



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE S. MANU

&

THE HONOURABLE MR. JUSTICE MURALEE KRISHNA S.

MONDAY, THE 29TH DAY OF JUNE 2026 / 8TH ASHADHA, 1948

WP(C) NO. 40423 OF 2025

PETITIONER(S) :

- 1 UNION OF INDIA
REPRESENTED BY ITS SECRETARY,
MINISTRY OF DEFENCE, SOUTH BLOCK,
NEW DELHI: 110 011, PIN 110011
- 2 THE CHIEF OF ARMY STAFF
IHQ OF MOD (ARMY) ,
NEW DELHI, PIN - 110011
- 3 OFFICER IN CHARGE
OIC RECORDS, SIGNALS RECORDS,
ARTILLERY RECORDS, ARTILLERY CENTRE,
NASHIK ROAD CAMP,
MAHARASHTRA, PIN - 908802
- 4 THE PRINCIPAL CONTROLLER OF DEFENCE ACCOUNTS
(PENSIONS)CDA(P) , DRAUPADI GHAT,
ALLAHABAD (UP), PIN - 211014
- 5 SENIOR RECORDS OFFICER
SIGNALS RECORDS C/O 56 APO, MAVELIKARA,
ALAPPUZHA, PIN - 908770
- 6 SENIOR ACCOUNTS OFFICER (PENSION)
OFFICE OF THE PCDA (P), DRAUPATHI GHAT,
ALLAHABAD, PIN - 211014
- 7 CHIEF RECORDS OFFICER
RECORDS SIGNALS, C/O 56 APO, MAVELIKARA,
ALAPPUZHA, PIN - 908770

BY ADV SMT.M.SHAJNA, CGC



W.P.(C)No.40423 of 2025

2

2026:KER:45798

RESPONDENT (S) :

SMT SARASWATI
SARASWATI, DIVORCED DAUGHTER OF EX NK E KRISHNAN
(LATE), KANIYAN KANDI HOUSE, ERUVATTY P.O.,
KANNUR, PIN - 617642

BY ADVS.
SHRI.G.KRISHNAKUMAR
SMT.NINA P. AUGUSTINE
SMT.SNEHA JOY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
15.06.2026, THE COURT ON 29.06.2026 DELIVERED THE FOLLOWING:

**JUDGMENT****Muralee Krishna S., J.****C.R.**

This writ petition is filed under Article 226 of the Constitution of India by the respondents in O.A.No.157 of 2021 on the file of the Armed Forces Tribunal, Regional Bench, Kochi ('the Tribunal' for short), seeking a writ of certiorari to quash Ext.P3 order dated 09.08.2023 passed by the Tribunal in that original application.

2. The facts which led to the filing of this writ petition are as follows:

2.1. The respondent is the daughter of late N.K.E. Krishnan and Smt. Nani @ Moolam Nani. The father of the respondent N.K.E. Krishnan, was working in the Indian Army as L/Hav/Naik. Since he suffered from severe cardiac issues, he was granted disability pension. After the death of the respondent's father in the year 1989, her mother Smt.Nani was getting family pension till her death on 09.08.2015.

2.2. As per the pleadings in the original application, the respondent belongs to the Hindu Thiyya, a backward community. Because of the financial stringency, the respondent had to discontinue her education in the fourth standard. On 18.02.1973, while the respondent was a minor of the age of sixteen years, her



marriage was conducted by the elders in the father's family with one Elancherry Raghavan of Pinarayi. The respondent states that the said marriage was without her consent and without taking into account her resistance. On the third day of marriage itself, the respondent returned to her parental home, and after attaining majority, Annexure A3 divorce deed dated 27.11.1974, registered as document No.85/1974 of S.R.O. Kadiroor was executed between the respondent and the aforesaid Raghavan as per the custom prevailing among the members of the Thiyya community in the locality. It is further stated in the original application that since the respondent left the matrimonial home on 21.02.1973, she had been living with her parents under their care and protection till their death.

2.3. The respondent further states that after the death of her mother, she submitted an application seeking payment of the family pension to her. In response to the said application, the 4th petitioner, Principal Controller of Defence Accounts (Pension), issued Annexure A4 communication dated 17.10.2015, requesting the respondent to submit the documents detailed therein. One of the documents required to be produced by the respondent is a



non-marriage certificate, along with an affidavit.

2.4. The application for continuation of family pension submitted by the respondent was forwarded by the 4th petitioner to the Personal Officer of PA Q (OR) for pre-audit as per Annexure A5 communication dated 08.05.2017. Thereafter, the Chief Records Officer, as per Annexure A6 communication dated 09.08.2017, forwarded the file to the Senior Accounts Officer (P), requesting to issue a pension payment order ('PPO' for short) in respect of the respondent at the earliest. By Annexure A7 communication dated 18.09.2017, the Senior Accounts Officer directed the 4th petitioner to submit (1) Divorce deed in respect of the respondent, duly issued by the competent court of law, (2) Income certificate of the respondent and (3) Non-remarriage certificate of the respondent. Thereafter, the respondent submitted an income certificate dated 06.03.2018 issued by the Tahsildar, Thalassery. She has also submitted Annexure A8 non-remarriage certificate dated 07.03.2018 issued by the Village Officer, Eruvatty Village. Since the Senior Accounts Officer insisted for a divorce deed from the court, the respondent filed O.P.No.762 of 2017, seeking divorce from the aforesaid Elancherry Raghavan,



before the Family Court, Thalassery. As per Annexure A9 judgment dated 27.01.2018, the Family Court, Thalassery, allowed O.P.No.762 of 2017.

