HIGH COURT OF ANDHRA PRADESH

* * * *

CIVIL REVISION PETITION No. 2619 of 2024

Between:

Mohammad Razik Shaik

..... PETITIONER

AND

Sufia Sultana Bano Mohammad

.....RESPONDENT

DATE OF JUDGMENT PRONOUNCED: **28.01.2025**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No

2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No

3. Whether Your Lordships wish to see the fair copy of the Judgment? Yes/No

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RAVI NATH TILHARI, J

* **THE HON'BLE SRI JUSTICE RAVI NATH TILHARI**

\+ **CIVIL REVISION PETITION No. 2619 of 2024**

% 28.01.2025

Mohammad Razik Shaik

....Petitioner

Versus

$ Sufia Sultana Bano Mohammad

....Respondent

! Counsel for the Petitioner: Sri Suryam Gannavarapu

^ Counsel for respondent : Sri S. Lakshminarayana Reddy

< Gist :

> Head Note:

? Cases Referred:

1. 2019 Supreme (AP) 357
2. (2018) 1 SCC 1
3. CRP No.1994/2024 & batch, Decided on 18.10.2024 Madras HC
4. (2017) 4 SCC 150
5. (2003) 4 SCC 601
6. (2017) 8 SCC 746
7. (2020) 3 SCC 637
8. (2021) 16 SCC 501

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

CIVIL REVISION PETITION No. 2619 of 2024

JUDGMENT:

Heard Sri Suryam Gannavarapu, learned counsel for the petitioner and Sri S. Lakshminarayana Reddy, learned counsel for the respondent.

2. The petitioner is the husband of the respondent/wife. The respondent/wife filed F.C.O.P.No.1313 of 2022 (in short 'FCOP'), pending in the Court of XIV Additional District & Sessions Judge-cum-Judge, Additional Family Court, Vijayawada (in short 'the Family Court'), through General Power of Attorney holder, under the Mohammedan Law, for restitution of conjugal rights. The marriage (Nikha) was performed on 05.12.2020 as per Muslim law, rites and customs at Hyderabad. It is the case of the respondent/wife that the husband used to work in Canada and also gave a hope to the wife that he will take her to Canada and would settle there. The wife came to know that the husband filed a petition for granting divorce, petition No.FC-22-00000623-0000 before the Superior Court of Justice Oshawa, Toronto, Canada on 03.05.2022 on allegedly false averments, in a Court having no jurisdiction. She filed FCOP stating that the husband without any reasonable excuse or justifiable cause withdrew from the society of the wife and was not allowing her to join the husband to lead marital life, though he was bound to discharge his duties towards the wife and so the wife was entitled for restitution of conjugal rights. *Inter alia,* the harassment and consequently, complaints against the husband were also pleaded. The more details of the pleadings are not required to be

stated for the decision of the present petition as it arises out of an interlocutory order passed in I.A.No.742 of 2024 in FCOP No.1313 of 2022.

3. In FCOP, the petitioner/husband filed I.A.No.742 of 2024 to permit him to appear before the Family Court, Vijayawada through video conference on a date and at a time designated for reconciliation. He *inter alia* pleaded that he was residing at Canada for job purpose and despite his efforts, he was unable to secure leave and so unable to attend the Court and intended to appear through video conference.

4. The wife/respondent filed counter. She denied the material allegations and submitted that the husband was trying to escape from the legal process for the last 1½ years and was seeking adjournments to come to India for attending the reconciliation proceedings, but now he filed the application for appearance through video conference mode for reconciliation, which was not permissible. The application was not maintainable. She also submitted that the mother and sister of the husband were the main persons who were trying to destroy the marital relationship. They were residing along with the husband in Canada and if the video conference was permitted, there would be chances of provocation and to mislead the reconciliation process. She also submitted that she was not giving her consent for video conference.

5. The learned Judge, Family Court framed the following point for consideration:

"Whether the petitioner is entitled for relief as prayed for?"

