

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD
SITTING AT LUCKNOW

Neutral Citation No.2024:AHC-LKO:66724

A.F.R.

RESERVED

Judgment Reserved on: 09.09.2024

Judgment Delivered on: 26.09.2024

Court No. - 19

Case :- MATTERS UNDER ARTICLE 227 No. - 5952 of 2023

Petitioner :- Dr. Priti Singh Thru. Her Mother Smt. Kusum Lata Verma(Power Of Attorney)

Respondent :- Dr. Birendra Narain Singh

Counsel for Petitioner :- Saksham Agarwal

Counsel for Respondent :- Saurabh Misra, Jai Prakash Awasthi

Hon'ble Subhash Vidyarthi J.

1. Heard Sri Saksham Agarwal, learned counsel for the petitioner and Sri Saurabh Misra, learned counsel for the opposite party.
2. By means of the instant petition filed under Article 227 of the Constitution of India, the petitioner has challenged the validity of an order dated 06.09.2023 passed by the learned Additional Principal Judge-IV, Family Court, Lucknow in Case No.440 of 2019 under Section 13 of the Hindu Marriage Act. The petitioner has further prayed for issuance of a direction to the Family Court to record her evidence through video conferencing or through her power of attorney holder.
3. Briefly stated, facts stated in the petition are that marriage of the parties was solemnized on 11.02.2008 at New Delhi. Out of the wedlock between the parties, a daughter was born on 15.02.2011 at Belfast, Northern Ireland and a son was born on 14.02.2013 in Scotland. The petitioner is a British citizen and she is domicile of

United Kingdom. The respondent also had the intention to settle in the United Kingdom but he could not qualify the entrance examination required for medical practitioners to obtain employment in United Kingdom and consequently, he returned to India. The petitioner is residing in Scotland along with both her minor children and she is currently employed in N.H.S. Grampian, as a Consultant Psychiatrist at Westholme Woodend Hospital, Scotland.

4. The opposite party has filed the aforesaid suit for a decree of divorce on 07.02.2019. On 28.01.2020, the petitioner filed an application in the suit stating that she is residing in United Kingdom and she has executed a power of attorney in favor of her mother, who would represent the petitioner in the suit. The power of attorney dated 08.07.2019 filed before the Family Court authorizes the petitioner's mother to prosecute the suit and proceedings, to sign and verify all the pleadings, applications and documents etc., to enter into a compromise in the suit and to appear before the Family Court at the first motion and the second motion in a petition for mutual consent and generally to do all other acts and things for conduct of the suit, as the petitioner could have done herself if she was personally present.

5. The plaintiff-opposite party had filed objections against the aforesaid application but the petitioner's application was allowed by means of an order dated 02.03.2020 passed by the Family Court permitting the petitioner to participate in the proceedings through her power of attorney holder subject to the condition that upon being directed, the petitioner shall appear before the Court in person.

6. The written statement filed in the suit has been signed and verified by the power of attorney holder of the petitioner. The plaintiff-opposite party has been examined as PW-1 and thereafter, the petitioner filed an application in the suit requesting for recording of her evidence through video conferencing or to allow her power of attorney

holder to physically appear and give evidence on behalf of the petitioner. The said application has been rejected by the impugned order dated 06.09.2023 for the reasons that there is no law laying down the procedure for recording evidence of a person from some other country through virtual mode and that there is a time difference of six hours between India and United Kingdom. The petitioner has not disclosed the name of the Court of United Kingdom, in which she will be physically present for getting her statement recorded through virtual mode and the Family Court also does not have any list of such Courts of United Kingdom, where the petitioner can be directed to be present for recording of her evidence. While allowing the petitioner's application for being represented through her power of attorney holder, the Family had granted permission to the petitioner to be represented through her power of attorney subject to the condition that the petitioner will appear in person before the Court whenever directed by the court and will participate in the proceedings of the Court personally.

7. In view of the aforesaid observations, the Family Court rejected the petitioner's application for recording of her evidence through video conferencing.

