

Sumati Gulhati Vs Prateek Bajaj

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: April 29, 2021

Acts Referred: Code Of Civil Procedure, 1908 " Section 151

Hindu Marriage Act, 1955 " Section 13, 24

Code Of Criminal Procedure, 1973 " Section 164

Hon'ble Judges: Lisa Gill, J

Bench: Single Bench

Advocate: Munisha Gandhi, Viraj Gandhi, Vaibhav Sharma, Vikas Bahl, Nikhil Sabharwal, Surabhi Kaushik

Judgement

Lisa Gill, J

This matter is being taken up for hearing through video conferencing due to the outbreak of pandemic, COVID-19.

Prayer in this revision petition is for setting aside order dated 03.02.2021, passed by the learned Additional District Judge, Chandigarh, Family Court,

whereby application filed by the petitioner under Section 151 CPC, seeking physical appearance of witnesses sought to be examined by the

respondent-husband in his petition under Section 13 of the Hindu Mariage Act and not proceeding with examination of the petitioner's witnesses

through video conferencing, has been dismissed. Certified copy of the order dated 03.02.2021 was furnished in Court on 23.04.2021 as the same was

not available with the petitioner at the time of filing of this petition. Same is taken on record, subject to just exceptions.

Brief facts necessary for adjudication of the matter are that respondent-husband filed a petition under Section 13 of the Hindu Marriage Act in 2019 at

Secunderabad Courts. Present petitioner sought transfer of the proceedings from the Family Court at Secunderabad to Jammu as she was stated to be

residing at Jammu along with her parents and minor child. The Hon'ble Supreme Court vide order dated 20.09.2019 in Writ Petition(C) No.276 of

2019, transferred the proceedings from Family Court at City Civil Court at Secunderabad to the District Judge at Chandigarh. Family Court at

Chandigarh was further directed to decide the matter within a period of six months. The period of six months came to an end on 20.03.2020.

However, due to outbreak of the pandemic, COVID-19, proceedings could not take place. An extension was ultimately afforded to conclude the

proceedings till 30.06.2021.

The matter was taken up by the learned Family Court, Chandigarh on 28.10.2020 and affidavit of respondent's father was filed in evidence.

Presence of present petitioner's counsel was duly marked and matter adjourned for cross examination of the said witness through video

conferencing. Petitioner filed an application dated 10.11.2020, Annexure P-4, seeking cross examination of witness through physical mode besides

consideration of her application under Section 24 of the Hindu Marriage Act. Petitioner's prayer for cross examination of the witness through

physical mode was dismissed vide impugned order dated 03.02.2021 and her application under Section 24 of Hindu Marriage Act was disposed of vide

a separate order, which is not the subject matter of this petition.

It has been averred in the revision petition that impugned order dated 03.02.2021 is unjustified as the petitioner never gave her consent for examination

of witness of the respondent-husband through video conferencing and that proper cross-examination of the witnesses of the respondent-husband could

not be conducted through video conferencing. However, keeping in view the unprecedented conditions created due to the outbreak of pandemic,

COVID-19 and its second surge wherein stringent travel restrictions have come into place, it has been fairly stated on behalf of petitioner that it will

not be possible for examination of remaining witness of the petitioner-husband on actual physical appearance. It is informed that one of the witnesses

i.e. father-in-law of the petitioner, who is a resident of Hyderabad stands examined and the only other witness of the respondent i.e. the

petitioner's husband is yet to be examined. Respondent-husband is admittedly residing in Singapore. It is submitted that in view of the peculiar

circumstances, which have emerged and are admittedly beyond the control of the parties, examination of the respondent-husband may be carried out

through the process of video conferencing but while ensuring meticulous compliance of the Model Rules for video conferencing promulgated by the

Hon'ble Supreme Court to ensure and maintain the sanctity of the testimony to be recorded.

Learned senior counsel for the respondent, in an equally fair stance does not raise any objection to the said procedure as mentioned in the Model

Rules being followed in principle for examination of the respondent, with liberty to the learned trial Court to take necessary steps to ensure that no

impediment is caused in proper conclusion of the trial within the stipulated time frame.

