



2025:KER:8235

[Mat.Appeal No.1138/2024, OP (FC) NO. 27/2025]

1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

&

THE HONOURABLE MRS. JUSTICE M.B. SNEHALATHA

MONDAY, THE 27TH DAY OF JANUARY 2025 / 7TH MAGHA, 1946

MAT.APPEAL NO. 1138 OF 2024

AGAINST THE JUDGMENT DATED 11.04.2024 IN OP NO.75 OF 2024 OF
FAMILY COURT,KOZHIKODE

APPELLANT/RESPONDENT:

RAJITHA K.V
AGED 42 YEARS
D/O. RAMAKRSIHNNAN, SREEVALSAM HOUSE, VANIYAMKULAM- II,
MANISSERY, PALAKKAD,, PIN - 679521

BY ADV NAVAS JAN A.

RESPONDENT/PETITIONER:

S VISWANATHAN
AGED 42 YEARS
S/O. K.V SURENDRAN, 408, FLAT NO. A2, VIKAS GARDEN
APARTMENT, GURUPURAM, SOUTH ARYAD, ALAPPUZHA 688006.
NOW RESIDING AT 117,122 INF: BN TA MADRASS, WEST HILL,
BARACKS, KOZHIKODE, PIN - 673005

BY ADV PRAVEEN.K.JOY

THIS MATRIMONIAL APPEAL HAVING COME UP FOR ADMISSION ON
27.01.2025, ALONG WITH OP (FC).27/2025, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:



2025:KER:8235

[Mat.Appeal No.1138/2024, OP (FC) NO. 27/2025]

2

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

&

THE HONOURABLE MRS. JUSTICE M.B. SNEHALATHA

MONDAY, THE 27TH DAY OF JANUARY 2025 / 7TH MAGHA, 1946

OP (FC) NO. 27 OF 2025

AGAINST THE ORDER DATED 22.11.2024 IN I.A.NO.2/2024 IN OP
NO.75 OF 2024 OF FAMILY COURT,KOZHIKODE

PETITIONER/PETITIONER/RESPONDENT:

RAJITHA K.V
AGED 42 YEARS
D/O. RAMAKRSIHNNAN, SREEVALSAM HOUSE, VANIYAMKULAM- II,
MANISSERY, PALAKKAD, PIN - 679521

BY ADV NAVAS JAN A.

RESPONDENT/RESPONDENT/PETITIONER:

S VISWANATHAN
AGED 42 YEARS
S/O. K.V SURENDRAN, 408, FLAT NO. A2, VIKAS GARDEN
APARTMENT, GURUPURAM, SOUTH ARYAD, ALAPPUZHA 688006.
NOW RESIDING AT 117,122 INF: BN TA MADRASS, WEST HILL,
BARACKS, KOZHIKODE, PIN - 673005

BY ADV PRAVEEN.K.JOY

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON
27.01.2025, ALONG WITH Mat.Appeal.1138/2024, THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING:

**JUDGMENT****DEVAN RAMACHANDRAN (J)**

We are disposing of the above Appeal and Original Petition jointly through this judgment because, the underlying factual circumstances are similar, if not identical; while the prayers are interconnected.

2. As per the conceded facts, the respondent herein filed O.P.No.75/2024 before the learned Family Court, Kozhikode, against the appellant/petitioner, seeking a decree of divorce, which was allowed exparte against her on 11.04.2024. On the assertion that she did not receive notice/summons from the learned Family Court, she filed I.A.No.2 of 2024, invoking the provisions of Order 9 Rule 13 of the Code of Civil Procedure (CPC), pleading that the exparte decree against her be set aside; but this has been dismissed through the



2025:KER:8235

[Mat.Appeal No.1138/2024, OP (FC) NO. 27/2025]

4

order of the learned Family Court dated 22.11.2024.