2.5. It is pleaded in the original application that the said Elancherry Raghavan, the ex-husband of the respondent, after the execution of Annexure A3 divorce deed, married another lady in the year 1974 itself, and he has children in that marital relationship. The respondent further states that Annexure A3, the registered divorce deed dated 27.11.1974, executed between the respondent and the aforesaid Raghavan, was, as per the custom and practice prevailing among the members of the Thiyya community in the locality, dissolving the marriage. In fact, the marriage with the aforesaid Raghavan was only a purported marriage. Being a dependent on her parents, the respondent was admitted as a member of the Ex-servicemen Contributory Health Scheme during the lifetime of her father. Evidencing the same, she produced Annexure A10 patient care record issued by ECHS polyclinic. She has also produced Annexure A11 ID card issued by the ECHS organisation to her. Annexure A12, produced by the respondent in the original application, is the true copy of the



proforma for the dependent daughter, countersigned by the OIC, ECHS polyclinic, Kannur.

2.6. The respondent further states that in continuation of Annexure A5 communication, the Chief Records Officer, as per Annexure A13 communication dated 03.05.2018, had submitted LPC-cum-Data Sheet duly rectified with supporting documents and requested the pension cell to take an early action. Similarly, in continuation of Annexure A6 communication dated 09.08.2017, the Chief Records Officer, by Annexure A14 communication dated 15.06.2018, submitted LPC-cum-Data Sheet, duly rectified with supporting documents to the 5th petitioner and requested an early action. However, as per Annexure A15 communication dated 05.09.2018, the 6th petitioner Senior Accounts Officer, returned the claim of the respondent, stating that the divorce proceedings were not instituted before the court during the lifetime of her parents. It is also stated in Annexure A15 that, in view of the letter No.1(9)/2013-D(Pen/Policy) dated 17.11.2017, divorced daughters are eligible for pension only if a decree of divorce had been issued by the court during the life of at least one of the parents. Thereafter, the Chief Records Officer issued Annexure



A16 communication dated 19.09.2018 to the respondent stating that in view of Annexure A15, the respondent's claim for family pension is treated as closed. As per Annexure A17 communication dated 20.11.2018, the Senior Records Officer rejected the respondent's request for continuation of family pension for the reason that Annexure A9 judgment dissolving the marriage of the respondent was on 27.01.2018, after the death of her parents.

2.7. On receipt of Annexure A17 communication dated 20.11.2018, the respondent submitted Annexure A19 representation to the Controller of Defence Accounts to consider her application. Thereafter, the respondent received Annexure A20 communication dated 11.01.2021 of the Senior Accounts Officer (Pension) stating that a mutual agreement of separation cannot be considered as valid for continuation of family pension and since the divorce proceedings were filed after the death of the pensioner, she may not be eligible for continuation of family pension. Being aggrieved by the decisions taken by the petitioners 5 and 7, the respondent approached the Tribunal by filing the original application invoking the provisions under Section 14 of the Armed Forces Tribunal Act, 2007, seeking the following reliefs:



"i) Set aside Annexure A16 & A17 communications of the 5th respondent and Annexure A15 and Annexure A20 communications of the 7th respondent rejecting the application submitted by the applicant for continuance of Family Pension of the applicant's father.

ii) Set aside Annexure A23 pension scheme so far as it does not provide for family pension to an unemployed married daughter who is placed in similar situation or in a worse situation than a divorced daughter for the reason that the husband is disable to maintain her on account of affliction of illness or other disabilities making the life of married daughter much more worse than a divorced daughter.

iii) Issue a direction to the respondent to pay Family Pension to the applicant with arrears from the date of death of her mother."

3. In the original application, the petitioners filed a reply statement dated 07.06.2023, opposing the reliefs sought for and producing therewith Annexures R1 to R18 documents. In the reply statement filed by the petitioners, *inter alia*, it was contended that on examination of Annexure R13 application dated 08.09.2020 submitted by the respondent, at the appropriate level, it was opined that a mutual agreement of separation cannot be considered as a valid document for continuation of family pension. As per para 4 of G.O.I, MoD letter dated 17.11.2017, family pension may be granted to a divorced daughter in case where



divorce proceedings had been filed in a competent court during the lifetime of the pensioner or his/her spouse. Since the respondent had filed a case for divorce in the Family Court, Thalassery, in 2017, after the death of her parents and the court allowed that original petition on 27.01.2018, the respondent is not eligible for grant of family pension.

4. After considering the rival contentions of the parties, by the impugned Ext.P3 order dated 09.08.2023, the Tribunal allowed the original application by directing the petitioners 3 and 4 herein to issue PPO granting family pension to the respondent-applicant from the date of demise of her mother, i.e., from 09.08.2015 and pay the arrears at the earliest, at any rate, within four months from the date of receipt of a copy of that order, failing which the unpaid amount was ordered to carry interest at the rate of 9% per annum. Though after the pronouncement of the order, the learned Central Government Senior Panel Counsel requested leave to appeal to the Supreme Court, the Tribunal refused that request, holding that in the opinion of the Tribunal, no question of law of general public importance is involved in the matter.

