



WEB COPY



C.R.P. (PD) .No.4073 & 4227 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 25.10.2024	Pronounced on: 31.01.2025
-----------------------------------	-------------------------------------

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).Nos.4073 & 4227 of 2024

C.R.P.(PD).No.4073 of 2024:

~~Nanda Kishore Kalluru~~

.. Petitioner

Vs.

~~Madhubika Madhupudi~~

.. Respondent

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to number the unnumbered I.A. Of 2023 in F.C.O.P.No.716 of 2024 pending on the file of the Principal Family Court, Chennai and to issue a positive direction and also to permit the petitioner's power agent to apply and obtain the certified copy in F.C.O.P.No.716 of 2024 and number the same.

For Petitioner : Mr.K.Subbu Ranga Bharathi

C.R.P.(PD).No.4227 of 2024:

~~Vijaya Vashnavi Srikan~~

.. Petitioner



C.R.P. (PD) .No.4073 & 4227 of 2024

Vs.

WEB COPY

~~Srikanth Sridhar~~

.. Respondent

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order dated 19.07.2024 in H.M.O.P.No.498 of 2024 passed by the Principal Family Court Judge, Chennai incharge of VII Additional Family Court by allowing this civil revision petition.

For Petitioner : Ms.Rohini Ravikumar

(In both cases):

Amicus Curiae : Mr.M.K.Kabir
Senior Counsel

COMMON ORDER

C.R.P.(PD).No.4073 of 2024 has been filed at the instance of the husband.

2.The petitioner married the respondent on 17.06.2022 at Rajahmundry, Andhra Pradesh. Soon thereafter, they developed serious disputes and differences. There was no cohabitation between the parties atleast, from 25.08.2022. Hence, their friends and relatives tried to resolve the



matter. Unfortunately, it ended in vain. Therefore, the couple decided to put an end to the matrimony. Hence, they filed F.C.O.P.No.716 of 2024 on 21.09.2023 invoking Section 13B of the Hindu Marriage Act. Even at the time of filing the petition, the petitioners were residing in United States of America.

3.On account of the fact that the husband had applied for permanent resident status in United States of America and since his application was under scrutiny, he could not return to the country. Pointing out that in case he comes to India, it would not be possible for him to re-enter the United States of America and such a situation would affect him personally and professionally, he appointed his father to act as his power agent. The power enabled his father not only to present a petition for divorce by mutual consent, but also to appear and represent him before the Court. In addition, the deed authorized the agent to file interlocutory applications, to apply and receive order copies and other case related papers. Therefore, the husband filed a petition to permit his father to act as his power agent in the said proceedings.

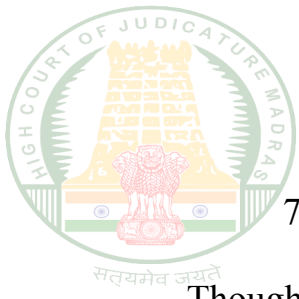


WEB COPY

4.This petition was accompanied by a notarized deed of power of attorney and an affidavit filed by the agent viz., father of the petitioner. The father not only accepted to act as a power of attorney, but was also willing to identify his son during his appearance via video conferencing before the Court.

5.An application was filed seeking the permission to appear through video conferencing and a petition was also filed under Section 13 of the Family Courts Act read with Rule 41 of the Family Courts Rules seeking the representation of the petitioner through a counsel.

6.Originally when the 13B petition was filed, the same was returned. Therefore, a revision was preferred to this Court in C.R.P.(PD).No.4804 of 2023 seeking a direction to receive the 13B petition. The reason for return was that the learned Principal Judge, Family Court directed the presentation of the petition by the petitioners themselves. This Court set aside the direction of the Principal Judge, Family Court at Chennai and directed the Trial Court to number the 13B petition.

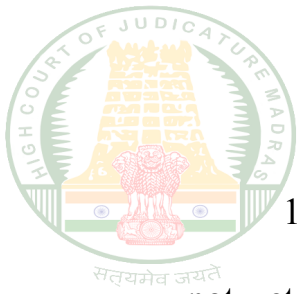


7.Subsequently, the petition was numbered as F.C.O.P.No.716 of 2024.

Though the 13B petition was numbered, the Court did not number the power of attorney petition. Hence, this revision has been presented before this Court seeking for a direction to number the power of attorney petition and also to permit the power agent to apply and obtain certified copies of the order in F.C.O.P.No.716 of 2024.

8.C.R.P.(PD).No.4227 of 2024 also arises from the Family Court at Chennai. The petitioner is the wife and the respondent is the husband. The petitioner – wife is residing in the State of Michigan in the United States of America. She entered into matrimony with the respondent on 20.01.2019 at Chennai. The parties were married as per the Hindu rites and customs.

9.Due to disputes and differences, the parties separated. Pleading that she had been treated with cruelty, while residing at the matrimonial home, the civil revision petitioner presented a petition for divorce invoking Section 13(1)(ia) of the Hindu Marriage Act, 1955. The petition was presented personally by the civil revision petitioner. It was numbered as H.M.O.P.No.498 of 2024.



WEB COPY

10.The case was listed for hearing on 25.03.2024. As the summons had not yet been served on the respondent, it was adjourned to 17.05.2024. On that day, the respondent-husband entered appearance and collected the papers. The matter then stood adjourned to 26.06.2024. In the meantime, the civil revision petitioner had left for United States of America.

11.On 26.06.2024, as there was no Presiding Officer to hear the matter, the matter was adjourned to 19.07.2024. On 19.07.2024, the civil revision petitioner appeared through hybrid mode. Her assisting counsel was present physically before the Family Court. Though the petitioner was permitted to join via virtual mode, she was not permitted from the virtual lobby into the virtual Court, when the matter was called. Consequently, the learned Trial Judge dismissed the petition for non-prosecution.

12.Pleading that she is not in a position to travel to India for every date of hearing and the fact that technology has improved to the extent of permitting the Courts to function virtually, she has moved this revision seeking to set aside the order of dismissal passed by the Family Court on 19.07.2024. A perusal of the order passed by the Court on 19.07.2024 shows



the following endorsement:

WEB COPY

“Respondent present. Petitioner absent. Petitioner not turned up from the date of first hearing. Hence, this petition is dismissed as default.”

13.I heard Mr.K.Subbu Ranga Bharathi for civil revision petitioner in C.R.P.(PD).No.4073 of 2024 and Ms.Rohini Ravikumar for the civil revision petitioner in C.R.P.(PD).No.4227 of 2024.

14.Both pleaded that the procedure followed by the Family Court is causing anguish to the litigants. Ms.Rohini Ravikumar points out, on account of the fact that the Family Court insists on the presence of the parties for every hearing and for presentation of the petition in person, it is becoming difficult for a party who is abroad or elsewhere in the country to prosecute a petition for divorce before the Family Court.

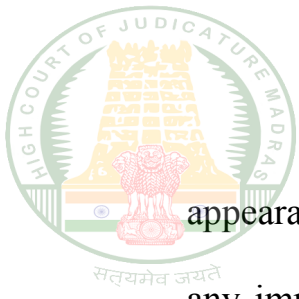
15.Several revisions have come up raising more or less the same issues, the pleas being the Family Court does not permit the appearance of lawyers. Instances of powers of attorney, not being permitted to appear, have also been noticed. The counsel pleaded that even for filing of copy applications, the



Court is insisting on the physical presence of the parties. It was pointed out that even in the contested proceedings, where matters are referred to mediation, where the parties arrive at a settlement before the Mediator or Counsellor and agree to file a 13B petition, the Court insists on referring the matter again to mediation when the 13B petition is filed pursuant to the compromise.

16. Noticing that this Court is hearing the procedural wrangles that are being faced by the parties before the Family Court, several members of the Family Court Bar were present and addressed the Court. They are as follows:-

(i) Ms. Rohini Ravikumar pleaded that the presence of Advocates assisting the parties is not noted by the Court. She pleads that when an application is filed for prosecuting the petition through a power agent, the proceedings are delayed by the Court by ordering notice to the other side. When a copy application is filed by a counsel, who is assisting the parties during the course of proceedings, the same is returned by the Registry stating that the parties would have to appear in person. She pleads that in the light of the explosive expansion of the technology, the Family Court should permit



appearance of parties through Video Conferencing. She adds in order to avoid any impersonation, the parties may be called upon to produce identity card like the passport or PAN card, driving license, Aadhar card or such other governmental identification certificates. She states that on account of the insistence of the Family Court that the parties have to appear in person, not less than 800 to 1500 entry slips are issued every day. This leads to overcrowding of the Courts. Finally, she pleaded that even for payment of batta “process”, filing of counter, affidavit of service or for complying with the returns/objections, the Family Court insists on appearance of the parties.

(ii) Ms. B. Poongkhulali submitted that the Family Court can insist on appearance of the parties at the time of presentation, mediation, counselling and for recording of evidence. Referring to Section 13 of the Family Courts Act and Rule 41 of the Family Courts Rules framed by this Court, she urges that Advocates are not excluded as a whole from the Family Court proceedings, but are only excluded under certain circumstances. She urges that once a counsel is permitted to appear in terms of Section 13 of the Family Courts Act, he or she should be permitted to receive the counter, instead, of insisting on appearance of the parties. She states the Madras High



WEB COPY

Court has framed Video Conferencing Rules and therefore, the said Rules must be enforced by the Family Court and the parties must be permitted to appear either physically or through video conferencing. She pleads that where parties are abroad, evidence can be recorded by the Court and the deposition can be sent by E-mail to the parties to be signed and sent back to the Court. Finally, she argues that in case of any disputes as regards the evidence so recorded, the Court can record the virtual tendering of evidence and keep the evidence so recorded in the bundle. She states if this mode of recording is done, no party can plead that the evidence that has been recorded is not what she / he had deposed in the Court. She adds that there can be a direction to the parties to supply the recording devices so that it obviates the Court from incurring the expenditure in purchasing the devices.

(iii)Mr.Rahul Jagannathan adopted the pleas of both the previous counsel. He adds the Family Court does not give a copy of unmarked documents. He expresses the difficulty with respect to implementation of the Video Conferencing Rules pointing out that there are no co-ordinators at the Court site in the Family Court. He refers to Rule 7 of the Video Conferencing Rules and pleads that the cost for providing the recoding device can be



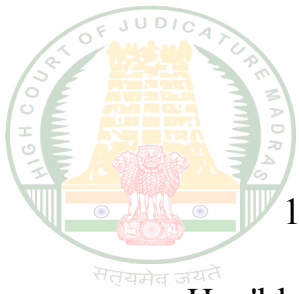
incurred by the party. He states that the Video Conferencing Rules are not being implemented before the Family Court.

WEB COPY

(iv)Ms.Chethana in addition urged that the interlocutory applications should be numbered before sending the parties for mediation.

(v)Ms.Ajeetha, learned counsel circulated her submissions wherein she urged that the Court must permit Advocates across the board to appear at all stages of the proceeding before the Family Courts viz., from presentation of plaint to filing of copy application. She also pleaded that a time limit must be fixed by the Court for disposal of the cases.

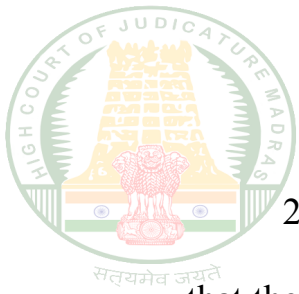
17.Considering the several issues that have arisen before this Court, I requested Mr.M.K.Kabir, Senior Advocate of this Court to assist the Court in coming up with certain guidelines to enable the Family Courts to better perform the onerous duties imposed on the Presiding Officers of the Family Court and at the same time ensure that procedural wrangles do not prevent access to justice.



WEB COPY

18.Mr.M.K.Kabir, invited my attention to the judgment passed by Hon'ble **MR.JUSTICE M.NIRMAL KUMAR** in *G. Shrilakshmi Vs Anirudh Kumar*, [C.R.P. Nos. 1994 & 89 of 2024 dated 18.10.2024] and pleaded that the procedure evolved by the learned Judge, in filing of mutual consent petitions under Section 13B of the Hindu Marriage Act, should be extended to contested petitions filed under several matrimonial enactments also. He states that presentation of petitions before the Family Court should not be confined only to party in person, but should be extended even for petitioners represented through their duly authenticated power agents. He pleads that the proceedings must be litigant friendly and litigant centric and should not be one in which the litigants suffer on account of filing of petitions before the Family Court.