Learned counsel for the parties submit that guidelines for video conferencing were issued by this High Court even prior to the outbreak of the

pandemic, COVID-19 in July 2018. Learned counsel for the parties further refer to order dated 06.04.2020 and 26.1.2020 in SMW(C) No.5/2020,

passed by the Hon'ble Supreme Court after outbreak of the pandemic, COVID-19. Learned counsel for the parties submit that at this stage,

necessary steps be taken to ensure the sanctity of testimony of the witnesses and in view of directions of the Hon'ble Supreme Court, Coordinator

at the Remote Point be appointed in terms of the specific provisions contained in the model video conferencing rules and that cross-examination of the

respondent be carried out in accordance thereof. It is brought to my notice that the respondent-husband seeks to examine only two witnesses and

examination of one witness i.e. father of the respondent, stands concluded through video conferencing.

Heard learned counsel for the parties.

The necessity and importance of recording of evidence through video conferencing was noted by the Hon'ble Supreme Court in STATE OF

MAHARASHTRA VS. PRAFUL B. DESAI AND ANOTHER 2003(4) SCC 601, wherein it was held that evidence can be record through medium

of video conferencing in a criminal trial.

Guidelines regarding video conferencing were issued by this High Court on 07.07.2018, while stating that an over-riding factor is that use of video

conferencing in any particular case must be consistent with furthering the interests of justice and should cause minimal disadvantage to the parties.

However, it is for the Court to decide whether evidence should be recorded by video-conferencing.

General Guidelines were issued and guidelines relevant to this case are reproduced as under:-

1.1 In these guidelines, reference to the 'Court point' means the Courtroom or other place where the Court is sitting or the place where Commissioner

appointed by the Court to record the evidence by video conference is sitting and the 'remote point is the place where person to be examined via video

conference is located, for example, a prison.

1.2 Person to be examined includes a person whose deposition or statement is required to be recorded or in whose presence certain proceedings are

to be recorded.

1.3 Wherever possible, proceedings by way of video conference shall be conducted as judicial proceedings and the same courtesies and protocols will

be observed. All relevant statutory provisions applicable to judicial proceedings including the provisions of the Information Technology Act, 2000 and

the Indian Evidence Act, 1872 shall apply to recording of evidence by video conference.

1.4 Video conferencing facilities can be used in all matters including remands, bail applications and in civil and criminal trials where a witness is

located intrastate, interstate, or overseas. However, these guidelines will not apply to proceedings under section 164 of Cr.P.C.

1.5 The guidelines applicable to a Court will mutatis mutandis apply to a Local Commissioner appointed by the Court to record the evidence.

It is further provided that a Court may either suo moto or on an application of a party or witness direct, by a reasoned order, that any person shall

appear before it or give evidence or make a submission to the Court through video conference. Clause 3.4 of the guidelines directs that if person to be

examined is overseas, the Co-ordinator shall be an official of Consulate/Embassy of India, who shall also verify identity of the persons to be examined.

Clause 3.6 and 3.7, regarding role of Coordinator at remote point are reproduced as under:-

3.6 It shall be ensured by the Co-ordinator at the remote point that:-

(i) the person to be examined or heard is available and ready at the Court / room earmarked for the video conference at least 30 minutes before the scheduled time.

(ii) no other recording device is permitted except the one installed in the Court/video conferencing room.

(iii) entry into the Court / video conferencing room will be regulated.

3.7 It shall be ensured by the Co-ordinator at the Court point that the Co-ordinator at the remote point has certified copies or soft copies of all or any

part of Court record in a sealed cover directed by the Court sufficiently in advance of the scheduled video conference.

Clause 6.6 of the said guidelines regarding record of the proceedings, reads as under:-

6.6 The record of proceedings including transcription of statement shall be prepared at the Court point under supervision of the Court and

authenticated. The soft copy of the transcript digitally signed by the coordinator at the Court point shall be sent by e-mail through NIC or any other

Indian service provider to the remote point where printout of the same will be taken and signed by the deponent. A scanned copy of the statement

digitally signed by co-ordinator at the remote point would be sent by e-mail through NIC or any other Indian service provider to the Court point. The

hard copy would also be sent subsequently, preferably within three days of the recording, by the co-ordinator at the remote point to the Court point by

courier/mail.

