

**(2012) 01 KL CK 0132****High Court Of Kerala****Case No:** O.P. (FC) No. 93 of 2012

Shibukumar

APPELLANT

Vs

Athira

RESPONDENT

**Date of Decision:** Jan. 10, 2012**Acts Referred:**

- Hindu Marriage Act, 1955 - Section 13, 13(1), 13B

**Citation:** (2012) 1 KLJ 344**Hon'ble Judges:** M.L. Joseph Francis, J; K.M. Joseph, J**Bench:** Division Bench**Advocate:** J. Jayakumar, for the Appellant;**Judgement**

K.M. Joseph, J.

Petitioner is the husband of the respondent. Petitioner filed a petition u/s 13 (ia), 13 (1) (iii) of the Hindu Marriage Act for dissolution of marriage under Ext.P1, Ext.P2 is the petition filed by the respondent for recovery of gold and Ext.P3 is M.C. filed by the respondent for maintenance. The respondent also filed a transfer petition which was allowed. Subsequently it is stated that the parties have amicably settled the entire issues and decided to exchange their belongings. Thereafter they filed compromise petition which is produced as Ext.P4. It is stated that they have also filed Ext.P5 which is a joint petition for divorce u/s 13 B of the Hindu Marriage Act. The petition is allegedly filed in June, 2011. It appears that the Family Court, Kottarakkara had posted the O.P for disposal on 27.12.2011. On 27.12.2011 both the petitioner and respondent were present before the Family Court for giving depositions in accordance with Ext.P5 petition, it is stated. But, the Family Court directed the parties for counseling on the same day and posted the case for awaiting counseling report on 6.1.2012. It is further stated that both the parties filed affidavit in support of Ext.P5 petition and jointly prayed for divorce. But the matter is posted as call on to 25.1.2012. It is stated that the petitioner has got a job visa for employment in Saudi Arabia and he wants to join duty on or before 22.1.2012. The

employment visa is stamped in his passport. Ext.P6 is the relevant page of the passport. The prayer in the original petition is to direct the Family Court, Kottarakkara to dispose of Ext.P5 petition within a time frame. We called for a report. The report reads as follows:

As directed, contacted the Family Court, Kottarakkara. The learned Judge, after verification, informed that since counseling has not been successful, O.P. No. 604/2011 is posted for evidence to 25.1.2012. If both the parties co-operate, the original petition can be disposed of on 25.1.2012 itself. The learned Judge further informed that at any rate he will try to dispose of the original petition before the end of January, 2012.

2. Learned Counsel for the petitioner would point out that actually counseling took place earlier. At any rate on 27.12.2011 the parties were referred for counseling again. Such a procedure is not contemplated, he points out. It is submitted by the Learned Counsel that subsequently the report has also come that there is no possibility of the marriage being saved. Still the Court posted the case again to 25.1.2012. Learned Counsel for the petitioner points out that the petitioner wants to join employment before 22.1.2012. Section 13B of the Hindu Marriage Act no doubt contemplates petition for divorce by mutual consent. Mutual consent must be there not only at the time of filing the petition but also at the time of decision is made under sub section 2. Under Sub section 2 the court on being satisfied, after hearing the parties and after making inquiry as it thinks fit, that a marriage has been solemnized and that the averments in the petition are true, is to pass orders. In this case, it is pointed out that, both the parties were present on 27.12.2011 and they pressed for divorce. Subsequently a report is also apparently filed by the Counselor that the marriage cannot be repaired. In such circumstances, we feel that this is a case where we must direct the Family Court to pass orders at the earliest. In this connection we direct that if the petitioner moves a petition to advance the case from 25.1.2012 to an early date with copy served to the respondent, the Family Court will consider the same in the context of the facts and law and pass orders in the interest of justice. The Original Petition is disposed of as above.