

(1997) 08 KL CK 0029
In the High Court Of Kerala
Case No : O.P. No. 12980 of 1997-T

P. Ramesh Kumar

APPELLANT

Vs

Secretary, Kannapuram Grama Panchayat and Another

RESPONDENT

Date of Decision : 12-08-1997

Acts Referred:

Hindu Marriage Act, 1955 — Section 1(2), 2(1), 2(3), 5, 8
Kerala Registration of Hindu Marriage Rules, 1957 — Rule 6

Citation : AIR 1998 Ker 95 : (1997) 2 CivCC 273 : (1997) 2 DMC 399 : (1998) 1 ILR (Ker) 757 : (1997) 2 KLJ 426 : (1997) 4 RCR(Civil) 285

Hon'ble Judges : K.A. Abdul Gafoor, J

Bench : Single Bench

Advocate : A.K. Basheer, for the Appellant; C.K. Pavithran, Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Abdul Gafoor, J.—The petitioner is a resident of Kannapuram Amsom Desom. He was working in a Company in Tokyo in Japan during 1989-1996. He happened to fall in love with a Japanese lady employed in Japan and they decided to get married. Accordingly, when the petitioner's wife reached at Kannapuram Amsom Desom in India, their marriage was solemnised on 27-7-1996, according to the petitioner, in accordance with the customary rites prevalent in the Nair Community to which the petitioner belongs. The petitioner's wife is a Buddhist. It is further submitted by the petitioner that their marriage was solemnised under the "Hindu Marriage Act 1955". The petitioner, his wife and the newly born child want to go to Japan for employment purpose. For this purpose, the petitioner requires a Marriage Certificate relating to the marriage of the petitioner with his wife, Yumi Ito. The marriage was held on 29-9-1996. The petitioner made an application to the local authority. That was not considered. Therefore the petitioner has approached this Court seeking a direction to the first respondent to issue a Marriage Certificate relating to his marriage under the Hindu Marriage Act, 1955 and Kerala Registration of Hindu Marriage Rules 1957.

2. A counter affidavit has been filed on behalf of the first respondent. It is stated that no application had been received from the petitioner seeking registration of Marriage or copy of the certificate. It is further submitted that the application, if received, will be considered, examined and disposed of in accordance with the law governing the issue. It is also mentioned that as the petitioner's wife is not a Hindu, to whom alone the Hindu Marriage Act 1955 applies, such certificate cannot be issued.

3. The petitioner submits that the contention of the first respondent that his wife is not a Hindu and the Hindu Marriage Act is not applicable to their marriage is not correct. Placing reliance on Section 2(3) of the said Act, the petitioner contends that the expression "Hindu" in the Act includes "any person who is a Buddhist, Jaina or Sikh by religion". Therefore, the petitioner's wife is a persons to whom the Act applies. Therefore, their marriage is a Hindu Marriage coming within Section 5 of the said Act. It is also submitted that the expression "Hindu" in the Act includes "a person who, though not a Hindu by religion, is nevertheless a person to whom this Act applies". Therefore by Section 2(1)(b) read with Sub-section (3) of Section 2, the petitioner submits that the Act applies to the petitioner's wife. Therefore, he is entitled to a Certificate.

4. The registration has to be applied for in terms of Rule 6 of Kerala Hindu Marriage Registration Rules 1957 issued u/s 8 of the Hindu Marriage Act. The said section provides for issuance of rules regarding registration of Hindu Marriage upon conditions to be prescribed in such Rules. The said Rule provides that "as soon as may be possible and not later than fifteen days after solemnisation of a Marriage, the Husband may and in compulsory registration area, shall give or caused to be given are port about the Marriage for it being registered". The petitioner was unable to prove that he had made an application within fifteen days. The Rule is such that the application shall be filed on a date "not later than fifteen, days after the solemnisation of a Marriage". The petitioner contends that when the expression "as soon as may be possible" and the expression "not later than fifteen days" are read as disjunctive from each other, the fifteen days time shall not be insisted upon strictly. If more waitage is given to the expression "as soon as may be possible", the importance of the expression "not later than fifteen days", shall be read down and in such case the petitioner can apply on any date after the marriage within a reasonable time which, according to the petitioner he has followed. As the Rule had employed the expression as conjunctives to link the said two expressions, it makes the meaning that the application shall be made as soon as possible after the marriage and such application shall be not later than fifteen days. It is more so, because the registration is provided u/s 8 "for the purpose of facilitating the proof of Hindu Marriage" as Hindu Marriages are normally solemnised in accordance with the customs and to this there should be some proof. In such case, it is imperative that any application for registration shall be within a time frame, as otherwise, one applying for registration long after the marriage cannot get it registered as the registering authority may not be able to rely only on his

words without any evidence or proof of marriage. Therefore, the time frame contained in Rule 6 has to be strictly followed. A Circular dated 3-3-1997 had been pointed out by the petitioner to content that the registration is intended for the purpose of facilitating the proof of marriage and statistics and therefore application received out of time can also be accepted. That circular is issued by the Government. But it is not Government Order u/s 16(6). Even if it is a Government Order that cannot supplement the statutory Rules.

5. Even if the petitioner's contention with regard to the time frame is accepted, the petitioner cannot escape another clutch that the Act does not apply to the petitioner's wife. Admittedly by the petitioner, his wife is a Japanese Lady having Japanese Citizenship and is on temporary visit to India, her husband's place. Section 5 makes it clear that the Hindu Marriage shall be a marriage between two Hindus. That means that they shall be Hindus to which the Act applies. Section 1(2) of the Act specifically makes it clear that the Act extends to the whole of India except the State of Jammu and Kashmir and also that it applies to Hindus domiciled in the territories to which this Act extends, who are outside the said territories. Therefore, the Act will apply to a Hindu outside the territory of India, only, if he is a Hindu domiciled in the territory of India. Therefore, only those Hindus having permanent residence in India will be covered by the Hindu Marriages Act. In other words, the petitioner's wife, a Buddhist, can be taken as a Hindu for the purpose of application of this Act, as contained in Section 2(1) (b), if she should also satisfy the application clause, as contained in Section 1(2) (b) of the said Act. For that, she shall be domicile of India residing in Japan. Domicile means permanent resident. The petitioner's wife is not a permanent resident of India and therefore the Act does not apply to her. So the marriage between the petitioner and his Japanese wife is not a Hindu Marriage to be registered u/s 8 read with the Rules framed there under. Therefore the petitioner is not entitled to any of the reliefs prayed for. The Original Petition fails.

The Original Petition is dismissed.