

W.P(MD)No.15511 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.07.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.15511 of 2022

Vasmi Sudarshini

... Petitioner

Vs.

The Sub Registrar,
Sub Registrar Office,
Manavalakurichi,
Kanyakumari.

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, to direct the respondent herein to solemnize the marriage of the petitioner with bridegroom namely Rahul Leena Madhu through video conference and register the same under Special Marriage Act, 1954 and issue marriage certificate by considering the representation of the petitioner dated 06.07.2022 within a time stipulated by this Court.

For Petitioner : Mr.M.Gnanagurunathan

For Respondent : Mr.K.S.Selvaganesan
Additional Government Pleader



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ORDER

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"There came a time when Rama was going to perform a huge sacrifice, or yajna, such as the old kings used to celebrate. But no ceremony in India can be performed by a married man without his wife ; he must have the wife with him, the sahadharmini, the "co-religionist" - that is the expression for a wife. The Hindu householder has to perform hundreds of ceremonies but not one can be duly performed according to the shastras, if he has not a wife to complement it with her part in it.

Now Rama's wife was not with him then, as she had been banished. So, the people asked him to marry again. But at this request Rama for the first time in his life stood against the people. He said, "this cannot be. My life is Sita's". So, as a substitute, a golden statue of Sita was made, in order that the ceremony could be accomplished".

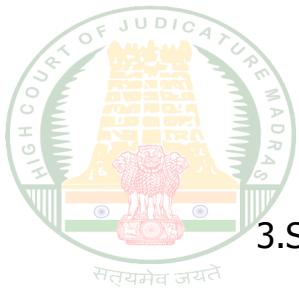
The above quotation is from Swami Vivekananda's lecture delivered at the Shakespeare club, California on 31.01.1900. If a golden statue of Sita can be a substitute for her physical presence, I have no hesitation to hold that virtual presence through online would meet the requirements of law under Section 12 of the Special Marriage Act, 1954. Recently, a Division Bench of the Hon'ble Supreme Court comprising Justice Indira Banerjee and Justice



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V.Ramasubramanian orally observed "the Special Marriage Act was enacted in 1954 whereas the technology of computer and internet was introduced much later. Law has to march along with technology. Where there is difficulty, the letter of law cannot be so rigid that it makes it impossible for the parties to follow".

2.Vasmi Sudharshini P N is a resident of Kanyakumari. Rahul L.Madhu is an American national. Both fell in love. They want to get married. Rahul came down to India and submitted a joint application with the petitioner before the respondent under Section 5 of the Special Marriage Act, 1954 on 05.05.2022. Notice was published on 12.05.2022. Objections were received from Rahul's father and another. The marriage officer came to the conclusion that the objections are not reasonable. The mandatory 30 days period expired on 12.06.2022. The parties appeared before the respondent on 13.06.2022. For reasons not quite discernible, the respondent did not facilitate the solemnization of marriage in his presence. Rahul could not wait further as he had to return owing to Visa requirements. Now the demand made by the parties is that they should be allowed to solemnize their marriage under Section 12 of the Act even though the bride is in India and the bridegroom is in USA.



3. Section 12 of the Special Marriage Act, 1954 is as follows :

“12. Place and form of solemnization.-

(1) The marriage may be solemnized at the office of the Marriage Officer, or at such other place within a reasonable distance therefrom as the parties may desire, and upon such conditions and the payment of such additional fees as may be prescribed.

(2) The marriage may be solemnized in any form which the parties may choose to adopt:

Provided that it shall not be complete and binding on the parties unless each party says to the other in the presence of the Marriage Officer and the three witnesses and in any language understood by the parties, -“I, (A), take the (B), to be my lawful wife (or husband)”.

It can be seen from the above that choice is given to the parties to adopt any form of solemnization of marriage. Of course, the form must be recognised and reasonable and not against public policy. One has read in history books that a Rajput bride can marry a Rajput warrior by garlanding his sword. A hundred years ago when the world witnessed the First World War, the Judge Advocate General rendered an opinion that soldiers abroad might marry their sweethearts in the United States through interchanging a marriage contract by mail, provided that such marriage does not contravene State statutes and that this method might properly be facilitated by the military authorities in France. Ernest G. Lorenzen had written a scholarly article in **32 Harvard Law**

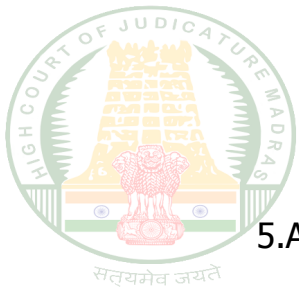


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Review 487 on "Marriage by Proxy and The Conflict of Laws". He

notes that marriage by proxy has been expressly sanctioned by law in three of the continental countries – Belgium, France and Italy and that it was allowed by Roman Law and Canon Law. According to Pomponius, a man who was away from home might marry a woman by letter or messenger. I came across the decision reported in **(2008) UK AIT 00080** by a Senior Immigration Judge holding that there is no exception in immigration cases to the rule of private international law that the validity of a marriage is governed by the *lex loci celebrationis* and on the authority of *Apt v. Apt* (1948) P.83 there is no reason in public policy to deny recognition to a proxy marriage.

