





('CMO' for short). The notification issued by the High Court of Kerala dated 10.3.2015 notifying the Rules called the Kerala Civil Courts (Case Flow Management) Rules, 2015 (in short 'Case Flow Management Rules') enables the Courts to authorise any officer to exercise the power of the Chief Ministerial Officer of the Court. The Presiding Officers are therefore directed to authorise the most competent Ministerial Officer as the CMO for the purpose of case flow management.

B. FUNCTIONS and DUTIES of CMO: On institution of proceedings, the CMO shall fix the date for appearance of the respondent(s). On appearance of the respondent(s), the parties be referred for counselling, which shall be in consultation with the Presiding Officer. The date and time for appearance of the respondent(s) shall be specified in the summons issued to the respondent(s) in Form No. 1 of Rule 5 of the Family Courts (Kerala) Rules, 1989. The CMO shall fix specified timings for counselling between the parties to a case(s) in a day and allot the matter to the concerned counsellor, who in turn, shall on a daily basis submit report of each day's work to the CMO. A cap of a maximum 10 cases in a day shall be fixed for each counsellor.

C. INSISTENCE of MEMO TO FURNISH DETAILS of CASE PENDING: When a case is presented before the CMO, the CMO shall insist that the parties to file a memo furnishing the details of the connected cases between the same parties pending before the Court. If such details are furnished, the CMO shall tag the cases.



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D. EXPARTE/UNCONTESTED MATTERS: The CMO shall post uncontested cases and cases where the respondent(s) remain absent immediately before the Court. Similarly, the CMO shall post joint petitions filed for divorce by mutual consent before the Court, if the parties fulfil the conditions laid down by the Honourable Supreme Court in Amardeep Singh v. Harveen Kaur [MANU/SC/1134/2017 : 2017 (4) KLT 367].

E. CLASSIFICATION of CASES FOR COUNSELLING: Only suits or proceedings filed for decrees of nullity, dissolution of marriages, judicial separation, restitution of conjugal rights, maintenance, guardianship, custody and access to minors need be referred for counselling, unless otherwise directed or felt necessary by the Presiding Officer.

F. CASES FIT FOR MEDIATION AT FIRST INSTANCE: In suits or proceedings for declaration as to validity of marriage, property, injunction and legitimacy of a person etc, the CMO shall refer the parties directly to mediation.

G. DISPUTE/S NOT SETTLED IN COUNSELLING: If parties are referred for counselling and the dispute does not get settled, the CMO shall call for a meeting of the parties and fix a date for referring the parties to mediation. The CMO shall also fix a date for the report of mediator with an outer time frame of 60 days after obtaining a formal order from the court. Further time can be extended only in accordance with Rule 19 of the Civil Procedure (Alternative Dispute Resolution) Rules, 2008.

H. CONTESTED CASES: In cases where the mediation proceeding is unsuccessful, then the CMO shall call for a meeting



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of the parties and fix the date of hearing of the proceeding in Court. While fixing the date for hearing in the Court, the CMO shall adhere to the time prescribed in accordance with the Case Flow Management Rules. The CMO shall, in consultation with the Presiding Officer, fix a timeframe in accordance with the Case Flow Management Rules, to dispose of the case. If the cases are jointly tried, all such cases shall be disposed of within the time as specified for highest track. However, taking note of huge pendency of cases, we permit the Family Courts to fix date and period for disposal of freshly instituted proceedings after reckoning the period required for disposal of the pending matters. The dates shall be fixed after appearance of both sides and in consultation with both parties. Lawyer(s) or authorized representatives shall be allowed to appear before the CMO.

Step 1 (ii): COUNSELLING: The counsellor shall follow the procedure as referred in Rule 26 of Family Courts (Kerala) Rules, 1989 while holding the counselling session. During the course of counselling, if the counsellor is of the view that an Expert's assistance is required, the parties shall be referred to a competent Expert from the panel formed by the Presiding Officer. If the counselling session is adjourned, fixing the next date shall be in consultation with the CMO. Separate timings shall be given for each party for counselling in a given day, so as to avoid crowding in the counselling centres and the parties getting frustrated by waiting at the court premises which is not congenial for counselling. The role of counsellor in the Family Courts is to handle the person(s) and not the disputes. Matters related to



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custody, nullity, dissolution etc., are required to be dealt with by the counsellor in a competent manner, as it involves emotions of person(s) involved in such disputes. The counselling date and time shall be fixed according to the convenience of the parties.

