

**A.F.R.1**

**Neutral Citation No. - 2025:AHC:9349**

**Reserved On : 17.09.2024**

**Delivered On : 20.01.2025**

**Case :- MATTERS UNDER ARTICLE 227 No. - 7309 of 2024**

**Petitioner :- Ankit Agrawal**

**Respondent :- Smt. Monika Agrawal**

**Counsel for Petitioner :- Paritosh Joshi, Raghav Dev Garg, Sr.  
Advocate**

**Counsel for Respondent :- Amrit Shanker Dubey**

**Hon'ble Neeraj Tiwari, J.**

1. Heard learned counsel for petitioner.
2. On 05.07.2024, this Court has issued notice to respondent and as per Office report dated 25.07.2024, notice has been served upon the respondent no. 22.07.2024, but even after service of notice, no one has turned up on her behalf, therefore, Court is proceeded to decide the case on merits.
3. Present petition has been filed seeking following reliefs:-
  - “i. Issue any order or direction, setting aside the dated 16<sup>th</sup> of May 2024 passed by the Ld. Principal Judge, Family Court, Firozabad, in H.M.P. No. 508 of 2023 ( Ankit Agrawal vs. Monika Agrawal) under Section 13-B of Hindu Marriage Act.
  - ii. Issue any order or direction upon the Court of Ld. Principal Judge, Family Court, Firozabad, to exempt the petitioner’s physical presence in the proceedings under section 13B of the Hindu Marriage Act, which is registered as H.M.P. No. 508 of 2023 (Ankit Agrawal vs. Monika Agrawal) and the petitioner may be allowed to participate in the further proceedings, including any mediation conducted by the court, either virtually or through its special power of attorney holder.”
4. Brief facts of the case are that marriage of petitioner and respondent was solemnized on 25.07.2015 as per Hindu Rites and Rituals. Till 2018, petitioner was working as Computer Engineer in Noida and subsequently, petitioner along with respondent shifted to United States of America. In due course of time, some differences took place between the parties leading to initiation of criminal proceeding as well as proceeding under the provisions of Domestic Violence Act against the petitioner. Lastly, in order to give logical

conclusions to the aforesaid proceedings, a memorandum of understanding/settlement dated 06.05.2023 was entered between the petitioner, through his special power of attorney holder and the respondent wherein it was decided between the parties to file a petition under section 13B of the Hindu Marriage Act before family court at Firozabad for divorce by mutual consent. It was also resolved between the parties that respondent shall not pursue the criminal proceeding against the petitioner and his family members. Consequently, a petition under section 13B of Hindu Marriage Act was filed by the petitioner through its special power of attorney holder before the family court at Firozabad on 06.05.2023. The said petition was registered as H.M.P. No. 508 of 2023.

5. Principal Judge, Family Court, Firozabad has decided to proceed with mediation in the matter, but as the petitioner was residing at United States of America, therefore, he could not personally present to file the petition. However petitioner ensured his presence through virtual mode where he verified the identity of his wife and his special power of attorney holder. Petitioner was not in a position to come back to India in order to pursue his petition as he is currently employed in a company based in United States of America, therefore, he has preferred to move an application dated 09.05.2023. After considering the said application, Principal Judge, Family Court, Firozabad has rejected the same vide impugned order dated 16.05.2024.

6. Learned counsel for petitioner submitted that similar dispute arising out of Section 13-B of Hindu Marriage Act was came up before the Apex Court in the matter of *Amardeep Singh vs. Harveen Kaur; (2017) 8 Supreme Court Cases 746*, in which Apex Court has taken a clear cut view that Court can also use the medium of video conferencing and also permit genuine representation of the parties through close relations such as parents or siblings.

7. He next submitted that in light of judgment given by the Apex Court, rejection of application of petitioner is bad and impugned order dated 16.05.2024 is liable to be set aside.

8. I have considered submissions advanced by counsel for petitioner and perused the records as well as judgments occupying the field.

9. There is no dispute on the point that during the course of time, there is lot of technological development and there are so many mode of virtual appearance i.e. skype, video calling etc., therefore, application for appearance before the Court through virtual mode cannot be rejected.