6. The learned Judge, Family Court, dismissed the petition I.A.No.742 of 2024, observing that there was no consent of both the parties which was must for conducting reconciliation through video conferencing. It also observed that the mother-in-law and sister-in-law of the respondent/wife had been staying with the petitioner/husband in Canada and they certainly influenced the petitioner/husband. The learned Judge, Family Court, in that regard, considered the judgment of the Andhra Pradesh High Court in ***Nerala Chiranjeevi Arun Kumar v. Nerala Sowjanya***[1] relied upon by the side of the husband and also the judgment of the Hon'ble Apex Court in ***Santhini v. Vijaya Venkatesh***[2] relied upon by the counsel for the wife.

7. Aggrieved by the rejection of the application, the husband has filed the present civil revision petition challenging the Order dated 10.09.2024, under Article 227 of the Constitution of India.

8. Learned counsel for the petitioner/husband submitted that the husband is residing at Canada for job purpose. It is not possible for him to come to India to attend the proceedings for reconciliation as he is not able to secure leave. The Family Court ought to have permitted the reconciliation process through video conferencing, using the technology, placing reliance in ***Nerala Chiranjeevi Arun Kumar*** (supra); the common order dated 18.10.2024 passed in ***G. Shrilakshmi v. Anirudh Ramkumar***[3] and ***Santhini*** (supra). He submitted that the order dismissing the petition seeking

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[1] 2019 Supreme (AP) 357
[2] (2018) 1 SCC 1
[3] CRP.No.1994/2024 & batch,
Decided on 18.10.2024 Madras HC

reconciliation through video conference deserves to be set aside and I.A.No.742 of 2024 deserves to be allowed.

9. Sri S. Lakshminarayana Reddy, learned counsel for the respondent/wife, submitted that the video conference, without the consent of both the parties, is not permissible in family dispute matters in Family Court. The respondent/wife did not give consent, for the reasons in her counter affidavit. Without the consent of both the parties, the video conference cannot be permitted, in view of the law as laid down by the Hon'ble Apex Court in ***Santhini*** (supra). So, there is no illegality in the order of the learned Judge, Family Court.

10. I have considered the submissions advanced by the learned counsel for both the parties and perused the material on record.

11. In FCOP, at the stage of reconciliation, the husband filed I.A.742 of 2024 for permission to attend in reconciliation process through video conferencing. He is at Canada for job purpose. It is his case that he could not secure leave and is unable to attend the proceedings at Vijayawada. The respondent/wife has opposed the prayer. She has not given consent for reconciliation through video conferencing.

12. The moot question for consideration is whether in matrimonial disputes, Family Court disputes, at the stage of reconciliation, appearance of the parties or any of them for reconciliation process, is legally permissible through video conferencing? and if it is permissible, under what circumstances and conditions, if any?

13. The law on the aforesaid aspect, i.e., use of video conferencing, i.e., technology, at the stage of reconciliation process and also afterwards, if the reconciliation fails, and after conclusion of the settlement proceedings, has been well settled by the Hon'ble Apex Court in ***Santhini*** (supra). The Hon'ble Apex Court considered its previous pronouncements on the use of technology, video conferencing etc; the object and scope and scheme of the Family Courts Act, the importance of reconciliation; the right of a woman in such reconciliation proceedings in a family dispute pending in the Family Court; right of privacy; in-camera proceedings and in para-58 of ***Santhini*** (supra) the Hon'ble Apex Court by majority judgment, recorded the following principles of law:

> "**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.
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> **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.
>
> **58.4.** In a transfer petition, videoconferencing cannot be directed.
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> **58.5.** Our directions shall apply prospectively.
>
> **58.6.** The decision in *Krishna Veni Nagam* [*Krishna Veni Nagam* v. *Harish Nagam*, (2017) 4 SCC 150 : (2017) 2 SCC (Civ) 394] is overruled to the aforesaid extent."