Step 2(i): Judicial time is wasted for roll calls. In view of our directions to activate the CMO's office to deal with routine matters regarding posting, reference to mediation, counselling etc., we are of the considered view that the Presiding Officers of the Family Courts shall bestow their attention only on matters where the Courts have to pass judicial orders. Therefore, the Family Courts, in normal circumstances, are directed to only list the following matters namely:

- i. Execution proceedings.*
- ii. Interlocutory applications where urgent orders are required.*
- iii. Cases listed for trial and hearing in the special list.*
- iv. On the day of listing, as envisaged under Section 9 of the Family Courts Act, the Presiding Officer shall make an endeavour to persuade the parties to arrive at a settlement, failing which the court shall proceed with the trial on day to day basis. It would be appropriate that the Presiding Officer interacts with the parties in the Chambers before the commencement of trial or at least during the course of the trial.*

A. SPECIAL LIST SYSTEM IN FAMILY COURTS: The Family Courts shall implement the special list system followed in the civil courts. Cases which are ripe for trial shall be included in the list in accordance with the seniority as on the date of institution of the case. A minimum of 2-4 cases shall be listed for



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trial in a day and 2-4 cases be listed for final arguments. The CMO shall fix the date for trial of pending cases ripe for trial in advance, with the approval of the Presiding Officer.

B. EXECUTION: Family Courts shall make every endeavour to dispose execution petition if there is no stay from superior courts, within the time provided for disposal of such cases in the Case Flow Management Rules.

C. EXECUTION of MAINTENANCE ORDER: The procedure for execution of maintenance orders, other than the orders passed under Chapter IX of the Code of Criminal Procedure read with Sub-Section (2) of Section 7 of the Family Courts Act, 1984, shall be done as expeditiously as possible in accordance with the procedure laid down under the Code of Civil Procedure.

D. CRIMINAL EXECUTION PETITIONS: Execution Petitions filed for enforcement of orders passed under Chapter IX of the Code of Criminal Procedure read with Sub-Section (2) of Section 7 of the Family Courts Act, 1984, need not be called in Court, unless hearing and judicial orders are required. The Court shall take necessary steps for the expeditious disposal of such applications, if no valid defence is raised.

E. MAINTENANCE THROUGH BANK ACCOUNT: For the payment of maintenance amounts, the decree holders/petitioners falling under category B and C cases mentioned above shall furnish their bank account details to the CMO to enable the judgment debtors/respondents to pay the monthly maintenance through the electronic bank transfer



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methods like NEFT/RTGS. The parties need only file memos evidencing and acknowledging the payments. If the practice is adopted by the parties, the execution petitions need not be called in Court, except where a party commits default or a dispute is raised. The parties are also at liberty to adopt the same procedure for execution of money decrees.

F. APPOINTMENT of NODAL OFFICERS FOR EXECUTION of WARRANTS: Necessary directions shall be issued by the Presiding Officer to appoint Nodal Officers in Revenue and Police Departments under the control of the District Collector and District Police Chief respectively, to monitor the execution of arrest warrants and distress warrants in execution of orders passed under Chapter IX of the Code of Criminal Procedure.

*G. INTERIM CUSTODY of CHILDREN: In matters relating to custody of children, the concern of the court shall be the best interest and the welfare of the child. At the first instance, before considering the prayer for interim custody, the Presiding Officers shall interact with the parties and the child, if needed. The Family Courts shall keep in mind the directions of the Honourable Supreme Court in *Yashita Sahu v. State of Rajasthan and Others* [MANU/SC/0052/2020 : (2020) 3 SCC 67] while deciding an application for interim custody, access, visitation rights and contact rights. If the Family Courts feels that familiarization of the child with a parent is required, it shall pass orders to ensure that the child is familiarized with the parent who is denied custody till final adjudication of the matter. The essence*



of brevity in such orders is for clarity and to avoid wastage of judicial time. Keeping the above objectives in mind, the Family Courts shall make every endeavour to pass interim orders accordingly.

H. INTERIM ORDERS: We have come across several interim orders passed by the Family Courts having the effect of the final orders/judgments, especially in matters relating to custody and visitation rights of children. It is elementary that the purpose of passing an interim order is, inter alia, to restrain property from being wasted/damaged/alienated, preserve the subject matter or to enforce one's rights or to discharge the other's obligation relating to dispute pending final adjudication.

I. TIME PERIOD FOR DISPOSAL of INTERIM APPLICATIONS: It would be appropriate that all interlocutory applications are disposed within four weeks after appearance of the parties, if not, specific reasons shall be stated.

