

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2018

CORAM

THE HONOURABLE MR. JUSTICE M.S. RAMESH

CRP.(PD)No.2156 of 2018

Smt.T.Shanthi

...Petitioner

Vs

Sri.Pushparaj Francis

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 12.03.2018 and received on 07.04.2018 in I.A.No.593/2017 in I.D.O.P.No.209/2015 on the file of the Principal District and Sessions Judge, Thiruvallur.

For Petitioner : Ms.S.Indumathi Ravi

For Respondent : Mr.A.Amalraj

सत्यमेव जयते

ORDER

The Husband had filed an application before the learned Principal District and Sessions Judge, Thiruvallur, seeking for permission to record the evidence by way of Videoconferencing which came to be allowed, challenging which, the present Civil Revision Petition has been filed.

2. The grievance of the wife, who is the petitioner herein, is that the procedure contemplated for disposing of matrimonial dispute is that it is mandatory for the parties to be referred to conciliation talks, in view of Section 9 of the Family Courts Act 1984 and since there was no conciliation or talks of settlement initiated between the parties, the Court below ought not to have permitted the petitioner to participate in the proceedings through videoconferencing.

3. The learned counsel for the petitioner by relying upon the Judgment of the Hon'ble Apex Court reported in **2018 1 SCC 1 (Santhini Vs. Vijaya Venkatesh)** submitted that the videoconferencing cannot be permitted in the absence of any consent from both the parties and as such, through an application filed by one of the parties alone, permission granted by the Court below by videoconferencing, is opposed to the said Judgment.

4. The learned counsel for the respondent on the other hand, submitted that the petitioner herein had initiated criminal complaint against the respondent and that he is under the threat of being evicted from Switzerland where he has presently residing.

5. According to the learned counsel, the Hon'ble Apex Court in the aforesaid Judgment in the Shanthini's case had also observed that if the Family Court is of the opinion on the facts and circumstances of the case that videoconferencing will sub serve the cause of justice, it can direct the proceedings to be conducted through videoconferencing. In view of such observation of the Hon'ble Apex Court, there is no infirmity in the order passed by the trial Court.

6. I have given my careful consideration to that the submissions made by the learned counsel for the respondent. It is not in dispute that the respondent herein is currently residing in Switzerland. Since, he apprehends coercive action against him owing to certain criminal complaint made and also in view of the fact that he is employed in Switzerland, he had sought for present application seeking permission for videoconferencing. The order passed in the interim application was on 12.03.2018. The Judgment relied upon by both the counsels was in the Shanthini's case which was on 09.10.2017. As such, the law Governing the grant of permission for videoconferencing by the Family Court was settled by the Hon'ble apex Court through Shanthini's case. As a matter of fact, the Family Court had also made a reference to the order of the Hon'ble Apex Court in the impugned order.

7. The learned Counsel for the petitioner relies upon the following portion of the Judgment of the Hon'ble Apex Court in Shanthini's case and submits that it is the categorical pronouncement of the Hon'ble Supreme Court that an application by one of the parties alone seeking for videoconferencing is not permissible. The relevant portion of the said order reads as follows:

"33. The aforesaid pronouncements, as we find, are absolutely different from a controversy which is involved in matrimonial proceedings which relate to various aspects, namely, declaration of marriage as a nullity, dissolution of marriage, restitution of marriage, custody of children, guardianship, maintenance, adjudication of claim of stridhan, etc. The decisions that have been rendered cannot be regarded as precedents for the proposition that videoconferencing can be one of the modes to regulate matrimonial proceedings."

"46. We, as advised at present, constrict our analysis to the provisions of the 1984 Act. First, as we notice, the expression of desire by the wife or the husband is whittled down and smothered if the Court directs that the proceedings shall be conducted through the use of videoconferencing. As is demonstrable from the analysis of para 14 of the decision1_ ,

the Court observed that wherever one or both the parties make a request for the use of videoconferencing, the proceedings may be conducted by way of videoconferencing obviating the need of the parties to appear in person. The cases where videoconferencing has been directed by this Court are distinguishable. They are either in criminal cases or where the Court found it necessary that the witness should be examined through videoconferencing. In a case where the wife does not give consent for videoconferencing, it would be contrary to Section 11 of the 1984 Act. To say that if one party makes the request, the proceedings may be conducted by videoconferencing mode or system would be contrary to the language employed under Section 11 of the 1984 Act. The said provision, as is evincible to us, is in consonance with the constitutional provision which confer affirmative rights on women that cannot be negated by the Court. The Family Court also has the jurisdiction to direct that the proceedings shall be held in camera if it so desires and, needless to say, the desire has to be expressed keeping in view the provisions of the 1984 Act."

