IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.07.2024

DELIVERED ON : 18.10.2024

CORAM:

THE HON'BLE MR.JUSTICE M. NIRMAL KUMAR

C.R.P.Nos.1994 & 89 of 2024
and
C.M.P.No.12451 of 2024 in C.R.P.No.1800 of 2024

C.R.P.No.1994 of 2024

... Petitioner

Vs.

... Respondent

PRAYER**:** Civil Revision Petition has been filed under Article 227 of Constitution of India, 1950, praying to direct the learned Principal Family Court, Chennai to number the unnumbered I.A. in O.P.No.2148 of 2023 filed on 29.02.2024 pending on its file in a time-bound manner.

For Petitioner : Ms.V.Chethana

C.M.P.No.12451 of 2024 in C.R.P.No.1800 of 2024

... Petitioner

Vs.

... Respondent

Prayer in C.M.P.No.12451 of 2024: Civil Miscellaneous Petition filed under Section 151 of C.P.C. praying to clarify the direction issued in Para 11 of the judgment in C.R.P.No.1800 of 2024 as permission to appear from the respective residences of the parties in United States of America without having go to the Indian Consulate for appearance through virtual mode.

For Petitioner : Mr.V.Prakash, Senior Counsel
for Ms.M.Karthikeyani

For Respondent : Ms.Revathi G. Mohan

C.R.P.No.89 of 2024

... Petitioner

Vs.

... Respondent

PRAYER**:** Civil Revision Petition has been filed under Article 227 of Constitution of India, 1950, praying to direct the registry of Family Court, Chennai to number O.P.(SR.) No.3609 of 2023 along with the interim applications.

For Petitioner : Mr.Rahul Jagannathan

COMMON ORDER

C.R.P.No.1994 of 2024

The petitioner/estranged wife of the respondent filed this revision seeking a direction to the Principal Family Court, Chennai to number the unnumbered I.A. in O.P.No.2148 of 2023 filed under Section 13-B of the Hindu Marriage Act seeking divorce by mutual consent.

2.The contention of the petitioner is that the marriage between the petitioner and respondent was solemnised on 23.06.2016 at Sri Kuchalambal

Kalyana Mahal, Chetpet, Chennai according to Hindu rites and customs. The marriage registered as S.No.257 of 2016 at SRO, Periamet on the same day. After the marriage, they lived in USA. They last resided together in Washington State, USA. During the course of their marriage life they had some differences. They tried their best to workout and resolve the issue. The advice and efforts taken by the elders and well-wishers to reconcile the dispute failed. Thereafter both acknowledged that divorce was not because of any specific fault on either side but it became evident that they were incompatible and the differences were irreconcilable. Thus, it was not possible to save the marriage. They were not able to live together as spouses anymore and their marriage broken down. The petitioner and respondent got separated amicably and living separately since 01.08.2021. Since the marriage has irretrievably broken down and it is no longer conducive to retain any matrimonial relationship, both the petitioner and respondent agreed to

amicably dissolve their marriage through mutual consent, with following terms:

(i) Since both the petitioner and respondent are well qualified, they are not seeking any maintenance or alimony from each other and give up their right to claim for maintenance in any proceedings, civil or criminal before any Court.

(ii) The petitioner and respondent have returned their respective articles, and there is no claim for return of any movable property from each other.

3.The petitioner came down from USA to Chennai to file the mutual consent divorce petition. Since the respondent could not travel to India due to visa renewal issues, he filed a petition to be represented by his power agent, his father Mr.Ramkumar and also filed a petition to appear before the Family Court through video-conferencing. The petitioner had no objection for the respondent appearing through video conferencing and being

represented by a power agent, his father. Hence, sought for a decree and judgment to dissolve the marriage solemnised between the petitioner and respondent on 23.06.2016 at Sri Kuchalambal Kalyana Mahal, Chetpet, Chennai and registered as S.No.257 of 2016 at SRO, Periamet.