19.He states that the parties in person face difficulty in numbering the petitions. He urges that a Family Court should insist on appearance of parties only during the counselling, mediation or recording of evidence. For other hearings, the appearance of the parties could be dispensed with. Referring me to Order III Rule 2 of the Civil Procedure Code, he argues that such petitions should be ordered immediately instead of keeping the petitions pending.



WEB COPY

20.He points out that lawyers are not being taken into confidence and that the biggest sufferers on account of this procedure are female litigants. He states that when a petition for mutual consent is filed, the Courts insist on the withdrawal of any petition previously presented as a condition precedent to entertain the mutual consent petition. He states that it is not impossible that after the petitions are withdrawn and the mutual consent petitions are taken on file, one of the parties may recant from the mutual consent petition and thereby force the other litigant to start the game all over again.

21.The learned counsel for the parties relied upon the Civil Procedure Code, 1908, Family Courts Act, 1984 and Family Courts (Procedure) Rules, 1996, to plead that legal representation should be permitted across the board by the Family Court. The learned counsel also referred to the Madras High Court Video Conferencing Rules, 2020, to urge that the Family Court should be directed to permit the parties to appear through video conferencing. They also invited my attention to the following judgments:-

(i)***R.R.Pauvya Vs. Kanagavel, [(2014) 5 CTC 177];***

(ii)***Sudha Ramalingam Vs. Registrar General, [(2015) 1 Mad LJ 540];***



WEB COPY



C.R.P. (PD) .No.4073 & 4227 of 2024

(iii)*S.Annapoorni Vs. K.Vijay, [2022 SCC OnLine Mad 4367];*

(iv)*G.Shrilakshmi Vs. Anirudh Ramkumar, [C.R.P.Nos.1994 & 89 of 2024 dated 18.10.2024];*

(v)*Dr.Senthil Kumar Elangovan Vs. Dr.Gnanakalyani, [C.R.P.(PD).No.2621 of 2024, dated 12.07.2024];*

(vi)*C.P.Saji Vs. Union of India & Ors., [2011 SCC OnLine Ker 4241];*

(vii)*Amardeep Singh Vs. Harveen Kaur, [(2017) 8 SCC 746];*

(viii)*Aditya Jagannath & another Vs. NIL, [M.F.A.No.4453 of 2020 (FC)];*

(ix)*K.G.Suresh Vs. Union of India, [2021 SCC OnLine Ker 1686];*

(x)*Selvaraj Vs. Koodankulam Nuclear Power Plant India Limited, [2021 SCC OnLine Mad 2514];*

(xi)*Sanjay Singh Vs. Sukhpal Kaur, [2022 SCC OnLine Del 1589];*

(xii)*PL.Murugan Vs. NIL, [C.R.P.(MD).No.1282 of 2022];*

(xiii)*Nancy Karthikeyan & another Vs. NIL, [C.R.P.No.3677 of 2023 dated 13.10.2023];*

(xiv)*Madhulika Maddipudi & another Vs. NIL, [C.R.P.(PD).No.4804 of 2023 dated 20.12.2023] and*



WEB COPY



C.R.P. (PD) .No.4073 & 4227 of 2024

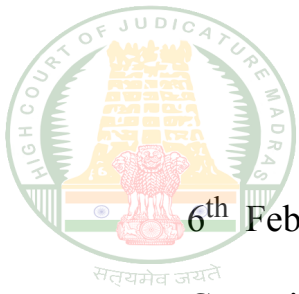
(xv)***R.Gnana Sundari Vs. T.Yesuraj,***
[C.R.P.(PD).No.3547 of 2024 dated 04.09.2024]

22.I have considered the submissions of the learned *amicus curiae* and the counsel who appeared for the parties in the revision petition as well as the submissions of the members of the Family Court Bar.

23.In order to properly assess and adjudicate the matters and submissions made before this Court, the Court must first consider the history of the Family Courts Act and the object that is sought to be achieved through its enactment.

**I.Enactment of the Family Courts Act, 1984 and establishment of
Family Courts in India**

24.The exigency to establish a separate court governed by flexible and humane procedures for dealing with family affairs was noted for the first time by the Sixth Law Commission of India chaired by the then Chief Justice of India, Dr. Justice P. B. Gajendragadkar. In its fifty-fourth report submitted on



6th February 1973 relating to the Code of Civil Procedure 1908, the Law

Commission of India, while dealing with suits concerning the family, opined:

“32A.3. Litigation concerning or involving affairs of the family therefore, requires a special approach, in view of the serious emotional aspects involved. For this sensitive area of personal relationship, our ordinary judicial procedure is not ideally suited. As Sir Garfield Barwick (then Attorney-General of Australia) said in the debates on the Matrnial Clauses Bill, 1959, the Judge not unnaturally feels reticent about intruding into the human relationship of those who come before him; and the parties themselves so often enter into a conspiracy of silence, where their innermost secrets are concerned.

32A.4. It is now being increasingly realised that-

(a) As far as possible, an integrated broad based service to families in trouble, should become a part of the court system;

(b) The existing court structure should be so organized that one single court should deal with the problem of preserving the families; and

(c) The conventional procedure dominated by the adversary system may not be appropriate for disputes concerning the family.”

25.The said opinion was reiterated and developed in the fifty-ninth Law Commission report relating to Hindu Marriage Act, 1955 and Special



Marriage Act, 1954. The Law Commission of India, recommended:

WEB COPY

“1.21. ... in dealing with disputes concerning the family, the court ought to adopt a human approach—an approach radically different from that adopted in ordinary civil proceedings, and that the court should make reasonable efforts at settlement before commencement of the trial. In our view, it is essential that such an approach should be adopted in dealing with matrimonial disputes. We would suggest that in the course, States should think of establishing family courts, with presiding officers who will be well qualified in law, no doubt, but who will be trained to deal with such disputes in a human way, and to such courts all disputes concerning the family should be referred. What we have said in our Report on the Code of Civil Procedure should be treated as a part of the present Report also. We are clear in our mind that if these measures are adopted, they will go a long way towards the proper resolution of such disputes. We may add that selected judicial officers could be posted in courts empowered under both the Acts, and by dealing with disputes concerning the family, they will be able to acquire experience and knowledge which should not only be of value to them but will ultimately benefit the society.”

26. These reports reveal that the basis for such a recommendation was the fact that family cases usually involve sensitive issues entwined with serious emotional aspects of the litigants. Mandating stringent adherence to



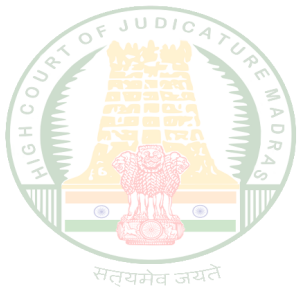
the Civil Procedure Code would be adding more misery to the already miserable life of the litigants. Therefore, a need was felt to establish a separate court with its own procedure to deal with family cases in a more humane and litigant-friendly manner.

27.The recommendations of the Law Commission were considered by the Ministry of Law, Justice and Company Affairs. The Ministry through its then Minister, Shri Jagannath Kaushal tabled the Family Courts Bill in the Parliament in 1984 to give effect to the recommendations of the Commission.After the Bill gained the acceptance of the Rajya Sabha, the bill was tabled in Lok Sabha. At the time of tabling the Family Courts Bill in Lok Sabha, Shri Kaushal explained the object of the Bill in the following words:

“That the Bill to provide for the establishment of Family Courts with a view to promote conciliation in, and secure speedy settlement of, disputes relating to marriage and family affairs and for matters connected therewith, as passed by Rajya Sabha, be taken into consideration.”

...

“The House is fully aware that a good deal of time of the civil courts is taken by small family disputes which could be more expeditiously and at much lesser cost be settled by Family Courts which should adopt an entirely new approach by avoiding rigid rules of procedure and evidence.”



WEB COPY



C.R.P. (PD) .No.4073 & 4227 of 2024

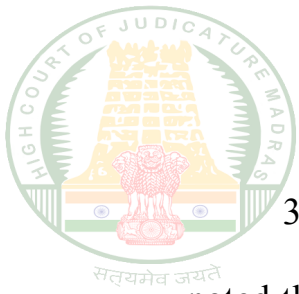
...

“I very sincerely urge the House to consider the keenness of the people and also that of the Government for simplifying the legal procedures to afford justice to the larger number of people in lesser time and money.”

28.On the bill being passed by Lok Sabha, the Family Courts Act, 1984 [hereinafter the “Act” for the sake of brevity] came to be enacted on 14th September 1984. It came into force in the State of Tamil Nadu on the very same day. The preamble of the Act reads as follows:

“An Act to provide for the establishment of Family Courts with a view to promote conciliation in, and secure speedy settlement of, disputes relating to marriage and family affairs and for matters connected therewith.”

29.The Act, therefore, was enacted with the object of establishing Family Courts whose approach would be considerate of the physiological and psychological suffering of the litigants and who would strive to reduce the time and money involved in such cases, without being bound by the stringency of the laws of procedure and evidence.



WEB COPY

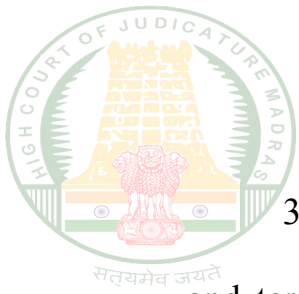
30.Family Courts are established under Section 3 of the Act. It is to be noted that this provision makes it mandatory for the State Government to set up a Family Court in

“every area in the State comprising of city or town whose population exceeds one million”.

31.Further, Section 7 of the Act lays down the subject-matter jurisdiction of the Family Courts. According to the Explanation appended to Section 7, apart from suits relating to nullity, restitution of conjugal rights and dissolution of marriage, the jurisdiction of the Family Courts extends to deciding suits relating to:

- a. declaration as to the validity of a marriage;
- b. property of the parties to the marriage;
- c. declaration as to the legitimacy of any person;
- d. maintenance;
- e. guardianship of the person or the custody of any minor;
- f. order or injunction in circumstance arising out of a marital relationship

Further, the Courts also have jurisdiction to adjudicate matters falling under Chapter IX of the Code of Criminal Procedure, 1973.



WEB COPY

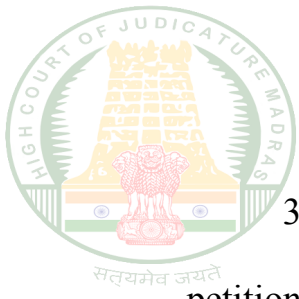
32.The Family Courts being vested with an extensive subject-matter and territorial jurisdiction, it becomes the duty of this Court to review the working and the procedure adopted by the Family Courts to ensure that they fulfill the object for which they were established.

II.Institution of proceedings and serving of summons

A. Institution of proceedings

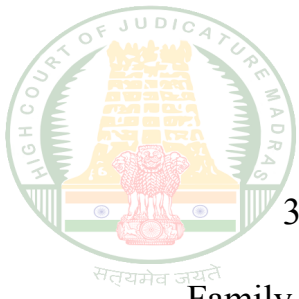
33.The proceedings before the Family Courts begins with the presentation of a plaint or a petition, as the case may be. The Madras High Court exercising its powers under Section 21 of the Act read with Section 122 of the Code of Civil Procedure, 1908 framed the Family Courts (Procedure) Rules, 1996 [hereinafter “ Family Courts Rules” for the sake of brevity]. Rule 5 of the Family Courts Rules deals with the institution of proceedings before the Family Court. Sub-rule (ii) of the said Rule reads:

“All proceedings instituted before the Family Court shall be by way of a petition or plaint, as the case may be, however in respect of applications under Chapter IX of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), the provisions of that Code will apply.”