8. The opposite party has filed a counter affidavit opposing the writ petition inter alia stating that the petitioner's mother and power of attorney holder Smt. Kusumlata Verma has already appeared as DW-1 in the suit and her examination-in-chief and cross-examination has already been recorded.

9. While assailing validity of the aforesaid order, learned counsel for the petitioner has submitted that the Rules for Video Conferencing for the Courts in the State of Uttar Pradesh, 2020 provide for recording of evidence of witnesses through video conferencing and the Family

Court has erred in rejecting the petitioner's application for being examined through video conferencing.

10. Per contra, learned counsel for the opposite party has submitted that the petitioner had prayed before the Family Court for recording of her evidence through video conferencing and she had made an alternative prayer for recording of evidence of her power of attorney holder in her place. Prayer No.2 in the petition filed before this court is for issuance of a direction to the Family Court for permitting the petitioner for recording her evidence through video conferencing or through her power of attorney holder. The alternative prayer made by the petitioner for recording of evidence through power of attorney holder of the petitioner, has become infructuous as statement of the power of attorney holder has already been recorded.

11. In reply to this objection, the learned Counsel for the petitioner has submitted that PW-1 has been examined in her personal capacity and she has not been examined as the power of attorney holder of the plaintiff.

12. What appears from the facts of the case mentioned above is that although the parties got married at New Delhi on 11.02.2008, shortly thereafter they moved to United Kingdom. The petitioner and both children of the parties are citizens of United Kingdom and they are domicile of United Kingdom. The husband – opposite party resides in India and he has filed a suit for divorce. Although the plaintiff-opposite party had opposed the defendant's request for being permitted to appear through her power of attorney holder, the Family Court allowed the request by means of an order dated 02.03.2020 subject to the condition that upon being directed, the petitioner shall appear before the Court in person. The defendant – petitioner has not appeared in the suit personally and she is defending the suit through her mother, in whose favour she has executed a power of attorney and she has filed

the written statement also through her power of attorney holder. In her application, the petitioner requested for recording of her evidence through video conferencing or to allow her power of attorney holder to physically appear and give evidence on behalf of the petitioner. The evidence of the petitioner's mother and power of attorney holder has already been recorded as PW-1. Therefore, the alternative prayer made in the petitioner filed before this Court - to allow her power of attorney holder to physically appear and give evidence on behalf of the petitioner, has become infructuous.

13. PW-1 has not stated that she has appeared as a witness only as the power of attorney holder of the petitioner and she simply got herself examined on behalf of the petitioner. PW-1 cannot be expected to state different facts on oath while appearing in her personal capacity and in the capacity of the power of attorney holder of the petitioner. Therefore, the contention of the learned Counsel for the petitioner that PW-1 has not been examined as the power of attorney holder of the petitioner, is not acceptable.

14. The statutory provision contained in Rule 3-A of Order XVII C.P.C. would also be relevant in the present case, which provides as follows:

“3-A. Party to appear before other witnesses.—Where a party himself wishes to appear as a witness, he shall so appear before any other witness on his behalf has been examined, unless the Court, for reasons to be recorded, permits him to appear as his own witness at a later stage.”

(Emphasis added)

15. In case the petitioner – plaintiff herself wished to appear as a witness, she should have appeared before her mother and power of attorney holder. As the plaintiff did not appear as a witness before her mother and power of attorney holder, she cannot be permitted to be examined now in absence of any special reasons. It is significant to

note that the plaintiff has not appeared before the trial Court even once and she has not even signed the pleadings. Therefore, there appears to be no special reason to permit the petitioner to appear as a witness now when her mother and power of attorney holder has already been examined.

16. For the foregoing reason, I find no illegality in the order dated 06.09.2023 passed by the learned Additional Principal Judge-IV, Family Court, Lucknow in Case No.440 of 2019 under Section 13 of the Hindu Marriage Act. As the evidence of the petitioner's power of attorney holder has already been recorded, there is no need to direct the Family Court to record the plaintiff's evidence through video conferencing.

17. The petition lacks merits and the same is **dismissed**. The parties shall bear their own costs of the petition.

(Subhash Vidyarthi J.)

Order Date: 26.09.2024

-Amit K-