



2025:KER:63605

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

&

THE HONOURABLE MRS. JUSTICE M.B. SNEHALATHA

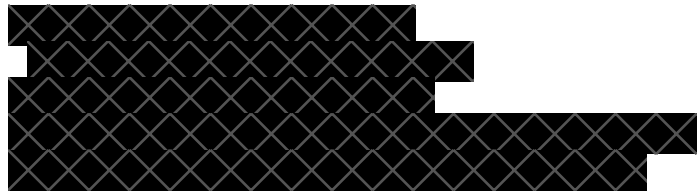
THURSDAY, THE 21ST DAY OF AUGUST 2025 / 30TH SRAVANA, 1947

MAT.APPEAL NO. 165 OF 2022

AGAINST THE JUDGMENT DATED 30.09.2021 IN OP NO.361

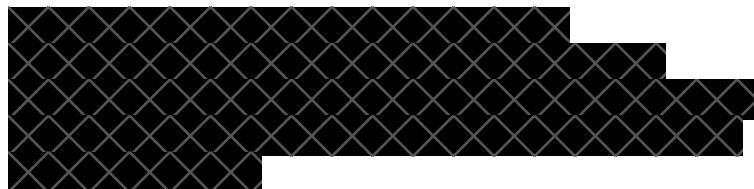
OF 2021 OF FAMILY COURT, IRINJALAKUDA

APPELLANT/2ND PETITIONER:



BY ADVS. SHRI.P.M.ABDUL JALEEL (KODUNGALLUR)
SRI.K.N.MUHAMMED THANVEER
SHRI.ALTHAF AHMED ABDU

RESPONDENT/1ST PETITIONER:



BY ADV SRI.T.N.MANOJ

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD
ON 21.08.2025, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



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'C.R.'

JUDGMENT

Devan Ramachandran, J.

This is a case where the appellant attempts to resile from a petition seeking divorce on mutual consent, that she filed jointly with the respondent, under Section 10A of the Divorce Act, 1869 ('Act', for short).

2. The essential facts, shorn of unnecessary details, are that the parties had matrimonial disputes between them, arising in 2011, leading to three cases being filed by the appellant against the respondent: namely OP No.181/2013 before the learned Family Court, Irinjalakuda, seeking return of her gold and patrimony; MC No.56/2014 before the Court of the Judicial Magistrate of the First Class,



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Irinjalakuda, seeking maintenance; and CC No.3330/2014 also before the Judicial First Class Magistrate Court, Irinjalakuda, under the provisions of the Indian Penal Code (IPC).

3. It is uncontested and unequivocally admitted that the parties went into compromise and subscribed to certain terms, to be presented as a Settlement Memorandum before the Judicial First Class Magistrate Court, Irinjalakuda; which was approved by it, thus ordering MC No.56/2014 in terms of the same.

4. The afore gave rise to a cascading series of events, namely, that the two Appeals that were filed by the parties before this Court against the judgment in OP No.181/2013 aforementioned - which had been decreed against the respondent asking him to return a certain weight of gold to the appellant - namely Mat.Appeal No.1227/2016 and 908/2016, were



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disposed of, also in terms of the above said settlement, expressly recording it and thus making it a part of the judgment of this Court.

5. At this stage or thereabout, it is alleged that the appellant did not comply with the further terms of the Agreement and hence the respondent and his parents approached this Court, through CrI.MC No.6043/2017, seeking that CC No.3330/2014 before the Judicial First Class Magistrate Court, Irinjalakuda, be quashed. Admittedly this case was allowed through the judgment dated 15.12.2017, recording therein that, though the appellant had tried to resile from the aforementioned Agreement, the same cannot be allowed, since it had been performed in part by the respondent; thus quashing the Criminal Case.

6. Since the appellant refused to evict herself from her matrimonial home, but which is



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admittedly owned by her father-in-law - though such was also a condition agreed to by her in the Agreement - the latter filed OS No.2199/2014 before the competent Civil Court, seeking her eviction from it.

7. While so, it transpires that the respondent - husband, on its own, filed an application under Section 10A of the 'Act', relying upon the aforementioned Agreement, before the learned Family Court, in which a notice was issued to the appellant. However, nothing appears to have progressed on that application - which in any case was not maintainable - and the parties, thereupon, filed the present case, presenting it after being signed by both of them and their counsel, specifically agreeing to certain terms as are available in paragraphs 8, 9 and 10 of the petition.