WEB COPY

34.This rule again has to be read with Rule 6 which mandates that the petition or application shall be accompanied by as many clear authenticated copies as there are respondents to be served. Though Rule 5 stipulates that all the proceedings before the Family Court must be instituted by way of plaint or a petition, the Rules are silent on the meaning, the format and the contents of the plaint/petition. In fact, Section 2(e) of the Act provides that the meaning for the terms not specifically defined under the Act must be referred in the Code of Civil Procedure, 1908. Further, the Rules do not specifically list out those circumstances which warrant the presentation of a plaint and those which require the presentation of a petition. With the subject-matter jurisdiction of the Family Court being extensive under Section 7 of the Act and with Family Courts Rules not specifying the format of the plaint/petition and the manner of its presentation, recourse can be only taken to Sections 2(e) & 10 of the Act read with Rules 50 and 51 of the Family Courts Rules. These provisions provide for the application of the provisions of Code of Civil Procedure, 1908 [hereinafter “CPC” for the sake of brevity] and the Civil Rules of Practice and Circular Standing Orders, in proceedings before the Family Court. This shows that the plaint or petition must comply with the rules contained in Orders VI and VII of the CPC.



WEB COPY

35. Here, it is apposite to note that the litigants who approach the Family Courts are normally persons with no formal exposure and experience in litigation, to know the rules of procedure as enumerated in the CPC. They are persons who seek assistance of the Court amidst their physical, emotional, and financial suffering. As noted by the Law Commission, they approach the Court with sensitive issues involving their person and life. Therefore, to mandate that they know the intricacies of plaint and petition, and the legal nuances that these terms carry would neither be sensible nor logical.

36. Further, to expect that these persons know the circumstances for filing a plaint and those for filing a petition, and to expect that they know the procedure for procurement of authenticated copies are incompatible with the very object for which the Family Courts are established- to provide an easily accessible platform for resolving family matters governed by just and humane procedures.

B. Assistance of an advocate

37. With no experience in the legal procedure and technicalities to enable them to draft a plaint or a petition and present it in consonance with



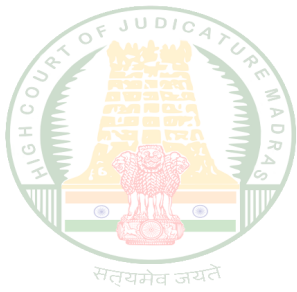
the procedural law, it only seems fair that the parties be allowed to obtain the guidance and aid of a legal practitioner. Here, it is pertinent to note that the Act attempts to regulate a party's right to be represented by a legal practitioner. Section 13 of the Act stipulates that:

“Notwithstanding anything contained in any law, no party to a suit or proceeding before a Family Court shall be entitled, as of right, to be represented by a legal practitioner:

Provided that if the Family Court considers it necessary in the interest of justice, it may seek the assistance of a legal expert as amicus curiae.”

38.The corresponding Rule to this Section would be Rule 41 of the Family Courts Rules. The said Rule is reproduced below:

“41. (i) The Court may permit the parties to be represented by a lawyer in Court. Such permission may be granted if the case involves complicated questions of law or fact and if the Court is of the view that the party in person will not be in a position to conduct his or her case adequately. The reason for granting permission shall be recorded in the- order. Such permission for the assistance of the lawyer by either of the parties cannot be claimed or entertained as a matter of right. Permission so granted may be revoked by the



WEB COPY



C.R.P. (PD) .No.4073 & 4227 of 2024

Court at any stage of the proceedings if the Court considers it just and necessary.

(ii) Time for making application:-An application by a party for being represented by a lawyer in Court shall be made by such party to the Court only after service of notice on either side upon appearance. Such an application shall be made at least two weeks prior to the date fixed for hearing.

(iii) Application not to be entertained at the hearing.-An application shall not be entertained after the petition is placed for hearing on the daily board of the Court unless there are exceptional circumstances justifying such late application.”

39.A combined reading of these provisions would indicate that it was not the intent of the Parliament or of the Madras High Court to unqualifiedly restrict the representation of a party by a lawyer before the Family Court. Though Section 13 and Rule 41 stipulate that the parties cannot seek representation by a lawyer, **as of right**, the provisions do not restrain the litigants before the Family Court from resorting to the aid and assistance of the legal practitioner altogether.

40.This position is further clarified by a perusal of the parliamentary debates on the Family Courts Bill. While rebutting the criticism made on the

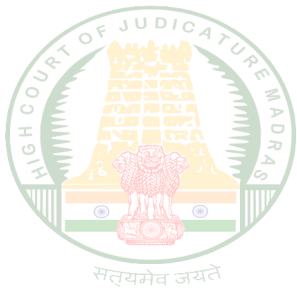


exclusion of legal practitioners, Shri Jagannath Kaushal explained:

WEB COPY

“Why we have excluded the legal practitioner? It may be an unfortunate experience, but experience says that whenever lawyers on both sides are there, effort of one side who feels that their case is weak is to prolong the case and that is a situation which we have to accept. Our idea again is what for people are needed at conciliation stages? We do not want proceedings to be adversarial. Therefore, we are keeping the lawyers out. It has been welcomed also; somewhere it is criticised also. But the demand is that free legal aid should be allowed. Obviously, free legal aid will be allowed because if you know free legal aid scheme, women are allowed free legal aid without any limitation as to income, etc; they will have free legal aid excluding the lawyer. Free legal aid is obvious because according to the central scheme prepared by Justice Bhagwati, it has been adopted by all the courts.”

41.Further the Court is also conscious of the fact that Rule 41 was modelled by the Madras High Court on the lines of Rule 37 of the Family Courts (Court) Rules, 1988 of the Bombay High Court. It was upon the recommendation of a Division Bench of this Court in ***S. Venkataraman Vs L. Vijayasaritha, [(1996) 2 LW 222]***. In the said decision, the Division Bench of this Court observed:



WEB COPY



C.R.P. (PD) .No.4073 & 4227 of 2024

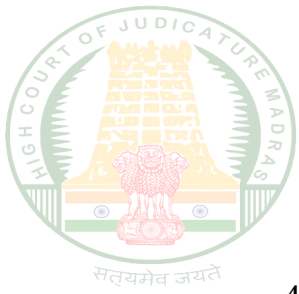
“7. ... So, in other words, though in other normal civil courts, a legal practitioner can, as of right, appear on behalf of his clients, in the Family Court, such a right cannot be claimed as such, but, it is left to the discretion of the Family Court to allow any counsel to appear on behalf of the client and give necessary legal assistance, generally in the interest of justice and particularly, taking into consideration the nature of the case and the conditions under which the parties are placed. So, if any of the parties before the Family Court, files a memo or petition before the Family Court, or even when orally express desire seeking permission of the court for him or her to engage a counsel and have legal assistance, the Family court, exercising its judicial discretion, may allow the parties to have such legal assistance, as required, in the interest of justice and after taking into consideration the nature of the case and the conditions under which the parties are placed. When so allowed, the counsel of a party could file the vakalath and do all that is necessary for the client in conducting the case. It is said that at times a counsel is allowed to give some (not all) assistance in conducting the case even without filing a vakalath. But, we must state that, allowing counsel to give any assistance in conducting the case without himself filing vakalath, is not proper.”

42.As clearly suggested by the parliamentary debates and the judgment of the Division Bench, lawyers are not completely prohibited from offering professional assistance to the litigants before the Family Courts. This view is



also in line with the judgment of the Division Bench of the Gujarat High Court in *Abhishek Kumar Mishra Vs Ankita Ghanshyamsinh Chauhan*, [2021 SCC OnLine Guj 961] and the Division Bench of the Andhra Pradesh High Court in *R. Durga Prasad Vs Union of India and Anr*, [AIR 1998 AP 290].

43.The only reason for regulating the representation by lawyers before the Family Court was to prevent the proceedings from becoming adversarial. If that be the intent of the framers, then to direct the litigants to draft the plaint/petition and later present it before the Family Court in accordance with CPC for instituting the proceedings, without the guidance of the lawyers whose experience in the field would be of significant help, is plainly unreasonable. Such a direction would by itself prolong the proceedings to the disadvantage of the parties for prevention of which the appearance of lawyers was restricted in the first place. A closer reading of Section 13 would further strengthen the view that only representation of a party by a lawyer before the Court is attempted to be regulated and the parties are under no restraint from approaching a legal practitioner to seek help while drafting a plaint or a petition, as the case may be.

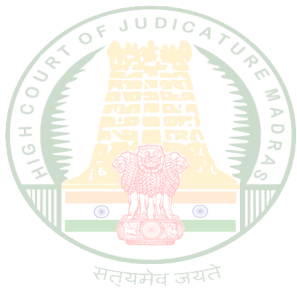


WEB COPY

44. Further, even as regards representation, as clarified by the Division Bench and affirmed by Rule 41, the lawyers can be allowed to file a vakalath and represent the parties, if mediation fails and the matter is taken on file by the Family Court, after obtaining the requisite consent from the Family Judge. As discussed in the earlier paragraph, the only reason for restricting the appearance and practice of the lawyers before the Family Courts was to prevent the proceedings from becoming adversarial. However, if the lack of representation by a lawyer would negatively impact a party's right to effectively present/contest her/his case, then the Court must be liberal in exercising its discretion under Rule 41 of the Family Courts Rules.

45. At this juncture, the Court must also consider the effect of Section 30 of the Advocates Act, 1961 on Section 13 of the Family Courts Act. Section 30 of the Advocates Act, 1961 deals with an advocate's right to practise in the courts in India and it reads as follows:

“Subject to the provisions of this Act, every advocate whose name is entered in the [State roll] shall be entitled as of right to practise throughout the territories to which this Act extends,-



WEB COPY



C.R.P. (PD) .No.4073 & 4227 of 2024

in all courts including the Supreme Court;

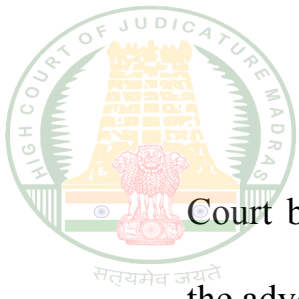
before any tribunal or person legally authorised to take evidence; and

before any other authority or person before whom such advocate is by or under any law for the time being in force entitled to practise.”

46. Though this provision enables the advocates to practise in all the courts including the Supreme Court as a matter of right, the said provision cannot override Section 13 of the Family Courts Act and its correlative Rule viz. Rule 41 of Family Courts Rules. The reason is fivefold.

47. Firstly, if Section 30 of the Advocates Act is interpreted in such a way as to nullify Section 13 of the Family Courts Act, it will go contrary to the principles of interpretation that no legislation can be nullified on the grounds of conflict. It is the duty of the Court to interpret both the provisions harmoniously.

48. Secondly, Section 13 of the Family Courts Act does not attempt to completely bar the advocates from practising in the Family Courts. It only tries to ensure that the right to practise of an advocate before the Family Court is not stretched to such an extent that their practise before the Family



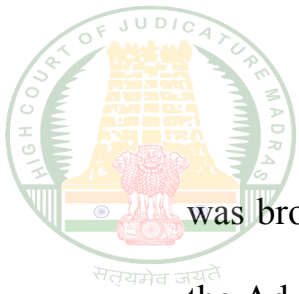
Court becomes adversarial. Therefore, to that extent the restraint placed on the advocate's right to practise before the Family Courts can be approved.

WEB COPY

49.Thirdly, the Family Courts Act is a special law and the Advocates Act is a general law, hence *generalia specialibus non derogant* (things general do not derogate from things special).

50.Fourthly, even if it is considered that the position under Section 30 of the Advocates Act reflects the fundamental right of the advocates to practise their profession under Article 19(1)(g), the same is not absolute. It can be reasonably regulated under Article 19(6). The restriction on practise placed under Section 13 of the Family Courts Act and Rule 41 of the Family Courts Rules is aimed at expediting the Family Court proceedings and making them less adversarial. Therefore, Section 13 and Rule 41 are not hit by Article 19(1)(g) of the Constitution.

51.Fifthly, it is worthwhile mentioning that though the Advocates Act was enacted in the year 1961, Section 30 of the Advocates Act was brought into force only on 15.06.2011, almost 27 years after the Family Courts Act

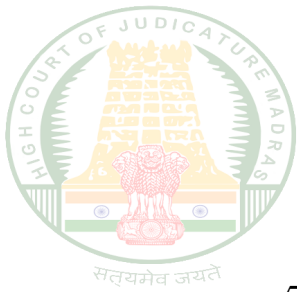


was brought into force. The Parliament, knew the existence of Section 30 of the Advocates Act, even at the time of enacting the Family Courts Act, 1984.