5. Since Ext.P3 order of the Tribunal has not been



complied with by the petitioners, the respondent approached this Court by filing W.P.(C)No.19100 of 2025, contending that she has filed a miscellaneous application seeking execution of the order, wherein the petitioners herein had undertaken to implement the order within four months. However, within the said period, the order was not complied with. By noting the directions in the judgment dated 08.01.2025 in W.P.(C)No.23871 of 2024 of a Division Bench of this Court, wherein one among us [S.Manu., J.] was a party, the Division Bench, wherein one among us [Muraleekrishna.S.,J.] was a party, disposed of W.P.(C)No.19100 of 2025 as under:

“The petitioner has already been successful in getting a relief of family pension vide order dated 9.8.2023. He has filed a miscellaneous application for seeking execution of the order wherein according to the averments in the petition, respondents had undertaken to implement the order within four months and four months time was granted. However in the said period, the order was not complied with. The Division Bench of this Court in the judgment dated 8.1.2025 in WP(C) No.23871 of 2024 has already issued the following directions:

1. The Respondents in all 312 Miscellaneous Applications mentioned in the report of the Registrar, Armed Forces Tribunal, Regional Bench, Kochi submitted with covering letter dated 18 November 2023 shall take necessary steps



to implement the final orders in the respective Original Applications if no decision and steps are taken to challenge the orders.

2. The Respondents shall ensure action as aforesaid in one-third of the total matters pending for execution within a period of one month from the date of receipt of copy of this order.

3. Appropriate action as directed above in remaining matters shall be ensured at the earliest at any rate within a further period of two months.

4. While complying with the above directions, the matters shall be prioritized in chronological order, with reference to the dates of passing of final orders in corresponding Original Applications by the learned Tribunal.

3. We are of the view that the respondents are required to comply with the aforementioned directions much less the AFT have also power to take the proceedings of contempt against the respondent in case of non compliance. In this view of the matter, we dispose of the writ petition with a hope that the order of the Division Bench as well as of the Armed Force Tribunal shall be complied with by the respondents, as expeditiously as possible.”

6. Since the aforesaid judgment dated 23.05.2025 in W.P.(C)No.19100 of 2025 was also not complied with by the petitioners, the respondent filed a contempt case(Civil) bearing No.197 of 2026 before this Court under the provisions of Section 12 of the Contempt of Courts Act, 1971, and Article 215 of the Constitution of India. Thereafter, the petitioners came up with the



present writ petition. On 10.04.2026, when this writ petition, along with the contempt case, came up for consideration, the Division Bench of this Court directed the Registry to place the matter before the Honourable the Chief Justice for constitution of a Bench to hear the writ petition and the contempt petition on an urgent basis, taking note of the fact that the judgment dated 08.01.2025 in W.P.(C)No.23871 of 2024 was delivered by a Division Bench in which one among us [S. Manu.,J] was a member and in the Bench which passed the judgment dated 23.05.2025 in W.P.(C)No.19100 of 2025, wherein one among as [Muraleekrishna.S., J.] was a member. Thereafter, by the order dated 01.06.2026 of the Honourable, the Chief Justice, this special Bench was constituted for hearing the contempt case and the writ petition.

7. In this writ petition, the respondent filed a counter affidavit dated 14.01.2026, reiterating her contentions in the original application filed before the Tribunal, and producing therewith Exts.R1(a) to R1(e) documents.

8. On 15.06.2026, we heard this writ petition.

9. Adv.M.Shajna, the learned Central Government



Counsel appearing for the petitioners, vehemently argued that as per para 4 of the Government of India, Ministry of Defence, letter dated 17.11.2017 produced as Annexure R17 in the original Application, a divorced daughter is entitled for continuation of family pension only in a case where in the divorce proceedings had been instituted in a competent court during the lifetime of employee/pensioner or his/her spouse, whereas in the present case, the divorce proceedings were filed after the death of the pensioner, i.e., the mother of the respondent. Therefore, the respondent is not eligible for family pension.

10. On the other hand, Sri.G.Krishnakumar, the learned counsel for the respondent, argued that in fact the marriage of the respondent was in the year 1973, when she was a minor aged sixteen years. Therefore, the marriage itself is voidable. The respondent returned to her parental house within three days of marriage, and Annexure A3 divorce agreement was executed between the parties. The learned counsel argued that such a dissolution of marriage by execution of an agreement was the customary practice among the members of the Thiyya community in the Malabar area, the caste to which the respondent belongs.



By pointing out Section 29 of the Hindu Marriage Act, 1955, the learned counsel further submitted that as per the provisions under sub-section (2) of Section 29 of the said Act, any right recognised by custom or conferred by any special enactment to obtain the dissolution of a Hindu marriage, whether solemnised before or after the commencement of the said Act, is saved. The learned counsel argued that the dissolution of marriage entered by way of Annexure A3 agreement between the respondent and her husband was in accordance with Section 6 of the Tamil Nadu Marumakkattayam Act, 1932. By relying on the judgment of this Court in **Janaki v. Land Tribunal, Tellicherry, [1973 KLT 923]**, the learned counsel argued that the Thiyyas of North Malabar are governed by Marumakkattayam law. Therefore, even in the absence of Annexure A9 judgment dated 27.01.2018 in O.P.No.762 of 2017, the respondent is entitled to be treated as a person divorced during the lifetime of the pensioner. Apart from the above argument, by relying on the observations in paragraphs 30 to 34 of the judgment of the Apex Court in **Prestige Lights Limited v. State Bank of India [(2007) 8 SCC 449]**, the learned counsel argued that the petitioners have not approached



this Court with clean hands as they have suppressed the filing of W.P.(C)No.19100 of 2025 and the judgment therein passed by this Court in the present writ petition.