14. The aforesaid conclusions of the Hon'ble Apex Court, as summed up, show that the hearing of the matrimonial disputes has to be conducted in camera. In camera proceedings are to be conducted if the Court considers it appropriate and if any of the parties, seeks in camera proceedings, then, necessarily. The confidentiality of the proceedings is imperative. 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. In para-58.3 of ***Santhini*** (supra), the Hon'ble Apex Court observed 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. From the aforesaid, the law as settled is that direction for hearing of the case through videoconferencing may be given by the Family Court, subject to conditions, as mentioned in para-58 of ***Santhini*** (supra). But, that is after the settlement fails. The present is a case at the stage of settlement/reconciliation. So, it is not a case after the settlement has failed. The request in the present case, for videoconferencing, is for the purpose of reconciliation/settlement proceedings, by the husband/petitioner.

15. At the stage of reconciliation/settlement process, in ***Santhini*** (supra), the Hon'ble Apex Court in detail discussed the position in paragraphs-47 to 56, which are as under:

> "**47.** The language employed in Section 11 of the 1984 Act is absolutely clear. It provides that if one of the parties desires that the proceedings should be

held in camera, the Family Court has no option but to so direct. This Court, in exercise of its jurisdiction, cannot take away such a sanctified right that law recognises either for the wife or the husband. That apart, **the Family Court has the duty to make efforts for settlement. Section 23(2) of the 1955 Act mandates for reconciliation.** The language used under Section 23(2) makes it an obligatory duty on the part of the court at the first instance in every case where it is possible, to make every endeavour to bring about reconciliation between the parties where it is possible to do so consistent with the nature and circumstances of the case. There are certain exceptions as has been enumerated in the proviso which pertain to incurably of unsound mind or suffering from a virulent and incurable form of leprosy or suffering from venereal disease in a communicable form or has renounced the world by entering any religious order or has not been heard of as being alive for a period of seven years, etc. These are the exceptions carved out by the legislature. The Court has to play a diligent and effective role in this regard.

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 emphasise, 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 India* [*K.S. Puttaswamy* v. *Union of India*, (2017) 10 SCC 1] , 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 those 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."

49. Felix Frankfurter, J. in *Schulte Inc.* v. *Gangi* [*Schulte Inc.* v. *Gangi*, 1946 SCC OnLine US SC 81 : 90 L Ed 1114 : 328 US 108 (1946)] , has stated that the policy of a statute should be drawn out of its terms as nourished by their proper environment and not like nitrogen out of the air. Benjamin N. Cardozo, J. in *Hopkins Federal Savings and Loan Assn.* v. *Cleary* [*Hopkins Federal Savings and Loan Assn.* v. *Cleary*, 1935 SCC OnLine US SC 186 : 80 L Ed 251 : 296 US 315 (1935)] , has opined that when a statute is reasonably susceptible of two interpretations, the Court has to prefer the meaning that preserves to the meaning that destroys.

50. The command under Section 11 of the 1984 Act confers a right on both the parties. It is statutory in nature. The Family Court Judge who is expected to be absolutely sensitive has to take stock of the situation and can suo motu hold the proceedings in camera. The Family Court Judge is only meant to deal with the controversies and disputes as provided under the 1984 Act. He is not to be given any other assignment by the High Court. **The in-camera proceedings stand in contradistinction to a proceeding which is tried in court.** When a case is tried or heard in court, there is absolute transparency. Having regard to the nature of the controversy and the sensitivity of the matter, it is desirable to hear in court various types of issues that crop up in these types of litigations. The Act commands that there has to be an effort for settlement. The legislative intendment is for speedy settlement. The counsellors can be assigned the responsibility by the court to counsel the parties. That is the schematic purpose of the law. The confidentiality of the proceedings is imperative for these proceedings.

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.

