

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 4298 OF 2019

Amit Vijay Prabhu

...Petitioner

Versus

Supriya Amit Prabhu

...Respondent

....

Mr. P.G. Sarda, Advocate for the Petitioner.

Mr. D.S. Joshi, Advocate for the Respondent.

....

CORAM : R. G. KETKAR, J.

DATE : 04th APRIL, 2019

P.C.

1. Heard Mr.P.G. Sarda, learned counsel for the petitioner and Mr.D.S. Joshi, learned counsel for the respondent, at length.
2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the order dated 23.1.2019 passed by the learned Judge, Family Court No.2, Pune below Exhibit-53 in P.A. No.515/2017. By that order, the learned trial Judge rejected the application made by the petitioner-husband for appointing Court Commissioner to record his cross-examination through video conferencing.

3. Rule. Mr. Joshi waives service. Having regard to the narrow controversy raised in this Petition as also at the request and by consent of the parties, Rule is made returnable forthwith and the petition is taken up for final hearing.

4. Mr. Sarda has invited my attention to paragraph-5 of the impugned order. In paragraph-5, the learned trial Judge has referred to the decision of Apex Court in **Santhini Vs. Vijaya Venketesh, (2018) 1 SCC 1**. The learned trial Judge in fact extracted the conclusions summed up by the majority (Dipak Mishra, C.J. and A.M. Khanwilkar, J.) in paragraph-58. The learned trial Judge, however, rejected the application by observing in paragraph-6 that the respondent has not consented for recording evidence of the petitioner through video conferencing.

5. On the other hand, Mr. Joshi supported the impugned order. He submitted that in paragraph-5 of the reply dated 6.8.2018, the respondent specifically contended that the petitioner is allowed to come back to India for a month every year. The journey is also sponsored by the company. The petitioner is drawing a salary of Rs.5,36,638/- per month. He submitted that for the reasons recorded in paragraph-6 thereof, no case is made out for interfering with the impugned order.

6. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. Paragraph-58 of **Santhini's** case (supra) reads thus:

“58. In view of the aforesaid analysis, we sum up our conclusion as follows:

58.1. In view of the scheme of the 1984 Act and in particular Section 11, the hearing of matrimonial disputes may have to be conducted in camera.

58.2. After the settlement fails and when a joint application is filed or both the parties file their respective consent memorandum for hearing of the case through videoconferencing before the Family Court concerned, it may exercise the discretion to allow the said prayer.

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 subserve the cause of justice, it may so direct.

XXXX
XXXX”

7. In the present case, we are not concerned with paragraphs- 58.1 and 58.2 of **Santhini's** case (supra). Paragraph 58.3 thereof lays down that after the settlement fails, **if the Family Court feels it appropriate having regard to the facts and circumstances of the case that videoconferencing will subserve the cause of justice, it may so direct.** A perusal of the impugned order and in particular the reasons given in paragraph-6 thereof does not indicate that the learned trial Judge has recorded any finding in terms of paragraph-58.3 extracted hereinabove.

(emphasis supplied)

8. In view thereof, the petition is disposed of in following terms:
- i. Impugned order dated 23.1.2019 is liable to be set aside thereby restoring the application Exhibit-53 to its original position.
 - ii. The learned trial Judge will decide the application keeping in mind the conclusions reproduced in paragraph-58 of **Santhini's** case (supra).
 - iii. All contentions of the parties in that regard are expressly kept open.
 - iv. Rule is made absolute in aforesaid terms with no order as to costs. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)