
(2006) 09 KL CK 0003
In the High Court Of Kerala
Case No : W.A. No. 1760 of 2006

Y. John Lukose and Another	Vs	APPELLANT
The District Registrar		RESPONDENT

Date of Decision : 27-09-2006

Acts Referred:

Special Marriage Act, 1954 — Section 16

Citation : (2008) 1 DMC 273 : (2006) 3 KLJ 768 : (2007) 1 KLT 247

Hon'ble Judges : V.K. Bali, C.J;M. Ramachandran, J

Bench : Division Bench

Advocate : Shaima U, for the Appellant; T.B. Hood (GP), for the Respondent

Judgement

M. Ramachandran, J.—Sri. Y. John Lukose, aged 40 years, and resident of Kundara, Kollam is the first appellant and the averments in the Memorandum show that the second appellant (Darily Lukose, aged 37 years) residing along with him is his legally married wife. They had married each other under Christian Law on 11-10-1993. It is stated they are living together even since and have two children out of the wedlock. Since the first appellant had obtained a job visa for overseas employment, and as he is required to reach Milan in Italy on or before 30-09-2006, he has booked an air ticket for 29-09-2006. He intends to take his wife in due course, but for the purpose of visa, according to him, it is necessary that a marriage certificate is to be obtained, as prescribed by the Special Marriage Act, 1954.

2. An application had been filed by him for the said purpose before the respondent - Registrar on 20-09-2006, a copy of which is produced as Ext. P3 in the writ petition. But, he had been informed that 30 days notice is a mandatory requirement, and after such notice the couple is expected to sign before the Registrar in the prescribed forms and then only it may be possible for a certificate to be issued. As there was no relaxation found possible at the level of the Registrar, and because of urgent needs, he had approached this Court by filing W.P. (C) No. 25062 of 2006.

3. However, the writ petition had been dismissed by the learned single Judge pointing out the presence of Section 16 of the Act, which prescribed the procedure for registration, including the one month's notice. Aggrieved thereby the appellants have filed this writ appeal.

4. Learned counsel had pleaded the cause of the appellants and pointed out that the rigidity as prescribed by the Act was unwarranted. This Court, by exercising its extra ordinary jurisdiction, should interfere so as to give reliefs, as impact of a rejection on the appellants would be unbearable.

5. We had heard the Government Pleader Mr. Hood. He submits that taking note of the requirements prescribed by the section, normally relaxation appears to be impermissible, as already found by a Division Bench, but leaves the matter to the discretion of this Court.

6. 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 III 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 Section 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.

7. 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. 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 petition, 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 29th September, 2006, appropriate certificate may be issued to them, as envisaged under Chapter III of the Act.

The Writ Appeal is disposed of as above.