4.The respondent executed a Deed of Special Power of Attorney in favour of his father on 26.04.2023 and the same was adjudicated at SRO, Mylapore as Document No.1350 of 2023. Thereafter, the mutual consent petition presented by the petitioner and respondent's father (POA) on 15.05.2023, along with it interim application, to appear through video-conferencing and to be represented by a power of attorney for the respondent filed. The respondent appeared before the Court through video-conferencing and the mutual consent petition was numbered as O.P.No.2148 of 2023, which is currently pending on the file of learned Principal Judge, Family Court, Chennai. Six months thereafter, the case posted for hearing on 15.11.2023, since the visa issue pertaining to the respondent could not be

resolved and he was unable to travel to India and not appeared before the Family Court and the case got adjourned to 29.01.2024. Thereafter for the same reason it was again adjourned to 23.02.2024. Finding that the mutual divorce petition getting stalled on technicality, the petitioner approached this Court in C.R.P.(PD) No.762 of 2024 and this Court by order dated 23.02.2024, permitted the respondent to appear through video conferencing. In the meanwhile, the petitioner had to return to USA otherwise she would lose her employment and livelihood, as she was staying in India for more than two months to complete the mutual consent formalities but the same could not be completed and hence, before leaving India, petitioner filed 4 interim applications in the Family Court registry on 29.02.2024, which are as follows:

(i) Application to appoint her mother, Jayanthi, as her power agent to represent her in the proceedings before the Family Court under Order III, Rule 2 of C.P.C. r/w Section 10 of the Family Courts Act;

(ii) Application to appear through video-conferencing under Section 151 of C.P.C.;

(iii) Application to assist by a legal counsel under Section 13 of the Family Courts Act read with Family Court Rules; and

(iv) Application for the counsel to collect the certified copy of the petition in O.P.No.2148 of 2023 with Copy Application No.2245 of 2024.

5.On the next hearing date on 18.03.2024, the interim applications not numbered and it was in the check and call stage. Later, the petitioner came to understand that all the four interim applications and the application filed by the respondent on 15.05.2023 to appear through video-conferencing and permit him to be represented by his father, power of attorney all returned. Now, neither her power of attorney nor her counsel are able to collect the return order and to re-present the same. The petitioner further submitted that only in criminal cases it is mandatory for a person to appear from a

diplomatic mission / consulate for their evidence through video conferencing according to the Madras High Court video-conferencing in Court Rules, 2020 and not in civil cases, more so in matrimonial cases filed under Section 13-B of Hindu Marriage Act, since the Lower Court insisted the petitioner to follow video conferencing rules, she had written to main Diplomatic Mission in San Francisco, who replied positively on 13.03.2024 informing that the Diplomatic Mission can conduct the video conferencing for the case but pointed that there is 12 ½ hours difference in Indian Standard Time (IST) and Family Court working hours in Chennai and it will be at odd hours in USA and it would not be possible to have video conference at odd hours and requested the Court may consider the petitioner's case to be listed in the first hearing/schedule between 10.00 a.m. to 10.30 a.m. (IST) of the Court and the video conference link may kindly be shared to test the video conferencing, prior to the hearing along with the details, contact number and name of the parties. When the same was informed to the Family court, the Family Court

declined to entertain such request and informed it was not feasible to have a sitting between 10.00 a.m. to 10.30 a.m. Further informed that Principal Family Court, Chennai is the Court where all mutual consent petitions are filed at 10.30 a.m., hence, such arrangement is not feasible. The petitioner and respondent appeared through video-conferencing on 08.04.2024 as per the notification in R.O.C.No.1166A/2024/Comp4/VC. Both power of attorneys, Jayanthi/mother of the petitioner, and Ramkumar/father of the respondent, appeared. The presence of the petitioner and respondent through video-conferencing marked but the parties were not permitted to record their evidence, since they not appeared through consulate. The case not adjudicated and progress of case got stalled. In view of such constraint, the present petition filed.

6.The learned counsel for petitioner submitted that petitioner and respondent are living apart from each other since 01.08.2021, for more than

two years and there is no chance of re-union. Despite best efforts, all mediation and reconciliation failed. She further submitted that the Principal Family Court, Chennai failed to consider that Rule 3 of Madras High Court video-conferencing in Courts, Rules, 2020 states that at the remote site, a coordinator is mandatory only when a witness or a person accused of an offence, i.e., in criminal case, is to be examined. The present case is a mutual consent divorce petition, where both parties seeks to appear through video-conferencing from their residence and also appointed power of attorney to be present physically before the Family Court to identify the petitioner and respondent and to provide all assistance in the Family Court proceedings. The Family Court failed to consider the difficulty faced by the parties and it is not feasible for the parties to appear from an Indian Consulate from USA, since they function according to USA time and there is 12 ½ hours time lag and the working time in USA will not be the working time for Indian Courts. The petitioner now unable to return to India and present herself physically before

