

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09.03.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(PD)No.3617 of 2012
and
M.P.No.1 of 2012**

Gayathiri

.. Petitioner

Vs.

Thirumaran

.. Respondent

Prayer: Civil Revision Petition filed under Section 115 of Code of Civil Procedure, against the Fair and Decreetal order dated 06.08.2012 passed in I.A.No.2813 of 2011 in Original Petition No.3180 of 2011, on the file of the learned II Additional Judge, Family Court, Chennai.

For Petitioner : Mr.Haja Mohideen Gisthi

For Respondent : Mr.N.Senthilkumar

ORDER

The respondent/wife in O.P.No.3180 of 2011, on the file of the II Additional Judge, Family Court, Chennai, is the civil revision petitioner before this Court, challenging the order in I.A.No.2813 of

2011 in O.P.No.3180 of 2011, dated 06.08.2012, on the file of the II Additional Judge, Family Court, Chennai.

2.The respondent/petitioner/husband, who has filed the divorce petition in O.P.No.3180 of 2011 before the learned II Additional Judge, Family Court, Chennai against this petitioner/wife, seeking divorce on the ground under Section 13(1)(ia) and 26 of Hindu Marriage Act.

3.The case of the respondent/husband is that the marriage of the respondent and this petitioner was solemnized on 27.08.2007 as per Hindu rites and community customs at Yadhava Kalyana Mandapam. After their marriage, the respondent has settled their family and lived together as husband and wife at No.28/6, Sangeetha Flats, Gujji Second Street, VOC Nagar, Anna Nagar East, Chennai-102.

4.The respondent also states that out of their wedlock, one female child was born namely Padmapooja, aged about 3 years, they have been living for a period of few months in the above said address. Thereafter, the petitioner/wife has left the matrimonial home without informing this respondent/husband. The

respondent/husband also states that at the time of marriage, this petitioner/wife has not bring any Sreethana Articles from her parents and all the belongings are in her parent's house.

5.After settled the family as husband and wife, they were lived in the above said address and during the said marriage life, this petitioner/wife has never shown any respect or affection in favour of the respondent herein. The respondent/husband also states that this petitioner/wife has refused to do the house work and she has having love and affection with her parents only. But, condoning her immature behaviour hoping that one day she will understand about the significance of the married life. But, unfortunately, there is no change in her behaviour and her behaviour become not change. The respondent/husband has lived with the petitioner/wife, but she was not changed her attitude.

6.The respondent/husband also states that the petitioner/wife has not behaved and not acted as Hindu dutiful wife and the respondent never enjoyed blessed and the comfort of the marital life. The respondent/husband also states that the petitioner/wife has also not given any love, affection and respect to the respondent/husband and family members of the respondent/husband. But, she had having

quarrelled with the respondent/husband and his family members for the silly reasons and all along the respondent/husband has adjusted the attitude of the petitioner/wife in the matrimonial home and lived peacefully with the petitioner/wife.

7.The respondent/husband also states that this petitioner/wife has failed in her marital life in the matrimonial home and failed to perform her duty and she has also not care about the respondent/husband's welfare and without any valid cause or reason the petitioner/wife has developed animosity towards the respondent/husband's parents and insisted the respondent/husband to shift their residence at her parent's house in order to severe his relationship to the respondent's parents.

8.The respondent/husband also raised a grounds stating that this respondent/husband has shocked and surprised that this petitioner/wife is suffering from Epilepsy (FITS), even she was unable to touch the water and she is suffering as mentally ill-patient and she behaved like mental patient. Therefore, the respondent/husband has requested the petitioner and the parents of the petitioner/wife for taking necessary treatments, but they have told that they have no proper medicine for her disease. The respondent/husband also

requested the petitioner/wife for taking Foreign Medical Treatment, but the petitioner/wife and her parents adamantly refused to send the petitioner/wife to the respondent/husband. The respondent/husband also raising the grounds stating that the petitioner/wife has not mentally growth and she has acted as a childhood and she unable to maintain her child and also the petitioner's mother also severe Hypertension patient. Therefore, this respondent/husband has also states that the child welfare has been spoiled, if the custody of the child with the petitioner/wife in future. The respondent/husband also states that suppose the child was remained with the petitioner/wife, the future life of the child definitely will be spoiled. Therefore, the respondent/husband's parents are requested the petitioner/wife and her parents to hand over the child, but they have not at all accept the same and also they have not permit the respondent/husband to visit the child and the wife has continuously ill-treated this respondent/husband and also by her parents.

9. During their life time in the matrimonial home, this petitioner/wife has left the matrimonial home without informing the respondent/husband or his parents, when the respondent/husband has requested the petitioner/wife and her parents to return back to matrimonial home, the petitioner/wife's parents also abused and used

unparliamentary words against the respondent/ husband and refused to return back the matrimonial home.