11. From the pleadings and materials on record and from the submissions made at the Bar, there are some facts in this case, in respect of which no serious dispute has been raised by the petitioners. The facts that the father of the respondent was a pensioner from the Indian Army and he was getting disability pension till his death in the year 1989, and thereafter, the mother of the respondent, namely, Nani @ Moolam Nani, was getting the family pension till 21.08.2015, are not in dispute. The pleading in the original application that the respondent was depending upon her parents till their death is also not seriously disputed by the petitioners. The pleadings in the original application that the respondent married to one Elancherry Raghavan and the marriage subsisted only for a short period, and they have executed Annexure A3 deed of dissolution of marriage, which was registered in the Sub Registrar Office of Kadiroor as document No.85 of 1974, are also not seriously disputed by the petitioners. The customary practice of dissolution of marriage by executing an agreement,



among members of the Thiyya community pleaded in the original application is also not specifically denied in the reply statement filed by the petitioners. On the other hand, the petitioners contend that since Annexure A9 decree of dissolution of marriage was obtained by the respondent from the Family Court, Thalassery, only on 27.01.2018, which was after the death of the pensioners, by virtue of Annexure R17 order of the Government of India, Ministry of Defence, she is not entitled to get continuation of the family pension that was received by her mother. Therefore, the only point to be considered in this writ petition is the legal effect of Annexure A3 registered deed of divorce dated 27.11.1974, executed between the respondent and her Ex-husband, especially when the respondent has obtained Annexure A9 decree of dissolution of marriage also from the competent Family Court.

12. The marriage and dissolution of marriage among the members of the Hindu community, after the enactment of the Hindu Marriage Act, 1955, are governed by the provisions under the said Act. However, as per the provisions under Section 29 of the said Act, some saving clauses are also provided. Section 29(2) of the Hindu Marriage Act, 1955, relied by the respondent to claim



that her marriage was dissolved by virtue of Annexure A3 agreement, provides that nothing contained in the Hindu Marriage Act, 1955, shall be deemed to effect any right recognised by custom or conferred by any special enactment to obtain the dissolution of Hindu marriage whether solemnised before or after the commencement of the said Act.

13. Though during the course of arguments, the learned counsel for the respondent relied on the judgment of this Court in **Janaki [1973 KLT 923]** and argued that the Thiyyas of north Malabar are governed by the Marumakkattayam law, and the Marumakkattayam law mentioned therein is the Tamil Nadu Marumakkattayam Act, 1932, on going through the judgment in **Janaki [1973 KLT 923]** and the relevant statutory provisions binding the followers of the Marumakkattayam Law in North Malabar, it is clear that the Marumakkattayam law mentioned in that judgment is not the Tamil Nadu Marumakkattayam Act, 1932, but it is the Madras Marumakkattayam Act, 1932. Infact, after the reorganisation of the states and the renaming of Madras State, the Madras Marumakkattayam Act, 1932, is renamed as Tamil Nadu Marumakkattayam Act, 1932 by the Tamil Nadu Adaptation



of Laws (Second Amendment) Order, 1969. More over, as per Section 1 of Tamil Nadu Marumakkattayam Act, 1932, the said Act is applicable to all Hindus in the State of Tamil Nadu who are governed by Marumakkattayam law of inheritance; to all Hindus outside the said State governed by the said law, in respect of properties within it; and all Hindu males, whether governed by the said law or not, who have contracted or may contract marital alliance with Hindu females governed by the said law. Essentially, the Tamil Nadu Marumakkattayam Act, 1932, applies to the marumakkattayis who have properties in Tamil Nadu or the Hindus residing in the State of Tamil Nadu or to the Hindu males who have contracted or may contract marital alliance with Hindu females governed by the said law. Whereas, as per Section 1 of the Madras Marumakkattayam Act 1932, the said Act is applicable to all Hindus in the erstwhile Presidency of Madras who are governed by Marumakkattayam law of inheritance; to all Hindus outside the said Presidency governed by the said law, in respect of properties within it; and all Hindu males, whether governed by the said law or not, who have contracted or may contract marital alliance with Hindu females governed by the said law. Therefore,



the Marumakkattayam law held as applicable to the parties to that case, who are Thiyyas of Malabar in **Janaki [1973 KLT 923]**, is the Madras Marumakkattayam Act, 1932.

14. Section 6 of the Madras Marumakkattayam Act, 1932, which deals with dissolution of a marriage which has taken place as per Section 4 of the said Act, reads thus:

“6. A marriage valid under Section 4 may be dissolved-
(a) by a registered instrument of dissolution executed by the parties thereto; or
(b) by an order of dissolution as hereinafter provided:
Provided that if either or both the parties is or are minors, the marriage shall not be dissolved until after the party has become a major or both the parties have become majors, as the case may be.” (Underline supplied)

15. It is pertinent to note at this juncture that, as per Section 7(2) of the Kerala Joint Hindu Family System (Abolition) Act, 1975, which came into force with effect from 01.12.1976, the Acts mentioned in the schedule, insofar as they apply to the whole or any part of the State of Kerala, are repealed. The schedule mentioned in Section 7(2) covers the Madras Marumakkattayam Act, 1932 also. Therefore, after the coming into force of the Kerala Joint Hindu Family System (Abolition) Act, 1975, the provisions mentioned in Section 6 of the Madras Marumakkattayam Act,



1932, cannot be pressed into service in the case of dissolution of marriage, by relying on Section 29(2) of the Hindu Marriage Act, 1955. The effect of Section 7(2) of the Kerala Joint Hindu Family System (Abolition) Act, 1975, was considered by a Division Bench of this Court in **Gopalakrishnan Nair v. Sarasamma [1979 KLT 810]**, while considering the special provision for dissolution of marriage under the Travancore Nair Act II of 1100, this Court held thus:

"4 The Hindu Marriage Act 1955 provided in S.4 for the overriding effect of the Act in certain cases. S.4 of the Hindu Marriage Act, 1955 read thus:

"4. Save as otherwise expressly provided in this Act, (a) any text rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;

(b) any other law in force immediately before the commencement of this Act shall cease to have effect in so far as it is inconsistent with any of the provisions contained in this Act.