the Family Court, since she had already stayed for more than two months to complete the mutual consent formalities in filing the case during January and February. Further, she stands to lose her employment if she is forced to make a trip to India personally. The respondent is also having some visa complications and he is unable to get visa stamping. If he is forced to come to India, he might not be allowed to re-enter USA and he will lose his job in the USA as well. For this reason, both the petitioner and respondent are unable to return to India and present physically before the Family Court. They are ready to appear through video-conferencing and their power of attorneys, mother of the petitioner and father of the respondent shall appear in person physically before the Family Court. Further before this Court both petitioner and respondent appeared through virtual mode, reiterated their inclination to get divorce by mutual consent, they also provided the copy of the petition and the documents annexed to the petition and proof affidavit.

7.In support of her contention, the learned counsel relied upon the following decisions:

(i) ***Amardeep Singh vs. Harveen Kaur*** reported in ***(2017) 8 SCC 746***, wherein the Hon'ble Apex Court had held that Section 13-B(2) is not mandatory but directory and Court to exercise its discretion. Further, the requirement in entertaining mutual consent petition is to see, whether there is possibility of parties resuming cohabitation, if not whether there are chances of alternative rehabilitation. Further any delay in granting divorce by mutual consent will affect the chances of their resettlement. Further referring to para 21 of the judgment submitted that in the Family Court proceedings, the Court can use the medium of video-conferencing and permit genuine representation of the parties through close relations such as parents or siblings, where the parties are unable to appear in person for any just and valid reason as may satisfy the Court to advance the interest of justice;

(ii) ***R.R.Pauvya vs. C.Kanagavel*** reported in ***2014 (5) CTC 177***, wherein the Division Bench of this Court following the

judgment in the case of *Terance Alex vs. Mary Sowmya Rose*, held that there is no legal impediment under the Family Courts Act for a power of attorney to appear on behalf of the principal and any person not being a legal practitioner, can be nominated as an agent under Order III, Rule 1 of C.P.C. to prosecute or to defend the parties;

(iii) ***G.Yogeetha @ Gajendranath Yogeetha vs. V.S.Sharvendiran @ Somasundaram Sharvendiran*** in C.R.P.Nos.4299 and 4301 of 2022, wherein the appearance of the parties through video-conferencing has been recognised finding there is no objection by either of the parties in allowing the petition for mutual consent, invoking powers under Article 227 of Constitution of India, had granted the relief by dissolving the marriage of the parties therein;

(iv) ***Akhila vs. T.Anjankumar*** in C.R.P.No.1291 of 2023, this Court following the judgment passed in C.R.P.Nos.4299 and 4301 of 2022, recognising and recording the appearance of petitioner/wife through video conferencing from USA and recognising Power of Attorney for the petitioner, had granted

the relief of dissolving the marriage between the parties therein invoking powers under Article 227 of the Constitution of India. It had also reprimanded the lethargic attitude of the Family Court in not following the dictum of C.R.P.No.4299 of 2022.

8.Further referring to the Madras High Court Video-Conferencing in Courts Rules, 2020 submitted Rule 6.3, in civil cases the parties requesting for recording statements of the person to be examined by video conferencing shall confirm to the Court, the location of the person, the willingness of such person to be examined through video-conferencing and the availability of technical facilities for video conferencing at the agreed upon time and place. Further as per Rule 6.6, the Court can pass suitable directions concerning the time and schedule of video-conferencing as the circumstances may warrant.

9.Further referring to the Apex Court judgment in the case of ***Krishna Veni Nagam vs. Harish Nagam*** in Transfer Petition (Civil) No.1912 of 2014, learned counsel submitted that in matrimonial cases wherever one or

both the parties make a request for use of video conference, proceedings may be conducted on video conferencing, obviating the needs of the party to appear in person and approved recording of evidence through video conferencing. Further the Hon'ble Apex Court in the case of ***Anuradha Bhasin vs. Union of India,*** reported in ***(2020) 3 SCC 637,*** has held as follows:

> *"24. Law and technology seldom mix like oil and water. There is a consistent criticism that the development of technology is not met by equivalent movement in the law. In this context, we need to note that the law should imbibe the technological development and accordingly mould its rules so as to cater to the needs of society. Non recognition of technology within the sphere of law is only a disservice to the inevitable. In this light, the importance of internet cannot be underestimated, as from morning to night we are encapsulated within the cyberspace and our most basic activities are enabled by the use of internet."*

10.The learned counsel for petitioner submitted that the Principal Family Court in not entertaining the parties to appear through video-conferencing is against the dictum of the Apex Court, more specifically in a case of divorce by mutual consent. This paradox position explained by Apex Court observing that the reluctance of the judges to conduct video conferencing is not in alignment with the technological advancements. Courts must keep in mind that the gap between physical presence and virtual presence has been bridged. Hence, prayed for suitable direction and orders to be passed on the plea of the petitioner.