WEB COPY

Nevertheless, it chose to introduce Section 13 into the Family Courts Act and chose to retain Section 13, even after Section 30 was brought into force. Therefore, the wisdom of the legislature to retain Section 13 in the Family Courts Act must be respected while interpreting Section 30 of the Advocates Act.

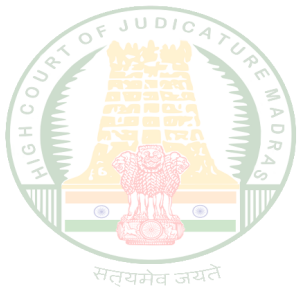
52. Therefore, it can be reasonably concluded that the litigants before the Family Courts can seek the assistance of legal practitioners to draft plaint/petition/application, as the case may be. They can present the plaint/petition/application before the Family Court to institute the proceedings. They can also be represented by lawyers upon the failure of mediation and upon filing of an application before the Family Court under Rule 41. While disposing of an application for legal representation under Rule 41 of the Family Courts Rules, the Court must adopt a liberal and a humane approach considering the fact that, even the most educated and privileged litigants, may not necessarily be adept with the legal procedure and formalities.



WEB COPY

53. Further, the Court must ordinarily allow such applications especially if the party is residing outside India. In such circumstances, the refusal of such applications would only increase the mental agony of the parties. In this regard, the observations of the Division Bench of the Allahabad High Court in ***Prabhat Narain Tickoo Vs Mamta Tickoo and Ors***, [(1998) 33 ALR 253] must be taken into account. In that case, the Court opined that:

“9. ... However, if the reconciliation attempt fails, and the matter has to be adjudicated, in our opinion the court should ordinarily allow lawyers to appear on behalf of the parties. This is necessary because Divorce law and other Family law has now become a complicated branch of law, and an ordinary layman cannot be expected to know this law. It may be mentioned that there is a catena of decisions both in England and India on this branch of law, and without a knowledge of the same a party cannot properly represent himself/herself in the case, and only a trained lawyer can do so... Moreover, a layman would be ignorant of procedure/rules, also. Hence, it is obvious that a layman cannot ordinarily represent himself properly in such cases. Representation by lawyers will not only be of great assistance to the parties, it will also be of great assistance to the court to do justice expeditiously. Some people say that lawyers will cause delay in the



WEB COPY



C.R.P. (PD) .No.4073 & 4227 of 2024

proceedings. In our opinion far from delaying the proceedings, a lawyer will greatly expedite it because by his knowledge of law and procedure and his training he can quickly come to the relevant points. Moreover, lawyers know the art of the cross-examination, and the rules of procedure, which a layman does not. Hence we are of the opinion that the discretion in granting/refusing representation by lawyers must be exercised in the manner aforementioned, namely that at the stage when the court is trying to reconcile the parties or when divorce is sought by mutual consent no lawyer should ordinarily be permitted, but otherwise when the matter is being adjudicated lawyers should ordinarily be allowed to represent the parties."

Therefore, the Family Courts must be conscious of the physiological and psychological suffering of the litigants and cannot display an attitude of utter indifference by mandating the litigants unfamiliar with the CPC to adhere to the letter and spirit of the Code. The Family Courts must remember that the Courts are for litigants and litigants are not for the Courts.

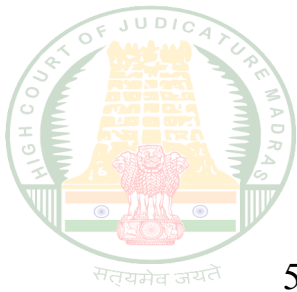
C. Representation by a power agent

54.To understand the working of the Family Courts here in Tamil Nadu and the difficulties faced in prosecuting the lis by the parties, this Court requested Mr.M.K.Kabir, learned *amicus curiae*, to submit a report. In his



report dated 25.10.2024, the learned *amicus curiae* submitted that the Family Court in Chennai has 8 Presiding Officers including the Principal Family Judge. Every month, a minimum of 500 cases are presented and several hundred cases are being disposed of by these Presiding Officers. As the Family Court insists on the personal attendance of the parties for every hearing, thousands of litigants throng the Court every day. These litigants are also accompanied by their family members and children, leading to overcrowding and disorder within the Family Court's limited premises. Apart from this, differently abled litigants, senior citizens and pregnant women also attend the Family Court regularly.

55.Further Ms.Rohini Ravikumar, learned advocate, on her independent research submitted that not less than 800 to 1500 entry slips are issued every day by the security detail of the Court premises to the litigants before the Family Court and their families. This is, on account of the fact that, the Family Courts insist on the personal appearance of the parties whenever their matter is listed before the Court. Even for complying with procedural formalities such as payment of batta, filing of affidavit, counter, etc., the attendance of the parties is mandated.



WEB COPY

56.The Court is given to understand that the Family Courts' insistence on the personal attendance of the litigants for every hearing contributes significantly to the delay in the disposal of cases. This issue of procedural delay was also highlighted by the constitutional bench of this Court in ***S.Annapoorni Vs K. Vijay [2022 SCC OnLine Mad 4367]***:

“366. It is a stark reality that many of the Family Courts suffer from procedural delays which completely defeats the purpose of the legislation. These issues have been noticed by Justice V. Parthiban in his order of reference. These concerns were also reiterated and highlighted by practitioners from the Family Court before this Bench. While acknowledging the existence of a problem in the Family Court, there is an urgent need to reform the existing system. There is a grave danger that inefficiency would erode the ability of these Courts to deliver justice to the relevant stakeholders who come before it. The High Court cannot throw up its hands and turn a blind eye when there exists a problem that cries out for solution.”

57.The insistence on personal attendance of the litigants for every hearing is incongruent with the spirit of the Act and the object it seeks to



WEB COPY

achieve. As noted in the earlier part of this judgment, the Family Courts were established to approach the family matters in a humane and reasonable manner. And as already noted, the Family Court was established as a separate institution to be more empathetic to the physical, emotional, and financial distress of the litigants. Even for the Family Courts, the personal attendance of the litigants during every hearing, including the procedural hearings, would tend to contribute to their inefficiency and delay in proceedings as the attendance of the litigants cannot always be guaranteed and would lead to more disorder within the court premises.

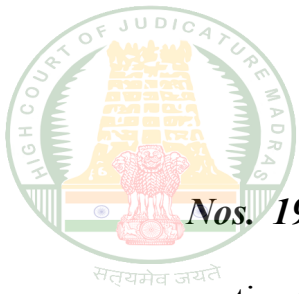
58.Further, it is also inhumane to presume that the litigants are placed in such circumstances that they are always available at the beck and call of the Family Court. There are a variety of reasons that could disable a party from personally attending the court proceedings ranging from professional commitments, health issues, overseas travel, etc. In such circumstances, the Family Court would not be justified in directing the parties to personally appear before it for any such direction would become simply adverse to the litigants. Again to reiterate, the litigants are not for the Courts, but the Courts are for the litigants.



WEB COPY

59. In consideration of the same, this Court is of the opinion that the parties may be permitted to appoint a power agent in consonance with Order III Rules 1 and 2 of the CPC and Rule 16 of the Civil Rules of Practice to conduct the proceedings on their behalf. The power to do the same is again traceable within Section 10 of the Act and Rules 50 and 51 of the Family Courts Rules which provide for the application of the provisions of CPC in the proceedings before the Family Court. This view is also adopted by the Supreme Court in *Amardeep Singh Vs Harveen Kaur*, [(2017) 8 SCC 746], Punjab and Haryana High Court in *Navdeep Kaur Vs Maninder Singh Ahluwalia*, [AIR 2010 P&H 90], and by this Court in *S.M. Syed Amina Beevi Vs Thaika Sahib Alim and Anr*, [(1993) 2 LW 604]; *Pavithra Vs Rahul Raj*, [(2003) 2 LW 431]; *Nathiya Faru Vs Rojan Roux*, [2009 SCC OnLine Mad 652]; *Terance Alex Vs Mary Sowmya Rose*, [(2011) 2 LW 84]; and *P.Pathiah Moopar Vs The Revenue Divisional Officer, Madurai*, [(2011) 2 LW 93].

60. Further this Court, while dealing with a matter relating to the physical presence of the parties seeking divorce under Section 13-B of the Hindu Marriage Act in *G. Shrilakshmi Vs Anirudh Ramkumar*, [C.R.P.



Nos. 1994 & 89 of 2024 dated 18.10.2024], allowed representation of the parties through power agents in such cases on the following terms:

WEB COPY

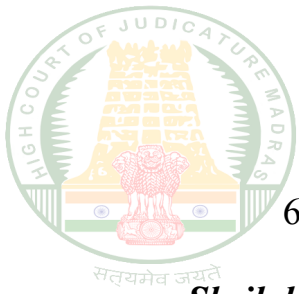
“32. ...

(ii) Petitions can be filed either by the parties directly or by the Power of Attorney of the parties. provided, the Power of Attorney to be a registered one or properly adjudicated;

(iii) On behalf of the parties, Power of Attorneys can appear and prosecute. The only embargo is that the recognised agent should not be a legal practitioner;

(iv) The Power of Attorney representing the parties shall present the petition with relevant documents annexed, materials and proof affidavit required for the case in physical form”

Though this case specifically relates to Section 13-B of the Hindu Marriage Act and can be conveniently applied to the facts in C.R.P.(PD).No.4073 of 2024, the ratio can be also followed in other cases pending before the Family Courts as well. This would not only facilitate the expeditious disposal of cases, but would also ensure that the Family Courts do not meander from their ingrained obligation to be responsive to the plight and pleas of the litigants.



61. In an attempt to supplement the safeguards laid down in the

Shrilakshmi case and to further ensure the *bona fides* of a power of attorney,

the following guidelines are framed by this Court:-

(i) To ensure the authenticity of deed of power of attorney, in case, if executed in India, it should be registered within the jurisdictional Sub Registrar or should be executed in the presence of a notary public.

(ii) In case the power of attorney is executed abroad and sent to India, it should be adjudicated by the competent authority or it should be notarized by the notary public or a similar officer appointed by that country to attest the document. It must be accompanied by a certificate of notary public confirming that the party is residing within the jurisdiction for which he has been authorized. Further, it should also be adjudicated in terms of Section 3(c) of the Stamp Act read with Article 48 of the I Schedule attached to the Stamp Act.

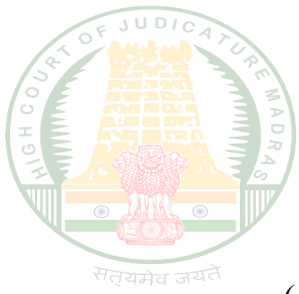
(iii) The power agent can represent the party at every stage of the proceeding right from the stage of presentation of the plaint/petition.



However, the power agent cannot substitute the presence of the party during mediation and recording of evidence or when the presence of the party is felt indispensable.

(iv)The plaint/petition can be presented by the petitioner appearing in person before the Family Court or by a duly authorized power agent. At the time of presentation of the plaint/petition by a power agent, it should be accompanied by a petition under Order III Rule 1 of the Code of Civil Procedure, the registered and adjudicated power of attorney, and two affidavits, one executed by the Principal stating that he/she has appointed a power of attorney, and the other executed by the power agent accepting the power that has been given by the petitioner. The filing of these two affidavits would further ensure the authenticity of the power agent and would also ensure that the provisions of Order III Rules 1 and 2 are not maliciously used to the disadvantage of any party to the litigation.

(v)Further, on the day of presentation of plaint/petition by the power agent, a soft copy of the plaint/petition must be emailed by the party represented by the power agent to the registered e-mail address of the Court.



WEB COPY

(vi) For the purpose of dealing with the petition under Order III Rule 1 of the Code of Civil Procedure, since the provisions of the Code of Civil Procedure apply to the Family Courts, the court need not issue notice in the said application. This is a matter between the Court and the party, and therefore, after confirming that the petition complies with the requirements of Order III Rule 1, it shall be allowed by the Court concerned without notice to the respondent. This, in the opinion of this Court, would greatly save the judicial time.