10.The respondent/husband also states that the petitioner/wife also acted against the respondent/husband and his parents, the petitioner/wife has not cooperated with the respondent, which was stated to the petitioner's parents, but the petitioner/wife has refused to permit the respondent/husband for sexual intercourse. Therefore, when the respondent/husband has enquired with the Doctor, at that time only, this respondent/husband aware the truth from the Doctor as the petitioner/wife has physically inability to co-operate with the respondent/husband and she often tried to commit suicide. Therefore, the respondent/husband is very much suffering from the attitude of the petitioner/wife.

11.The respondent/husband also states that the respondent/husband has studying in United Kingdom as Master of Science Innovative Technology and he is doing the part time job for managing his educational expenses. Even though, when the respondent/husband requested the petitioner/wife and her parents to return back the petitioner/wife to the matrimonial home, but, they were refused, not only they refused, but the petitioner/wife's parents

frankly told that she is not interested to live with the respondent/husband in the matrimonial home. The petitioner/wife has unnecessarily deserted the respondent and the petitioner/wife also threatening the respondent/ husband along with his family members and also lodged a false complaint before the All Women Police Station for registration of dowry harassment case and put the respondent/husband's family in jail. The father of the petitioner/wife is a Village Administrative Officer and having very good influence in the society and community, and he also threatened that to lodge a complicated complaint against the respondent/husband and his parents under the Domestic Violence Act. Therefore, the respondent/husband has suffered mental torture, mental agony, cruelty and desertion by the petitioner/wife and her family members, which has been beyond the tolerate limits and hence the respondent/husband has no other option to approach before the Family Court except to file the petition for divorce, since he has no other option to live with the petitioner/wife. Therefore, he has filed the above O.P. against this petitioner/wife and she is not condone the act of cruelty, desertion, mental torture and mental agony and prayed the Family Court for divorce.

12.At the time of filing the original divorce petition, this

respondent/husband has filed an application in I.A.No.2813 of 2011 for seeking permission of her mother Smt.Kalaiarasi w/o late Perumal, aged about 54 years has filed an application under Order III Rules 1 and 2 of C.P.C. read with Section 151 of C.P.C. seeking prayer to dispense with the respondent/husband of his personal appearance and permit the power agent Smt.Kalayarasi, to appear on his behalf to file any counter statements, reply statements, affidavits or receive the papers divorce petition and affidavits, Interlocutory Applications, Petitions, to identify by the respondent/husband in the video conference to apply order copies, to receive the said order copies and other related case papers of the divorce petition and to appear in the proceedings of the case before the Court.

13.On receipt of the notice, a counter affidavit has been filed by this petitioner/wife, denying the allegations set out in the main Original Petition as well as in I.A.No.2813 of 2011.

14.This petitioner/wife has stated that on the compulsion of the respondent/husband's mother Smt.Kalayarasi, this respondent/husband has filed the above Original Petition for divorce by stating false and frivolous allegations against this petitioner/wife.

15.The petitioner/wife has stated in the counter that this respondent/husband has gone to United Kingdom and working as Supervisor at ASDA Super Store, Tilly Road, Feltham, London, United Kingdom and earning 1200 pounds per month, which is approximately Rs.1 lakh per month and not for studying as alleged by him.

16.This petitioner/wife has stated that the alleged power of attorney was a forged one and the same was not executed by the respondent/husband with free will and consent. The petitioner/wife also states that the respondent/husband has called her over phone and stated that his mother forced him to execute the same and only on the compulsion of his mother only, he filed the above Original Petition for divorce and the respondent/husband has assured this petitioner/wife that he would not divorce her and hence the above petition authorizing his mother to represent the case should not be permitted, since the mother of the respondent have some adverse interest in the case. The petitioner also states that in her counter that the alleged power agent Kalayarasi wants her son to marry with her brother's daughter and if the mother of the respondent was permitted to contest divorce case, the petitioner herein will be put to greater hardship and irreparable loss.

17.The petitioner/wife also states that if the mother of the respondent was permitted to contest the case, very purpose of counselling will not served since the power agent wants the respondent/husband to marry her brother's daughter, therefore, the petitioner/wife has stated that if the petition was allowed for dispensed with and the permission for appearance of the power agent, the petitioner/wife and her daughter would be greatly prejudiced.

18.The petitioner/wife also states that in her counter that the object of Section 9 of the Family Court Act, 1984 that in every suit or proceedings, endeavour shall be made by the Family Court in the first instance, where it is possible to do so consistent with the nature and circumstances of the case, to assist and persuade the parties in arriving at a settlement in respect of the subject matter of the suit of proceedings. Therefore, she stated that if the said petition was allowed for dispensed with and the permission of the power agent, the purpose of settlement will not be served since the alleged power agent have adverse interest in the said proceedings against this petitioner/wife. The petitioner/wife also states in her counter that this Court laid down the dictum in ***S.M.Syed Amina Beevi Vs. Thaika Sahib Alim & Another*** reported in ***I (1994) DMC 557*** as

follows:-

“Personal appearance or presence of the party concerned becomes therefore inevitable and necessary, at any rate from the stage of hearing after the appearance of the other side to the proceedings, and the efforts contemplated to be made by the Family court under the statute cannot be effectively carried out through a recognized or authorised agent of the party and having regard to the sensitive nature, personal feelings and behavioural attitudes to be assessed by the court in carrying out the mandate contained in Section 9 of the Family courts Act. Personal appearance, though, not initially required, becomes absolutely necessary after the appearance of the respondent to the proceedings.”