8. Going by the terms of the joint



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application filed, the respondent - husband conceded to pay the sums agreed by him under the settlement earlier mentioned and also additionally to release a deposit in the joint names of the parties to the appellant; with her agreeing that she will vacate the house, so that OS No.2199/2014 filed by her father-in-law can be withdrawn.

9. Interestingly, even though the respondent - husband deposited the amount agreed in the application - which was concededly withdrawn by the appellant; and also allowed her to withdraw the Fixed Deposit, she refused to give consent for the divorce, saying that she was made to sign the application without being aware of its contents and by employing deception on her.

10. The learned Family Court considered the matter and delivered the impugned judgment, holding that the case of the appellant cannot be believed



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because, she had voluntarily accepted all the amounts reserved to her in the application itself, but then attempted to recant from her obligation to vacate the house; further recording that it was her specific assertion that she has no other place to live and therefore, cannot vacate therefrom. The learned Court then proceeded to hold that a party to an Agreement cannot be allowed to withdraw from it in such a fashion; and thus allowed the application, granting divorce.

11. It is this judgment, which is now assailed by the appellant through this Appeal.

12. Sri.P.M.Abdul Jaleel - learned counsel for the appellant, submitted that, when his client withdrew from the application filed under Section 10A of the 'Act', the learned Family Court could not have granted divorce to the respondent as prayed for because, it would go contrary to the Statutory



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Scheme. His argument was that, his client was compelled to sign the application, employing deceit upon her, thus without being aware that she would have to evict herself from the house in question. He cited several judgments in support of his contention that, when one of the parties to the application is to withdraw consent, no divorce under Section 10A of the 'Act' can be granted, including *Jayaraj R. v. Kavya G.Nair* [2023 KHC 361]; *Amit Kumar v. Suman Beniwal* [Civil Appeal No.7650 of 2021]; *Gudivada Seshagiri Rao v. Gudivada Ashalatha* [2025 KHC 7118] and *Tiji Daniel v. Roy Panamkoodan* [2018(5) KHC 288]. He thus prayed that this Appeal be allowed.

13. Sri.T.N.Manoj - learned counsel for the respondent, in refutation, submitted that none of the afore cited precedents have any application in this case because, his client had complied with all the conditions imposed against him in the



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application; but when it came to the appellant's duties, she wanted to retract from them, even though she enjoyed all the benefits and amounts that were reserved to her therein. He argued that the attempt of the appellant is malicious and her intent is only to continue to occupy the house in question, though the original suit aforementioned - namely OS No.2199/2014, filed by his client's father - has now been decreed. He contended that the appellant is abusing the processes of law, after enjoying all the benefits reserved to her in the first application, but then refusing to comply with her obligations therein; thus trying to obtain undue advantage. He pleaded this Appeal be, therefore, dismissed.

14. Though we have not called for the Trial Court Records from the learned Family Court, the learned counsel for the parties has made all such available, with the express consent that we can act



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upon it and dispose of this matter.

15. Most of the facts are without contest, particularly that the parties had entered into a compromise as early as on 16.12.2016 in MC No.56/2014, on the files of the Court of the Judicial Magistrate of the First Class, Irinjalakuda. It is admitted that this MC was closed, recording the compromise; and that, thereafter, this Court disposed of two Appeals, namely Mat.Appeal Nos.1227/2016 and 908/2016, filed by the parties against each other, impugning the judgment of the learned Family Court in OP No.181/2013 - which had been filed by the appellant seeking return of her gold and patrimony - solely based on the compromise and recording it, making it a part of the said judgment. This Court also left liberty to the parties to initiate appropriate action, in case the terms of the said Agreement had



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not been complied with.

