

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.3228 of 2018

ORDER :

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.23-05-2018 in I.A.No.625 of 2018 in F.C.O.P.Nos.892 of 2014 and 1557 of 2013 of the Principal Judge, Family Court, City Civil Court, Hyderabad.

2. Petitioner herein had filed F.C.O.P.No.892 of 2014 against respondent for dissolution of the marriage between them which took place on 15-02-2012 and for other reliefs.

3. Respondent filed F.C.O.P.No.1557 of 2013 before the Family Court, City Civil Court, Hyderabad for restitution of conjugal rights against petitioner.

4. Both the matters have been clubbed together.

5. Petitioner is presently employed in United States of America for employment purpose along with a son born to the parties. Petitioner is represented by her father / G.P.A. Holder.

Petitioner's plea in I.A.625 of 2018

6. She filed I.A.No.625 of 2018 giving the said reason and sought recording of evidence by video conference from her residence in the United States of America.

7. Earlier also, petitioner had made a request for recording of her evidence through video conference on the ground that she was staying in U.S.A. and contended that it was not possible for her to appear before the Family Court, Hyderabad on the several dates of adjournment, but the trial Court declined to give such permission.

8. Petitioner then questioned the same in C.R.P.Nos.6015 and 5319 of 2017.

9. This Court on 12-03-2018 held that since petitioner was coming down to India on 25-03-2018, and the O.Ps stand posted to 26-03-2018, and since she stated that she is ready to give evidence before the Family Court, Hyderabad as she will remain in India from 25-03-2018 for 21 days, the Family Court should complete the recording of her evidence within the period of her stay in India and an order to that effect was passed by this Court.

10. This fact was also mentioned by petitioner in I.A.No.625 of 2018 and it was mentioned in the said I.A. that she had filed evidence affidavit in both O.Ps., that the Court below directed her to file a comprehensive affidavit on 04-04-2018, that she filed it on 10-04-2018; that prior thereto, chief-examination affidavit was filed through her father as G.P.A. holder to receive documents filed by her, but due to some reason, it was returned twice and resubmitted by complying with the objections. She contended that though she requested the Court to record her cross-examination as she has to

leave India on 15-04-2018, the Court below did not consider her request and posted the matter to 16-04-2018 for counter of respondent. She contended that respondent had filed an application for seizing her passport and to restrain her from traveling abroad and this shows the malafide intention of the respondent.

The Counter affidavit of the respondent

11. Counter-affidavit was filed by respondent opposing this application. He contended that the subject matter of O.Ps. relate to disputes between the parties and G.P.A. holder of petitioner cannot say things which have transpired between petitioner and respondent. He alleged that petitioner had abandoned the proceedings in the O.P. without leave or permission from the Court. He alleged that on account of the same, petitioner is not entitled to the relief of recording of evidence through video conference from her residence at U.S.A. and that is not the procedure in law to look into issues relating to matrimonial cases.

12. It is also alleged that comprehensive affidavit of petitioner in both the O.Ps. was filed by her only on 10-04-2018 and the petitioner left to U.S.A. on the very next day and willfully absented herself. He contended that it was impossible to conclude the evidence of petitioner in the short period available since chief-examination itself ran into 8 pages warranting comprehensive cross-examination. He alleged that petitioner feared cross-examination and left India

immediately after filing of chief-examination affidavit and therefore no relief should be granted to her.

The order in I.A.No.625 of 2018

13. By order dt.23-05-2018, the Court below dismissed I.A.No.625 of 2018 observing that in the premises of the City Civil Court, Hyderabad where the Family Court was located, infrastructure facility for video conferencing has not been provided.

14. It observed that in view of the nature of the case and the guidelines issued by the High Court apart from lack of sufficient infrastructural facilities for video conferencing in the Court Complex, request of the petitioner cannot be acceded to.

15. It also observed that as per the decision of the Supreme Court in **Santhini Vs. Vijaya Venkatesh**¹, only both parties can consent that a witness can be examined by video conferencing. So only a joint application would be entertained for recording evidence through video conferencing and since the respondent did not consent to it, request of the petitioner cannot be entertained.

16. Assailing the same, this Revision is filed.

Contentions of Petitioner in the CRP

17. Learned counsel for petitioner contended that the stand taken by the Court below is not proper and the petitioner cannot be compelled

¹ (2018) 1 SCC 1

to leave her employment in U.S.A. and stay in India to attend the day-to-day hearings in the O.Ps., which would result in her losing employment. He also contended that the judgment in **Santhini** (1 supra) refer only to the question whether in transfer petitions video conferencing can be directed, but it did not take away the power of the Family Court, in cases where settlement talks failed, to record evidence through video conferencing if it will sub-serve the cause of justice.