19.The petitioner/wife also states that in her counter that the allegations made in the main O.P. involves some personal marital relationships and the same can be resolved only in the presence of the respondent/husband and it cannot be resolved by the alleged power agent, who cannot answer for the same.

20.The petitioner/wife also states that if the dispense with the

personal appearance of the respondent/husband and the alleged power agent was permitted to contest the case, this petitioner/wife and her 4 year daughter will be put to great hardship and irreparable loss. On the other hand, the petition will not be allowed, there will be no prejudice or hardship be caused to the respondent/husband. Therefore, the petitioner/wife, has prayed the Family Court, for dismissal of the application in I.A.No.2813 of 2011.

21.Considering both side cases, the learned II Additional Principal Judge, Family Court, Chennai was pleased to allowed the said application and permitted Smt.Kalaiyarasi to appear on behalf of the respondent/husband to act on behalf of him as power agent.

22.Challenging the said order, the petitioner/wife has filed the civil revision petition before this Court.

23.I heard Mr.Haja Mohideen Gisthi, learned counsel appearing for the petitioner and Mr.N.Senthilkumar, learned counsel appearing for the respondent and perused the records and judgments.

24.Admittedly, the respondent/husband has filed the O.P.No.3180 of 2011 for divorce against this petitioner/wife under

Sections 13(1)(ia) and 26 of Hindu Marriage Act. At the time of filing the case that her husband's mother Smt.Kalayarasi has filed an application under Order III Rules 1 and 2 of CPC read with Section 151 of CPC for permitting her to file the main O.P. on behalf of the respondent as power agent. The provisions under Order III Rule 1 and 2 of C.P.C. states as follows:

“Order III Rule 1 of CPC Appearances, etc., may be in person, by recognised agent or by pleader Any appearance, application or act in or to any Court, required or authorised by law to be made or done by a party in such Court may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognised agent, or by a pleader (appearing, applying or acting, as the case may be) on his behalf.

2.Recognised Agents The recognised agents of parties by whom such appearances, applications and acts may be made or done are -

(a) persons holding powers-of-attorney, authorising them to make and do such appearances, applications and acts on behalf of such parties;

(b) persons carrying on trade or business for and in

the names of parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance, application or act is made or done, in matters connected with such trade or business only, where no other agent is expressly authorised to make and do such appearances, applications and acts.”

25.As per the Order III Rules 1 and 2 of CPC, any appearance, application or act in or to any Court, required or authorized by law to be made or done by a party in such Court may, except where otherwise express provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent, or by a pleader on his behalf. The Rule 2 says the persons holding powers-of-attorney, authorizing them to make and do such appearances, applications and acts on behalf of such parties and the recognized agents of parties by whom such appearances, applications and acts. This Court and the Hon’ble Apex Court has categorically held that if the power agent is permitted to appear before the Court and the said Court should permit the appearance of the power agent as per the provision under Order 3 Rule 1 and 2 of CPC. The above provisions ensuing that unless the Court permitted the power agent not be appeared on behalf of the parties. Admittedly, the case in

hand the application has been filed in I.A.No.2813 of 2011 for seeking above permission. For the above said petition, this petitioner/wife, who is the respondent in the application has filed a detailed counter on various grounds and also cited judgment reported in ***S.M.Syed Amina Beevi v. Thaika Sahib Alim*** reported in ***I 1994 DMC 557***. As per the above judgment rendered by the Hon'ble High Court that it is very clear that the party concerned becomes therefore inevitable and necessary, at any rate from the stage of hearing after the appearance of the other side to the proceedings, as per Section 9 of the Family Courts Act, Personal appearance, though, not initially required, becomes absolutely necessary after the appearance of the respondent to the proceedings.

26.As per section 9 of the Family Courts Act, it says as follows:

"9.Duty of Family Court to make efforts for settlement.- (1) In every suit or proceeding, endeavour shall be made by the Family Court in the first instance, where it is possible to do so consistent with the nature and circumstances of the case, to assist and persuade the parties in arriving at a settlement in respect of the subject-matter of the suit or proceeding and for this purpose a Family Court may, subject to any rules made

by the High Court, follow such procedure as it may deem fit.

(2) If, in any suit or proceeding, at any stage, it appears to the Family Court that there is a reasonable possibility of a settlement between the parties, the Family Court may adjourn the proceedings for such period as it think fit to enable attempts to be made to effect such a settlement.

(3) The power conferred by sub-section (2) shall be in addition to, and not in derogation of any other power of the Family Court to adjourn the proceedings.”

27. Therefore, as per the above provisions, the learned counsel appearing for the petitioner/wife has vehemently opposed to allowing the application by stating that though the personal appearance was not necessary at the initial stage, but it is absolutely necessary after appearance of the respondent in the Family Court.