52. The two-Judge Bench [*Krishna Veni Nagam* v. *Harish Nagam*, (2017) 4 SCC 150 : (2017) 2 SCC (Civ) 394] had referred to the decisions where **the affirmative rights meant for women have been highlighted in various judgments. We have adverted to some of them to show the dignity of woman and her rights and the sanctity of her choice. When most of the time, a case is filed for transfer relating to matrimonial disputes governed by the 1984 Act, the statutory right of a woman cannot be nullified by taking route to technological advancement and destroying her right under a law, more so, when it relates to family matters. In our considered opinion, dignity of women is sustained and put on a higher pedestal if her choice is respected. That will be in consonance with Article 15(3) of the Constitution**.

53. In this context, we may refer to the fundamental principle of necessity of doing justice and trial in-camera. The nine-Judge Bench in *Naresh Shridhar Mirajkar* v. *State of Maharashtra* [*Naresh Shridhar Mirajkar* v. *State of Maharashtra*, AIR 1967 SC 1] , after enunciating the universally accepted proposition in favour of open trials, expressed : (AIR pp. 8-9, para 21)

"*21.* … While emphasising the importance of public trial, we cannot overlook the fact that the primary function of the judiciary is to do justice between the parties who bring their causes before it. If a Judge trying a cause is satisfied that the very purpose of finding truth in the case would be retarded, or

even defeated if witnesses are required to give evidence subject to public gaze, is it or is it not open to him in exercise of his inherent power to hold the trial in camera either partly or fully? If the primary function of the court is to do justice in causes brought before it, then on principle, **it is difficult to accede to the proposition that there can be no exception to the rule that all causes must be tried in open court**. If the principle that all trials before courts must be held in public was treated as inflexible and universal and it is held that it admits of no exceptions whatever, cases may arise where by following the principle, justice itself may be defeated. That is why we feel no hesitation in holding that the High Court has inherent jurisdiction to hold a trial in camera if the ends of justice clearly and necessarily require the adoption of such a course. It is hardly necessary to emphasise that this inherent power must be exercised with great caution and it is only if the court is satisfied beyond a doubt that the ends of justice themselves would be defeated if a case is tried in open court that it can pass an order to hold the trial in camera; but to deny the existence of such inherent power to the court would be to ignore the primary object of adjudication itself. **The principle underlying the insistence on hearing causes in open court is to protect and assist fair, impartial and objective administration of justice; but if the requirement of justice itself sometimes dictates the necessity of trying the case in camera, it cannot be said that the said requirement should be sacrificed because of the principle that every trial must be held in open court**."

54. The principle of exception that the larger Bench enunciated is founded on the centripodal necessity of doing justice to the cause and not to defeat it. **In matrimonial disputes that are covered under Section 7 of the 1984 Act where the Family Court exercises its jurisdiction, there is a statutory protection to both the parties and conferment of power on the court with a duty to persuade the parties to reconcile. If the proceedings are directed to be conducted through videoconferencing, the command of the section as well as the spirit of the 1984 Act will be in peril and further the cause of justice would be defeated**.

55. A cogent reflection is also needed as regards the perception when both the parties concur to have the proceedings to be held through videoconferencing. In this context, the thought and the perception are to be viewed through the lens of the textual context, legislative intent and schematic canvas. The principle may have to be tested on the bedrock that courts must have progressive outlook and broader interpretation with the existing employed language in the statute so as to expand the horizon and the connotative expanse and not adopt a pedantic approach.

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* [*Krishna Veni Nagam* v. *Harish Nagam*, (2017) 4 SCC 150 : (2017) 2 SCC (Civ) 394] 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 Singh* [*Bhuwan Mohan Singh* v. *Meena*, (2015) 6 SCC 353 : (2015) 3 SCC (Civ) 321 : (2015) 4 SCC (Cri) 200] , 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**."

16. In ***Santhini*** (supra), the Hon'ble Apex Court thus clearly held that 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. It was emphasized that, 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. The Hon'ble Apex Court further observed that the Family Courts Act under Section 11 of the 1984 Act confers a right on both the parties. It is statutory in nature. The Family Court Judge who is expected to be absolutely sensitive has to take stock of the situation and can *suo motu* hold the proceedings in camera. The Family Court Judge is only meant to deal with the controversies and disputes as provided

under the 1984 Act. The in-camera proceedings stand in contradistinction to a proceeding which is tried in court. When a case is tried or heard in court, there is absolute transparency. Having regard to the nature of the controversy and the sensitivity of the matter, it is desirable to hear in court various types of issues that crop up in these types of litigations. The Act commands that there has to be an effort for settlement. The legislative intendment is for speedy settlement. The confidentiality of the proceedings is imperative for these proceedings.