D.Numbering and serving of summons

62. Once the petition filed under Order III Rule 1 of CPC is allowed, the plaint/petition will be taken on file by the Family Court. The next stage in the proceeding would be the numbering of the plaint/petition and serving of summons. Again, be it the petitioner or the power agent, to direct them to follow up with the numbering of the plaint/petition and undertake serving of summons in accordance with CPC as mandated by Rule 12 of the Family Courts Rules, would be unreasonable. They, being persons with no familiarity with the legal procedure, and the non-service of summons in the manner laid



down in CPC being detrimental to the very proceedings under Rule 15 of the Family Courts Rules, it is only reasonable to allow the petitioner or the power agent to employ the services of a lawyer or a registered clerk to the extent of ensuring the numbering of the plaint/petition and serving of summons to the defendants/respondents in the matter.

III.Counselling

63.Upon the service of summons and appearance of the parties before the Court on the appointed date, the Court must verify the identity of the parties. In case, the defendant/respondent is not in a position to appear in person on the appointed date, the said defendant/respondent can appear through a power agent in the manner discussed under the head “***Representation by a power agent***” in this judgment.

64.The Court, after deciding the petition under Order III Rule 1, would proceed to verify the identity of the parties and the parties must produce a government-issued identity document such as a passport, aadhar card, driving license, etc., to prove that they indeed are the parties to the proceedings. If



WEB COPY

any of the party/parties are being represented by the power agent, the power agent must produce his/her government-issued identity document along with a copy of the identity document of the party that they are representing and the party being represented must e-mail a soft copy of his/her identity document to the registered e-mail address of the Family Court on the same date.

65.On the appearance of parties and verification of their identity, the parties are first referred to counselling by the Family Court. This Court is made aware by the counsel for the petitioners and members of the Bar practising in the Family Court that as of now there is no provision for online counselling. Till online counselling facility is commenced, the parties shall physically appear before the counsellor. After counselling, the Court may refer the parties to mediation which can happen either physically or through video conferencing. More about it later.

66.Instead of opting for counselling, if the parties jointly request for mediation, the Court may bypass counselling and may allow the parties to directly go to mediation.



WEB COPY

67.This Court is also conscious of the fact that the Family Court does not entertain applications for interim relief until the process of mediation is completed. However, the Court cannot ignore the fact that the parties to the proceeding may approach the Family Court with certain extremely urgent reliefs, such as anti-suit injunctions, injunctions for preventing the other spouse from removing the child from the jurisdiction of the Court, co-endorsement on the passport, application for extension of visa, etc. An application for such reliefs may be moved before the Family Court with the assistance of an Advocate before the matter is referred to mediation and the Court must be sensitive to the pleas and rights of the parties.

68.The reliefs hereinabove listed out are only illustrative and not exhaustive. The Family Courts cannot restrict the scope of the pre-mediation applications to the reliefs illustratively mentioned in this order. The Family Courts must always remember that there could be a variety of other urgent reliefs wherein in case the event feared takes place, it is not always possible for the situation to reverse.

69.Therefore, considering the nature of the application moved, the



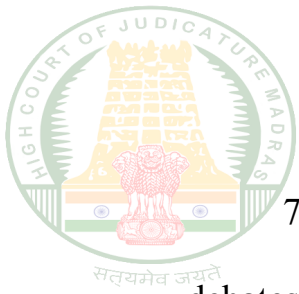
Courts must hear the application before referring the parties to mediation.

While determining the urgent nature of the application, the Family Court must not forget that the instances in the society are myriad as the colours in the kaleidoscope and it is for the Court to be considerate of the emergency evidenced in the pre-mediation application. Before disposing of such applications, the Court may grant *ex parte* order or may order notice to the other side and must hear both sides and must dispose of such applications before ordering for mediation.

IV.Mediation

70.After counselling, the Family Court may refer the parties to mediation to comply with the provisions of Section 9(1) of the Act. For the sake of cogent discussion, the provision is extracted hereunder:

“9(1). In every suit or proceeding, endeavour shall be made by the Family Court in the first instance, where it is possible to do so consistent with the nature and circumstances of the case, to assist and persuade the parties in arriving at a settlement in respect of the subject-matter of the suit or proceeding and for this purpose a Family Court may, subject to any rules made by the High Court, follow such procedure as it may deem fit.”

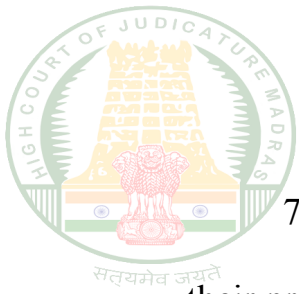


WEB COPY

71.It is pertinent to point out here that a perusal of the parliamentary debates on the Family Courts Bill and the Preamble of the Family Courts Act would reveal that the Act has been enacted with an objective to promote “conciliation” among the parties before the Family Court. Therefore, the duty cast on the Family Court under Section 9 is unqualified and cannot be exempted. Further ,the parties before the Family Court have an obligation to take part in the mediation efforts of the Court. This again is clear from Rule 26 of the Family Courts Rules which reads as follows:

“26. The parties shall be bound to consult the counsellor on the date and at the time so fixed by the Court.”

72.When the Act is intended to promote conciliation among the litigants before the Family Courts and when the litigants are obliged to cooperate with the mediation efforts of the Family Court, their presence during mediation becomes indispensable. They cannot be represented by their power agent, whoever that may be, at this stage of the proceedings. However, this Court is still conscious of the fact that the parties may not always be suited to personally attend the proceedings before the Family Court, including the mediation before the mediator.



WEB COPY

73. With the parties' participation during mediation indispensable and their presence not always guaranteed, it is only fair to allow them to appear in video conferencing if their physical presence for the mediation on the appointed date is rendered impossible.

74. Here, Section 30 of the Mediation Act, 2023 is significant. Section 30 of the Mediation Act allows online mediation. Unfortunately, the Section has not been brought into force and the rules regarding online mediation have not yet been framed. Nevertheless, in terms of Section 57 of the Mediation Act and the Proviso attached to it, the rules which have been framed for court-annexed mediation shall continue till regulations are framed under Section 15(1) of the Mediation Act. Therefore, the Tamil Nadu Mediation Rules, 2010 continue to be in force even after the enactment of the Mediation Act. Rule 7 of the Mediation Rules provides the venue for the mediation. Rule 7(5) stipulates that the venue for mediation can be

“any other place as may be agreed upon by the parties subject to the approval of the Court”.

75. This shows that though the Rules do not specifically provide for



online mediation, it does not prohibit it either.

WEB COPY

76.The Madras High Court has been proactively encouraging online mediation. In fact, the Committee for Tamil Nadu Mediation and Conciliation Centre of the Madras High Court in the meeting held on 13th August 2020 has directed the Tamil Nadu Mediation and Conciliation Centre to conduct a training program for the mediators in online mediation. In compliance with the same, a pilot project of online mediation training for the mediators of the State of Tamil Nadu was notified through ROC No. 27/2020/TNMCC/Hct.Ms dated 16.08.2020 and the same was conducted between 23rd and 25th August 2020.

77.Given the fact that this Court promotes online mediation, and the mediators of the State of Tamil Nadu are trained to conduct mediation online, the parties referred to mediation by the Family Court may appear through video conferencing upon serving due and prior notice to the mediator and the other side, if they are unable to appear physically. This view also aligns with the judgment of this Court in ***S. Kasthuri Vs G. Nitin Krishna, [C.R.P.(MD)***



No. 530 of 2024 dated 20.09.2024].

WEB COPY

78. Till appropriate rules are framed, this Court feels a procedure should be evolved for this purpose. Hence, the following directions: -

(i) Notice must be served on the mediator and other side at least two days prior to the appointed date of mediation to enable the mediator to make arrangements for the video conferencing.

(ii) The notice must specify the email address and the phone number of the party seeking to appear online.

(iii) The mediator must decide on an online platform that is easily accessible for the parties and must send the details of the online platform including the time of mediation to the notified e-mail address or phone number or both, as the case may be, of the parties at least a day before the mediation. The mediator must also ensure that the time fixed for mediation is feasible for all the parties.

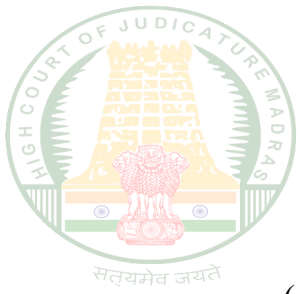
(iv) Further, if one of the parties chooses to physically appear for the



mediation, the mediator shall conduct the online mediation within the premises of the mediation centre or within the premises of the Court with a video conferencing facility, and notify the party choosing to physically appear of the venue of mediation at least a day before the appointed date of mediation. The mediator shall also ensure that the party appearing physically is adequately audible to the party/parties appearing in video conferencing.

(v) At the time of mediation, the mediator must preserve the *in camera* nature of the proceedings and must ensure that no other party is let inside the online platform where the mediation of a particular case takes place. Further, if any attempt to record the mediation is made by any of the parties appearing in video conferencing, the same may be proceeded against as contempt of court.

(vi) For the purpose of verification, the party/parties appearing in video conferencing must e-mail a soft copy of the government-issued identity document to the mediator on the appointed date of mediation. The party/parties appearing physically must also produce their identity document to the mediator for the said purpose.

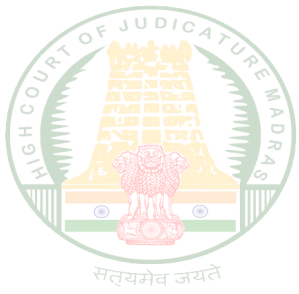


WEB COPY

(vii) Upon mediation, if the parties arrive at a settlement, the said settlement shall be reduced to writing in terms of Rule 35 of the Family Courts Rules and it shall be signed by the parties and countersigned by the mediator. If any of the party/parties appear online during the mediation, the mediator shall cause the terms of settlement to be reduced to writing and send an non-editable soft copy of the same to the notified email address of the party who appeared through video conferencing. The said party shall sign the settlement and email the signed settlement to the mediator to be countersigned by him/her. In such circumstances, the report of the mediator shall state that the parties appeared online and were duly identified.

(viii) The signed settlement along with the report of the mediator must then be forwarded by the mediator to the Court for pronouncing the judgment and decree.

(ix) Though mediation is made mandatory, it may not be out of place to state that, it may not be required if a 13B petition or any other consent petition is filed pursuant to a compromise made during mediation.



WEB COPY



C.R.P. (PD) .No.4073 & 4227 of 2024

V.Applications for representation and interim relief

79.If after mediation, the parties fail to arrive at a settlement as stipulated under Rule 36 of the Family Courts Rules or fail to appear and cooperate with the mediator as envisaged under Rule 27 of the Family Courts Rules, the mediator shall file a memorandum or report, as the case may be, to that effect before the Family Court. The Court shall list the case for trial. At this stage, if any of the party/parties feel that their interest and case would be better presented through a lawyer, a petition must be made to that effect before the Court under Rule 41 of the Family Courts Rules. As discussed in the earlier part of this judgment, the Court must adopt a liberal approach while deciding the petition. At the time of deciding the Rule 41 petition, while assessing whether the matter is of such nature warranting the assistance of and representation by a legal practitioner, the Family Court must not impose its own subjective opinions on the case before it. The Court must be sensitive to the concerns of the litigants and must remind itself that the parties before it are, very often, emotionally fragile.



WEB COPY

80. On the Court allowing the Rule 41 petition, the advocate must file a vakalath nama in consonance with Order III Rule 4 CPC. The option to file such petition is available to both the petitioner and the respondent. With the advocate filing the vakalath nama, the defendant/respondent may file a written statement/counter either by himself/herself or through the power agent or through the advocate. In case, such a written statement/counter is filed by a party through the advocate or power agent, a soft copy of the same must be e-mailed to the registered e-mail address of the Family Court on the same day of presentation. The presence of the advocate must be recorded on every hearing when he/she is present.

81. Likewise, the parties before the Family Court may file any application for interim relief in accordance with the CPC by himself/herself or through the power agent or through the advocate. The counter for such an application may be filed by the advocate or the power agent of the other party. A soft copy of the petition or counter, as the case may be, if presented through advocate or power agent, must be e-mailed to the Court on the same day of presentation.