C.M.P.No.12451 of 2024 in C.R.P.No.1800 of 2024

11.The petitioner and respondent in Civil Revision Petition represented by their Power of Attorneys, mother of the petitioner and father of the respondent submitted that both petitioner and respondent earlier married, got separated mutually, finding their marriage irretrievably broken, no longer conducive to continue matrimonial relationship. Both petitioner

and respondent presently residing in USA agreed to dissolve their marriage by mutual consent entered into Memorandum of Understanding to part ways.

12.This Court, by order dated 30.04.2024 in C.R.P.No.1800 of 2024 recorded the amicable settlement, which is reduced by way of Memorandum of Understanding between the petitioner and respondent represented by their respective Power of Attorney holders. The petitioner is represented by her mother and the respondent by his father. This Court in para 11 of the order directed the Principal Family Court to take divorce petition in H.M.O.P.SR.No.217 of 2024 on file and to pass orders and also issued certain directions, of which, para 11(iv) of the order dated 30.04.2024, the following direction was given:

> *"(iv) The respondent and the petitioner are permitted to be represented by their power of attorneys and also permitted to appear before the Principal Family Court at Chennai through virtual mode to record their concurrence of mutual consent for divorce."*

13.Pursuant to the order the petitioner and respondent approached the Principal Family Court, Chennai wherein H.M.O.P.SR.No.217 of 2024 was numbered as H.M.O.P.No.2077 of 2024, the Principal Family court observed that consent of the parties, namely, the petitioner and respondent could be made only through video conferencing from the Consulate office in USA and not from any other remote site. The petitioner acquired citizenship in USA and presently holding her American passport. There is difference in working hours in USA and Court hours of Family Court, Chennai and it is not feasible to be present in the Consulate office at USA at the corresponding working time of Family Court, Chennai. Added to it, there is difficulty in coordination. Hence, filed the present petition to give clarification and direction permitting the petitioner and respondent to appear from their respective residence in USA without going to Indian Consulate for appearance through virtual mode.

14.A proof affidavit of petitioner and respondent filed giving details of compliance of the Memorandum of Understanding payment of Rs.22 lakhs by way of demand draft to the petitioner. Further, the petitioner produced the marriage invitation, marriage photo, Aadhar card of the petitioner, marriage registration certificate and memorandum of compromise. The proof affidavit of the petitioner and respondent signed before the Notary Public in USA produced and they also appeared through video conference, confirmed Memorandum of Understanding complied. They also reiterated their marriage become irrevocable, they are living separately and both decided to part ways for the betterment of each other life.

15.The learned Senior counsel for petitioner in support of his contention relied upon the orders passed by this Court in C.R.P.Nos.4299 and 4301 of 2022 and C.R.P.No.1291 of 2023 and submitted that invoking powers under Article 227 of Constitution of India, this Court to pass orders in

confirmity to facilitate the petitioner and respondent, who have decided to part ways under Section 13-B of the Hindu Marriage Act.

16.The learned Senior Counsel further submitted that the Principal Family court is taking technical objections and not entertaining the plea and prayer of the petitioner. The Hon'ble Apex Court judgments and this Court orders in similar cases produced but not considered. The consistent view of the Apex Court and this Court is to encourage video conferencing facility and hearings, wherever it is difficult for the parties to appear in person, might be due to various reasons. He further submitted that petition under Section 13-B of Hindu Marriage Act for divorce by mutual consent is filed after all steps to reconcile the difference between spouses failed. The petition filed under Section 13-B of the Act is by mutual consent, which are not seriously contested. The presentation of the petition by petitioner and respondent in person is not mandatory, further presentation of divorce petition by mutual

consent can be filed through Power of Attorneys. The insistence by the Family Court that petitioner and respondent to appear from Indian Embassy and in presence of Embassy officials is not proper, considering the time lag of 12 ½ hours and unworkable conditions.

