

Judgment Reserved on : 03.03.2025
Judgment Delivered on : 06.03.2025

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

JUSTICE SHRI MANOJ KUMAR TIWARI

AND

JUSTICE SHRI VIVEK BHARTI SHARMA

Appeal From Order No. 271 of 2024

Madhuri JoshiAppellant

-Versus-

Shashank BalooniRespondent

Presence:-

Mr. Vikas Bahuguna, learned counsel for the appellant-wife.

Mr. Sandeep Kothari, learned counsel for the respondent-husband.

JUDGMENT:(per Shri Vivek Bharti Sharma, J.)

The present appeal from order is filed by the appellant-wife against the order dated 11.06.2024 passed by the learned Additional Family Court Judge, Dehradun in Matrimonial Original Suit No. 543 of 2021 '*Shashank Balooni vs. Smt. Madhuri Joshi*', whereby the application Paper No. 125C2 for recording her evidence by video-conference filed by the respondent/appellant was disposed of.

The appellant-wife filed an application Paper No. 125C2 as per Schedule 1 of the "High Court of Uttarakhand Video Conferencing Rules-2020"

(hereinafter referred to as “Rules, 2020”) but court directed the appellant-wife to remain present for her evidence in defence.

2. Learned counsel for the appellant-wife would submit that the learned Additional Family Court Judge, Dehradun did not apply his judicial mind while disposing of her application for recording the evidence of the appellant-wife by video-conferencing, notwithstanding the fact that it was specifically stated in the application that the appellant-wife was residing in the United States of America, working there as trainee teller in *Patelco. Credit Union Bank* and unable to take leave and travel for her evidence in India.
3. Per contra, learned counsel for the respondent-husband would submit that vide order dated 29.07.2024, the Coordinate Bench of this Court has already allowed the appellant-wife to appear through Video-Conferencing before the concerned Family Court for the evidence.
4. Considered and perused the record.
5. The Coordinate Bench of this Court vide order dated 29.07.2024 directed that appellant-wife can appear through video-conferencing before the lower court. This order of the Coordinate Bench has effectively granted the relief, however, the appeal was not finally disposed of.

6. It is a matter of fact that the High Court of Uttarakhand vide its Notification No. 260/UHC/Admin.A/2020 dated 10.10.2020 notified **'High Court of Uttarakhand Video Conferencing Rules-2020'**.
7. As per Rule 3(i) of Rules 2020 *the video conferencing facilities may be used at all stages of judicial proceedings and proceedings conducted by the Court.*

The general principles as enshrined in Chapter II of Rules, 2020 are reproduced here as under:-

3. General Principles Governing Video Conferencing

(i) Video conferencing facilities may be used at all stages of judicial proceedings and proceedings conducted by the Court.

(ii) All proceedings conducted by a Court by way of video conferencing shall be judicial proceedings and all the courtesies and protocols applicable to a physical court shall apply to these virtual proceedings.

(iii) All relevant statutory provisions applicable to judicial proceedings including provisions of the CPC, CrPC, Contempt of Courts Act, 1971, Indian Evidence Act, 1872 (abbreviated hereafter as the Evidence Act), Oaths Act, 1969 and Information Technology Act, 2000 (abbreviated hereafter as the IT Act), shall apply to proceedings conducted by video conferencing.

(iv) Subject to maintaining independence, impartiality and credibility of judicial proceedings and subject to such directions as the High Court

may issue, Courts may adopt such technological advances as may become available from time to time.

(v) The Rules as applicable to a Court shall mutatis mutandis apply to a Commissioner appointed by the Court to record evidence and to an inquiry officer conducting an inquiry.

(vi) There shall be no unauthorised recording of the proceedings by any person or entity

(vii) The person defined in Rule 2(xi) shall provide identity proof as recognised by the Government of India/State Government/Union Territory to the Court point coordinator via personal email. In case identity proof is not readily available the person concerned shall furnish the following personal details: name, parentage and permanent address, as also, temporary address if any.

8. The Rule 5 of Chapter II of Rules, 2020 says that there shall be a Coordinator at the remote point i.e. at the place where a person as witness is required to be present or appear through a video link.

Sub Rule 5.3.1 of Rules, 2020 further says that if the place, where a person who is to be examined, is overseas then the remote point Coordinator shall be *an official of an Indian Consulate/the relevant Indian Embassy/the relevant High Commission of India.*

9. As observed above, these Rules were notified on 10.10.2020 and circulated among all the Courts. After notification of the Rules, two Circular Letters

vide C.L. 2/UHC/Admin.B/2022 dated 05.01.2023 and C.L. 7 dated 10.07.2023 were issued exhorting upon courts to provide facility of video conferencing as per the Rules, 2020.

Thereafter, a Circular Letter No. 15 UHC/Admin.B/2022 dated 12.07.2023 was also issued and by this circular letter, the High Court expressed its displeasure for not making use of Video-Conferencing Rules, 2020 when the same was required and for not providing video-conferencing facility to the advocates and litigants to appear before the Court concerned through Video-Conferencing if they wish to do so.

This circular letter also expressed its displeasure that this was being done notwithstanding the Circular Letter No. 2 UHC/Admin.B/2022 dated 05.01.2023 and Circular Letter No. 7 dated 10.07.2023 and directed that any deviation of the directions issued aforesaid circulars without any justified reason shall be dealt seriously.

10. Perusal of the impugned order would reflect that, by directing to appear in person, the concerned Additional Family Court Judge effectively disallowed the application of the appellant-wife without giving any reason for getting her examined as witness in her defence through Video-Conferencing as she was out of India residing at San Francisco in the United States of America and because of her nature of job, she was unable to come to India for her evidence.

The concerned Family Court did not consider the circumstances stated in the application of the appellant-wife and without giving any reasons surprisingly fixed a lump sum amount of ₹10,000/- for expenditures of whole journey of the appellant-wife from U.S.A. for appearing in the concerned court.

In the opinion of this Court a lump sum amount of ₹10,000/- for travelling from San Francisco to Dehradun and staying here in India is very meagre amount.

The impugned order dated 11.06.2024 has been passed by the Additional Family Court Judge in utter disregard to the Rules, 2020, C.L. No. 2 UHC/Admin.B/2022 dated 05.01.2023, C.L. No. 7 dated 10.07.2023 and C.L. No. 15 UHC/Admin.B/2022 dated 12.07.2023.

It would be pertinent to iterate that in para 5 of C.L. No. 15 UHC/Admin.B/2022 dated 12.07.2023, it was directed that any deviation issued in above circulars without justified reasons shall be dealt seriously.

In view of above, the impugned order dated 11.06.2024 passed by the learned Additional Family Court Judge, Dehradun is liable to be set-aside.

The present appeal is hereby allowed. The application of the appellant-wife for recording her

evidence in defence through Video Conferencing is allowed.

11. It is given to understand that India has its consulate at San Francisco. Therefore, any official at Indian consulate San Francisco can act as Coordinator and this request can be made by the court through proper channel for the same.
12. Copy of this judgment be circulated among all the courts within the State of Uttarakhand to ensure the effective use of High Court Video Conferencing Rules 2020 as and when necessary.
13. The copy of this judgment be also sent to the Director, Uttarakhand Judicial and Legal Academy to make it part of the curriculum of Induction Training and refreshers course of all the judges of the District courts of the States within a period of next six months from today.

(VivekBharti Sharma, J.)
06.03.2025

(Manoj Kumar Tiwari, J.)
06.03.2025