WEB COPY

82.At the time of hearing the application, the party/parties may be represented by their advocate or power of attorney. However, if the Family Court insists on the appearance of the parties themselves, and if the parties are not in a position to appear in person, an application to appear in video conferencing may be filed by the party through the advocate or power of attorney. This application must specifically state the email address of the party seeking to appear online for the purpose of communication of hearing details by the Court. This application, to appear in video conferencing, must be decided first and the Court, like in the Rule 41 petition, must adopt a liberal approach while adjudicating the video conferencing application.

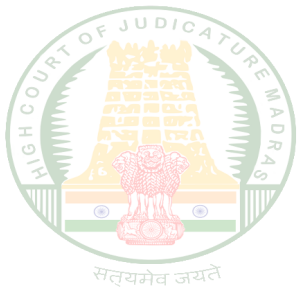
83.While allowing the video conferencing application, the Court must also fix a hearing date and time that would be convenient and feasible for all the parties and the Court itself. The Court must inform while allowing the application the date and time at which the video conferencing proceedings would be carried on. In the event, it is not possible to inform immediately, then the Court must inform the assisting counsel about the dates. If no assisting counsel is available, then the Court must e-mail the details of the video conferencing to the parties seeking to appear in video conferencing at



least three days before the hearing date. Here it is pertinent to mention that the parties appearing in video conferencing can access the video conferencing link from the official website of the Court.

84.And, to enable the Court to verify the identity of the party appearing in video conferencing, the party must e-mail the soft copy of a government-issued identity document to the Court. On the appearance of the party in video conferencing, the party must be identified either by his/her advocate or the power agent before the Court. While disposing of the application for interim relief, the Court must specify that such party appeared through video conferencing.

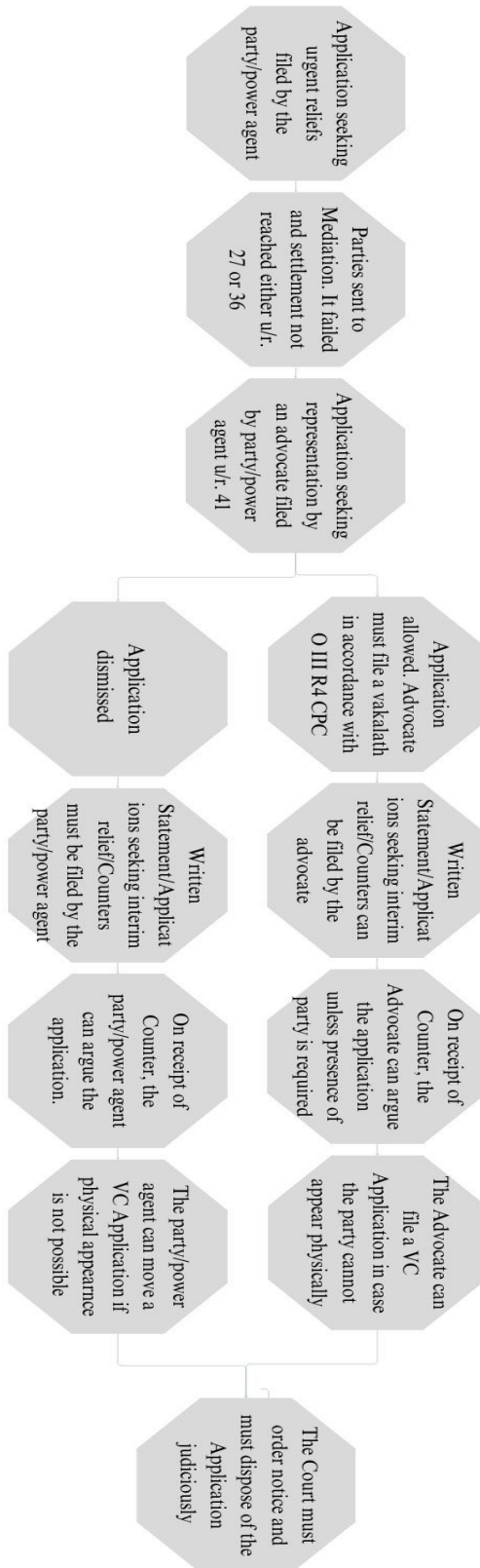
85.For an easier understanding of the procedure laid down by this Court, vis-à-vis applications, the following flow chart may be referred to:-

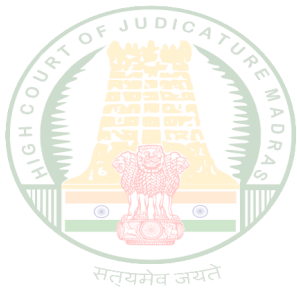


WEB COPY



C.R.P. (PD) .No.4073 & 4227 of 2024



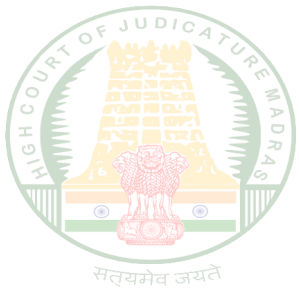


VI. Recording of evidence and hearing of parties

WEB COPY

86. Prior to the COVID-19 pandemic, the proceedings before every court in this country took place physically, and virtual hearings happened only in exceptional circumstances. The proceedings before the Family Courts in particular took place physically to adhere to the *in camera* mandate of the Act. In this setting, a three-judge bench of the Supreme Court in ***Santhini Vs Vijaya Venkatesh***, [(2018) 1 SCC 1], in a 2:1 split verdict, held that the conduct of proceedings under the Family Courts Act, 1984 through video conferencing upon the request of only ***one party*** is impermissible. The rationale adopted in the majority opinion is as follows:

“45. The aforesaid enunciation of law makes it graphically clear that the “constitutional identity”, “freedom of choice”, “dignity of a woman” and “affirmative rights conferred on her by the Constitution” cannot be allowed to be abrogated even for a moment. In this context, we have to scan and appreciate the provision contained in Section 11 of the 1984 Act. The provision, as has been stated earlier, mandates the proceedings to be held in camera if one of the parties so desires. Equality of choice has been conferred by the statute. That apart, Section 22 of the 1955 Act lays down the proceedings to be held in camera and any matter in relation to any such



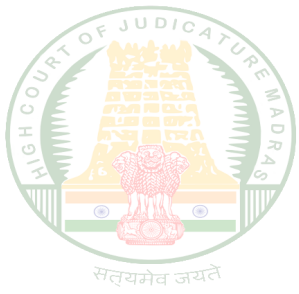
WEB COPY



C.R.P. (PD) .No.4073 & 4227 of 2024

proceeding may not be printed or published except a judgment of the High Court or of the Supreme Court with the previous permission of the Court.

46. We, as advised at present, constrict our analysis to the provisions of the 1984 Act. First, as we notice, the expression of desire by the wife or the husband is whittled down and smothered if the Court directs that the proceedings shall be conducted through the use of videoconferencing. As is demonstrable from the analysis of para 14 of the decision [Krishna Veni Nagam v. Harish Nagam, (2017) 4 SCC 150 : (2017) 2 SCC (Civ) 394] , the Court observed that wherever one or both the parties make a request for the use of videoconferencing, the proceedings may be conducted by way of videoconferencing obviating the need of the parties to appear in person. The cases where videoconferencing has been directed by this Court are distinguishable. They are either in criminal cases or where the Court found it necessary that the witness should be examined through videoconferencing. In a case where the wife does not give consent for videoconferencing, it would be contrary to Section 11 of the 1984 Act. To say that if one party makes the request, the proceedings may be conducted by videoconferencing mode or system would be contrary to the language employed under Section 11 of the 1984 Act. The said provision, as is evincible to us, is in consonance with the constitutional provision which confer affirmative rights on women that cannot be negated by the Court. The Family Court also has the jurisdiction to direct that the proceedings shall be held in camera if it so desires and, needless to say, the



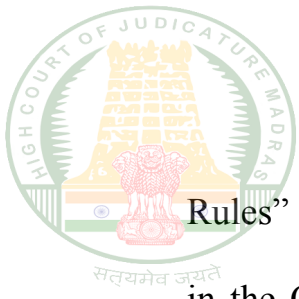
desire has to be expressed keeping in view the provisions of the 1984 Act.”

WEB COPY

87.However, even the majority view in paragraphs 58.2 and 58.3 of the said judgment permitted the use of video conferencing to conduct the proceedings under the Family Courts Act, 1984 if both the parties to the proceedings, after the failure of settlement, consent for the same, or if the Court believes that the conduct of proceedings through video conferencing would subserve the interests of justice.

88.The majority view in the ***Santhini*** case restricted the use of video conferencing as a mode to conduct the proceedings before the Family Court only to protect the privacy and dignity of the parties and to prevent their abrogation and to respect the parties' freedom of choice to have the proceedings conducted *in camera*. Further, it should also be noted that it was never the intention of the Supreme Court to ban the use of video conferencing in the proceedings before the Family Courts.

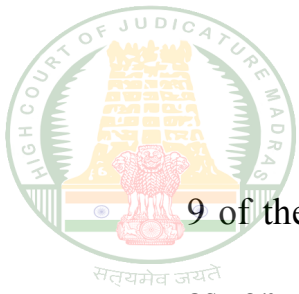
89.Today the present day rules viz. the Madras High Court Video-Conferencing in Courts Rules, 2020 [hereinafter the “Video Conferencing



WEB COPY

Rules” for the sake of brevity] governing the operation of video conferencing in the Courts in Tamil Nadu, it provides sufficient room for preserving the privacy of the parties and the *in camera* nature of the proceedings before the Family Courts. According to Clause 5.4 of the Practice Directions- VC No. 1 appended to the Video Conferencing Rules, the participants, after joining the hearing, shall remain in the virtual lobby, until they are admitted to virtual hearing by the coordinator at the court site. This practice of retaining the participants in the virtual lobby until the matter is called for hearing by the Judge would ensure that the video conferencing technology is not used to breach the *in camera* nature of the proceedings, especially considering the fact that the participants would not be able to view, hear and participate in the cases of other parties. This would protect the anonymity, privacy and dignity of all the parties to the proceeding.

90. With the advent of this technology, even if one of the parties seeks to appear through video conferencing, the *in camera* nature of the proceedings would not be vitiated for the coordinator at the court site can ensure that the party relevant to the case alone is present in the virtual hearing at the time of taking up of the case by the Court. This is also in line with Rule

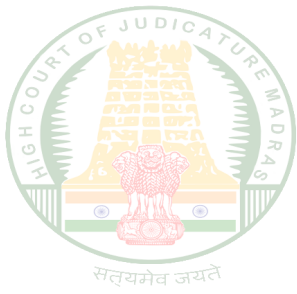


WEB COPY

9 of the Video Conferencing Rules. Further, the Video Conferencing Rules, as on today, under Rule 3.7.2 do not permit any party to record the proceedings. If it is recorded, the party, who has made such a recording, will be liable to be proceeded for contempt of court. This again would doubly guarantee that the *in camera* nature of the proceedings is not vitiated.

91. At this juncture, it is also apt to reproduce the dissenting opinion of Dr. Justice D.Y. Chandrachud, as his Lordship then was, in the *Santhini case*:

“85. Videoconferencing and in-camera proceedings are not irreconcilable. Videoconferencing, in itself, is a private interaction. It does not involve third persons or spectators apart from the two participants between whom the videoconferencing is taking place (Judge or counsellor and one of the parties to the dispute). As long as it is not accessible to the public, privacy is maintained. Therefore, it does not run contrary to the intent of Section 11, which is to maintain privacy. The same level of privacy that is afforded to parties during in-camera proceedings which take place in the same physical space, can be maintained over the virtual space of videoconferencing. Technology also allows us to ensure that there is no record of the conversation which took place through videoconferencing, once the conversation is over. This is similar to a



WEB COPY

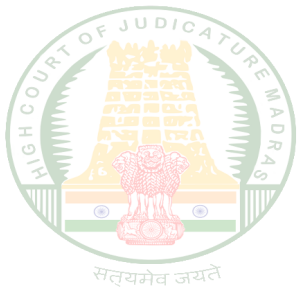


C.R.P. (PD) .No.4073 & 4227 of 2024

telephone call (unless the call was being recorded). Technology provides flexibility. Discussions across an audio-visual link in the course of counselling or conciliation will not be recorded so as to maintain privacy and intimate confidences. On the other hand, where in the course of a trial, a judge requires that a record of the deposition be maintained, technology will facilitate it.