16. It is from this stage that the controversy arises.

17. The appellant appears to have resiled from the compromise; and therefore the respondent being constrained to approach this Court, filing Cr1.MC No.6043/2017, seeking to quash CC No.3330/2014 on the files of the Court of the Judicial Magistrate of the First Class, Irinjalakuda; which was allowed by this Court through the judgment dated 15.12.2017. Pertinently, in the said judgment, a learned Judge of this Court observed as under:

8. It appears that the first respondent has unilaterally withdrawn from her obligation at least in relation to the present proceedings. At the time of hearing, few objections were raised by the learned counsel for the first respondent regarding the delay that had occurred in the course of complying with the certain conditions. It



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appears that both the parties have no objection regarding the terms incorporated in Annexure C. The first respondent has no case that Annexure-C was not legally sustainable nor that it was obtained under any other vitiating circumstances. No proceedings have been initiated till now to challenge Annexure- C also. Hence, the parties are bound by the terms of the agreement. Hence, it has to be considered that the allegation that, the first respondent did not co-operate with the petitioners herein, is to be accepted.

18. The records reveal that, thereupon, the respondent notified the appellant to agree to sign the application for divorce by mutual consent; but that, since she did not do so, he presented one subscribed by him alone and filed it as an application under Section 10A of the 'Act', before the learned Family Court. Even though this application could never have been construed to be maintainable, we are told that the learned Family



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Court issued notice to the appellant.

19. At this stage, interestingly, the appellant also agreed to sign a fresh mutual consent petition; and the present one was thus filed before the learned Family Court and numbered as OP NO.36/2021. However, when the parties were sent to counselling, the appellant appears to have said that she does not agree to the divorce - though she expressly concedes that she had withdrawn the amount deposited by the respondent before the Trial Court in terms of Clause 8 of the said application; and had also withdrawn the Fixed Deposit above mentioned.

20. The learned Family Court assessed the testimonies of the parties, as also the evidence, to hold that this is a case where the appellant could not have legally withdrawn from the application, since the conditions imposed against the respondent



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had been fully complied with by him, by deposit of the agreed amount in Court and in allowing the appellant to have withdrawn it, as also the Fixed Deposit.

21. We have no doubt that the learned Family Court has acted correctly because, Sri.P.M.Abdul Jaleel unequivocally admits before us that his client - the appellant, had withdrawn the amount deposited by the respondent before the learned Court, as also the amount in the Fixed Deposit.

22. In such factual scenario, one fails to fathom how the appellant says that she was made to sign the application employing deceit, when she unreservedly admits that she received the deposited amount and the sums in the Fixed Deposit with full volition.

23. One surely can gather justifiably from the conduct of the appellant that it is only because



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she was enjoined under the agreed terms to have vacated herself from the house of her father-in-law, that she did not agree to the Original Petition being ordered.

24. Hence, the learned Family Court has correctly assessed the situation, to hold that this is not a case where the appellant could withdraw from the application, especially when she had obtained benefits under it without any demur.

25. Ineluctably, the defence of the appellant is specious, since she virtually says that such part of the application, which is in her favour, was entered into by her voluntarily; while, that which imposes obligation on her was obtained through deceit. This can never be accepted, and hence we find no reason to intervene.

This appeal is, therefore, dismissed; however, adverting to the rather peculiar



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circumstances presented, we make no order as to costs.

Sd/-

DEVAN RAMACHANDRAN

JUDGE

Sd/-

M.B.SNEHALATHA

JUDGE

akv



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APPENDIX OF MAT.APPEAL 165/2022

RESPONDENT ANNEXURES

- | | |
|-----------------|---|
| ANNEXURE R1 (A) | THE TRUE COPY OF THE AGREEMENT OF SETTLEMENT/ MEDIATION DATED 16/12/2016 WAS ARRIVED AT, BETWEEN US IN MC 56/2014 BEFORE THE JFCM,IRIJALAKKUDA. |
| ANNEXURE R1 (B) | THE TRUE COPY OF THE PETITION OP 361/2021, DATED 18/3/2021 FILED BEFORE THE FAMILY COURT AT IRINJALAKUDA. |
| ANNEXURE R1 (C) | THE TRUE COPY OF THE DEPOSIT RECEIPT DATED 27/8/2021 EVIDENCING THE DEPOSIT OF RUPEES 9 LAKHS BEFORE THE SUB TREASURE AT IRINJALAKUDA |
| ANNEXURE R1 (D) | THE TRUE COPY OF THE RELEVANT PAGE OF THE ACCOUNT PASSBOOK OF THE APPELLANT EVIDENCING THE TRANSFER OF AN AMOUNT OF RUPEES 5, 14,4,77/- |