17. The Hon'ble Apex Court in ***Santhini*** (supra) further observed that 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. The Hon'ble Apex Court further observed and emphasized that the statutory right of a woman cannot be nullified by taking route to technological advancement and destroying her right under a law, more so, when it relates to family matters. It was observed that if the proceedings were directed to be conducted through videoconferencing, the command of the section as well as the spirit of the 1984 Act would be in peril and cause of justice would be defeated.

18. The Hon'ble Apex Court, overruled its judgment in ***Krishna Veni Nagam v. Harish Nagam***[4] to a certain extent. In ***Krishna Veni Nagam***

[4] (2017) 4 SCC 150

(supra), the statement of law that if either of the parties gives consent, the case can be transferred, was held absolutely unacceptable. The Hon'ble Apex Court in ***Santhini*** (supra) however carved out an exception 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 the parties 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. The Hon'ble Apex Court also added a safeguard that a joint application should be filed before the Family Court Judge, who shall take a decision. It was made clear that in a transfer petition, no direction can be issued for videoconferencing. It was reiterated 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 the parties file a joint application or each party filing consent memorandum of videoconferencing.

19. So, in ***Santhini*** (supra) in clear words it has been laid down that the videoconferencing may be permitted only after the settlement fails, on the joint application of the parties or on their respective consent memo, if the Family Court feels it appropriate. So, the videoconferencing at the stage of reconciliation/settlement process is not permissible at all. The question of consent of both the parties is also of no consideration or relevance, at the stage of the reconciliation.

20. The aforesaid is the majority view and thus, the law laid down.

21. Learned counsel for the petitioner submitted that the videoconferencing and in camera proceedings are not irreconcilable. There are advantages of adopting videoconferencing technology. The aforesaid submission proceeds on the minority view taken in ***Santhini*** (supra).

22. In ***Santhini*** (supra), dissenting view was recorded by Hon'ble Dr. Justice D. Y. Chandrachud (as His Lordship then was) in paragraph Nos.61.1 to 61.10, as under:

> "**DR D.Y. CHANDRACHUD, J.** (*dissenting*)— The judgment proposed by the learned Chief Justice has been circulated and deliberated upon. The reasons why I am unable to adopt the view propounded in the judgment of the learned Chief Justice will be delivered separately [**Ed.** : See below from para 63.] . I record below my conclusions:
>
> **61.1.** The Family Courts Act, 1984 has been enacted at a point in time when modern technology (at least as we know it today) which enables persons separated by spatial distances to communicate with each other face to face was not the order of the day or, in any case, was not as fully developed. That is no reason for any court, especially for this Court which sets precedent for the nation, to exclude the application of technology to facilitate the judicial process.
>
> **61.2.** Appropriate deployment of technology facilitates access to justice. Litigation under the Family Courts Act, 1984 is not an exception to this principle. This Court must be averse to judicially laying down a restraint on such use of technology which facilitates access to justice to persons in conflict, including those involved in conflicts within the family. Modern technology is above all a facilitator, enabler and leveller.
>
> **61.3.** Videoconferencing is a technology which allows users in different locations to hold face to face meetings. Videoconferencing is being used extensively the world over (India being no exception) in online teaching, administration, meetings, negotiation, mediation and telemedicine among a

myriad other uses. Videoconferencing reduces cost, time, carbon footprint and the like.

