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**(1985) 04 MAD CK 0043**  
**In the Madras High Court**

S. Manuel Santharaj

APPELLANT

Vs

Mrs. Jayarani and Another

RESPONDENT

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**Date of Decision :** 04-04-1985

**Acts Referred:**

Divorce Act, 1869 — Section 16, 17A

**Citation :** (1985) 2 MLJ 216

**Hon'ble Judges :** Sengottuvelan, J

**Bench :** Single Bench

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**Judgement**

Sengottuvelan, J.—In this matter a decree nisi for divorce was passed on 25.9.1984 providing for six months time for confirmation. The petitioner who is the husband has filed an affidavit on 14.3.1985 stating that six months time had passed since the date of passing of decree nisi and as such the order of divorce will have to be confirmed.

2. On a doubt being felt as to whether notice in that application is necessary to the respondent, to clarify that doubt, the matter is posted today. Mr. G.M. Nathan, appearing for the petitioner contends that the procedure laid down u/s 16 of the Indian Divorce Act relates to passing a decree for divorce in the first instance by giving six months time for confirmation so as to enable third parties to challenge the decree as one obtained by collusion between the parties and relies on the very Section itself in support of his argument. Section 16 of the Indian Divorce Act reads as follows:

Section 16: Every decree for a dissolution of marriage made by a High Court not being a confirmation of a decree of a District Court, shall, in the first instance, be a decree nisi, not to be made absolute till after the expiration of such time, not less than six months from the pronouncing thereof as the High court, by general or special order from time to time directs.

During that period any person shall be at liberty, in such manner as the High Court by general or special order from time to time directs, to show cause why

the said decree should not be made absolute by reason of the same having been obtained by collusion or by reason of material facts not being brought before the Court.

On cause being so shown, the court shall deal with the case by making the decree absolute, or by reversing the decree nisi, or by requiring further inquiry, or otherwise as justice may demand.

The High Court may order the costs of counsel and witnesses and otherwise arising from such cause being shown to be paid by the parties or such one or more of them as it thinks fit, including a wife if she have separate property.

Whenever a decree nisi has been made, and the petitioner fails, within a reasonable time, to move to have such decree made absolute, the High Court may dismiss the suit.

Sub-section to Section 16 only enables a third party to the proceeding to challenge the decree nisi on the ground of collusion. In the case reported in Williams v. Williams AIR 1936 Rang. 499 Justice Leach as he then was had an occasion to interpret the phrase "any person" appearing in the Section in the following way:

The words "any person" in Section 16 do not apply to the parties to proceedings, and consequently a respondent has no right to show cause against the decree nisi being made absolute. Only officer appointed u/s 17-A exercising jurisdiction exercisable by King's Proctor in England, or the third persons are entitled to intervene or show cause against the decree nisi being made absolute and even though allegations of misconduct subsequent to the granting of the decree nisi have been made by the respondent on his or her own responsibility the officer cannot leave the matter, in the hands of the respondent.

I am in entire agreement with the learned Judge in the interpretation of the phrase "any person". Under the circumstances, no notice is necessary to make a decree nisi absolute. Accordingly six months time had passed since the decree nisi had been passed. The decree nisi for divorce is made absolute.