Recording of the audio is provided in Clause 6.9, which reads as under:-

6.9 The audio shall be recorded at the Court point. An encrypted master copy with hash value shall be retained in the Court as part of the record.

Another copy shall also be stored at any other safe location for backup in the event of any emergency. Transcript of the evidence recorded by the

Court shall be given to the parties as per applicable rules. A party may be allowed to view the master copy of the audio recording retained in the Court

on application which shall be decided by the Court.

Clause 7 which deals with putting of documents to a person/witness at the Remote Point is reproduced as under:-

7. If in the course of examination of a person at remote point by video conference, it is necessary to put a document to him, the Court may permit the

document to be put in appropriate manner.

The Hon'ble Supreme Court vide order dated 06.04.2020 in SMW(C) No.5/2020 has held that in the wake of the unprecedented situation created

by the outbreak of the pandemic, it is necessary for Courts at all levels to respond to the call of social distancing and ensure that court premises do not

contribute to spread of virus and that this is a matter of duty and not discretion. Hon'ble Supreme Court has observed that:-

3. Modern technology has enabled courts to enhance the quality and effectiveness of the administration of justice.

Technology has facilitated advances

in speed, accessibility and connectivity which enable the dispensation of justice to take place in diverse settings and situations without compromising

the core legal principles of adjudication. Indian courts have been proactive in embracing advancement in technology in judicial proceedings. The Indian

judiciary has incorporated Information and Communication Technology systems through the e-Courts Integrated Mission Mode Project (e-Courts

Project) as part of the National eGovernance Plan (NeGP). The robust infrastructure in place has reduced conventional impediments and legal

uncertainty surrounding the use of virtual courts. ICT enabled infrastructure is available across all courts including the district judiciary which

constitutes the initial interface of the court system with the citizen.

4. The use of technology found judicial recognition in precedent of this Court in State of Maharashtra v Praful Desai¹.

This Court held that the term

"evidence" includes electronic evidence and that video conferencing may be used to record evidence. It observed that developments in

technology have opened up the possibility of virtual courts which are similar to physical courts. The Court held:

"Advances in science and technology have now, so to say, shrunk the world. They now enable one to see and hear events, taking place far away,

as they are actually taking place. Video conferencing is an advancement in science and technology which permits one to see, hear and talk with

someone far away, with the same facility and ease as if he is present before you i.e. in your presence. In fact he/she is present before you on a

screen. Except for touching one can see, hear and observe as if the party is in the same room. In video conferencing both parties are in presence of

each other. Recording of such evidence would be as per "procedure established by law".

Various directions were issued by the Hon'ble Supreme Court in para 6 of order dated 06.04.2020. Para 6 (vii) reads as under:-

“Until appropriate rules are framed by the High Courts, video conferencing shall be mainly employed for hearing arguments whether at the trial

stage or at the appellate stage. In no case shall evidence be recorded without the mutual consent of both the parties by video conferencing. If it is

necessary to record evidence in a Court room the presiding officer shall ensure that appropriate distance is maintained between any two individuals in

the Courtroom.

Thereafter, vide order dated 26.10.2020 in SMW(C) No.5/2020,

Hon’ble Supreme Court observed that:-

“We propose to substitute sub-para (vii) of Paragraph 6 with the following :

The Video Conferencing in every High Court and within the jurisdiction of every High Court shall be conducted according to the Rules for that

purpose framed by that High Court. The Rules will govern Video Conferencing in the High Court and in the district courts and shall cover appellate

proceedings as well as trials.

We are given to understand that several High Courts have framed their rules already. Those High Courts that have not framed such Rules shall do so

having regard to the circumstances prevailing in the State. Till such Rules are framed, the High Courts may adopt the model Video Conferencing

Rules provided by the E-Committee, Supreme Court of India to all the Chief Justices of the High Court.

It is pertinent to note at this stage that though Guidelines for video conferencing as discussed in foregoing paras were issued, Rules for video

conferencing have not yet been notified by this High Court.