3. The appellant/petitioner initially filed Mat Appeal No.1138/2024 against the exparte decree of the learned Family Court; but perhaps, sensing that this by itself may not be sufficient, she has filed O.P.(FC)No.27/2025 praying that the order of the learned Family Court in I.A.No.2/2024 be also set aside.

4.`It is, therefore, that we said in the prefatory paragraph of this judgment, that both matters require to be heard together; and we record that the learned counsel for both sides have fully consented to this.

5.`Sri.Praveen K.Joy - learned counsel for the respondent, argued that even a reading of the order of the learned Family Court in I.A.No.2/2024 would establish without an iota of doubt that the summons from the Court was



2025:KER:8235

[Mat.Appeal No.1138/2024, OP (FC) NO. 27/2025]

5

received by the appellant/petitioner, but that she tore it off in a fit of arrogance, saying that she will not grant divorce to his client. He submitted that these have been established through the evidence of RW1, RW2 and RW3; and hence that the appellant/petitioner does not obtain any cause to have filed these matters. He thus prayed that both the above Appeal and the Original Petition be dismissed.

6.`However, Sri.A.Navas Jan - learned counsel for the appellant/petitioner, refuted the afore submissions of the respondent, asserting that the allegation that his client tore away the summons has been spoken only by RW1, namely the respondent herein; while, RW2 and RW3 are two staff members of the military, who are attached to RW1. He submitted that it would require no expatiation that all the testimonies on record are thus interested ones;



6

and hence that the learned Family Court ought not to have relied upon the same. He concluded contending that, in any event, the factum of his client having approached the learned Family Court within a period of 67 days, to have the exparte decree set aside, ought to have been appreciated by the said Court; and therefore, that the order in I.A.No.2/2024 in O.P.No.75/2024 - assailed in O.P.(FC)No.27/2025 - is illegal; and consequently, that the exparte decree against his client is also without forensic support.

7.`We have examined the rival submissions of the parties, on the touchstone of the various materials on record.

8.`We notice that a counter affidavit has been filed by the respondent in O.P(FC).No.27/2025, reaffirming what has been stated by the the learned Family Court; but



7

then asserting that the marriage between the parties has irretrievably broken down and hence that there will be no purpose in the Original Petition being considered on its merits by the said Court.

9. We are afraid that the above stand of the respondent cannot be countenanced by us at this stage because, what is impelled before us is the correctness of the exparte decree and judgment suffered by the appellant/petitioner; as also that of the order issued by the learned Family Court in I.A.No.2/2024. Even assuming that we accept the submissions of Sri.Praveen K.Joy, that the marriage between the parties may have broken down, it would not grant us the option to approve or disapprove the divorce because, this is a matter that will have to be considered as per law. Though Sri.Praveen K.Joy relies upon a judgment of the Hon'ble Supreme



8

Court granting divorce on account of irretrievable breakdown of marriage, it would not be open to us to follow suit, since the said judgment is edified on Articles 141 and 142 of the Constitution of India.

10. That being said, we are called upon to examine the validity of the reasons recorded by the learned Family Court, in dismissing the application of the appellant/petitioner to set aside the exparte decree.

11. As rightly argued by Sri.A. Navas Jan, RW1 is the respondent himself and RW2 and RW3 are military officers - the first of whom is the 'Buddy' of the respondent; while, the second is the Head Clerk, working in the "Tapal Division" of the Defence Establishment. Going by the testimony of RW1, it is expressly admitted that he and the appellant/petitioner



9

are living in the same house, which is allotted to him as a defence officer; and that he had got the summons issued to her in the same address. RW2 is the 'Buddy' of RW1 - a person by name Sri.Ugle Pavan - who admitted that he was a Sepoy of RW1 in his Army Headquarters at West Hill, Kozhikode; and that he obtained the summons addressed to the appellant/petitioner from Subedar Prakasan (RW3), the Head clerk of the Military Unit. He says that he went to the quarters of RW1 and gave the summons to him in the presence of the appellant/petitioner and their son; and then stated that RW1 thereafter handed over the same to the appellant/petitioner. He further testified that the appellant/petitioner opened the cover, read it, took a photo of the same, and then tore it off, shouting at RW1 in English.