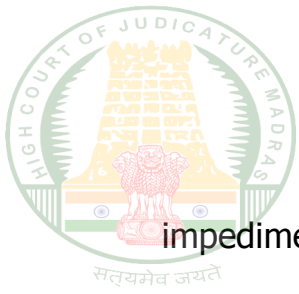
4.In this case, the parties do not propose to conduct proxy marriage. The bridegroom will be very much present. The only distinguishing feature will be his presence being virtual and not physical. Section 12 of the Act does not exclude virtual presence. Here is a case where the parties submitted a joint application in person and again appeared in person before the respondent after the expiry of the mandatory period of 30 days. If the respondent had taken steps right then, the present situation would not have arisen at all. Just as an act of the court should not harm any party, the default committed by the authority ought not to result in prejudicial consequences.



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5. Article 23 (2) of the International Covenant on Civil and Political Rights, 1966 states that the right of men and women of marriageable age to marry and to found a family shall be recognized. Article 16(1) of the Universal Declaration of Human Rights, 1948 also declares that men and women of full age, without any limitation due to race, nationality or religion have the right to marry and to found a family. Singapore had enacted Covid-19 (Temporary Measures for Solemnization and Registration of Marriages) Act, 2020 providing for solemnization and registration of marriages using remote communication technology. Eligible couples may solemnize their marriage online through a video link. Even statutory declarations can be made virtually. According to Hanafi school of thought in Pakistan, marriage can be performed through Skype and there is no need for bride or groom to join their Nikah ceremony personally.

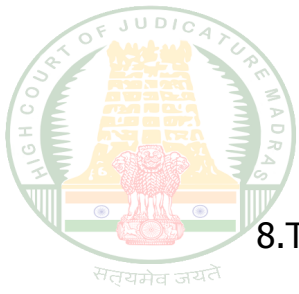
6. The issue came up for consideration before His Lordship The Hon'ble Mr. Justice P.B. Suresh Kumar of The High Court of Kerala in WP(C)No.15244 of 2021. His Lordship was confronted with the very same issue that is now before me. After a consideration of the precedents and also the provisions of the Information Technology Act, the learned Judge felt that law must respond to the needs of changing society and that a pragmatic interpretation of the Act must be adopted. Since a Division Bench decision stood as an



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impediment, the Registry was directed to place the matter before a larger Bench. A specific observation was made that a large number of cases are coming up before the Court involving situations where one or both the parties to the intended marriage had to leave the country after giving notice of the intended marriage on account of the inevitable social requirements and could not consequently solemnize the marriage.

7. Fortunately, there is no contrary decision of the Division Bench of the Madras High Court. Right to marry is a fundamental human right. Sections 12 and 13 of the Special Marriage Act, 1954 should be so construed as to effectuate this right. Section 12 (2) of the Act states that the marriage may be solemnized in any form which the parties may choose to adopt. In this case, the parties have chosen the online mode. Since law has to keep pace with the march of technology, the choice of the parties herein very much passes legal muster. The respondent is therefore directed to facilitate the solemnization of the marriage of the writ petitioner with Rahul L.Madhu in the presence of three witnesses through virtual mode. After the parties to the marriage make the declaration as set out in the proviso to sub-section (2) of Section 12 of the Act, the marriage shall be deemed to be complete and binding on the parties.



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8.The parties to the marriage are very much having the capacity to marry. In U.Kalatheeswaran v. The District Registrar, Karaikudi and another [WP(MD)No.11345 of 2018 dated 23.12.2020], the Hon'ble Mr.Justice S.Vaidyanathan had held that it is not necessary that both the parties must be Indian citizens. Therefore, I hold that there is no legal impediment whatsoever for solemnizing the marriage. The petitioner is having power of attorney from Rahul L.Madhu. After the marriage is solemnized, the petitioner can affix her signature in the marriage certificate book both for herself and on behalf of Rahul L.Madhu. Thereupon, the certificate of marriage shall be issued under Section 13 of the Act by the respondent.

9.The writ petition is allowed. No costs.

28.07.2022

Index : Yes / No

Internet : Yes/ No

skm

To

The Sub Registrar,
Sub Registrar Office,
Manavalakurichi, Kanyakumari.



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G.R.SWAMINATHAN, J.

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