10. This issue was also before this Court in the matter of *Shilpa Chaudhary vs. Principal Judge and Ors.; 2016 (4) ADJ 262*. Relevant paragraph nos. 1, 16, 17, 18, 19 & 20 of the said judgment are being quoted below:-

“1. The applicant and the second respondent contracted marriage as per hindu rites and custom on 20 November 2010. In August 2013 a joint petition under Section 13B of the Hindu Marriage Act, 1955 was instituted before the Family Court, at Muzaffarnagar, seeking divorce on mutual consent. The petition being Case No. 1149 of 2014 (Smt. Shilpa Chaudhary vs. Vikram Singh). Though dates were fixed by the Court, however, the matter could not be taken for hearing, finally the applicant left the country for Boston, USA, for pursuing her carrier. The applicant executed power of attorney in favour of her mother for parivi and to enter into a compromise for dissolution of the marriage before the Family Court. On 28 November 2015 applicant filed an application (11Ka) through her counsel and prayed for decision/disposal of the case, but by the impugned order dated 17 December 2015 the application was rejected.

16. 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.

17. Reliance was placed on a decision rendered by Calcutta High Court in *Amitabh Bagchi vs. Ena Bagchi*<sup>10</sup> wherein, the Court relying upon *Dr. Praful (supra)* held that "presence" does not necessarily mean actual physical presence in the Court. Section 3 of the Indian Evidence Act provides that evidence means and includes all statements which the Court permits or requires to be made before it by witnesses, in relation to the matters of fact under enquiry; evidence would, therefore, include videoconferencing which apply in all cases and not necessarily in criminal matters.

18. Then under Order 18 Rule 4(3) of the amended Code of Civil Procedure, presence in the Court does not necessarily mean physical presence. Rule 4(3) provides for recording evidence either by writing or mechanically in presence of the judge.

19. The Karnataka High Court in *Twentieth Century Fox Films Corporation vs. N.R.I. Film Production Associates (P) Limited*<sup>11</sup> held that mechanical process includes the electronic process both for the Court and Commissioner. Those are empowered to adopt the mode of evidence as per the amended Evidence Act.

20. Dispensation of justice entails speedy justice and justice rendered with least inconvenience to the parties as well as to the witness. If a facility is available for recording evidence through videoconferencing, avoids any delay or inconvenience to the parties such facilities should be resorted to. There is no requirement that the witness must be required to come to court and depose in the physical presence in the court. ”

11. Apex Court in the matter of *Amardeep Singh (Supra)* has also considered the issue of video conferencing. Relevant paragraph nos. 20 & 21 are being quoted below:-

“20. Since we are of the view that the period mentioned in Section 13B(2) is not mandatory but directory, it will be open to the Court to exercise its discretion in the facts and circumstances of each case where there is no possibility of parties resuming cohabitation and there are chances of alternative rehabilitation.

21. Needless to say that in conducting such proceedings the Court can also use the medium of video conferencing and also permit genuine representation of the parties through close relations such as parents or siblings where the parties are unable to appear in person for any just and valid reason as may satisfy the Court, to advance the interest of justice.”

12. Similar controversy was also came up before the High Court of Karnataka in the matter of *Aditya Jagannath and Ors.*; 2021 (1) HLR 201 (M.F.A. No. 4453 of 2020 (FC) in which facts are also identical to this case. Relevant paragraph nos. 16 to 20 of the said judgment are being quoted below:-

“16. In recent times, we find that the parties who seek for dissolution of their marriage by a decree of divorce by mutual consent do so after long negotiation and discussion, some times they, being located at different parts of the globe, through skype, telephonically or use of other forms of technology, such as whatsapp calls, video conferencing etc. On account of the parties residing in different parts of the country or across the globe and owing to constraints of job or other constraints, such as illness etc., it may not be possible for both parties to sign and verify the pleadings and jointly present the petition for dissolution of their marriage by mutual consent before the Court of Law. This is so in the instant case. In such circumstances, one of the parties to the petition may avail of the facility of appointing a Power of Attorney/agent, in whom the party has full trust and confidence to represent her or him in a proceeding to be filed as in the instant case before the Family Court or any other Court seeking matrimonial or any other relief. Therefore, the provisions of the various enactments must be harmoniously read and interpreted, so as to make it conducive for availing or taking recourse through appointment of a Power of Attorney holder, to represent a party in a proceeding. This is particularly, as in the instant case, where parties are seeking dissolution of their marriage by a decree of divorce by mutual consent. Moreover, in such cases, a party can carefully think over the matter and appoint a person in whom the party would have full trust and confidence to be as her or his Power of Attorney holder. It is on the strength of such a document of Power of Attorney that the Power of Attorney holder would represent a party to jointly file a petition for dissolution of their marriage through mutual consent on behalf of the executor or Power of Attorney. The Family Court may insist on satisfying itself that indeed the parties have an intention that they should seek a decree of divorce by mutual consent and in order to fully satisfy itself, the Court may, apart from examining the Power of Attorney holder representing any party, also through video conferencing, (which is now widely being used on account of the Covid-19 pandemic), examine the parties including the party who is represented through the Power of Attorney holder. That merely because one of the parties would file the petition seeking dissolution of marriage by mutual consent jointly with the other party, through a Power of Attorney, one cannot ignore the fact that the Court must satisfy itself about the genuineness of the petition filed by the parties seeking dissolution of their marriage by a decree of divorce by mutual consent irrespective of whether it is filed through a Power of Attorney. In fact, the filing of such a petition is an exception to what has been stated in Section 23 of the Act. Even so, the Court ought not to be pedantic but must apply a flexible procedure which is in accordance with law and not a procedure, but not one which is incongruent in law.