61.4. An in-camera trial is contemplated under Section 11 in two situations : the first where the Family Court so desires; and the second if either of the parties so desires. There is a fallacy in the hypothesis that an in-camera trial is inconsistent with the usage of videoconferencing techniques. A trial in camera postulates the exclusion of the public from the courtroom and allows for restraints on public reporting. Videoconferencing does not have to be recorded nor is it accessible to the press or the public. The proper adoption of videoconferencing does not negate the postulates of an in-camera trial even if such a trial is required by the court or by one of the parties under Section 11.

61.5. The Family Courts Act, 1984 envisages an active role for the Family Court to foster settlements. Under the provisions of Section 9, the Family Court has to endeavour to "assist and persuade" parties to arrive at a settlement. Section 9 clearly recognises a discretion in the Family Court to determine how to structure the process. It does so by adopting the words "where it is possible to do so consistent with the nature and circumstances of the case". Moreover, the High Courts can frame rules under Section 9(1) and the Family Court may, subject to those rules, "follow such procedure as it deems fit". In the process of settlement, Section 10(3) enables the Family Court to lay down its own procedure. The Family Court is entitled to take the benefit of counsellors, medical experts and persons professionally engaged in promoting the welfare of the family.

61.6. The above provisions—far from excluding the use of videoconferencing—are sufficiently enabling to allow the Family Court to utilise technological advances to facilitate the purpose of achieving justice in resolving family conflicts. There may arise a variety of situations where in today's age and time parties are unable to come face to face for counselling or can do so only at such expense, delay or hardship which will defeat justice. One or both spouses may face genuine difficulties arising from the compulsions of employment, family circumstances (including the needs of young children), disability and social or economic handicaps in accessing a court situated in a

location distant from where either or both parties reside or work. It would be inappropriate to deprive the Family Court which is vested with such wide powers and procedural flexibility to adopt videoconferencing as a facilitative tool, where it is convenient and readily available. Whether videoconferencing should be allowed must be determined on a case-to-case analysis to best effectuate the concern of providing just solutions. Far from such a procedure being excluded by the law, it will subserve the purpose of the law.

61.7. Conceivably there may be situations where parties (or one of the spouses) do not want to be in the same room as the other. This is especially true when there are serious allegations of marital abuse. Videoconferencing allows things to be resolved from the safety of a place which is not accessible to the other spouse against whom there is a serious allegation of misbehaviour of a psychiatric nature or in a case of substance abuse.

61.8. Videoconferencing is gender neutral. In fact it ensures that one of the spouses cannot procrastinate and delay the conclusion of the trial. Delay, it must be remembered, generally defeats the cause of a party which is not the dominant partner in a relationship. Asymmetries of power have a profound consequence in marital ties. Imposing an unwavering requirement of personal and physical presence (and exclusion of facilitative technological tools such as videoconferencing) will result in a denial of justice.

61.9. The High Courts have allowed for videoconferencing in resolving family conflicts. A body of precedent has grown around the subject in the Indian context. The Judges of the High Court should have a keen sense of awareness of prevailing social reality in their States and of the federal structure. Videoconferencing has been adopted internationally in resolving conflicts within the family. There is a robust body of authoritative opinion on the subject which supports videoconferencing, of course with adequate safeguards. Whether videoconferencing should be allowed in a particular family dispute before the Family Court, the stage at which it should be allowed and the safeguards which should be followed should best be left to the High Courts while framing rules on the subject. Subject to such rules, the use of

videoconferencing must be left to the careful exercise of discretion of the Family Court in each case.

61.10. The proposition that videoconferencing can be permitted only after the conclusion of settlement proceedings (resultantly excluding it in the settlement process), and thereafter only when both parties agree to it does not accord either with the purpose or the provisions of the Family Courts Act, 1984. Exclusion of videoconferencing in the settlement process is not mandated either expressly or by necessary implication by the legislation. On the contrary, the legislation has enabling provisions which are sufficiently broad to allow videoconferencing. Confining it to the stage after the settlement process and in a situation where both parties have agreed will seriously impede access to justice. It will render the Family Court helpless to deal with human situations which merit flexible solutions. Worse still, it will enable one spouse to cause interminable delays thereby defeating the purpose for which a specialised court has been set up."