87. This Court must also take a robust view of today's conditions. We are living in an age of technology. Men and women have access to and are in possession of instruments which use advanced technologies. The reality is that the world is not a closed space. It has never been, and is becoming increasingly interconnected. People are constantly moving from one place to another in the course of their personal and professional pursuits. In spite of the distances that this movement entails, people are able to interact with each other because of digital facilities. Most desktops and mobile devices have cameras, thereby facilitating the ease of online communications in the audio-visual mode.

89. Technology must also be seen as a way of bringing services into remote areas to deal with problems associated with the justice delivery system. With the increasing cost of travelling and other expenses, videoconferencing can provide a cost-effective and efficient alternative. Solutions based on modern technology allow the court to enhance the quality and effectiveness of the administration of justice. The use of technology can maximise efficiency and develop innovative methods for delivering legal services. Technology-based solutions must be adopted to facilitate access



WEB COPY



C.R.P. (PD) .No.4073 & 4227 of 2024

to justice. Family Courts are overburdened with all too familiar problems : too few courts, vacancies in Judge strength and a creaking infrastructure. Men and women in matrimonial distress have their woes compounded in the justice delivery system. Repeated adjournments break the back of the litigant. We must embrace technology and not retard its application, to make the administration of justice efficient.”

92.This view on adopting technology and video conferencing in cases before the Family Court was also approved by an earlier judgment of the Supreme Court in the case of ***Amardeep Singh Vs Harveen Kaur***, [(2017) 8 SCC 746] and the same has been not overruled by the three-judge bench in the ***Santhini case***. The ***Amardeep case*** was also followed by this Court in ***G. Shrilakshmi Vs Anirudh Ramkumar***, [C.R.P. Nos. 1994 & 89 of 2024 dated 18.10.2024].

93.The views on technology and video conferencing taken by Dr.Justice D.Y.Chandrachud in his dissenting opinion in the ***Santhini case*** have become far more practical after the COVID-19 pandemic, and the same, if adhered to, would provide a platform to uphold the very object for which



the Act was enacted viz. speedy disposal of family matters with a lenient approach towards the pleas and prayers of the litigants.

WEB COPY

94.If this technology is put to proper use, the recording of evidence and the hearing of parties can be done through video conferencing. In fact, Rule 3(2) of the Video Conferencing Rules permits the use of video conferencing in all or any stage of the judicial proceedings. Further, the Madras High Court acting through its Registrar General mandated the District Judiciary to hear cases through hybrid video conferencing with effect from 05.02.2024 and directed the District Judiciary to not insist on the physical appearance of the advocates/litigants unless and until required, vide notification R.O.C.No. 1166A/2024/Comp4/VC dated 02.02.2024.

95.It is also pertinent to point out that the Video Conferencing Rules under Rule 3(3) only prohibits the recording of judicial confessions of the accused and the recording of settlements and pronouncements of awards in Lok Adalat or Jail Adalat through video conferencing. This implies that there is nothing in law to prohibit the Family Courts from recording the evidence and hearing the parties through video conferencing. Therefore, at the time of

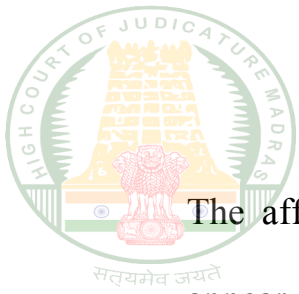


trial, if the parties cannot make themselves physically available then the Family Court must understand their concerns and may allow them to appear in video conferencing upon the consideration of the relevant circumstances.

A. Recording of evidence

96.During the conduct of proceedings, in case the party is abroad, the proof affidavit of the party should be notarized or should be authenticated by any Court, Judge, Magistrate, Indian Consulate, or any other representative of the Central Government of India in that country. The notary, who attested the proof affidavit, should be within the jurisdiction where the deponent is residing. Further, in case any party before the Family Court is unable to physically appear before the Court at the time of recording of evidence, either on account of not being in India or otherwise, the advocate or the power agent of the party may move an application before the Family Court for the purpose of recording the evidence through video conferencing under Rule 4(1) of the Video Conferencing Rules.

97.The application for video conferencing shall be supported by an affidavit evidencing the circumstances justifying the party's physical absence.



WEB COPY

The affidavit also must specify the email address of the party seeking to appear in video conferencing so that the same could later be used for the communication of details of the video conferencing, exhibits, and deposition. A soft copy of the said application and affidavit shall also be e-mailed to the registered e-mail address of the Court on the same day by the said party. On receipt of such an application, the Family Court must serve notice to the other side in accordance with Rule 4(3). The other side may oppose the said application in the same manner, as provided for, filing a counter to an application seeking interim relief. To reiterate, while disposing of the application filed under Rule 4 of the Video Conferencing Rules, the Family Court must be guided by sensitivity and humanity.

98. On allowing the application, the Family Court must fix a date and time that is feasible for all the parties and the Court itself for recording of evidence. The Court must inform while allowing the application the date and time at which the video conferencing proceedings would be carried on. In the event, it is not possible to inform immediately, then the Court must inform the assisting counsel about the dates. If no assisting counsel is available, then the Court must e-mail the details of the video conferencing to the parties



seeking to appear in video conferencing at least three days before the hearing date. Here it is pertinent to mention that the parties appearing in video conferencing can access the video conferencing link from the official website of the Court.

99.Prior to the commencement of the recording of evidence by the Family Court, the deponent should identify herself / himself and produce a government-issued identity document pointing out to her / his identity. In case of physical appearance of the deponent, the identity document can be physically produced before the Court. For virtual appearance, the party must email the identity document to the Court. In addition, the power of attorney or the advocate, as the case may be, should identify the deponent.

100.Since the provisions of the Evidence Act, 1872 (now the Bharatiya Sakshya Adhinyam) are diluted by Section 14 of the Family Courts Act, the Family Court need not expend much time in deciding on the admissibility of the documents sought to be marked by the deponent. Further, since the Family Courts are established for the purpose of speedy disposal of family matters and to alleviate the strain and suffering of the parties, the Court need



not insist on stringent compliance with Rules 7 and 8 of the Video Conferencing Rules. Nevertheless, in respect of the parties appearing in video conferencing, the advocates or power agents can produce the hard copy of the documents sought to be marked by the party and the party can e-mail the soft copy of the same to the Court with a carbon copy (CC) made to the other side before the commencement of the Trial.

101.If during the cross-examination, the other side desires to confront a party appearing through video conferencing with a certain document, the same must be e-mailed to the party with a carbon copy (CC) made to the Court. The hard copy of the said document must be produced to the Court by the advocate or the power agent representing the party on behalf of whom the cross-examination is conducted.

102.Moreover, though the Video Conferencing Rules make a reference to the presence of a coordinator at the remote site (the place, other than the Court, from which the party appearing in video conferencing participates in judicial proceedings), the presence of the coordinator at the remote site is not mandatory and can be dispensed with. Here, reference could be made to



Clause Rule 3.1. of the Practice Directions- VC No. 1 which states:

WEB COPY

“There shall be a Coordinator at the Court Site for all hearings by Video-conference. At the Remote Site, a Coordinator is mandatory only when a witness or a person accused of an offence is to be examined.”

103.Since recording of evidence of the parties before the Family Court is not even remotely related to the examination of an accused or a witness to an offence, the presence of the coordinator at the remote site is not required and it is adequate if the party appearing through video conferencing is adept in operating the platforms in which video conferencing takes place.

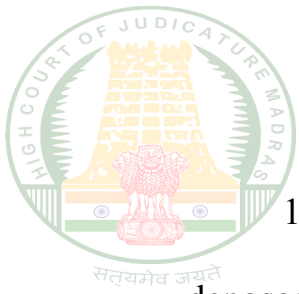
104.At this juncture, it is also pertinent to note that Clause 3.3 of the Practice Directions- VC No. 1 only enumerates a list of ***preferable*** coordinators of the remote site, and the same does not make it mandatory on the Family Court to ensure the presence of such coordinators at the remote site. It is to be borne in mind that the very reason for appointing the coordinators, be it at the court site or remote site, is to ensure seamless video conferencing. If ensuring the presence of the coordinator at the remote site is



going to further add to the emotional, physical and financial agony of the party, then the same is not mandatory and the respective party shall coordinate with the coordinator at the court site so as to ensure seamless video conferencing at the respective remote site. This interpretation is accepted and affirmed in Clause 3.6. of the Practice Directions itself. This view also finds acceptance in the judgment of another learned Single Judge of this Court in ***G. Shrilakshmi Vs Anirudh Ramkumar, [C.R.P. Nos. 1994 & 89 of 2024 dated 18.10.2024]***.

105.Since, this Court has directed the Family Courts to dispense with the presence of the coordinator in the remote site, the Family Courts shall ensure that there is a coordinator present at the court site to enable seamless video conferencing.

106.Further, if the deponent appearing through video conferencing is not placed to operate the video conferencing technology by himself/herself, a coordinator at remote site is mandatory and recourse can be taken to Clause 3.3. and 3.4 of the Practice Directions- VC No. 1 in this regard.



WEB COPY

107. On the conclusion of the evidence, the evidence that has been deposited virtually should be signed by the power of attorney and attested by the advocate who has been permitted to appear under Section 13 of the Act. The deposition must state that the same was recorded with the party appearing through video conferencing. The Court shall send a non-editable copy of the deposition by e-mail to the deponent. The deponent shall take a print out of the deposition and sign the same and thereafter, the deponent should scan and send the deposition to the official e-mail ID of the concerned Court within 72 hours of recording of deposition. The scan should be clear and the signature should be legible.

108. The filing of the signed hard copy of the deposition can be done either by the power agent or assisting advocate and if neither are available, then it can be sent by registered post with acknowledgement due to the Court with a covering letter stating the case number and date of deposition. On receipt of the signed hard copy of the deposition, the Court must compare the same with the soft copy and if the Court is satisfied that the contents of the signed hard copy are same as that of the earlier sent soft copy, the Judge of the Family Court may sign the deposition and endorse the same with the



phrase: “verified and compared with the scanned copy and found to be identical”. This procedure is applicable for both chief examination and cross examination of the deponent.

109. The said procedure can also be adopted for the witnesses who seek to appear virtually. However, the presence of the coordinator at the remote site as stipulated in Clauses 3.1, 3.3 and 3.4 of the Practice Directions- VC No. 1 is mandatory for such witnesses.

B. Recording of depositions

110. In case, the parties appear via video conferencing, in order to avoid any dispute as regards, the correctness of the evidence so recorded, a procedure has to be evolved. The Video Conferencing Rules, prohibit the recording of proceedings which take place through hybrid / video conferencing mode. The prohibition operates on the parties and not on the Court. It is possible that an unscrupulous litigant would make a statement or admission, during the course of evidence and the same gets recorded by the Court and is e-mailed to the deponent for signature. At that stage, the deponent may plead that the recording by the Court does not reflect the actual



WEB COPY

tendering of evidence made by him or her. To avoid this situation and taking into consideration the Video Conferencing Rules framed by this Court, this Court is of the view that if the Family Court itself were to record the deposition and place the recording in the file, it will prevent such conflicts. This mode of recording of evidence is permissible by a mere scan of Rule 7(6) of the Madras High Court Video Conferencing Rules of 2020. If there is no provision for a recording device, then the parties can provide the recording device to the Court. The Rule contemplates such a situation as is clear from Rule 7(10).