17.Further submitted that in Section 13-B petition, there is no serious adjudication except verifying the address and identity of the parties, confirmed by the power of attorneys, who shall be physically present before the Court with necessary documents. The proof affidavit can be confirmed from the contesting parties and decree of divorce can be granted. The Family Court taking technical objections, insisting petitioner and respondent to appear from the Embassy and before Embassy officials citing Video Conferencing Rules is not proper. In civil cases more particularly, in Section 13-B petitions such strict adherence to the procedure is not required. He further submitted that procedures are hand maid to facilitate easy

implementation of the Act and not an obstacle, thereby defeating the very purpose of Section 13-B of the Hindu Marriage Act.

C.R.P.No.89 of 2024

18.The petitioner and respondent are estranged wife and husband. They filed a petition under Section 13-B of Hindu Marriage Act seeking divorce by mutual consent before the Family Court, Chennai represented by their respective power of attorneys, since both the petitioner and respondent are residing at Auckland, New Zealand. The marriage between the petitioner and respondent was solemnised on 30.08.2018 at Jayashree Mahal, Manthithoppu Road, Kovilpatti as per hindu rites and customs. The marriage was registered in S.R.No.416 of 2018 with SRO, Kovilpatti on the same day. After the marriage, they initially set up their matrimonial home at the respondent house and thereafter they set up separate matrimonial home at Besant Nagar, Chennai and resided together for sometime. The petitioner left

for New Zealand followed by the respondent. There due to misunderstanding and difference of opinion, which could not be reconciled and resolved, they decided to get separated and they are living separately for more than 14 months. Despite all efforts by the elders and family friends, the issue could not be resolved and the division between them had become irrevocable and the marriage irretrievably broken down. Hence, they decided to part ways. They filed a petition under Section 13-B of the Hindu Marriage Act seeking divorce by dissolving the marriage solemnised between them on 30.08.2018. Out of the marriage they had no children and all the articles including Sreedhana articles between each other were exchanged and handed to the respective persons and settled all the claims between them.

19.The petitioner appointed her cousin, namely, M.Arun Kumar as power of attorney by registered Document No.639 of 2023 and the respondent appointed his sister, namely, Mrs.Rajitha Narayanasamy as power

of attorney by registered Document No.637 of 2023 and an application under Order III Rule 2 of C.P.C. filed before the Family Court, Chennai. The petitioner and the respondent agreed to appear and preferred a joint video conferencing petition notarised in New Zealand, which was filed along with 13-B petition and power of attorney petitions. The petitioner gave an undertaking to comply with the Madras High Court video conferencing in Courts Rules, for which, an interim application was filed on 26.06.2023 before the Family Court, Chennai. The Principal Family Court without numbering the original petition for divorce along with interim application, to the shock of the petitioner and respondent, refused to number the petition and insisted that one of the parties to the original petition to be physically present to submit the original petition and the interim applications and returned the petitions on 01.07.2023. The Principal Family Court refused to conduct proceedings vide video conference giving reasons that no such procedure available when both the parties are residing outside India.

20.The marriage between the petitioner and respondent had irretrievably broke down and their entire life has come to stand still. They have been living separately for considerable amount of time and there is no possibility of reunion and they filed a petition to save from further agony and any further delay will affect the chance of resettlement. They filed a petition seeking divorce by mutual consent. But the Family Court not entertaining the petition filed by the petitioner and respondent insisting for their personal appearance is not proper which is against the decision of the Hon'ble Apex Court and this Court. The petitioner further submitted that in a similar situation the III Additional Principal Judge, Family Court, Chennai in I.D.O.P.No.4049 of 2021 and O.P.No.1748 of 2023 had entertained the original petitions filed through power of attorneys of the parties and heard the parties through video conference and recorded their evidence and allowed the petition for mutual divorce. In other Additional Family Courts, similar

petitions are entertained but as regards the Principal Family Court it is insisting on the appearance of the parties, which is not proper.

21.In support of his contention, both the petitioner and respondent produced the documents of their residence proof, Aadhar Card, Visa details, residence in New Zealand, marriage invitation, marriage photo and the proof affidavit of both the petitioner and respondent confirming to the above facts and seeking for divorce by mutual consent.