12. Interestingly, RW3 is Subedar



10

Prakasan - the Head Clerk of the Military Establishment - who deposed that, on 17.01.2024, he received a registered 'Tapal' from the learned Family Court, Kozhikode, addressed to the appellant/petitioner and that he gave it to RW2, since he is the 'Buddy' of RW1.

13. Pertinently, the learned Family Court went through the "Defence Service Regulations", to hold that all "Tapals" addressed to servicemen and their families are served in the manner as has been deposed by RW3; and therefore, that such service require to be accepted.

14. However, what is relevant is that both RW2 and RW3 are subordinates of RW1; and even if we are to accept what RW3 had stated, one fails to understand how implicit reliance could be placed on the testimony of RW2, to the



11

effect that the appellant/petitioner tore off the summons and shouted at RW1, when it is expressly admitted by RW1 that he is his "Buddy", thus being under his command and control. Indubitably, the version of RW2 have to be taken carefully, in view of the specific relationship between him and RW1.

15. That said, even if we are to travel with RW2, to the extent of his deposition that he had handed over the cover received from RW3 to RW1, it can only mean that the summons issued by the learned Family Court had reached the residence of RW1 at the Army Quarters at West Hill, Kozhikode. His further testimony, that he handed over the summons to RW1 in the presence of the appellant/petitioner and their son, obviously could not have been given much of primacy on account of the afore factors; and his assertion that the



2025:KER:8235

[Mat.Appeal No.1138/2024, OP (FC) NO. 27/2025]

12

appellant/petitioner tore it off, again ought to have been taken with some caution.

16. That apart, as rightly argued by Sri.A.Navas Jan, the delay in his client approaching the learned Family Court, to have the exparte decree set aside, is only 67 days.

17. In normal circumstances, it would not have even required the learned Family Court to make the parties adduce evidence, when the delay was comparatively small; but, perhaps it did so, on account of the strong objections impelled by the respondent.

18. Therefore, though we cannot find blame with the learned Family Court in the course adopted by it, we cannot approve its findings in the impugned order in I.A.No.2/2024.

19. Needless to say, the conclusion of the learned Family Court, that the



2025:KER:8235

[Mat.Appeal No.1138/2024, OP (FC) NO. 27/2025]

13

appellant/petitioner should be construed to have validly received the summons from it, cannot find our favour.

20. Perhaps sensing our mind as afore, Sri.Praveen K.Joy - learned counsel for the respondent, requested that, if this Court is inclined to direct the learned Family Court to dispose of O.P.No.75/2024 on its merits, then it may be directed to do so within a time frame to be fixed by us.

21. We notice that the Original Petition has been pending only for the last less than a year. It is common knowledge that Family Courts in Kerala are enduring huge workload. We cannot, therefore, fix time frames for Original Petitions to be disposed of finally.

In the afore circumstances, we allow Mat Appeal No.1138 of 2024 and OP(FC)No.27 of 2025;



2025:KER:8235

[Mat.Appeal No.1138/2024, OP (FC) NO. 27/2025]

14

and consequently, set aside the impugned order in I.A.No.2/2024, as also the exparte decree and judgment dated 11.04.2024 in O.P.No.75/2024; with a consequential direction to the learned Family Court to dispose of the said O.P, affording necessary opportunities to both sides, as expeditiously as is possible.