"48. The reconciliation requires presence of both the parties at the same place and the same time so as to be effectively conducted. The spatial distance will distant the possibility of reconciliation because the Family Court Judge would not be in a position to interact with the parties in the manner as the law commands. By virtue of the nature of the controversy, it has its inherent sensitivity. The judge is expected to deal with care, caution and with immense sense of worldly experience absolutely being conscious of social sensibility. Needless to emphasis , this commands a sense of trust and maintaining an atmosphere of confidence and also requirement of assurance that the confidentiality is in no way averted or done away with. There can be no denial of this fact. It is sanguinely private. Recently, in K.S. Puttaswamy v. Union of India⁴⁵, this Court, speaking through one of us (Chandrachud,J.), has ruled thus: (SCC pp. 498-99, para 298)

"298. ...The intersection between one's mental integrity and privacy entitles the individual freedom of thought, the freedom to believe in what is right, and the freedom of self-determination. When these guarantees intersect with gender, they create a private space which protects all these elements

which are crucial to gender identity. The family, marriage, procreation and sexual orientation are all integral to the dignity of the individual."

And again: (SCC p. 499, para 299)

" 299. Privacy represents the core of the human personality and recognises the ability of each individual to make choices and to take decisions governing matters intimate and personal."

51. The procedure of videoconferencing which is to be adopted when one party gives consent is contrary to Section 11 of the 1984 Act. There is no provision that the matter can be dealt with by the Family Court Judge by taking recourse to videoconferencing. When a matter is not transferred and settlement proceedings take place which is in the nature of reconciliation, it will be well-nigh impossible to bridge the gap. What one party can communicate with other, if they are left alone for some time, is not possible in videoconferencing and if possible, it is very doubtful whether the emotional bond can be established in a virtual meeting during videoconferencing. Videoconferencing may create a dent in the process of settlement.

"56. We have already discussed at length with regard to the complexity and the sensitive nature of the controversies. The statement of law made in Krishna Veni Nagam 1_ that if either of the parties gives consent, the case can be transferred, is absolutely unacceptable. However, an exception can be carved out to the same. We may repeat at the cost of repetition that though the principle does not flow from statutory silence, yet as we find from the scheme of the Act, the Family Court has been given ample power to modulate its procedure. The Evidence Act is not strictly applicable. Affidavits of formal witnesses are acceptable. It will be permissible for the other party to cross-examine the deponent. We are absolutely conscious that the enactment gives emphasis on speedy settlement. As has been held in Bhuwan Mohan Singh24_, the concept of speedy settlement does not allow room for lingering the proceedings. A genuine endeavour has to be made by the Family Court Judge, but in the name of efforts to bring in a settlement or to arrive at a solution of the lis, the Family Court should not be chained by the tentacles by either parties. Perhaps, one of the parties may be interested in procrastinating the litigation. Therefore, we are disposed to think that once a

settlement fails and if both the parties give consent that a witness can be examined in videoconferencing, that can be allowed. That apart, when they give consent that it is necessary in a specific factual matrix having regard to the convenience of the parties, the Family Court may allow the prayer for videoconferencing. That much of discretion, we are inclined to think can be conferred on the Family Court. Such a limited discretion will not run counter to the legislative intention that permeates the 1984 Act. However, we would like to add a safeguard. A joint application should be filed before the Family Court Judge, who shall take a decision. However, we make it clear that in a transfer petition, no direction can be issued for videoconferencing. We reiterate that the discretion has to rest with the Family Court to be exercised after the court arrives at a definite conclusion that the settlement is not possible and both parties file a joint application or each party filing his/her consent memorandum seeking hearing by videoconferencing. "

8. On a perusal of the aforesaid observations and as rightly pointed out by the learned counsel for the petitioner, the Hon'ble Supreme Court had observed that whenever there is a settlement, and the same failed and when

both parties given consent that witnesses can be examined through videoconferencing such a prayer could be accepted. It is also held that the discretion to be exercised by the Family Court would rest on it, after the Court arrives on a definite conclusion that the settlement was not possible and when both parties have filed a joint application seeking for hearing of the case through videoconferencing. As such, in the light of the above observations, it can only be held that the facility of conducting the case through videoconferencing can be made only when both parties make out a joint application.

9. On the other hand, the learned counsel for the respondent placed reliance on paragraph 58.3 of the same Judgment and submits that the Hon'ble Apex Court has clearly held that if the Family Court is of the view that allowing the proceedings through videoconferencing will sub serve the cause of justice, the same can be permitted. Paragraph 58.3 if the said order reads as follows:

"58.3. After the settlement fails, if the Family Court feels it appropriate having regard to the facts and circumstances of the case that videoconferencing will sub serve the cause of justice, it may so direct."

10. The aforesaid observations starts with a clause "after the statement fails". It would be pertinent to find out, as to whether at all, there was any statement in the instant case.