28. To support his case, the learned counsel appearing for the petitioner has produced three judgments rendered by this Court:

(1) ***Mrs.S.M.Syed Amina Beevi v. 1.Mr.ThaiKa Sahib Alim and another*** reported in ***1993 – 2 – L.W.***

604

(2) ***Pavithra, rep. by Power Agent S.Rajkumar Kalingarayar v. Rahul Raj*** reported in **2003 – 2 – L.W.**

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(3) ***Dr.K.Malathi v. Dr.S.Rajasekaran*** reported in **2003 (2) CTC 166**

29.In the case of ***Mrs.S.M.Syed Amina Beevi v. 1.Mr.ThaiKa Sahib Alim and another*** reported in **1993 2 LW 604**, the learned Judge of this Court has passed the order as follows:

“The petitioner therefore, is entitled to have the papers filed or presented before the Family Court through a recognized agent in terms of Order 3, R.1 of the C.P.C. and such a recognized agent at any rate cannot be a legal practitioner. This has got to be limited or confined to the stage of presentation or filing of the matters only. Personal appearance or presence of the party concerned is inevitable and necessary, at any rate from the stage of hearing after the appearance of the other side to the proceedings, and the efforts contemplated to be made by the Family Court under the statute cannot be effectively carried out through a recognized or authorized agent of

the party and having regard to the sensitive nature, personal feelings and behavioral attitudes to be assessed by the Court in carrying out the mandate contained in S.9 of the Family Courts Act, personal appearance, though not initially required, becomes absolutely necessary after the appearance of the respondent to the proceedings. The Family Court at the same time is entitled to insist upon the personal appearance of the petitioner or any party concerned for the matter for all subsequent or further stages of the hearing, after the appearance of the respondent or from the stage of hearing, even when the respondent fails to appear or remains ex parte to the proceedings. Subject to the above declaration of the position of law regarding the procedure to be followed and the duties and obligations of the petitioner to make personal appearance in Court before the Family Court, as and when so stipulated or directed or indicated by that court, the petitioner shall have the right to present the papers through a recognized agent other than a legal practitioner, as contemplated under O.3, R.1 of the C.P.C.”

30.The other judgment in the case of ***Pavithra, rep. by Power Agent S.Rajkumar Kalingarayar v. Rahul Raj*** reported in **2003 2 LW 431**, the learned Judge of this Court has passed the following orders:

“14.Order 3 Rule 1 of CPC empowers a party in a suit or proceedings to be represented by a pleader, but so far as the proceedings in the Family Courts are concerned, the right of representation by the pleader does not exist. The operation of Order 3 Rule 1 is subject to any law for the time being in force. In addition to the said exclusion in the code, Section 13 of Family Courts Act prohibits the operation of Order 3 Rule 1 to the extent that the case being represented by the legal practitioner. The recognized agent appointed under Order 3 Rule 2 stands on a different footing from pleader. However, recognized agent cannot be a legal practitioner. The embargo on the appearance of legal practitioners should not be extended to recognized agent. There is no prohibition in the Act or Rules a petition being filed by an authorized agent who is not legal practitioner. The recognized agent can prosecute or defend or represent until Family Court passes specific order directing the

party to appear in person, depending upon the facts and stage of the case. Personal appearance of the parties is inevitable to comply with mandatory provisions of the Act. In this case, the authorized agent has filed a petition seeking permission to defend the case on the ground that she is not able to come to India and contest the case. Such a permission cannot be granted. Hence, the said petition is liable to be rejected and rejected accordingly."

31.The other judgment in the case of ***Dr.K.Malathi v. Dr.S.Rajasekaran*** reported in ***2003 (2) CTC 166***, the learned Judge has passed an order as follows:

"10.It is clear that in the light of Section 13 of the Family Courts Act, Order 3, Rule 1 and Order 4, Rule 1 of Section 132, CPC, no party to the Family Court seek dispensation once for all, to avoid personal appearance and claim to have the adjudication through a recognized agent on account of the peculiar provisions of law governing the adjudication in the Family Court. Undoubtedly, from the stage of hearing, after the appearance of the either side to the proceedings, considering the peculiar and sensitive nature of the lis,

personal feeling, behavioral attitudes to be assessed by the Court, it is, but proper that appearance of the parties become necessary. To put it clear that though the parties are at liberty to present through an authorized agent other than the legal practitioner as contemplated under Order 3, Rule 1 CPC, at the stage of examination / hearing, it is for them to appear in person. In our case, there is no dispute that the husband was appearing before the Court for all the earlier hearings. It is also seen from the Court proceedings that he was examined as P.W.1 from 08.03.2002 to 11.11.2002 exhaustively. It is also brought to my notice that two more witnesses, namely P.Ws.2 and 3 were all examined and ultimately, the evidence on the side of the husband was closed. It is further seen that the revision petitioner was also examined in chief on 3.12.2002, 9.12.2002 and 11.12.2002. Since the husband got posting at Saudi Arabia, after informing the Court, filed a petition in I.A.No.2388 of 2000. The Principal Judge, Family Court, taking note of all the above aspects though has not passed a considered order, after referring the relevant materials, allowed his petition on 8.11.2002."