Step 2 (ii): (I). NATURE of PROCEEDINGS TO RECORD ORAL EVIDENCE:

A. APPOINTMENT of ADVOCATE COMMISSION: If both parties agree, the Family Court may appoint an Advocate Commission to record the oral evidence of parties and their witnesses.

B. If the Presiding Officers record the evidence, the court shall follow the procedure as contemplated under Section 15 of Family Courts Act i.e., to record or cause to record only the memorandum of substance of what the witness deposed. This again would avoid unnecessary wastage of time in recording



matters which are not relevant to the issues involved in the proceeding.

C. It is also open for the Family Courts to record evidence of persons, wherever such evidence is of formal character, through affidavit of such persons.

II. VIDEO CONFERENCING: When an application is filed to record the evidence through Video Conferencing, the Family Courts, if it feels so, shall allow such application following the Video Conferencing Rules approved by the Full Court of the Kerala High Court (yet to be notified by the Government) and the law laid by the Honourable Supreme Court in State of Maharashtra v. Dr. Praful B. Desai [MANU/SC/0268/2003 : (2003) 4 SCC 601] and Santhini v. Vijaya Venketesh [MANU/SC/1274/2017 : 2017 (4) KLT 415 (SC)]. The Registrar (District Judiciary) shall make available a copy of the Video Conferencing rules along with this judgment to all the Presiding Officers.

III. CONSOLIDATION and JOINT TRIAL: After a case is ripe for trial, wherever possible, the Family Courts shall order the consolidation and joint trial of all the proceedings between the same parties.

Step 3(i) A. PENDING MATTERS: The Presiding Officers shall take immediate steps to refer all pending cases to mediation, if not referred so far. All other pending cases shall be listed for trial only in accordance with their seniority as on the date of institution of the proceeding and keeping in mind the volume of pending cases.



B. LOK ADALATHS: It would be appropriate for the Family Courts to convene Adalaths in consultation with District Legal Services Authority for settling all pending proceedings which are ripe for trial at least on quarterly basis.

C. ADVANCED HEARING: Family Courts are permitted to depart from the procedure aforesaid on a motion made by a party for early hearing of a case(s) for any justifiable or valid reason. If any party desires to move an application for early hearing, he/she shall move the Family Court at the first instance. The Family Court shall dispose of such application, as expeditiously as possible, at any rate within two weeks from the date of moving such application. It would be open to the Family Court to pass orders on such applications in the chambers. This court need not entertain any original petitions, filed under Article 227 of the Constitution of India, for early disposal of cases, unless the parties move the concerned Family Court at first instance.

D. SENIOR CITIZEN: In cases involving senior citizens, if the Family Court is of the view that the outcome of such cases will have direct impact on the rights of the senior citizen, the Family Court shall make every endeavour to dispose such cases within the outer limit of six months of appearance of parties. The above directions shall be implemented with effect from 1st of June, 2021. The Family Courts are directed to place a report before the Registrar (District Judiciary) by 31/12/2021 with regard to compliance of the above directions.



5.The Hon'ble Division Bench relied on the decision reported in (2003) 4

SCC 166 (K.Abdul Jaleel Vs TA. Shahada) in which the following observation

was made:

“It has come to the notice of the Court that on certain occasions the Family Courts have been granting adjournments in a routine manner as a consequence of which both the parties suffer or, on certain occasions, the wife becomes the worst victim. When such a situation occurs, the purpose of the law gets totally atrophied. The Family Judge is expected to be sensitive to the issues, for he is dealing with extremely delicate and sensitive issues pertaining to the marriage and issues ancillary thereto. When we say this, we do not mean that the Family Courts should show undue haste or impatience, but there is a distinction between impatience and to be wisely anxious and conscious about dealing with a situation. A Family Court Judge should remember that the procrastination is the greatest assassin of the lis before it. It not only gives rise to more family problems but also gradually builds unthinkable and Everestine bitterness. It leads to the cold refrigeration of the hidden feelings, if still left. The delineation of the lis by the Family Judge must reveal the awareness and balance. Dilatory tactics by any of the parties has to be sternly dealt with, for the Family Court Judge has to be alive to the fact that the lis before him pertains to emotional fragmentation and delay can feed it to grow. We hope and trust that the Family Court Judges shall remain alert to this and decide the matters as



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expeditiously as possible keeping in view the objects and reasons of the Act and the scheme of various provisions pertaining to grant of maintenance, divorce, custody of child, property disputes, etc”