11. When the respondent herein had made this application seeking for videoconferencing, the counter statement came to be filed by the petitioner herein and in paragraph 8 of the said application, the petitioner herein had stated as follows:

"This respondent submits that the petitioner has not appeared before this Hon'ble court or before the family Court at Bangalore for conciliation. In view of the above referred ruling of the Hon'ble Apex Court the present application is liable to be dismissed as premature. The Petitioner has no choice to appear before this Hon'ble court and participate in conciliation proceedings and if the conciliation proceedings fails, the petitioner is thereafter entitled to make application as per the said decision and this Hon'ble Court will have to decide such application at that stage. The present application to lead evidence through Video conferencing is liable to be dismissed."

12. The learned counsel for the respondent is also unable to substantiate that there was settlement talks held between the parties, whereas it is reiterated and submitted by the learned counsel for the petitioner that there was no settlement talks at all initiated before the Family Court. In the light of the submissions made in the counter affidavit and by taking into account the submissions made by both counsels, it is safely concluded that there was no settlement talks at all initiated between the parties. In the absence of any settlement talks, the question of applying paragraph No. 58.3 of the observation of the Hon'ble Apex Court, in Shanthini's case, referred to supra, would not be applicable to the case in hand. As already observed, the discretion of the Family Court to conduct the proceedings through videoconferencing, would be possible only when there are settlement talks and such statement talks fail. While that being so, in the absence of any settlement talks, respondent herein may not be in a position to rely on paragraph No. 58.3 of the aforesaid judgment and the attempt to substantiate that the order of the trial Court was not correct.

13. The observation of the Hon'ble Apex Court clearly holds that any application seeking for videoconferencing must be done only when the settlement talks initiated or when the settlement

fails or through the consent of both the parties. In this case, it is borne out of records that there was neither any settlement talks nor there was any consent by both parties for having the proceedings to be conducted through videoconferencing.

14. Though the Court below had referred to the judgment of the Hon'ble Apex Court, in the Shanthini's case, the dictum laid down therein has not been appreciated and if properly appreciated, the Court below would not have come to such a conclusion, In view of the aforesaid findings, the order of the trial Court passed in I.A.No.593 of 2017 in I.D.O.P.No.209 of 2015, is set aside. Consequently the Civil Revision Petition stands allowed and the connected Miscellaneous Petition is closed. No costs.

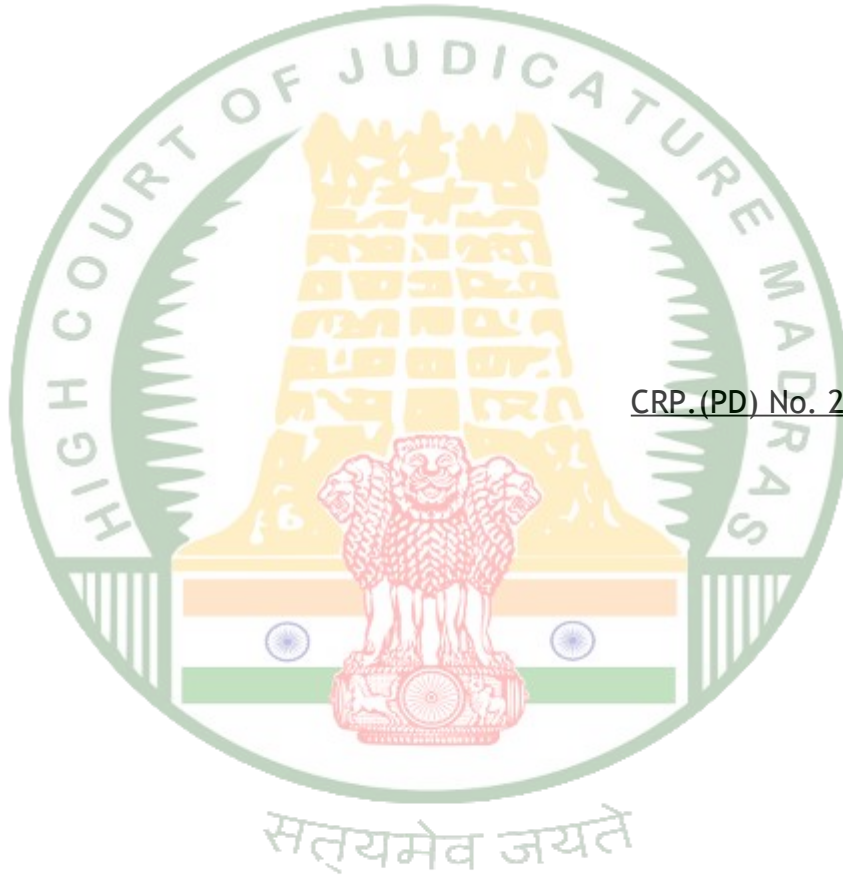
30.10.2018

Index: Yes/No
Internet: Yes/No
vsn/dh

To
The Principal District and Sessions Judge,
Thiruvallur.

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M.S.RAMESH. J.,
vsn/dh



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