32.Per contra, the learned counsel appearing for the respondent has produced two judgments in the case of ***Mrs.Komal S.Padukone v. Principal Judge, Family Court, and another*** reported in ***II (1999) DMC 301*** and unreported judgment passed in ***CRP.No.1621 of 2015*** by the Hon'ble Andhra Pradesh High Court.

33.In the case of ***Mrs.Komal S.Padukone v. Principal Judge, Family Court, and another*** reported in ***II (1999) DMC 301***, the learned Judge has passed the following orders:

"16. Learned Counsel for the second respondent submitted that the proviso to Rule 1 of Order III of the CPC enabled the Court to direct the appearance of a party in person and therefore the respondent before the Family Court was bound to appear in person. But, the said provision is a special provision, under which the Court can, by a specific order, on the facts and circumstances of the case, require the appearance of a party. There is no such special order in this case. The Family Court has proceeded on the assumption that in all proceedings before it, the respondents should appear in person and then file an application to engage the Counsel. The Family

Court has inferred from Section 9, which requires the Court to attempt settlement in the first instance, and Section 13 which denies representation by a Legal Practitioner unless permitted, that there is an obligation on the parties to appear in person in response to the notice and then continue to appear in person on every hearing date. As noticed above there is no basis for such inference or assumption. Section 9 makes it clear that the duty of Family Court to make efforts for settlement in the first instance is "where it is possible to do, consistent with the nature and circumstances of the case". Where one of the parties is abroad or is disabled, it may not be possible to attempt settlement in the first instance. But, that does not mean that the party who is unable to appear, should be denied the right to prosecute or defend the proceedings. All that it means is that the effort to make settlement, gets postponed to a later date when parties are able to appear. In some cases, it may not be possible to attempt settlement at all due to the peculiar fact and circumstances. The statutory duty cast on the part of the Family Court to attempt settlement cannot be converted by the Court into a penalising weapon to deny

representation or right to contest, merely on the ground that a party has by his or her absence, has come in the way of the attempt for settlement. If the reasons are bona fide, the Family Court should permit representation through Legal Practitioner or authorised agent. In this case, as the petitioner is abroad and has stated that she will not be able to come till July 1999, the Court ought to have allowed IA III."

34.The other unreported judgment in ***CRP.No.1621 of 2015 dated 17.06.2015*** held as follows:

"Increasingly Family Courts have been noticing that one of the parties is stationed abroad. It may not be always possible for such parties to undertake trip to India, for variety of good reasons. On the intended day of examination of a particular party, the proceedings may not go on, or even get completed possibly, sometimes due to pre-occupation with any other more pressing work in the Court. But, however, technology, particularly, in the Information sector has improved by leaps and bounds. Courts in India are also making efforts to put to use the technologies available. Skype is one such facility, which

is easily available. Therefore, the Family Courts are justified in seeking the assistance of any practicing lawyer to provide the necessary skype facility in any particular case. For that purpose, the parties can be permitted to be represented by a legal practitioner, who can bring a mobile device. By using the skype technology, parties who are staying abroad can not only be identified by the Family Court, but also enquired about the free will and consent of such party. This will enable the litigation costs to be reduced greatly and will also save precious time of the Court. Further, the other party available in the Court can also help the Court in not only identifying the other party, but would be able to ascertain the required information. Accordingly, I direct the Family Court to entertain the I.A. as it is maintainable and permit the GPA of the 2nd petitioner in O.P. to represent and depose on behalf of the 2nd petitioner in the O.P. and the Family Court shall also direct such GPA or any legal practitioner chosen by him to make available the skype facility for the Court to interact with the 2nd petitioner, who is staying at

Melbourne, Australia and record the consent of 2nd petitioner and proceed with the matter thereafter as expeditiously as is possible.

Accordingly, the civil revision petition is allowed. No order as to costs.”

35.The judgment rendered in the case of ***S.M.Syed Amina Beevi v. Thaika Sahib Alim***, reported in ***1994 DMC 557***, the learned Judge states that held as follows:

“12. I have already expressed the view that the prohibition contained in Sec.13 of the Family Courts Act is only vis-à-vis a legal practitioner and not in respect of a recognized agent permissible under the provisions of Order 3 Rule 1 of the Code of Civil Procedure, which is rendered applicable by the provisions contained in Section 10 of the Family Courts Act to the extent to which there is no provision otherwise contained to the contra. The petitioner in my view therefore is entitled to have the papers filed or presented before the Family Court through a recognized agent in terms of Order 3, Rule 1, and such a recognized agent at any rate cannot be a legal