"We are here concerned not with any text rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of the Act. Therefore S.4(a) has no application. Clause (b) of S.4 of the Act rendered any law in force immediately



before the commencement of the Act inoperative in so far as such Act was inconsistent with any of the provisions contained in the Hindu Marriage Act 1955. But this was expressly subject to the provision "Save as otherwise expressly provided in the Act." Therefore in examining the question whether any provision of a special enactment ceased to have effect because of the provisions of the Hindu Marriage Act, 1955, two questions have to be examined and they are (1) whether the provision in the enactment is inconsistent with the provisions in the Hindu Marriage Act (2) If so is there any express provision otherwise in the Act which keeps alive such law despite the inconsistency. S.29(2) of the Hindu Marriage Act provide thus:

"29(1)

(2) Nothing contained in this Act shall be deemed to affect any right recognised by custom or conferred by any special enactment to obtain the dissolution of a Hindu marriage, whether solemnised before or after the commencement of this Act.

(3)

(4)"

The express provision in the sub-section would save the rights recognised by custom conferred by any special enactment to obtain the dissolution of Hindu marriage. Therefore if there was a special enactment in force which conferred a right to obtain dissolution the provision with regard to dissolution of marriages under the Hindu Marriage Act would not affect such right. The field of operation of the right to dissolution conferred under the Hindu Marriage Act



was restricted in its scope by reason of S.29(2) of the Act. It was operative in all cases other than those to which S.29(2) would apply. In other words the right to obtain dissolution under the Hindu Marriage Act did not extend to cases where provision has been made for that purpose in special enactments. In such cases the special enactment would continue to operate. The words "Nothing contained in this Act shall be deemed to affect any right". in sub-s.(2) of S.29 of the Act clearly indicates the limited scope of S.13 of the Hindu Marriage Act, limited in the sense that it will not override the provisions in 'special enactments conferring right to obtain dissolution of Hindu marriages: In that view the provisions of the Nair Act which conferred a right to obtain dissolution of a marriage on certain specific grounds and by resort to a specific procedure would remain in force not because such right was conferred by S.29(2) but S.29(2) limits the operation of S.13 to cases other than those covered, among other laws by Nair Act 1100. In that view S.4(b) will not be applicable, for, that renders any law inoperative only in so far as it is inconsistent with any provision contained in the Act. Nair Act is not inconsistent with any provision contained in the Hindu Marriage Act, for, S.13 limited in its operation to cases other than those covered by S.29(2) would not be inconsistent with cases covered by S.29 (2). In other words the provisions of Nair Act concerning the right to obtain dissolution of marriage are not inconsistent with S.13 of the Act.

5. The continuance of rights of parties to seek dissolution under Nair Act is not because of any right conferred by the



Hindu Marriage Act, but because of the special provision in the Act that the provision regarding dissolution of marriages under that Act would not apply to cases governed by special enactments. The Nair Act ceased to be operative by reason of its subsequent repeal by Act 30 of 1976. Till then petitions for divorce could be filed under the Nair Act, tried and disposed of. That was a right available to parties because relevant provisions of that Act were in force as stated earlier. They were in force by their own right and not because of any provision in any other enactment. When once the Nair Act is repealed and proceedings under the Act are pending on the date of such repeal whether they could be continued under that Act has to be decided with reference to the provisions of the repealing statute read along with S.4 of the Interpretation and General Clauses Act 1125 corresponding to S 6 of the General Clauses (Central) Act 1897. S.4 of the Interpretation and General Clauses Act 1125 provides for the effect of repeal. That reads thus:

4. "Effect of repeal Where any Act repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not

- (a) revive anything not in force or existing at the time at which the repeal takes effect; or
- (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so



repealed; or

(e) affect any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any penalty, forfeiture or punishment may be imposed as if the repealing Act had not been passed."

Unless a different intention appears the repeal will not affect any legal proceeding or remedy in respect of any right and such proceeding or remedy may be continued or enforced as if the repealing Act had not been passed. It may be that the repealing statute indicates an intention expressly or impliedly to keep alive proceedings under the provisions repealed. It may be that it indicates an intention not to keep alive the proceedings which are pending. In either case there would not be any difficulty. The intention must necessarily be decisive. But there may be cases where the repealing Act is silent. No contrary intention appears in such a case. The silence in the repealing Act cannot be taken to be an indication of a contrary intention. Those are cases of simple repeal. In such cases if the court finds that no contrary intention is indicated in the repealing enactment the position would be that pending proceedings would survive as if the repealing provision continued to be in force. The Supreme Court in *Baliah v. Rangachari*, [AIR 1969 SC 701] observed in para 5 of the judgment thus: "The principle of this section is that unless a different intention appears in the repealing Act, any legal proceeding



can be instituted and continued in respect of any matter pending under the repealed Act as if that Act was in force at the time of repeal. In other words, whenever there is a repeal of an enactment the consequences laid down in S.6 of the General Clauses Act will follow unless, as the section itself says a different intention appears in the repealing statute. In the case of a simple repeal there is scarcely any room for expression of a contrary opinion. But when the repeal is followed by fresh legislation on the same subject the Court would undoubtedly have to look to the provisions of the new Act, but only for the purpose of determining whether they indicate a different intention. The question is not whether the new Act expressly keeps alive old rights and liabilities but whether it manifests an intention to destroy them. S.6 of the General Clauses Act therefore will be applicable unless the new legislation manifests an intention incompatible with or contrary to the provisions of the section."