22.Considering the submissions made, it is seen that the issue involved in all the Civil Revision Petitions are with regard to technical and procedural objections raised by the Principal Family Court, Chennai in entertaining the petition for Divorce by mutual consent under Section 13-B of Hindu Marriage Act, which reads as follows:

> *"**13-B. Divorce by mutual consent.** (1) Subject to the provisions of this Act a petition for dissolution of marriage by a decree of divorce may be presented to the district Court by both*

the parties to a marriage together, whether such marriage was solemnized before or after the commencement of the Marriage Laws (Amendment) Act, 1976, on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved.

(2) On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in sub-section (1) and not later than eighteen months after the said date, if the petition is not withdrawn in the meantime, the Court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnized and that the averments in the petition are true, pass a decree of divorce declaring the marriage to be dissolved with effect from the date of the decree."

23.By way of amendment in the year 1976, the concept of divorce by mutual consent was introduced.

24.It would be apposite to extract the following paragraphs of the Apex court judgment in ***Amardeep Singh*** case:

*"**17.** The object of the provision is to enable the parties to dissolve a marriage by consent if the marriage has irretrievably broken down and to enable them to rehabilitate them as per*

available options. The amendment was inspired by the thought that forcible perpetuation of statue of matrimony between unwilling partners did not serve any purpose. The object of the cooling-off period was to safeguard against a hurried decision if there was otherwise possibility of differences being reconciled. The object, was not to perpetuate purposeless marriage or to prolong the agony of the parties when there was chance of reconciliation. Though every effort has to be made to save a marriage, if there are no chances of reunion and there are chances of fresh rehabilitation, the Court should not be powerless in enabling the parties to have a better option.

18. *In determining the question whether provision mandatory or directory, language alone is not always decisive. The court has to have the regard to the context, the subject-matter and the object of the provision. This principle, as formulated in Justice G.P. Singh's Principles of Statutory Interpretation (9th Edn., 2004), has been cited with approval in Kailash v. Nanhku as follows: (SCC pp. 496-97, para 34)*

> *"34. The study of numerous cases of this topic does not lead to formulation of any universal rule except this that language alone most often is not decisive, and regard must be had to the context, subject- matter and object of the statutory provision in question, in*

determining whether the same is mandatory or directory. In an oftquoted passage Lord Campbell said: "No universal rule can be laid down as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of courts of justice to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be considered."

'For ascertaining the real intention of the legislature, points out Subbarao, J. 'the court may consider inter alia, the nature and design of the statute, and the consequences which would follow from construing it the one way or the other; the impact of other provisions whereby the necessity of complying with the provisions in question is avoided; the circumstance namely, that the statute provides for a contingency of the non-compliance with the provisions, the fact that the non-compliance with the provisions is or is not visited by some penalty: the serious or the trivial consequences, that flow therefrom: and above all, whether the object of the legislation will be defeated or furthered'. If object of the enactment will be defeated by holding the same directory, it will be construed as mandatory, whereas if by holding it mandatory serious general inconvenience will be created to innocent persons without very much furthering the object of enactment, the same will be construed as directory."

19. *Applying the above to the present situation, we are of the view that where the court dealing with a matter is satisfied that a case is made out to waive the statutory period under Section*

13-B(2), it can do so after considering the following:

> *(i) the statutory period of six months specified in Section 13-B(2). in addition to the statutory period of one year under Section 13-B(1) of separation of parties is already over before the first motion itself;*
>
> *(ii) all efforts for mediation/conciliation including efforts in terms of Order 32-A Rule 3 CPC/Section 23(2) of the Act/Section 9 of the Family Courts Act to reunite the parties have failed and there is no likelihood of success in that direction by any further efforts;*
>
> *(iii) the parties have genuinely settled their differences including alimony, custody of child or any other pending issues between the parties;*
>
> *(iv) the waiting period will only prolong their agony.*

The waiver application can be filed one week after the first motion giving reasons for the prayer for waiver. If the above conditions are satisfied, the waiver of the waiting period for the second motion with in the discretion of the court concerned.