practitioner. This in my view, has got to be limited or confined to the stage of presentation or filing of the matters only. The petitioner cannot take advantage of the other provisions contained in Order 3, Rule 1 or Order 4, Rule 1 or Sec.132 of the Code of Civil Procedure, once and for all, to avoid personal appearance before the Family Court and claim to have the adjudication through such a recognized agent, on account of the peculiar provisions of law governing the adjudication in the Family Courts. The provision of Section 9 of the Family Courts Act looms large and acquired significance for consideration in this regard. Section 9 of the Act specifically provides that in every suit or proceedings, endeavor shall be made by the Family Court in the first instance, where it is possible to do so consistent with the nature and circumstances of the case to assist and persuade the parties in arriving at a settlement in respect of the subject-matter of the suit or proceedings and the endeavor of efforts shall be in accordance with the Rules. Personal appearance or present of the party concerned becomes therefore inevitable and necessary, at any rate from the stage of hearing after the appearance of the

other side to the proceedings, and the efforts contemplated to be made by the Family Court under the statute cannot be effectively carried out through a recognized or authorized agent of the party and having regard to the sensitive nature, personal feelings and behavioral attitudes to be assessed by the Court in carrying out the mandate contained in Section 9 of the Family Courts Act. Personal appearance, though, not initially required becomes absolutely necessary after the appearance of the respondent to the proceedings. I am of the view that the petitioner shall be at liberty to present the application through a recognized or an authorized agent other than the legal practitioner as contemplated under Order 3, Rule 1 of the Code of Civil Procedure, and the Family Court at the same time is entitled to insist upon the personal appearance of the petitioner or any party concerned for the matter for all subsequent or further stages of the hearing, after the appearance of the respondent or from the stage of hearing even when the respondent fails to appear or remains ex parte to the proceedings. Subject to the above declaration of the position of law regarding the procedure to be followed and

the duties and obligations of the petitioner to make personal appearance in Court before the family Court, as and when so stipulated or directed or indicated by that Court the petitioner shall have the right to present the papers through a recognized agent other than a legal practitioner, as contemplated under Order 3, Rule 1 of the Code of Civil Procedure."

36.The learned Judge has clearly held that though initially the personal appearance of the parties not required, but it is absolutely necessary after the appearance of the respondent. The learned Judge also passed an order stating that the Family Court at the same time is entitled to insist upon the personal appearance of the petitioner or any party concerned for the matter for all subsequent or further stages of the hearing after the appearance of the respondent or from the stage of hearing even when the respondent, fails to appear or remains exparte to the proceedings.

37.The learned Judge also states that as per Section 13 of the Family Courts Act, Order 3, Rule 1 and Order 4, Rule 1 of Section 132 of the Code of Civil Procedure, no party to the Family Court seek dispensation once for all, to avoid personal appearance and claim to

have the adjudication through a recognised agent on account of the peculiar provisions of law governing the adjudication in the Family Court.

38. Apart from this, it is also made clear that this is a dispute between the husband and wife, it is evident from various provisions of the Family Courts Act and Rules that the Family Courts have been established to adopt different approach to dispose the cases expeditiously, besides for taking reasonable efforts for settlement before commencement of trial. As per the Section 10(3) of the Family Courts Act, it is stated as follows:

“10(3) Nothing in sub-section (1) or sub-section (2) shall prevent a Family Court from laying down its own procedure with a view to arrive a settlement in respect of the subject-matter of the suit or proceedings or at the truth of the facts alleged by the one party and denied by the other.”

39. Similar provisions are seen in Order 32-A Rule 3 and 4 of CPC for conciliation. The said provisions of Order 32-A were incorporated by C.P.C. Amendment Act 1976 with effect from 01.02.1997, however, it was operate retrospectively to all pending

cases. It is evident that Parliament has been consistent in speedy disposal and settlement of Family Cases. The Family Court from laying down its own procedure with a view to arrive a settlement in respect of the subject-matter of the suit or proceedings. The Hon'ble Division Bench of this Court in a case of ***S.Venkataraman v. L.Vijayasaritha*** reported in ***1996 1 LW 222***, the Division Bench of this Court held that there is no appearance of the parties to have assistance to counsel, however it is the discretion of the Family Court to allowing the petition in the interest of justice and after taking into consideration and nature of the case. But, however, the Hon'ble Division Bench held that the intentment of the Legislature obviously was that the problems or grounds for matrimonial break-down or dispute being essentially of a personal nature, that it may be advisable to adjudicate these issues as far as possible by hearing the parties themselves and seeking assistance from Counsellors. But, in the case in hand, the issue as to whether the mother of the petitioner is the capacity of power agent and restricted the petitioner or not. This Court also held that in other cases that though initially the appearance of the petitioner in the main case can be dispensed with, but later on, the parties appearance to the Family Court are necessary and to be present and the party should appear before the Court concerned.

40. Considering all these aspects and judgments rendered by this Court and the Hon'ble Apex Court, it is made clear that the respondent/husband, who is the petitioner in the main O.P. have legally right to file a petition for dispensed with and petition filed seeking permission for the appearance of the power of attorney before the Family Court and no legal practice has been permitted to make appearance of the petitioner provided as per Section 13 of the Family Courts Act, there is no totally prohibition being represented the legal practice. The provisions clearly provides that the Family Court clearly considered in the interest of justice and the nature of case, but the personal appearance of the respondent/husband or persons of the respondent/husband, who is the petitioner in the main O.P. and the party concerned become inevitable and necessary at any rate, from the stage of hearing of the appearance of the other side to the proceedings.