We have already observed that the repeal under S.7 of Act 30 of 1976 was a simple repeal without providing for any saving. Hence any proceeding under the repealed Act must continue as if the repealed Act was in force.

6. Soon after the Hindu Marriage Act came into force a controversy arose on the scope of S.4(b) and S.29(2) of the said Act in the courts of the State. There were special statutes like Travancore Ezhava Act and Travancore Nayar Act in force in the State which granted parties right to obtain dissolution on grounds different from that recognised under the Hindu Marriage Act. A Full Bench of this Court is



Vasappan v. Sarada, [1957 KLT 977] had occasion to examine the scope of the provisions of the Travancore Ezhava Act concerning the right to dissolution of marriage in the context of the Hindu Marriage Act. Dealing with this question Sankaran J. speaking for the Full Bench said thus: "The section makes it perfectly clear that the implied repeal contemplated by it can operate only in respect of matters which are not saved by the other provisions of the Act. Such saving provisions are contained in S.29 of that Act. Sub-s.(2) of S.29 is relevant to the question at hand. The sub-section is as follows:

"Nothing contained in this Act shall be deemed to affect any right recognised by custom or conferred by any special enactment to obtain the dissolution of a Hindu Marriage, whether solemnised before or after the commencement of this Act".

The Travancore Ezhava Act is a special enactment coming within the scope of this sub-section. That special enactment has conferred a right on the parties to a marriage recognised by that Act, to have the marriage dissolved by presenting a petition to the District Munsiff's Court in the manner specified by S.8 of that Act. S.8 and 11 of that Act make it clear that the right to have recourse to the Munsiff's Court for getting an order of dissolution of the marriage has also been conferred on the parties to a marriage. Since such a right has been expressly preserved in tact by sub-s.(2) of S.29 of the Hindu Marriage Act, the petition E. R. P. 5/1956 filed in the Alleppey Munsiff's Court is perfectly competent and that Court has the undoubted jurisdiction to entertain



the petition and to pass the necessary orders on it, as contemplated by S.11 of the Travancore Ezhava Act."

7. Though in view of the Full Bench decision the controversy as to whether the right to obtain divorce under the Ezhava Act or the Nair Act survived must be taken to be settled a further controversy arose as to the scope of such right. Whether that right was only to avail of the grounds specified under the said statutes as grounds for divorce or whether it extended to seek such divorce in the forum specified in the said statutes and in the manner prescribed in the said statutes was the subject of controversy. A learned Judge of this Court in *Vijayamma v. Gangadharan*, [1967 KLT 115] took the view that such right extended only to seek to avail of grounds of dissolution in the special statute. That would mean that a person who sought dissolution under the Travancore Nair Act and who if he was bound by the Nair Act in the choice of the forum would have to resort to the Munsiff's Court was entitled to rely upon the grounds of dissolution but was not to move a petition before the Munsiff's Court. The provisions of Hindu Marriage Act 1955 contemplated moving a petition for dissolution before the District Court. That would certainly give rise to an anomaly, for, a District Court under the provisions of the Hindu Marriage Act was no doubt a court which could entertain a petition for dissolution of marriage but that was a petition contemplated under the provisions of the Hindu Marriage Act and not the provisions under the Nair Act. This anomaly was noticed. A Division Bench of this Court in *Raghavan Indira v. Kesavan Gopinathan*, [1968 KLT 528] noticed that



there was nothing in the Hindu Marriage Act 1955 which provides that petitions under the Travancore Ezhava Act should be deemed by any legal fiction to be petitions presented under the Hindu Marriage Act, 1955. The Division Bench did not agree with the view taken by the learned single Judge expressed in *Vijayamma v, Gangadharan*, [1967 KLT 115]. In view of such different views expressed by this Court the matter came up before a Full Bench in *Krishna Pillai v. Subhadra Amma*, [1970 KLT 442]. Raman Nayar C. J. said in that case thus: "It is important to note that what is saved is the right to obtain the dissolution the emphasis is mine not the right of dissolution or the grounds for dissolution, and having regard to the plain language of the statute, as to its purpose, the right saved includes everything necessary, call it substantive, remedial or procedural, to obtain the dissolution As I have already observed, all manner of rights, call them substantive, procedural, remedial or what you will, the word "right" is wide enough to take in all of them are comprehended by the saving so long as they relate to the obtaining of the dissolution."

8. To us it seems to be beyond doubt that by reason of S.29(2) of the Hindu Marriage Act the right to obtain dissolution under the Nair Act continues to be operative. The scope of the right has already been, as we have observed, defined by the Full Bench as including not only the right to avail of the grounds but also the procedure. If so, when the Nair Act was repealed and the repealing Act did not indicate any intention to the contrary S.4 of the Interpretation and



General Clauses Act operated to keep alive the petitions which had been filed under the Nair Act. They will have to be continued as if the Nair Act continued to be in force for the purpose". (Underline supplied)

16. While coming to the facts of the present case, the marriage of the respondent with Elancherry Raghavan was before the coming into force of the Kerala Joint Hindu Family System (Abolition) Act, 1975. Annexure A3 divorce agreement was also executed between the respondent and the aforesaid Raghavan before the coming into force of the said Act. Therefore, Annexure A3 divorce deed executed by the respondent and her ex-husband has the backing of the provisions under Section 6 of the Madras Marumakkattayam Act, 1932, which is saved by virtue of Section 29(2) of the Hindu Marriage Act, 1955.