23. This Court is to follow the majority view, which is the law laid down.

24. In respect of the advantages of the videoconferencing and speedy decision, the majority view also considered the same and observed in para-33 that the pronouncement with respect to the use of technology, modes of videoconferencing etc., in the judgments referred by it, on different points, on different controversies, different from matrimonial proceedings and those judgments could not be regarded as precedents for the proposition that the videoconferencing can be one of the modes to regulate the matrimonial proceedings. Para-33 of ***Santhini*** (supra) reads as under:

"**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."

25. I now proceed to consider the judgment cited by the learned counsel for the petitioner.

25.1. In ***Nerella Chiranjeevi Arun Kumar*** (supra), the civil revision petition was filed challenging the Order dated 23.04.2019 passed in I.A.No.991 of 2018 in FCOP No.634 of 2017. The consideration was, whether the petitioner therein could be allowed to be represented by General Power of Attorney Holder for reconciliation, when the petition was dismissed and on application under Order 9 Rule 9 CPC to set aside the dismissal order and to restore the main petition and to permit the GPA holder to contest the reconciliation proceedings was filed. The learned single Judge, considering the previous pronouncements, mainly on the point of power of attorney and appearance through power of attorney holder, observed that since the husband was working in USA and it would be difficult to get leave from his company, and also noting that the husband requested for process of reconciliation through electronic devices, i.e., Skype, whatsapp, true caller etc., whereas the wife was insisting the personal appearance of the husband, further observed that during the conciliation proceedings, it could not be necessary for the husband to come all the way from US, and with the technology in the information sector was available, therefore, the party seeking such benefit, be allowed the appearance

by using the technology to reduce the cost of litigation and save the precious time for the purpose of reconciliation.

25.2. ***Nerella Chiranjeevi Arun Kumar*** (supra) was decided on 13.09.2019, however, the judgment of the Hon'ble Apex Court in ***Santhini*** (supra) which was decided on 09.10.2017 appears not to have been brought to the notice of the learned single Judge, as it does not find mention.

26.3. In ***G. Shrilakshmi*** (supra), which was a case under Section 13-B of the Hindu Marriage Act before the Family Court, the learned single Judge of the Madras High Court, highlighting the importance of the virtual proceedings, referring to the judgments of the Hon'ble Apex Court in ***State of Maharashtra v. Dr. Praful Dubey***[5], ***Amardeep Singh v. Harveen Kaur***[6], ***Anuradha Bhasin v. Union of India***[7] and others issued direction to the Principal Family Court, Chennai, to dissolve the marriage between the parties therein without insisting the physical presence of the parties, permitting the respective power of attorney of the parties to present the petition. The direction was also issued that the Family Courts shall not insist physical presence of the spouses at the time of presenting the petition at the first instance and for future hearings, and also that the parties can be present through virtual mode from their respective places and the place of location, identity of the person to be confirmed with relevant documents. It was further directed that the Court can verify with the parties appearing through virtual mode as to the petition, proof affidavit,

[5] (2003) 4 SCC 601
[6] (2017) 8 SCC 746
[7] (2020) 3 SCC 637

documents produced and record the same as evidence on satisfaction and to pass appropriate orders. The Madras High Court observed that virtual proceedings provide an opportunity to modernize the system by making it more affordable and citizen friendly, enabling the aggrieved to access justice from any part of the country in the world. Thus, the Family Court, to ensure that such system of conducting the proceedings through videoconferencing was put to usage, without insisting the presence of the petitioner even from the time of first presentation till the conclusion of the proceedings, direction was given to the Family Court, not to raise technical objections and insist on physical appearance of the parties at any stage.

25.4. Para-29 of ***G. Shrilakshmi*** (supra) upon which learned counsel for the petitioner placed reliance, is as under:

> "29. Virtual proceedings provide an opportunity to modernize the system by making it more affordable and citizen friendly, enabling the aggrieved to access justice from any part of the country in the world. Thus the Family Court to ensure that such a system of conducting the proceedings through video conferencing is put to usage without insisting the presence of petitioner even from the time of first presentation till the conclusion of proceedings. The Family Court henceforth not to raise technical objections and insist on physical appearance of petitioner/parties at any stage."