17. In fact, recently, the Hon'ble Supreme Court in the case of Amardeep Singh vs. Harveen Kaur (2017) 8 SCC 746 while considering Section 13B(2) of the Act, which stipulates a cooling off period of six months which is also a period of locus poenitentiae, after filing a petition of divorce under Section 13B(1) of the Act, so

as to give an opportunity to the parties to rethink over the decision and thereafter, to confirm their decision six months later, has made the said provision less rigid and more pro-litigants by bearing in mind the changed circumstances and peculiarities of the case. Nevertheless, in the said case, it has been observed that the period of six months should be waived owing to the circumstances of the particular case, the exigencies of the situation and bearing in mind the interest of the parties so that justice would be subserved in the matter. In this regard, the Hon'ble Supreme Court has observed that the period mentioned in Section 13B(2) could be construed to be as directory and not mandatory and it would be open to the Court to exercise its discretion in the facts and circumstances of each case, where there are no possibilities of parties to reconcile, cohabit and there are no chances of alternative rehabilitation. In Paragraph No.21 of the said judgment, the Hon'ble Supreme Court has also observed as under:-

"Needless to say that in conducting such proceedings the court can also use the medium of videoconferencing and also permit genuine representation of the parties through close relations such as parents or siblings where the parties are unable to appear in person for any just and valid reason as may satisfy the court, to advance the interest of justice."

18. A reading of the above would clearly indicate that the Hon'ble Supreme Court has also made it flexible in the context of representation of the parties by their close relatives, partners or siblings or any other person in whom they have complete trust to be appointed as a Power of Attorney holder. In fact, as already noted, the Court can always satisfy itself about the genuineness of the intention of the parties who approach the Court either by themselves or through a Power of Attorney holder by way of video conferencing, so that any doubts about the genuineness of the petition being filed before the Court is removed.

19. On a perusal of the aforesaid observations of the Hon'ble Supreme Court, it is clearly permissible for the parties to be represented by their partners or siblings in a proceeding filed under Section 13B(1) of the Act or any other similar provision in any other enactment, which provides for dissolution of marriage by a decree of divorce by mutual consent.

20. In the circumstances, we find that in the instant case Family Court ought to have permitted the father of appellant No.2, for signing and verifying the pleadings as her Power of Attorney holder and to represent her in the proceedings. Moreover, for the sake of satisfying and genuineness of the petition, the Family Court could always resort to video conferencing through the medium of which, both the parties could appear apart from the Power of Attorney holder of the second appellant appearing for her, so as to completely satisfy itself about the genuineness of the petition filed by the parties just as presently in this appeal, the appellants have both appeared through video conferencing, first appellant from Bengaluru and the

second appellant from Toronto, Canada. In this regard, we can also briefly advert to the decisions relied upon by the learned counsel for appellants.”

13. Now coming to the present case. Facts of this case are squarely similar to the facts of the judgments cited above, therefore, this Court has no reason to have a different opinion. It is required on the part of Court to permit the petitioner to appear through virtual mode as prayed.

14. Therefore, under such facts of the case as well as law laid down by the Courts, impugned order dated 16.05.2024 is bad and hereby set aside.

15. Writ petition is accordingly ***allowed***.

16. No order as to costs.

17. Principal Judge, Family Court, Firozabad is directed to permit the petitioner to appear through video conferencing or any other electronic mode and be allowed to participate in further proceeding.

18. It is open for the Principal Judge, Family Court, Firozabad to verify the identity of petitioner by the respondent while he is appearing through electronic mode.

**Order Date :- 20.01.2025**

Sartaj