20. *Since we are of the view that the period mentioned in Section 13-B(2) is not mandatory but directory, it will be open to the court to exercise its discretion in the facts and circumstances of each case where there is no possibility of parties resuming cohabitation and there are chances of alternative rehabilitation.*

21. *Needless to say that in conducting such proceedings the court can also use the medium of video conferencing and also permit genuine representation of the parties through close relations such as parents or siblings where the parties are unable to appear in person for any just and valid reason as may satisfy the court, to advance the interest of justice."*

25.Now looking the case of the petitioners in the above background it is clear that the petitioner and respondent/spouses got married in India, after marriage migrated to USA for employment for betterment of their career. Getting visa to USA and getting USA citizenship is a herculean task not everyone succeeds. Hence the young spouses focused on their career migrated to USA, took all efforts to acquire Visa and Residenceship. Unfortunately during their stay in USA serious misunderstanding crept between them and all efforts to reconcile failed. Likewise the couple in Auckland, New Zealand. Finally they decided to part ways and there are chances of alternative rehabilitation. Any delay will affect the chances of

their resettlement. The time lag between USA and India is around 12 ½ hours, it is more in New Zealand, hence it is impossible to insist the petitioners to appear from the Consulate/Embassy in the presence of officials of Embassy. It will amount to insisting on a onerous condition, creating obstacle, which cannot be resolved, thereby the very purpose of Section 13-B provision and video conferencing facility would get defeated. In the recent past, justice dispensation system has seen much advancement in the use of technology in conducting the Court proceedings, to use the system of video conferencing. The recently introduced BNSS (Bharatiya Nagarik Suraksha Sanhita) (New Criminal Procedure Code) Section 530 emphasis even in criminal cases trial and proceedings to be held in electronic mode.

26.The presence of coordinator at the remote site is mandatory, required only when a person accused of an offence is to be examined meaning in criminal cases, coordinator presence is mandatory. As regards

other cases, it is not a mandatory requirement for a coordinator in the remote site, more so in cases of divorce by mutual consent.

27.It is well settled that rules and procedures are the hand maids of justice. Technicalities and procedures shall not frustrate the course of justice. The meaning of "presence" as used in Section 273 Cr.P.C. has been clarified in the case of ***State of Maharashtra vs. Dr.Praful Dubey***, reported in ***(2003) 4 SCC 601*** and held "in this modern era presence can be guaranteed with technologies even without physical presence and video conferencing is an agreeable replacement for the same. In the case of ***Amardeep Singh vs. Harveen Kaur*** the Hon'ble Apex Court granted mutual divorce and held needless to say that in conducting such proceedings the Court can also use the medium of video conferencing and also permit genuine representation of the parties through close relationship such parents or siblings, where the parties are unable to appear in person for any just and valid reason as may satisfy the Court, to advance the interest of justice.

28.In the case of ***Anuradha Bhasin vs. Union of India,*** the Apex Court had emphasised the need to adopt technological advancements while dispensing justice. The Delhi High Court in the case of ***Reena Chadha and another vs. Government of NCT of Delhi*** reported in ***(2021) SCC OnLine 4336*** in **W.P.(C) 6653 of 2021**, directed the Registrar of Marriage to register the marriage of Indian couple residing in USA under Delhi (Compulsory Registration of Marriage) Order, 2014 without insisting on their physical presence.

29.Virtual proceedings provide an opportunity to modernise the system by making it more affordable and citizen friendly, enabling the aggrieved to access justice from any part of the country in the world. Thus the Family Court to ensure that such a system of conducting the proceedings through video conferencing is put to usage without insisting the presence of petitioner even from the time of first presentation till the conclusion of

proceedings. The Family Court henceforth not to raise technical objections and insist on physical appearance of petitioner/parties at any stage.

30.In the case of petitions filed under Section 13-B of Hindu Marriage Act for divorce by mutual consent, the Court is to see whether they have got separated, there is no chance for reunion, whether mutual consent is not obtained by force, fraud or undue influence. These can be verified from the petition filed and enquiring the petitioners, who appear through virtual mode. The role of the Court in dealing with 13-B petition is limited. Hence, this Court finds the technical objections raised by the Principal Family Court, Chennai and not entertaining the petition and plea of the petitioners not proper, unreasonable and unsustainable. Hence, the objections are set aside.

31.The learned counsel for the petitioners spearheaded the difficulties faced by the parties in filing Section 13-B mutual consent divorce

petition and its adjudication and disposal. It is found that majority of 13-B petitions are kept in abeyance or stalled due to non appearance of the parties in person, since the parties faced difficulty in appearing in person for various reasons including travel restrictions. To obviate such difficulty faced by the parties, who have decided to part ways and start a fresh life, it has become imperative to issue the following guidelines by adopting to the latest development in technology infused by Hon'ble Apex Court.