17. While going through the pleadings in the original application, we notice that though the arguments relying on the right under the Marumakkattayam law, which was saved under Section 29(2) of the Hindu Marriage Act, 1955, are raised during the course of arguments, the pleadings to that effect are conspicuously absent in the original application. The pleading in the original application is that Annexure A3 agreement was executed in accordance with the custom that followed in the



Thiyya community. As far as the right to obtain dissolution of marriage on the basis of custom is concerned, in **Kizhakkayi Dasan v. Kuniyil Cheerootty [2025 (7) KHC 197]**, a Division Bench of this Court held as under;

“10. The authoritative precedents on the subject have to be examined for a proper understanding of the above principle. It is well settled that the right to obtain dissolution of a Hindu marriage on the basis of such custom can be accepted by the Court only if the party asserting it succeeds in proving that the custom has prevailed in the community with the essential attributes of antiquity, continuity, and reasonable certainty. Antiquity and continuity are indispensable features of a practice for it to mature into a legally acceptable custom. The burden of proof in this regard lies entirely upon the person who relies upon the existence of such a custom”. (Underline supplied)

18. In the instant case, though the respondent pleaded that Annexure A3 divorce agreement was executed in accordance with the customary practice in their caste, the petitioners did not deny the same in their reply statement. Even in the present writ petition, the petitioners have no case that such a customary practice of dissolution of marriage by executing an agreement was not there among the members of the Thiyya community of the Malabar area. Moreover, as mentioned above, the customary



practice of dissolution of marriage pleaded in the original application has statutory backing of Section 6 of the Madras Marumakkattayam Act. It is true that in the original application, there is no pleading about the sanctity of Annexure A3 divorce agreement based on the statutory provisions. But, on analysing the facts and circumstances of this case as narrated above, we are of the opinion that even in the absence of specific pleading in the original application, the contentions of the respondent about the validity of Annexure A3 Divorce agreement can be accepted as it is a right claimed based on statutory provisions and not based on the customary practice. Then the question that may arise is the effect of Annexure A9 judgment of dissolution of marriage obtained by the respondent from the Family Court.

19. From the perusal of Annexure A9 judgment of the Family Court in O.P.No.762 of 2017, it is evident that the respondent had pleaded the existence of Annexure A3 agreement in that original petition. The ground for dissolution of marriage granted by the Family Court is the desertion of the respondent by her husband for the last 43 years. It is also pertinent to note that in the original application, the respondent has specifically pleaded



that she was constrained to obtain Annexure A9 decree of dissolution of marriage from the Family Court, only because the petitioners insisted for a certificate of dissolution of marriage from a competent court. In such circumstances, it can only be said that the dissolution of the marriage of the respondent took place in the year 1974 by way of Annexure A3 registered agreement. Therefore, it can be concluded that the marriage of the respondent with Elancherry Raghavan was dissolved by virtue of Annexure A3 agreement during the lifetime of the pensioners, i.e., the father as well as the mother of the respondent. The petitioners ought to have honoured the said dissolution of marriage, which was stated in her application submitted for continuation of the family pension.

20. While coming to the argument of suppression of material fact raised by the learned counsel for the respondent in **Prestige Light Ltd. [(2007) 8 SCC 449]**, the Apex Court held thus:

"32. It is thus clear that though the appellant Company had approached the High Court under Article 226 of the Constitution, it had not candidly stated all the facts to the Court. The High Court is exercising discretionary and extraordinary jurisdiction under Article 226 of the Constitution. Over and above, a court of law is also a court



of equity. It is, therefore, of utmost necessity that when a party approaches a High Court, he must place all the facts before the Court without any reservation. If there is suppression of material facts on the part of the applicant or twisted facts have been placed before the Court, the writ court may refuse to entertain the petition and dismiss it without entering into merits of the matter.

33. The object underlying the above principle has been succinctly stated by Scrutton, L.J., in *R. v. Kensington Income Tax Commrs.* [(1917) 1 KB 486 : 86 LJKB 257: 116 LT 136 (CA)], in the following words:

“[I]t has been for many years the rule of the court, and one which it is of the greatest importance to maintain, that when an applicant comes to the court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts—facts, not law. He must not misstate the law if he can help it—*the court is supposed to know the law. But it knows nothing about the facts*, and the applicant must state fully and fairly the facts, and the penalty by which the court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the court will set aside, any action which it has taken on the faith of the imperfect statement.” (emphasis supplied)

34. It is well settled that a prerogative remedy is not a matter of course. In exercising extraordinary power, therefore, a writ court will indeed bear in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the court, the



court may dismiss the action without adjudicating the matter. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible". (Underline supplied)

21. The Apex Court, while considering the effect of suppression of material facts by a litigant while approaching the Court seeking a discretionary remedy in **Dalip Singh v. State of UP [(2010) 2 SCC 114]** held thus:

"1. For many centuries Indian society cherished two basic values of life i.e. "satya" (truth) and "ahinsa" (nonviolence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice - delivery system which was in vogue in the pre - Independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post - Independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.