41. This case has been filed in the year 2011 and the learned counsel appearing for the petitioner has represented before this Court that from the date of initial filing of the O.P., the respondent, who is the petitioner in the main O.P.No.3180 of 2011 has not put his personal appearance in single occasion before the Family Court.

42. Admittedly, the Family Courts Act 1984, provide for the establishment of Family Courts with a view to promote conciliation in, and secure speedy settlement of disputes relating to marriage and family affairs and for matters connected therewith. Admittedly, in this case, the respondent/husband has filed a petition for divorce under Section 13(1)(ia) and 26 of Hindu Marriage Act. As per Section 9 of the Family Courts Act, it is made clear that Section 9 provides that the duty of the Family Court to make efforts for settlement. In the case in hand, it is a matrimonial dispute and the husband wants divorce and the matter is ought to be posted for settlement or compromise between the parties.

43. Admittedly, when the Family Court cases were filed all the respective Family Courts were directed the parties through appearance before the mediators, where the mediators were engaged the Family Court for the conciliation and the orders of the Hon'ble High Court sent the matters along with the parties appearance before the mediators for the compromise or settlement. But, the case in hand, though the case was filed in the year 2011 with the power of attorney without the presence of the respondent in the main case, the matter was periodically adjourned but no settlement was arrived till

date.

44.The allegations of this petitioner/wife is that in the counter affidavit filed in I.A.No.2813 of 2011 in para-6, the alleged power of attorney was a forged one and the same was not executed by the respondent/husband with free will and consent. In fact, the petitioner/wife has also stated that the respondent/husband have called this petitioner/wife over phone and informed her that his mother had forced him to execute the same and only on the compulsion of her, he has filed the above Original Petition in O.P.No.3180 of 2011 and also states that her husband will not divorced this petitioner/wife, since the mother of the respondent/husband, who is the power of attorney if some adverse interest in the case against this petitioner/wife, since the alleged power agent namely the mother of the respondent/husband wants her son to marry her brother's daughter. Therefore, it is made clear that as on date, there was no personal appearance and personal meeting between the petitioner and the respondent and if the matter is sent for mediation and the respondent/husband will appeared before the mediation along with his petitioner/wife, definitely there will be possibility for compromise arrived between them.

45. Apart from this, the issue in challenging before this Court is that the very allowing of the application in I.A.No.2813 of 2011 by permitting the power agent by the learned II Additional Principal Judge, Family Court, Chennai, has been passed correctly or in accordance with the Family Courts Act.

46. On fair reading of the order passed by the learned Judge is totally against the law and natural justice since the learned Judge has not given any valid reasons for allowing the application. The learned Judge had simply stated that "records perused in the interest of justice and without caused prejudiced raised in the counter petition is allowed and Smt.Kalayarasi recognized the power agent and permitted to act upon on behalf of the respondent/husband in this case as power agent". The order of the learned Judge in I.A.No.2813 of 2011 in O.P.No.3180 of 2011, dated 06.08.2012 is as follows:

"This is a petition filed by the petitioner against the Respondent to dispense with the petitioner's personal appearance and to permit his power agent Mrs.Kalayarasi to appear on his behalf to file any counter statements, reply statements, affidavits or receive the papers divorce petition and Affidavits, Interlocutory Applications, Petitions

to identify him in the Video conference and also to apply order copies to receive the said order copies and to appear in the proceedings of the case before this court.

Petitioner Power Agent and Respondent present. Records perused. In the interest of Justice and without causing prejudice to the contentions raised in the counter, petition is allowed and Tmt.Kalaiaarasi is recognised as power agent and permitted to act on behalf of petitioner/husband in this case as power agent.”

47.This Court categorically held in various cases that while the Court below namely the trial Court have passed orders in the Interlocutory Application they should apply their mind and to pass orders with the judicial view and judicial conscious. It was also observed by this Court that the Courts below ought to have passed orders by giving valid reason by way of speaking their order.

48.But, in the case in hand, it was totally lack on the part of the learned Judge. Apart from this, the Family Court Acts and the Judgments rendered by this Court very categorically held that the petitioner’s appearance for initial stage can be dispensed with, but after receiving notice by the respondent, the petitioner must be

appeared before the Courts. Since it is a Family Courts and the dispute is between the husband and wife. The sharing of the personal life of the petitioner and the respondent cannot be speak by the power agent. But, the order passed by the learned Judge in I.A.No.2813 of 2011 dated 06.08.2012, has totally ignored the law and act and the judgments of this Court and had simply allowed the application filed by the power agent and there is no whisper about the appearance of the respondent/husband, who is the petitioner in the main O.P.No.3180 of 2011 in the Court on any one of occasions warranting necessary by the said Family Court.