The Model Rules for video conferencing circulated by the Hon’ble Supreme Court also provide for appointment of a Coordinator at the Court

point as well as the remote point. Clause 5.3.1 provides for appointment of the Remote Point Coordinator as an official of an Indian Consulate/the

relevant Indian Embassy/the relevant High Commission of India. It is necessary to refer to Clause 5.6, 8.8, 8.9, 8.11 and 8.12, which read as

under:-

5.6 The Coordinator at the Remote Point shall ensure that:

5.6.1 All Advocates and/or Required Persons scheduled to appear in a particular proceeding are ready at the Remote Point designated for video

conferencing at least 30 minutes before the scheduled time.

5.6.2 No unauthorised recording device is used.

5.6.3 No unauthorised person enters the video conference room when the video conference is in progress.

5.6.4 The person being examined is not prompted, tutored, coaxed, induced or coerced in any manner by any person and that the person being

examined does not refer to any document, script or device without the permission of the concerned Court during the examination.

.....

8.8 The Court shall obtain the signature of the person being examined on the transcript once the examination is concluded. The signed transcript will

form part of the record of the judicial proceedings. The signature on the transcript of the person being examined shall be obtained in either of the

following ways:

8.8.1 If digital signatures are available at both the concerned Court Point and Remote Point, the soft copy of the transcript digitally signed by the

presiding Judge at the Court Point shall be sent by the official e-mail to the Remote Point where a print out of the same will be taken and signed by the

person being examined. A scanned copy of the transcript digitally signed by the Coordinator at the Remote Point would be transmitted by official email

to the Court Point. The hard copy of the signed transcript will be dispatched after the testimony is over, preferably within three days by the

Coordinator at the Remote Point to the Court Point by recognised courier/registered speed post.

8.8.2 If digital signatures are not available, the printout of the transcript shall be signed by the presiding Judge and the representative of the parties, if

any, at the Court Point and shall be sent in non-editable scanned format to the official email account of the Remote Point, where a printout of the

same will be taken and signed by the person examined and countersigned by the Coordinator at the Remote Point. A non-editable scanned format of

the transcript so signed shall be sent by the Coordinator of the Remote Point to the official email account of the Court Point, where a print out of the

same will be taken and shall be made a part of the judicial record. The hard copy would also be dispatched preferably within three days by the

Coordinator at the Remote Point to the Court Point by recognised courier/registered speed post.

8.9 An audio-visual recording of the examination of the person examined shall be preserved. An encrypted master copy with hash value shall be

retained as a part of the record.

8.11 The Coordinator at the Remote Point shall ensure that no person is present at the Remote Point, save and except the person being examined and

those whose presence is deemed administratively necessary by the Coordinator for the proceedings to continue.

8.12 The Court may also impose such other conditions as are necessary for a given set of facts for effective recording of the examination (especially

to ensure compliance with Rule 5.6.4).

It is a matter of record that examination of father of the respondent has already been carried out through the mode of video conferencing. Learned

counsel for the respondent submits that it is only the present respondent who is to be examined as a witness and the respondent does not wish to

examine any other witness in support of his petition.

It is further a matter of record that the respondent is residing at Singapore as of now. It is not possible for the respondent to travel to India for his

examination keeping in view the second surge of pandemic, COVID-19.

Stringent travel restrictions are in place, which makes travel from Singapore and back again impossible. The Hon'ble Supreme Court has already

extended the time given to the learned trial Court to conclude the proceedings till 30.06.2021. Both the parties have agreed that examination of the

respondent be carried out through the mode of video conferencing.

As noted in the foregoing paras it is a matter of record that as of now Rules regarding video conferencing have not been notified by this High Court,

though guidelines had been issued in the year 2018 itself. The Hon'ble Supreme Court has issued various directions as mentioned above. Model

Video Conferencing Rules have also been circulated. Keeping in view the facts and circumstances as narrated above, it is directed that examination

of the respondent be carried out by the learned trial Court while adhering to the guidelines as circulated in 2018 as well as the Model Video

Conferencing Rules, circulated by the Hon'ble Supreme Court. Learned trial Court shall ensure appointment of the Remote Point Coordinator and

adherence to the procedure as provided in terms of the said guidelines/ Model Rules. In case, any deviation is required to be made from the Model

Rules to ensure sanctity of the testimony to be recorded, and keeping in view any exigency, learned trial Court shall record specific reasons for the

same.

With the above said directions, this revision petition is disposed of. No separate order need be passed in pending applications if any, which stand

disposed of accordingly.