

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE PRANAY VERMA

ON THE 16th OF JANUARY, 2024

MISC. PETITION No. 7735 of 2023

BETWEEN:-

**RUCHA W/O KUSH DEWOO MANJREKAR D/O
SURESH PATHAK THROUGH POWER OF
ATTORNEY MRS. APARNA PATHAK W/O MR.
SURESH PATHAK, PERMANENT ADDRESS: 104,
ASHIRWAD VILLA, NEAR ST. THOMAS SCHOOL
NEW CITY LIGHT ROAD BHARTHANA SURAT
GUJRAT 395007 AT PRESENT R/O LONG ISLAND
NEW YORK UNITED STATES OF AMERICA AND
R/O 104 ASHIRWAD VILLA SURAT GUJRAT
(GUJARAT)**

.....PETITIONER

**(BY SHRI SUMEET SAMVATSAR, ADVOCATE ALONGWITH SHRI KOUSTUBH
FADNIS, ADVOCATE)**

AND

**KUSH DEWOO MANJREKAR S/O MR. DEWOO
MANJREKAR, AGED ABOUT 34 YEARS,
OCCUPATION: SERVICE R/O RH 1 SCHEME NO.
54 NEAR SATYA SAI SCHOOL INDORE 452010
(MADHYA PRADESH)**

.....RESPONDENT

(BY MS. POORVA MAHAJAN – ADVOCATE FOR THE RESPONDENT)

*This petition coming on for admission this day, the court passed
the following:*

ORDER

With the consent of learned counsel for the parties, the matter is finally heard.

02. By this petition preferred under Article 227 of the Constitution of India, the petitioner/wife has challenged the order dated 23.11.2023 passed in HMA No.2175/2023 by the IIIrd Additional Principal Judge, Family Court, Indore, whereby the joint application made by both the parties for permitting appearance through video conferencing has been rejected.

03. The facts in brief are that the petitioner and the respondent have filed a joint application under Section 13-B of the Hindu Marriage Act, 1955 before the Family Court for dissolution of their marriage by grant of a decree of divorce. It has been stated in the application that the petitioner is a resident of U.S.A and is the daughter of Smt. Aparna wife of Suresh Pathak and has executed a special power of attorney in her favour at U.S.A. on 01.06.2023 for filing the petition on her behalf along with the respondent under Section 13-B of the Act, 1955.

04. Thereafter, an application was jointly filed by the parties for carrying out the proceedings of reconciliation between them through video conferencing. It was stated in the application that the petitioner is residing in U.S.A. permanently and is not able to come to Indore for recording of her statement and is not getting permission to travel to India for recording of her evidence. By the impugned order, the Family Court has rejected the prayer for conducting the mediation/reconciliation proceedings through video conferencing and has directed the parties to remain present in person for the said purpose.

05. Learned counsel for the petitioner has submitted that the Family Court has refused to exercise the discretion vested in it by law and

has passed the order contrary to the guidelines issued by the High Court of Bombay in **Harshada Deshmukh Vs. Bharat Appasaheb Deshmukh, W.P. No. 1788/2018 decided on 06.04.2018**. Reliance has also been placed by him on the decision of the Hon'ble Supreme Court in **Santhini Vs. Vijaya Venketesh (2018) 1 SCC 1**. It is hence submitted that the impugned order be set aside.

06. Learned counsel for the respondent has not opposed the submissions made by the petitioner and has supported the prayer made by her.

07. I have heard the learned counsel for the parties and have perused the record.

08. In **Harshada Deshmukh (Supra)** the Bombay High Court has held as under:

“11. xxxxxxxx In peculiar circumstances, like where one of the parties cannot remain present due to certain practical difficulties i.e. job, leave, visa etc. Due to globalization and since noticeable educated young persons are crossing the borders of India and it is not possible to remain present. This Court had observed that there is no illegality to solve such difficulty by adopting novel and available ways by use of advanced technology of communication and new scientific method. In the peculiar circumstances of the case, the Court had directed online counselling to be done with the help of web-cam and online consent through the web-cam and laptop/computer.

12. In view of the aforesaid circumstances, whether the issue involved in the present case was at a more preliminary level i.e. at the stage of filing of the petition through a Power of Attorney holder, it can be seen that there is no legal lacunae in filing of the petition through a registered Power of Attorney, and the said petition needs to be accepted by setting aside the impugned order by the Family Court. Further, in the light of the Tilak 12/17 wp-1788-18 said legal position, Family Court will not insist upon the presence of the parties before the Court and would arrange for the consent terms to be recorded either through skype or adopting any other technology and the proceedings contemplated under Section

13-B of the Hindu Marriage Act in the time schedule specified therein.”

09. Even in the case of Santini (Supra) the Supreme Court has not prohibited recording of preliminary evidence on an application under Section 13-B of the Act, 1955 through video conferencing. On the contrary, from a careful reading of the entire decision it is evident that it has been held that such recording of preliminary evidence is permissible under special circumstances.

10. In the present case, the petitioner is a permanent resident of U.S.A. and has executed a special power of attorney in favour of her mother and due to her visa conditions she is not getting permission to travel to India. It is stated by learned counsel for the petitioner and not denied by the respondent that in case the petitioner travels to India her visa would stand cancelled automatically. For that reason she is not able to come to Indore for personally recording her evidence. The Family Court has failed to exercise its discretionary powers and has illegally directed the petitioner to appear personally for reconciliation proceedings. Exceptional circumstances have been pointed out by the petitioner whereby she is not able to come to Indore for recording of her statement which circumstances have been failed to be taken into consideration and petitioner has been directed to remain personally present for recording of her statement.

11. In my opinion, the Family Court ought not to have insisted upon the personal presence of the petitioner for reconciliation proceedings. In view of the aforesaid position of law, the impugned order passed by the Family Court deserves to be and is accordingly set aside and the Family Court is directed not to insist upon presence of the

petitioner before the Court and would arrange for the reconciliation proceedings to be recorded by adopting any technology as may be available for presence of the petitioner through video conferencing.

12. Learned counsel for the respondent has submitted that the respondent would appear before the Family Court on the next date of hearing fixed before it since he is a resident of Indore itself.

13. With the aforesaid directions, the petition stands allowed and disposed off.

(PRANAY VERMA)
JUDGE

Shilpa