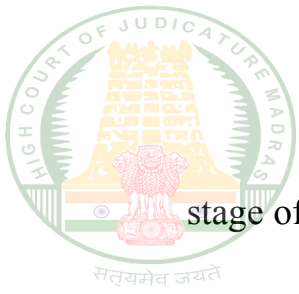
C. Hearing of the parties

111. Once the evidence of all the parties and relevant witnesses is recorded, the Family Court proceeds to fix a date for hearing the parties on the plaint/original petition. At the stage of hearing, the Family Court need not insist on the appearance of the parties, if they have already obtained the leave of the Court, to be represented by an advocate. However, if the Court is of the opinion that the presence of a party is essential, then the Court may specifically direct the party to appear before it. If any party so directed by the Court finds himself/herself in circumstances impeding him/her from



physically appearing before the Court, then such party may make an application under Rule 4(1) of the Video Conferencing Rules. And the procedure envisaged for disposing of such application under the head “**Recording of evidence**” in this judgment must be followed by the Family Court.

112.A separate application under Rule 4(1) need not be filed if a similar application had already been moved and allowed at the stage of recording of evidence and the circumstances justifying the making of such an application continue to exist even at the time of hearing the parties. However, in case of the latter, an oral mentioning by the advocate or the power agent is necessary to notify the Court of the party’s appearance through video conferencing. This may be done when the Court fixes the date for hearing the parties on the plaint/original petition. The Court must communicate the hearing date and time and must verify the identity of the parties in the manner as set out under the head “**Recording of evidence**” in this judgment vis-à-vis the parties appearing in video conferencing. Further, the rules framed regarding the presence of the coordinators at the remote site and court site under the head “**Recording of evidence**” in this judgment shall apply at the



stage of hearing the plaint/original petition/applications as well.

WEB COPY

113.If the party appearing through video conferencing intends to cite any authority or circulate any notes of arguments, a soft copy of the same must be e-mailed to the official e-mail address of the Court and a carbon copy of the same must be made to the other parties on the same day prior to the hearing in accordance with Clause 7 of the Practice Directions. A hard copy of the same must be submitted to the Court by the advocate or power agent of the party on the day of hearing. On the other hand, in respect of the authorities or notes of arguments submitted to the court by the advocate representing a party at the time of hearing, a hard copy of the same must be furnished to the other side forthwith.

114.To ensure that the video conferencing is conducted seamlessly, the difficulties, if any, experienced in connectivity or otherwise may be brought to the notice of the Court at the earliest by sending an email to the official email address of the Court or by reaching out to the mobile number of the court site coordinator, which has to be furnished to the party before the commencement of the video conferencing in accordance with Clause 5.8 of



the Practice Directions- VC No. 1. In order to save judicial time, such difficulties may also be brought to the attention of the Court through the advocate of the party or the power agent, as the case may be. The same procedure may be followed at any stage of the proceeding.

115.Considering the fact that the video conferencing requires internet connectivity and that internet connectivity may not always be stable, the Court may not pass orders adversely affecting the litigants only on the ground of absence due to poor internet connectivity or for the unforeseeable defects in video conferencing or for the faults of the coordinator. Even for this very reason, the impugned order in C.R.P.(PD).No.4227 of 2024 cannot be sustained.

VII.Judgment and copy application

116.If any of the party/parties appeared through video conferencing during the recording of evidence or hearing of the plaint/original petition, the Judgment of the Court made under Section 17 of the Act shall specify that such party so appeared in accordance with Clause 5.9 of the Practice



Directions. Further, since the Family Court is directed under Rule 42 of the Family Courts Rules to provide a copy of the judgment/order free of cost to the litigants, the Court shall provide the same to their advocate or power agent if their physical presence before the Family Court at the time of rendering the judgment is made impossible. The Court must also e-mail a soft copy of the judgment/order to such litigants who were not present at the Court physically at the time of pronouncing of judgment.

117.This Court is also made aware that the Family Courts and the Registry insist on the personal attendance of the parties for the purpose of filing a copy application under the pretext of complying with Rule 43 of the Family Courts Rules. Though Rule 43 directs the Court to issue interim applications to a copy of every judgment/order free of cost to the parties, the said Rule does not prohibit the Court from issuing the same to the advocate of the parties. In fact, this Court in ***Togo Mukherjee Vs Sapna Mukherjee and Anr, [(2002) 1 LW 356]*** held that the advocate who filed a vakalath on behalf of the party can be permitted to file the copy application. However, if the party is only represented by the power agent or if the party is neither represented by the power agent nor a lawyer, the Court may issue such copy



application to the party or the power agent, as the case may be, and permit them to seek the assistance of a lawyer or his clerk to proceed with the copy application.

VIII.Miscellaneous

118.This Court is also made aware that the Family Court insists on the parties to withdraw any pending suits / petitions / applications as a precondition to present a 13-B petition under the Hindu Marriage Act. This practice could again be used by unscrupulous litigants to manoeuvre the opposite party to withdraw the proceedings instituted by her / him. Therefore, the Family Court must not insist on the withdrawal of the already instituted proceedings as a prerequisite to take on file a 13-B petition. The already instituted proceedings would be in suspended animation till the 13-B petition is posted for hearing. On the day on which the 13-B petition is posted for hearing, the suits / petitions / applications instituted prior to the 13-B petition would also be posted for hearing. If the 13-B petition is allowed, the other proceedings would stand closed. On the other hand, if the 13-B petition is dismissed, the other proceedings would no longer be in suspended animation



and can be proceeded in accordance with the law.

WEB COPY

119.The Court also makes it clear that the presence of the advocate must be recorded by the Family Court every time the advocate represents her / his client before the Family Court. In fact, in C.R.P.(PD).No.4227 of 2024, on 19.07.2024, when the impugned order was passed, the counsel for the petitioner was physically present before the Family Court. The said counsel had been assisting the petitioner during the course of the proceedings. The time difference between India and United States of America is 12 hours. The petitioner had logged into the video conferencing and her counsel was physically present at the Court to assist the Court. The learned VII Additional Family Court Judge had dismissed her petition for the want of presence of the petitioner even without taking into consideration that her counsel was present and that she was not permitted into the virtual Court from the virtual lobby. The petitioner cannot be penalised for the glitches that happened during virtual hearing. In order to remedy such situations, it becomes necessary that the presence of the advocate be recorded by the Court on every hearing when they are present.

120.Further, though it was submitted before this Court that the



WEB COPY

advocates must be permitted to represent the parties at all the stages of the proceeding, allowing the same would not be in alignment with the object of the Family Courts Act. It is reminded that the Act attempts to regulate the representation by advocates to prevent the proceedings from becoming adversarial and to allow the Family Court to conduct the proceedings in expeditious manner, attempting conciliation at all the stages. If the advocates are permitted to appear at every stage right from the presentation of plaint, the very purpose for which the Act was enacted would be defeated. Therefore, the advocates can assist and represent the parties in a manner as directed by this Court in this judgment.

121. With regard to time limit, though this Court restrains from fixing a time limit for the proceedings before the Family Court, the Family Judge may exercise her / his discretion to fast track the proceedings after taking into account the peculiarities of the case before her / him.

122. Further, any person, on being faced with any other inconvenience, a solution for which is not envisaged and dealt with under this judgment is free to approach this Court by way of an application and seek appropriate



WEB COPY

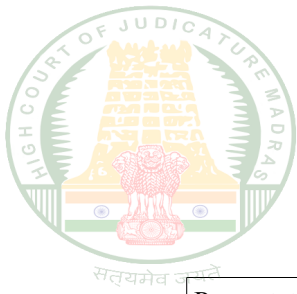
123.Since the Mediation Rules are a decade old, the Registry shall place it before the Rules Committee considering the development that had taken place due to technology development.

124.The directions given so far as video conferencing are concerned, they are a measure adopted to avoid the issues that the parties are facing today. It is subject to modifications that may be made by My Lord, the Hon'ble Chief Justice, as contemplated under the Madras High Court Video Conferencing Rules, 2020.

IX.CONCLUSION:

125.Before I conclude, I have to place on record the excellent assistance I received from the learned *Amicus Curiae*, the members of the Bar and from Ms.Harshini Ranganathan, an Research Law Assistant of this Court.

126.The directions framed in this case are summarized below in the form of a flow chart for better understanding:-



WEB COPY

Presentation of plaint/original petition drafted with the aid of an advocate before the Family Court under Rule 5(ii) Family Courts Rules by the party/power agent. In case a power agent petition is filed u/O. III R 1 CPC, it must be adjudicated first without ordering notice to the other side.

Taking on file of the plaint/original petition by the Family Court. Numbering of plaint/original petition and serving of summons with the assistance of an advocate/advocate clerk.

Party/power agent may file an application for urgent interim relief. While determining the urgency of the interim relief, the Court must be reasonable and sensitive to the concerns of the party. After issuing notice to the other side, the Court must dispose of the application. The Court may also pass *ex parte* order if the circumstances so require.

The parties must be referred to counselling and later to mediation. If both the parties consent, the parties can be directly referred to mediation without going through the process of counselling.

Parties must be referred to mediation under Section 9 of the Family Courts Act. Parties may appear in person or in VC. In case of appearance in VC, prior notice must be given to the mediator and the other side.

If, Mediation succeeds and a settlement is arrived at under Rule 35 of the Family Courts Rules, the Court shall pass a judgment and decree in terms of the settlement. If Mediation fails either under Rule 27 or 36 of the Family Courts Rules, the matter is referred back to the Court.

The party/power agent may file an application to be represented by an advocate under Section 13 of the Act r/w. Rule 41 of the Family Courts Rules. On being permitted, the advocate must file a vakalath in accordance with OIII R 4 CPC. The presence of the advocate must be recorded when she/he is present.

The party/power agent/advocate may file a written statement/application/counter.

In case the presence of the party during hearing of the application is required and the party is not able to appear physically, the party/power agent/advocate may file an application to appear in VC. After ordering notice to the other side, the application must be disposed of.

The party/power agent/advocate may file the proof affidavit. The recording of evidence of the party/witness may be done physically/VC. If evidence is to be recorded in VC, an application must be made and notice must be ordered to the other side. Party appearing in VC must be identified by the advocate/power agent.





C.R.P. (PD) .No.4073 & 4227 of 2024

At the time of hearing the plaint/original petition, the Court may hear the advocate or the party as the case be. If the presence of the party at the time of hearing is necessary, the party may appear physically/in VC.

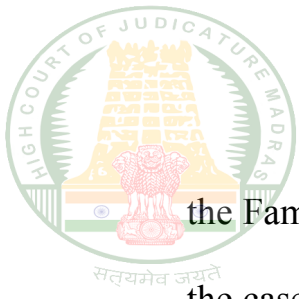
A copy of the judgment/order of the Court must be given to the party/power agent free of cost. The Court may also issue a copy of the judgment/order to the advocate of a party if the physical presence of the party/power agent cannot be secured. In such cases, the Court must e-mail the judgment/order to the concerned party.

The advocate of a party shall be permitted to file a copy application. In case, the party is not represented by an advocate, the party/power agent can obtain the assistance of an advocate or his clerk for filing the copy application.

127.To conclude, C.R.P.(PD).No.4073 of 2024 is ordered. The Principal Family Court at Chennai shall number the application filed by the parties for prosecuting the petition through power of attorney. It shall verify the details as set forth above and grant the requested certified copies. No costs.

128.C.R.P.(PD).No.4227 of 2024 is ordered. The order passed dismissing the petition for default on 19.07.2024 in H.M.O.P.No.498 of 2024 is set aside. The Family Court on the production of web copy of this order, shall issue fresh notice to the respondent / husband and grant him four (4) weeks time to file a written statement / counter. The batta (process) and notice can be taken by a Lawyer approved by the Court under Section 13 of





C.R.P. (PD) .No.4073 & 4227 of 2024

the Family Courts Act, 1984, and the Court shall not proceed on the merits of the case unless and until the respondent / husband has been put on notice. No costs.

31.01.2025

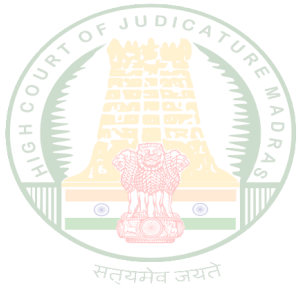
krk

Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

To

- 1.The Principal Family Court, Chennai.
- 2.The Principal Family Court Judge, Chennai
incharge of VII Additional Family Court.

V.LAKSHMINARAYANAN, J.



WEB COPY



C.R.P. (PD) .No.4073 & 4227 of 2024

krk

C.R.P.(PD).Nos.4073 & 4227 of 2024

31.01.2025