6.The learned counsel for the petitioner submits that as a result of implementation of the aforesaid directions has had a salutary effect on the functioning of the Family Courts in Kerala. According to him, the statistics speaks for himself. He asserted that though there are 37 Family Courts in Kerala compared to 40 Family Courts in Tamil Nadu, the rate of disposal in Kerala is more than double. In my view, this is a cause for serious introspection and reflection. I take judicial notice of the fact that the substantial time of the presiding officers is devoted to calling cases and granting adjournments. Ways and means have to be devised to speed up disposal of cases. Section 21(B)(1) & (2) of the Hindu Marriage Act, 1955 is as follows:

“21B. Special provision relating to trial and disposal of petitions under the Act.—

(1) The trial of a petition under this Act shall, so far as is practicable consistently with the interests of justice in respect of the trial, be continued from day to day until its conclusion unless the court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded.

(2) Every petition under this Act shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date of service of notice of the petition on the respondent.



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(3) Every appeal under this Act shall be heard as expeditiously as possible, and endeavour shall be made to conclude the hearing within three months from the date of service of notice of appeal on the respondent. ”

Section 23(3) of the Hindu Marriage Act, 1955 is as follows:

“ 23. Decree in proceedings.

(3) For the purpose of aiding the court in bringing about such reconciliation, the court may, if the parties so desire or if the court thinks it just and proper so to do, adjourn the proceedings for a reasonable period not exceeding fifteen days and refer the matter to any person named by the parties in this behalf or to any person nominated by the court if the parties fail to name any person, with directions to report to the court as to whether reconciliation can be and has been, effected and the court shall in disposing of the proceeding have due regard to the report.”

7.As per the Tamil Nadu (Case flow management in Subordinate Courts) Rules, 2007, cases relating to matrimonial cases have to be dealt under Track – II and the maximum time for disposal is 12 months.

8.Though Rule 28 of Family Courts (Procedure) Rules, 1996 lays down the duties and functions of counsellors, the Rule does not specify a time limit for completing the process. Rule 51 of Family Courts (Procedure) Rules, 1996 extends the applicability of the Rules framed by the High Court under Section



122 of C.P.C. Rule 19 of the Tamil Nadu Mediation Rules, 2010 made by the

High Court under Section 122 of C.P.C is as follows:

“19. Time-limit for completion of mediation.— (1) In the absence of the parties for three consecutive meetings or during the period of sixty days, whichever is earlier, the mediation shall stand terminated and the matter shall be listed before the Court concerned.

(2) On the expiry of sixty days from the date fixed for the first appearance of the parties before the mediator, the proceedings shall be posted before the Court for further orders of extension, upon the request of the mediator or any of the parties. ”

In view of the aforesaid statutory provisions, the counselling process held in Family Courts will have to adhere to the time limit set out in Rule 19 of the Tamil Nadu Mediation Rules, 2010. The counsellors ought not to insist on physical presence of parties. It is true that mediation is effective when done physically but one party to a matrimonial proceeding cannot be permitted to delay the proceedings by citing inability to be present physically. In such cases, the proceedings should be conducted through video conference in the manner conforming to the Madras High Court Video-conferencing in Courts Rules, 2020. If necessary, the counsellor / Judge should not hesitate to adopt other modes such as Whatsapp Video call / Google meet / Skype / Zoom etc. The Family Courts should also appoint sufficient number of counsellors.

9.The petitioner is aged about 30 years. The proceeding is already more than a year old. Life is like a test match having two innings and not an IPL



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match. If the matrimonial proceedings are expeditiously concluded, the parties can consider having a second innings. The petitioner is a woman. Article 15(3) of the Constitution of India envisages a special treatment for women. Considering the special facts and circumstances obtaining in this case, I direct the Court below to expeditiously dispose of HMOP.No.851 of 2023 on merits and in accordance with law.

10.Time has come to make a rapid study of the situation prevailing in Tamil Nadu. In an appropriate case, directions similar to the ones issued by the Hon'ble High Court of Kerala may have to be issued in exercise of the supervisory jurisdiction under Article 227 of the Constitution of India.

11.I acknowledge the able and excellent assistance rendered by Shri.M.S.Parthiban, learned counsel for the petitioner.

12.This Civil Revision Petition is disposed of accordingly. No costs.

20.09.2024

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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Note: Issue order copy on 20.12.2024.



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G.R.SWAMINATHAN, J.

MGA

To:

The Family Court,
Madurai.

C.R.P.(MD)No.530 of 2024

20.09.2024