

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

&

THE HONOURABLE MRS. JUSTICE M.C.HARI RANI

MONDAY, THE 22ND FEBRUARY 2010 / 3RD PHALGUNA 1931

WP(C).No. 35983 of 2009(R)

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OP.1205/2009 of FAMILY COURT, KOTTAYAM  
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PETITIONER :

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SANTHANAMMA THOMAS,D/O.P.T.THOMAS,  
PLAKKITHOTIL HOUSE,PALAI.P.O,KOTTAYAM.

BY ADV. SRI.S.SUBHASH CHAND  
SMT.M.P.MARY

RESPONDENT :

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SHIBU KOSHY,S/O.NAINAN KOSHY,  
DHARANIYIL HOUSE,NIRANAM CENTRAL.P.O,THIRUVALLA,  
PATHANAMTHITTA.

ADV. SRI.V.V.SHAJI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD  
ON 18/01/2010, THE COURT ON 22/02/2010 DELIVERED THE  
FOLLOWING:

**R. BASANT &  
M.C. HARI RANI, JJ.**

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**W.P.(C) No. 35983 of 2009-R**  
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**Dated this the 22<sup>nd</sup> day of February, 2010**

**JUDGMENT**

**Basant,J.**

Can the waiting period after filing the joint petition for divorce under Sec.13B of the Hindu Marriage Act, Sec.10A of the Indian Divorce Act and Sec.28 of the Special Marriage Act be waived by the court suo motu or on the application of both parties?

2. This question arose for consideration in various petitions and we posted all such cases together for hearing. Sri. G.Shrikumar, Advocate, has rendered assistance as amicus curiae for the court. We have had the advantage of hearing Advocates M/s S. Subash Chand, , Sandhya Raju, M.R. Rajesh, R. Sunilkumar, Soby K. Francis and others on the question.

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3. We have answered that question in Mat.Appeal No.633/08 today. The finding on that question is extracted below:

“We may, in these circumstances summarise the law and state that not only conditions A, B, C and D below; but condition E below also are mandatory requirements that must all co-exist before the court’s power under Sec.13B of the Hindu Marriage Act, Sec.10A of the Divorce Act and Sec.28 of the Special Marriage Act to pass the decree for dissolution on the basis of a joint application for divorce on mutual consent is invoked:

- A. Solemnisation of marriage.
- B. The mutual agreement of the spouses that the marriage should be dissolved.
- C. That the spouses have been living separately for the specified period of one year/two years prior to the presentation of the application.
- D. They have not been able to live together during this period; and
- E. Minimum period of six months and maximum period of 18 months has elapsed from the date on which the application for divorce under Sec.13B of the Hindu Marriage Act and Sec.10A of the Divorce Act is filed and the spouses have made the second motion for dissolution thereafter.”

4. Having so understood the law, we look at the facts in this case. The spouses were married on 20/1/05. They started

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separate residence from 9/7/05. They filed the application for divorce by mutual consent under Sec.10A of the Divorce Act in December, 2009. The matter now stands posted to 7/6/10. Their prayer is that the period of waiting may be dispensed with.

5. In the light of the law that we have already ascertained, which we have extracted above, the prayer to dispense with the period of six months under Sec.10A of the Divorce Act is found to be without any merit. This petition is accordingly dismissed.

7. We may hasten to observe that the personal presence of such applicants/spouses in the application for dissolution of marriage by mutual consent need not be unnecessarily insisted by the court. It is submitted that the parties find it difficult to personally appear after the period of waiting. After the period of waiting, a second motion need only be made and personal presence of the spouses need not be insisted. The learned counsel can make such second motion on their behalf. Their presence need not also be insisted to tender evidence. Ordinarily, chief affidavits can be filed by them to state their case on oath. Hence the personal presence of the parties need not ordinarily be insisted. In the instant case, conciliation has already taken place, it is submitted. Even otherwise, ritualistic

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insistence on personal presence of the parties for conciliation/counselling need not be made by a court in a joint application for divorce on the ground of mutual consent, if the court is otherwise satisfied about the genuineness of the application.

Sd/-

**R. BASANT  
(Judge)**

Sd/-

**M.C. HARI RANI  
(Judge)**

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P.S. to Judge