Contention of the Respondent

18. Learned counsel for respondent contended that there is no facility to record evidence through video conferencing and in any event, conduct of the petitioner did not warrant permission to record her cross-examination through video conferencing.

The Consideration by the Court

19. I have noted the contentions of both sides.

20. This Court verified with the Registry and ascertained that though the Family Court, City Civil Court, Hyderabad does not have exclusive video conferencing facility, the City Civil Court Complex in Hyderabad where the Family Court is located, has been provided now with a video conferencing facility. Therefore, one of the reasons given by the Court below for not permitting evidence to be recorded by video conferencing, no longer exists.

21. In **Santhini** (1 supra), the Supreme Court observed:

*“55. Be it noted, sometimes, transfer petitions are filed seeking transfer of cases instituted under the Protection of Women from Domestic Violence Act, 2005 and cases registered under the Indian Penal Code. As the cases under the said Act and the Indian Penal Code have not been adverted to in **Krishna Veni Nagam Vs. Harish Nagam**² or in the order of reference in these cases, we do intend to advert to the same.*

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

(i) 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.

(ii) 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 video conferencing before the concerned Family Court, it may exercise the discretion to allow the said prayer.

(iii) 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.

(iv) In a transfer petition, video conferencing cannot be directed.

(v) Our directions shall apply prospectively.

(vi) The decision in Krishna Veni Nagam (2 supra) is overruled to the aforesaid extent.”

22. A reading of the above passages indicates that essentially the Court in the said case was dealing with power to direct video conferencing and recording of evidence through video conferencing; in petitions filed for transfer of cases. Even the said decision in para-

² (2017) 4 SCC 150

56(3) empowers the Family Court *in appropriate cases where settlements fails, to permit video conferencing having regard to the facts and circumstances of the case and if it would sub-serve the cause of justice.*

23. In **the State of Maharashtra and P.C. Singh Vs. Praful B.Deasai and others**³, the Supreme Court held that video-conferencing is an advancement in science and technology which permits one to see, hear and talk with someone far away, with the same facility and ease as if he is present before the Court; and in fact, he/she is present before you on a screen, except for touching, one can see, hear and observe as if the party is in the same room. It observed that in video-conferencing both parties are in presence of each other and so long as the accused and/or his pleader are present when evidence is recorded by video-conferencing, that evidence is being recorded in the 'presence' of the accused and would thus fully meet the requirements of Section 273 Criminal Procedure Code and recording of such evidence would be as per 'procedure established by law'. It observed that the accused and his pleader can see the witness as clearly as if the witness was actually sitting before them and the accused may be able to see the witness better than he may have been able to if he was sitting in the dock in a crowded court room and can observe his or her demeanour. It also observed that the witness can be confronted with documents or other material or statement in the same

³ (2003) 4 SCC 601

manner as if he/she was in Court and no prejudice, of whatsoever nature, is caused to the accused provided evidence by video-conferencing is done subject to some conditions.

24. Thus if in criminal cases, recording of evidence through video conferencing is accepted, subject to certain conditions, I do not see why there ought to be a bar for recording of evidence through video conferencing in matrimonial proceedings.

25. In a situation where one or both of the parties to a matrimonial proceeding is living abroad, and is unable to come to India to give evidence on account of his/her employment there, and there is a risk of the party losing his/her employment if she were to return to India, it would be unjust to compel the said party to give up her job there so that he/she can appear on every date of adjournment in the Family Court in India where his/her case is pending. It is common knowledge that pendency in some of the Family Courts is very high and there is every possibility of the matter getting dragged on indefinitely.

26. I am also of the opinion that the petitioner cannot be penalized if her evidence could not be recorded if she was in India in the year 2018 because she admittedly attempted to file her documents through G.P.A. which was rejected and much later it was permitted.

27. For the aforesaid reasons, the impugned order is set aside; I.A.No.625 of 2018 is allowed; and the Principal Judge, Family Court,

City Civil Court, Hyderabad is directed to record the chief-examination/cross-examination of the petitioner through video conferencing at the video conferencing facility available in City Civil Court, Hyderabad after fixing appropriate time with the consent of both parties and their counsel. Such evidence shall be recorded in the presence of counsel for petitioner at Hyderabad as well as counsel for respondent in the O.Ps. and such recording shall be done by the Presiding Judge of the Family Court within four (04) weeks from the date of receipt of copy of the order. Learned counsel for both parties shall inform the Presiding Judge of the Family Court of the date and time at which such video conferencing can be done within one week from the date of receipt of copy of the order, and the Chief Judge, City Civil Court, Hyderabad shall accord permission for recording of evidence of the witness through video conferencing, and the expenses in that regard shall be collected from the petitioner's G.P.A. Holder in advance.

28. The Civil Revision Petition is allowed with the above directions. No costs.

29. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 19-07-2019

Vsv