2. In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect



for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands is not entitled to any relief, interim or final." (Underline supplied)

22. After considering various previous judgments, including that in **Dalip Singh [(2010) 2 SCC 114]**, the Apex Court in **Kusha Duruka v. State of Odisha [2024 (1) KHC 389]** held thus:

"It was held in the judgments referred to above that one of the two cherished basic values by Indian society for centuries is "satya" (truth) and the same has been put under the carpet by the petitioner. Truth constituted an integral part of the justice-delivery system in the pre-independence era, however, post - Independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings. In the last 40 years, the values have gone down and now a litigants can go to any extent to mislead the court. They have no respect for the truth. The principle has been evolved to meet the challenges posed by this new breed of litigants. Now it is well settled that a litigant, who



attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final. Suppression of material facts from the court of law, is actually playing fraud with the court. The maxim supressio veri, expression falsi, i.e. suppression of the truth is equivalent to the expression of falsehood, gets attracted. Its nothing but degradation of moral values in the society, may be because of our education system. Now we are more happy to hear anything except truth; read anything except truth; speak anything except truth and believe anything except truth. Someone rightly said that 'Lies are very sweet, while truth is bitter, that's why most people prefer telling lies.'"

(Underline supplied)

23. In **Kusha Duruka [2024 (1) KHC 389]**, taking serious note of the fact that the appellant therein obtained bail from the High Court, without disclosing the pendency of that S.L.P., as well as of the fact that it was his second bail petition, the Apex Court imposed the appellant a cost of Rs.10,000/-. While imposing the cost, the Apex Court observed that, considering the conduct of the appellant, one of the options available was to cancel his bail.

24. In the instant case, the petitioners have not stated anything about the miscellaneous application bearing No.M.A.No.465 of 2024 filed by the respondent before the Tribunal to execute Ext.P3 order of the Tribunal and the undertaking made



by the petitioners to implement the directions and also about Ext.R1(c) order dated 31.07.2024 passed by the Tribunal in that miscellaneous application, granting four months time to the petitioners based on their undertaking. Similarly, the petitioners have not stated anything in the writ petition about the judgment of this Court dated 23.05.2025 in W.P.(C)No.19100 of 2025, the copy of which is produced as Ext.R1(e) along with the counter affidavit filed by the respondent. After undertaking before the Tribunal to implement the impugned Ext.P3 order and also suffering Ext.R1(e) judgment, it was the duty of the petitioners to state all those facts in the writ petition. Though the learned counsel for the respondent vehemently submitted that the petitioners are liable to be nonsuited for suppression of these material facts, we are not entering into a finding against the petitioners based on nondisclosure of these facts in the writ petition, for the reason that even otherwise, on merits, as discussed in the preceding paragraphs of this judgment, the respondent has made out sufficient ground to dismiss the writ petition.

25. Having considered the pleadings and materials on



record and the submissions made at the Bar, we find no illegality or impropriety in the impugned order of the Tribunal which warrants interference by exercising extraordinary jurisdiction under Article 226 of the Constitution of India.

In the result, this writ petition stands dismissed.

Sd/-

S. MANU, JUDGE

Sd/-

MURALEE KRISHNA S., JUDGE

nak



APPENDIX OF WP(C) NO. 40423 OF 2025

PETITIONER EXHIBITS

- Exhibit P1 THE TRUE COPY OF THE O.A 157/2021 DATED 16/08/2021 ALONG WITH ALL ANNEXURES, FILED BY THE APPLICANT, BEFORE THE TRIBUNAL
- Exhibit P2 A TRUE COPY OF REPLY STATEMENT DATED 07.06.2023 IN OA NO. 157 OF 2021 FILED BY THE PETITIONERS
- Exhibit P3 A TRUE COPY OF THE ORDER DATED 09.08.23 PASSED IN OA NO. 157 OF 2021 BY THE HON'BLE ARMED FORCES TRIBUNAL REGIONAL BENCH, KOCHI

RESPONDENT EXHIBITS

- Exhibit R1(a) The true copy of the request dated 19-10-2023 by the respondent to the 7th petitioner
- Exhibit R1(b) The true copy of the request dated 09-03-2024 submitted by the respondent to the 4th and 7th petitioners
- Exhibit R1(c) The true copy of the Order dated 31.07.2024 in MA No. 465/2024 in OA 157/21 of AFT, Kochi
- Exhibit R1(d) The true copy of the covering letter dated 31.12.2024 the Sr Accounts officer - (PG) pension Grievances Department of Ex-servicemen welfare to the concerned officer
- Exhibit R1(e) The true copy of the Judgment dated 23.5.2025 of this Hon'ble Court in W.P.(C) No.19100/2025
- Exhibit R1(f) TRUE COPY OF THE COMMUNICATION DATED 30.10.2025 ISSUED BY THE 1ST RESPONDENT HEREIN TO THE OTHER RESPONDENTS/ PETITIONERS IS PRODUCED HERewith AND MARKED AS EXHIBIT R1 (F)
- Exhibit R1(g) TRUE COPY OF THE COMMUNICATION DTD 31.1.2026 ISSUED BY THE 5TH WRIT PETITIONER'S OFFICE TO ME IS PRODUCED HERewith AND MARKED AS EXHIBIT R1 (G) .
- Exhibit R1(h) TRUE COPY OF THE COMMUNICATION DATED 19.02.2026 FROM THE WRIT PETITIONER NO.4 ISSUED TO THE OFFICE OF THE 5TH WRIT PETITIONER IS PRODUCED HERewith AND MARKED AS EXHIBIT R1 (H) .