Sd/-

DEVAN RAMACHANDRAN
JUDGE

Sd/-

M.B. SNEHALATHA
JUDGE

SAS



2025:KER:8235

[Mat.Appeal No.1138/2024, OP (FC) NO. 27/2025]

15

APPENDIX OF OP (FC) 27/2025

PETITIONER EXHIBITS

Exhibit P1	A TRUE COPY OF THE PETITION FILED BY THE RESPONDENT HEREIN AS OP NO. 75/2024 BEFORE THE FAMILY COURT, KOZHIKODE
Exhibit P2	A TRUE COPY OF THE JUDGMENT DATED 11.04.2024 IN OP NO. 75/2024 PASSED BY THE FAMILY COURT, KOZHIKODE
Exhibit P3	A TRUE COPY OF THE INTERLOCUTORY APPLICATION NO. 2/2024 DATED 17.07.2024 FILED BY THE PETITIONER HEREIN BEFORE THE FAMILY COURT, KOZHIKODE
Exhibit P4	A TRUE COPY OF THE INTERLOCUTORY APPLICATION NO. 3/2024 DATED 17.07.2024 FILED BY THE PETITIONER HEREIN BEFORE THE FAMILY COURT, KOZHIKODE
Exhibit P5	A TRUE COPY OF THE INTERLOCUTORY APPLICATION NO. 4/2024 DATED 17.07.2024 FILED BY THE PETITIONER HEREIN BEFORE THE FAMILY COURT, KOZHIKODE
Exhibit P6	TRUE COPY OF THE COUNTER DATED 25.07.2024 IN I.A NO. 2/2024
Exhibit P7	TRUE COPY OF THE COUNTER DATED 25.07.2024 IN I.A NO. 3/2024
Exhibit P8	TRUE COPY OF THE COUNTER DATED 25.07.2024 IN I.A NO. 4/2024
Exhibit P9	A TRUE COPY OF THE ORDER DATED 22.11.2024 IN I.A NO.2/2024 IN OP NO. 75/2024 PASSED BY THE LEARNED FAMILY COURT KOZHIKODE
Exhibit P10	A TRUE COPY OF THE ORDER DATED 22.11.2024 IN I.A NO.3/2024 IN OP NO. 75/2024 PASSED BY THE LEARNED FAMILY COURT KOZHIKODE



2025:KER:8235

[Mat.Appeal No.1138/2024, OP (FC) NO. 27/2025]

16

APPENDIX OF MAT.APPEAL 1138/2024

PETITIONER ANNEXURES

Annexure A1	A TRUE COPY OF THE PETITION FILED BY THE RESPONDENT HEREIN AS OP NO. 75/2024 BEFORE THE FAMILY COURT, KOZHIKODE
Annexure A2	A TRUE COPY OF THE INTERLOCUTORY APPLICATION NO. 2/2024 DATED 17.07.2024 FILED BY THE APPELLANT HEREIN BEFORE THE FAMILY COURT, KOZHIKODE
Annexure A3	A TRUE COPY OF THE INTERLOCUTORY APPLICATION NO. 3/2024 DATED 17.07.2024 FILED BY THE APPELLANT HEREIN BEFORE THE FAMILY COURT, KOZHIKODE
Annexure A4	A TRUE COPY OF THE INTERLOCUTORY APPLICATION NO. 4/2024 DATED 17.07.2024 FILED BY THE APPELLANT HEREIN BEFORE THE FAMILY COURT, KOZHIKODE
Annexure A5	TRUE COPY OF THE COUNTER DATED 25.07.2024 IN I.A NO. 2/2024
Annexure A6	TRUE COPY OF THE COUNTER DATED 25.07.2024 IN I.A NO. 3/2024
Annexure A7	TRUE COPY OF THE COUNTER DATED 25.07.2024 IN I.A NO. 4/2024
Annexure A8	A TRUE COPY OF THE ORDER DATED 22.11.2024 IN I.A NO.2/2024 IN OP NO. 75/2024 PASSED BY THE LEARNED FAMILY COURT KOZHIKODE
Annexure A9	A TRUE COPY OF THE ORDER DATED 22.11.2024 IN I.A NO.3/2024 IN OP NO. 75/2024 PASSED BY THE LEARNED FAMILY COURT KOZHIKODE