32.This Court coming to such finding, the following directions are issued in respect of filing of petitions, hearing the parties, recording of evidence under Order XVIII Rule 4 and allied provisions of C.P.C. in a cases filed under Section 13-B of Hindu Marriage Act;

(i) The Family Courts henceforth not to insist physical presence of the petitioners/spouses at the time of presenting the petition at the first instance and for future hearings;

(ii) Petitions can be filed either by the parties directly or by the Power of Attorney of the parties, provided, the Power of Attorney to be a registered one or properly adjudicated;

(iii) On behalf of the parties, Power of Attorneys can appear and prosecute. The only embargo is that the recognised agent should not be a legal practitioner;

(iv) The Power of Attorney representing the parties shall present the petition with relevant documents annexed, materials and proof affidavit required for the case in physical form;

(v) The parties can be present through virtual mode from their respective places and the place of location, identity of the person to be confirmed with relevant documents;

(vi) The Court can verify with the parties appearing through virtual mode as to the petition, proof affidavit, documents produced and record the same as evidence on satisfaction and to pass appropriate orders.

33.As regards C.R.P.No.1994 of 2024 is concerned, coming to the specific prayer of the petitioner in C.R.P.No.1994 of 2024, this Court, following the orders passed by this Court in C.R.P.Nos.4299 and 4301 of 2022 in the case of ***G.Yogeetha @ Gajendranath Yogeetha vs. V.S.Sharvendiran @ Somasundaram Sharvendiran*** reported in ***Neutral Citation: 2023:MHC:170,*** subsequently following the same, orders passed by this Court in C.R.P.No.1291 of 2023 in the case of ***Akhila vs. T.Anjankumar,*** passes the following order:

(i) The marriage solemnised between Mrs.G.Shrilakshmi, D/o.Mr.S.Govindarajan and Mr.Anirudh Ramkumar, S/o.Mr.S.Ramkumar on 23.06.2016 at Sri Kuchalambal Kalyana Mahal, Chetpet, Chennai, registered as S.No.257 of 2016 at SRO, Periamet stands dissolved;

(ii) In view of the relief granted in C.R.P.No.1994 of 2024, the adjudication in O.P.No.2148 of 2023 pending on the file of

Principal Family Court, Chennai has become unnecessary and the same is ordered to be struck off.

With the above observations and directions, ***C.R.P.No.1994 of 2024 is allowed.***

34.As regards C.M.P.No.12451 of 2024 in C.R.P.No.1800 of 2024 is concerned, this Court passes the following order:

(i) In continuation and conjunction to the order passed by this Court on 30.04.2024 in C.R.P.No.1800 of 2024, the marriage solemnised between Mrs.Aishwarya Sridhar D/o.Mr.Sridhar and Mr.Harihara Venkataraman Balasubramanian, S/o.Mr.N.Balasubramanian on 10.07.2016 at M.G.Swami Kalyana Mandapam, Virugambakkam, Chennai stands dissolved;

(ii) In view of the relief granted in C.M.P.No.12451 of 2024 in C.R.P.No.1800 of 2024, the adjudication in H.M.O.P.No.2077 of 2024 pending on the file of Principal Family Court, Chennai has become unnecessary and the same is ordered to be struck off.

With the above observations and directions, ***the issue is clarified***.

35.As regards C.R.P.No.89 of 2024 is concerned, this Court passes the following order:

The Principal Family Court is directed to take the petition filed under Section 13-B of Hindu Marriage Act by Mrs.V.Nisha, D/o.Mr.Veerakesavan and Mr.Ramkumar Narayanasamy, S/o.Narayanasamy seeking to dissolve the marriage solemnised between them on 30.08.2018 at Jayashree Mahal, Manthithoppu Road, Kovilpatti, registered vide S.R.No.416 of 2018 in SRO Kovilpatti on file without insisting the physical presence of the

parties, permitting the respective power of attorney of the parties to present the petition and to follow the above directions to dissolve the marriage and grant divorce without further delay, preferably within a period of two months from the date of receipt of a copy of this order.

With the above observations and directions, ***C.R.P.No.89 of 2024 is disposed of***.

18.10.2024
(1/2)

Index : Yes/No
Internet : Yes/No
Speaking order/Non speaking order
Neutral Citation : Yes/No
rsi

Note: Registry is directed to return the original Proof Affidavit.

To

The Principal Family Court,
Chennai.

M.NIRMAL KUMAR, J.

rsi

Pre-delivery order in
C.R.P.Nos.1994 & 89 of 2024
and
C.M.P.No.12451 of 2024 in C.R.P.No.1800 of 2024

18.10.2024
(1/2)