49.The Family Courts are created with an aim to settle the dispute arosed between the families particularly the husband and wife. The Family Courts are functioning without engaging Advocate by the parties except on permission of the Family Courts. It is made clear that only the parties alone were appeared with the main motto, the husband and wife, the persons who brought the disputes before the Family Court having personal knowledge for settlement between them. But, the Presiding Officers are ignored the main motto of the creation of Family Courts had simply permitting the power agents to represent the parties right from beginning till the ending of the cases which act is totally against the Family Courts Act. The case in hand is

the example to prove that night from the initial stage of the case till this date, the husband who is the petitioner in main O.P.No.3180 of 2011 and the respondent/wife were not appeared jointly on single occasion before the Family Court. If the permission of this GPA from the date of proceedings till the ending of the case will be definitely put injustice to the wife, who is the respondent in this case. The Family Courts created only to settle the dispute between the parties. Therefore, the Presiding Officer of the Family Courts should conscious while permitting the power of attorney and dispensing with the appearance of the parties only to an limited extent, but in all Family Court cases, both the parties must be appeared and the Presiding Officers of the respective Family Courts to ensure the appearances of both parties and dispose the cases.

50. When the Family Court acts and the Civil procedure code has very categorically held that the parties can appeared and filed the cases in the initial stage through their power agent, but the Family Courts should direct the parties for their appearances for any settlement between them, then evidences and examinations through their personal knowledge.

51. The judgment produced by the learned counsel appearing for

the respondent though it is held that the learned Judge of the Andhra Pradesh High Court has permitted the petitioner/husband to appear through video conference, but in my view it is absolutely not suitable since the video conference and skype technology are not make settlement between the parties, but the personal appearance of both parties alone should make settlement between them. Normally, there is a genuine apprehension in the mind of the Family Court Judges that whether any possibility of settlement between the parties through their personal appearance before the Courts.

52. In my view that unless the parties are personally appeared before the Court it would be very difficult for Family Court to assess whether they have changed their mind since the date of petition, the hearing does not necessarily means that both the parties have to be examined in the hearing. It is stated that one of the parties is abroad or is disabled, the personal appearance of the parties can be changed their mind for reunion between them. Mere filing of the affidavit through their power agent will not solved the problem or the dispute between them, but the personal appearance of both the parties will definitely change the minds of the parties. The very performable of Family Courts Act 1984, one would covered every endeavor is required to be made by the Family Court should assist the parties

arriving at the speedy settlement of the matter. Therefore, Section 9 of the Family Courts Act provided and appropriate legal enforcement of settlement in an amicable manner, the parties are not only require to be assisted, but also require to be assisted and persuaded by the Judge in arriving at a settlement, while keeping in view of the practicing and behaviour, the marriage between the parties to the extent of possible, the Family Court is require to utilise the skill and gained over long time of period by ill-society, then finding suitable case for them hence, reconsideration of the disagreements between the parties. Therefore, there is a famine intention in the mind of the Family Courts that the matter is settled between the parties or compromise between the parties and hence, the personal appearance of the parties are absolutely necessary and very allowing of the application in I.A.No.2813 of 2011 is totally wrong since the order is very clearly states that the very appearance of the respondent/husband, who is the petitioner in O.P.No.3180 of 2011 is not required by the Court for the whole proceedings since there was no direction given by the learned Judge to the petitioner/husband for his appearance in any stage in the said proceedings. Therefore, it is my absolute view that though the parties can file their cases through their power agent and the appearance of the petitioner is not necessary at the initial stage, but after the appearance of the

respondent, is just and necessary for the appearance of the petitioner for the proceedings of the case and the Family Court should ensure the personal appearance of the petitioner for the further stage of the hearing.

53. Therefore, the order of the learned Judge is totally against the law and natural justice. Hence, this Court warranting interference in the said order and accordingly the order in I.A.No.2813 of 2011 in Original Petition No.3180 of 2011, dated 06.08.2012, passed by the learned II Additional Judge, Family Court, Chennai, is liable to be set aside.

54. In the result:

(a) the civil revision petition is allowed by setting aside the order in I.A.No.2813 of 2011 in Original Petition No.3180 of 2011, dated 06.08.2012, passed by the learned II Additional Judge, Family Court, Chennai;

(b) the learned II Additional Judge, Family Court, Chennai is hereby directed to pass suitable orders for the personal appearance of the petitioner/husband in O.P.No.3180 of 2011 before the II Additional Judge,

Family Court, Chennai in the above case and in an exceptional circumstances permit the General Power of Attorney Smt.Kalaiyarasi to represent the case;

(c) the learned II Additional Judge, Family Court, Chennai is directed to dispose of the O.P. within a period of 3 months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

09.03.2017

Index:Yes
Internet:Yes

vs
Note:Issue order copy on 15.03.2017.

To

The II Additional Judge,
Family Court, Chennai.

M.V.MURALIDARAN, J.

VS

**Pre-Delivery order made in
CRP(PD)No.3617 of 2012
and
M.P.No.1 of 2012**

09.03.2017