identity of the persons, it may be necessary, in given cases, to obtain the presence of both the parties to the marriage. Insistence on appearance cannot be the rule; but the exception. In the aforesaid view of the matter, the credibility of the materials produced by the petitioner, not being doubted by the respondents, the petitioner's request for registration of her marriage, as placed on record through the memorandum for registration of marriage in terms the Common Rules, ought to be acted upon without insisting on the presence of either or both of the parties, if the memorandum is otherwise in order.

In the result, this writ petition is ordered as above, further directing that

registration and issuance of certificate in the light of what is stated above be done within a period of one month from the date of receipt of a copy of this judgment.