

A DR. BENOY IDICULA BABU REP BY P.O.A  
HOLDER P. I BABU & ORS. ETC.

v.

DR. NISHA SAIRA BENOY & ANR. ETC.

(Civil Appeal Nos. 11262-11264 of 2018)

B NOVEMBER 22, 2018

**[KURIAN JOSEPH AND HEMANT GUPTA, JJ.]**

*Divorce Act, 1869 – s.10-A – Matrimonial Dispute – Court assisted mediation and conciliation – Held: Having regard to the entire background of the long drawn litigation between the parties and the fact that they have taken a conscious decision to part, there is no need for them to go through the regular process – Marriage between the appellant and the respondent is dissolved by decree of divorce by mutual consent – Deed of settlement to form part of the decree – Application u/s.10-A, 1869 Act is allowed – Since the parties have settled the dispute, the Passport Officer concerned is directed to process the application duly filed by the respondent-mother for the minor child and Rs.1,00,000/- deposited with the Regional Passport Officer, Thiruvananthapuram to be refunded to the respondent – Various cases pending between the parties are disposed of/dismisssed/quashed.*

**Disposing of the matters, the Court**

**HELD: 1.1** The deed of settlement shall form part of the decree. Having regard to the entire background of the long drawn litigation between the parties and having regard to the fact that they have taken a conscious decision to part, there is no need for the parties to go through the regular process. Therefore, their application under Section 10-A of the Divorce Act, 1869 is allowed and their marriage is dissolved by a decree of divorce by mutual consent. The amount of Rs.1.25 crore paid by the husband to the wife by way of permanent alimony shall not be treated as income for the purpose of income tax. [Paras 6, 7][390-C-E]

**1.2** Since the parties have settled the dispute, the Passport Officer concerned is directed to process the application duly filed by the respondent-mother for the minor child. The application shall not be rejected on the ground of any pending litigation, since

**the parties have settled all the disputes. Since the parties have settled the dispute, the amount of Rs.1,00,000/- deposited with the Regional Passport Officer Thiruvananthapuram shall be refunded to the respondent. [Paras 8, 9][390-E-F]** A

**1.3 In view of the settlement by the parties, the cases filed before the High Court of Kerala and the case pending before the Family Court, Tiruvalla are disposed of. The cases pending before the Judicial First Class Magistrate, Thiruvalla and Judicial First Class Magistrate, Ranni are disposed of. The cases pending before the High Court of Kerala in CrI.M.C.No.7353/2015 and CrI.M.C.No.3194/2017 are dismissed. The cases pending before the Judicial First Class Magistrate Court-XI, Thiruvananthapuram and Judicial First Class Magistrate, Thiruvalla, Kerala are quashed. All proceedings initiated under the Indian Passport Act shall be dropped. [Paras 11-14][391-A-C]** B  
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CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 11262-11264 of 2018. D

From the Judgment and Order dated 29.03.2017 of the High Court of Kerala at Ernakulam in Mat. Appeal Nos. 737, 956 and 955 of 2015.

With

Civil Appeal Nos. 11265-11266 of 2018.

Vipin Nair, P. B. Suresh, Karthik Jayashankar, Anshumaan Bahadur, Advs. for the Appellants. E

Manoj V. George, Ms. Shilpa Liza George, B. D. Das, Vignesh Ram K. M., Ms. Ashita Arora, Amit Kumar, Kamendra Mishra, Sanand Ramakrishnan, Advs. for the Respondents. F

The Judgment of the Court was delivered by

**KURIAN, J.** 1. Leave granted.

2. This is a case where this court successfully experimented a new method of settlement, namely, court assisted mediation and conciliation. G

3. The appellant approached this Court aggrieved by the order dated 29.3.2017 of the High Court of Kerala at Ernakulam in Matrimonial Appeal Nos.737, 955 and 956 of 2015.

4. Finding that there is an element of settlement, we initially directed the parties for mediation. The Initial attempt was unsuccessful. Thereafter, this Court directed the parties to appear before this Court. H

A We had long interaction with them. Finally, on the monetary aspect, a settlement has been arrived at, on the terms suggested by the Court. Still there were some minor disputes.

B 5. We sought the assistance of Mr.V.Shekhar, learned senior counsel and we are happy to note that the learned senior counsel was able to successfully mediate on the remaining disputes and the parties have reached a settlement.

C 6. The deed of settlement has been produced along with the I.A. The same is taken on record. The deed of settlement shall form part of the decree. In terms of the settlement, the parties have filed an application under Section 10-A of the Divorce Act of 1869. Having regard to the entire background of the long drawn litigation between the parties and having regard to the fact that they have taken a conscious decision to part, we are of the view that there is no need for the parties to go through the regular process. Therefore, their application under Section 10-A of the Divorce Act is allowed and the marriage between Dr.Benoy D Idicula Babu and Dr. Nisha Saira Benoy is dissolved by a decree of divorce by mutual consent.

D 7. We make it clear that the amount of Rs.1.25 crore paid by the husband to the wife by way of permanent alimony shall not be treated as income for the purpose of income tax.

E 8. Since the parties have settled the dispute, we direct the Passport Officer concerned to process the application duly filed by the mother Dr.Nisha Saira Benoy for the minor child Danil Chacko Benoy. The application shall not be rejected on the ground of any pending litigation, since the parties have settled all the disputes.

F 9. Since the parties have settled the dispute, the amount of Rs.1,00,000(one Lakh) deposited with the Regional Passport Officer Thiruvananthapuram shall be refunded to the mother-Nisha Saira Benoy.

G 10. In view of the settlement by the parties as above, the cases filed before the High Court of Kerala i.e. W.P(C) No.28239/ 2009, W.P.(C)No.24558/ 2013, W.P.(C)No.9832/ 2014, W.P.(C) No.19111/2010 and W.P.(C)No.21292/2009, W.P.(C)No.31159/2011 and the case pending before the Family Court, Tiruvalla in O.P.No.630/2010 and O.P.No.631/ 2010 are disposed of. The cases pending before the Judicial First Class Magistrate, Thiruvalla, in CC No.757/2010 and Judicial first Class Magistrate, Ranni, in FIR NO.392/2013 and CrI.M.P.No.7499/2013 are disposed of.

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11. The cases pending before the High Court of Kerala in A  
Crl.M.C.No.7353/2015 and Crl.M.C.No.3194/2017 are dismissed.

12. The cases pending before the Judicial first class Magistrate  
Court-XI, Thiruvananthapuram in FIR No.584/2010 and Judicial First  
Class Magistrate, Thiruvalla, Kerala in CC No.709/2012 in FIR No.403/  
2009 are quashed. B

13. All proceedings initiated under the Indian Passport Act shall  
be dropped. We record our sincere appreciation for the efforts taken by  
Mr. V.Shekhar, and the counsel on both sides who have devoted  
considerable time for settlement of dispute between the parties. We also  
record our appreciation for the cooperation extended by the parties. C

14. Pending applications, if any, stand disposed of.

Divya Pandey

Matters disposed of.