25.5. A reading of the judgment in ***G. Shrilakshmi*** (supra) shows that the judgment of the Hon'ble Apex Court in ***Santhini*** (supra) was not taken note of.

26. For the aforesaid consideration made in particular paras-25.2 to 25.5 (supra), the judgments in ***Nerella Chiranjeevi Arun Kumar*** (supra) and ***G.***

Shrilakshmi (supra) are of no help to the petitioner and cannot be relied upon.

27. I may also refer to the judgment of the Hon'ble Apex Court in ***Anjali Brahmawar Chauhan v. Navin Chauhan***[8]. In the said case, the transfer petition of the petitioner was dismissed on account of the fact that no serious inconvenience would be caused to the petitioner for travelling between Gautambudh Nagar, U.P. to Saket, New Delhi. The petitioner filed review petition on the ground that there was no videoconferencing facility at Gautambudh Nagar, District Courts. Another ground was taken that videoconferencing was not permissible in matrimonial matters in accordance with the judgment in ***Santhini*** (supra). The Hon'ble Apex Court dismissed the review petition. However, due to the ongoing Pandemic situation at that time and the physical functioning of the Courts had been stopped since March 2020, and the proceedings of all Courts were being conducted only through videoconferencing, the Family Court was directed to conduct trial through videoconferencing. The Hon'ble Apex Court, however, observed that in the normal course, it would not have directed videoconferencing in respect of matrimonial matters as per the judgment of the Hon'ble Apex Court, in ***Santhini*** (supra).

28. Paragraph Nos.2 to 4 of ***Anjali Brahmawar Chauhan*** (supra) are as under:

> "**2.** This review petition has been filed by the petitioner on the ground that there is no videoconferencing facility at Gautambudh Nagar, District

[8] (2021) 16 SCC 501

Courts. Another ground in the review petition is that videoconferencing is not permissible in matrimonial matters in accordance with the judgment of this Court dated 9-10-2017 in *Santhini* v. *Vijaya Venketesh* [*Santhini* v. *Vijaya Venketesh*, (2018) 1 SCC 1 : (2018) 1 SCC (Civ) 1 (three-Judge Bench)] .

3. Notice was issued in the review petition on 20-3-2018 [*Anjali Brahmawar Chauhan* v. *Navin Chauhan*, 2018 SCC OnLine SC 3652] . Due to the ongoing Pandemic, physical functioning of the courts has been stopped since March 2020. Proceedings in all courts are being conducted only through videoconferencing. In the normal course we would not have directed videoconferencing in respect of matrimonial matters as per the judgment of this Court mentioned above. However, in the present situation where all proceedings are conducted through videoconferencing, we direct the Family Court, District Gautambudh Nagar, U.P. to conduct the trial through videoconferencing.

4. The review petition is dismissed."

29. In ***Anjali Brahmawar Chauhan*** (supra), which was a case of transfer petition of matrimonial matter, the videoconferencing was permitted only because of the Pandemic situation.

30. I am of the considered view that in view of the law laid down by the Hon'ble the Apex Court in ***Santhini*** (supra),

(i) for the purposes of reconciliation in matrimonial matters before the Family Courts videoconferencing is not permissible, and

(ii) it is only after the efforts of reconciliation and settlement fails, the videoconferencing can be resorted on the joint application filed by the parties or the memorandum of consent by both the parties, husband and wife, for such videoconferencing, in the discretion of the Court, if the Court considers it appropriate.

31. Consequently, I do not find any illegality in the Order of the learned trial Court passed in I.A.No.742 of 2024 in FCOP No.1313 of 2022, dated 10.09.2024.

32. The Civil Revision Petition is dismissed. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

RAVI NATH TILHARI, J

Date: 28.01.2025
Dsr

Note:
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