

IN THE COURT OF JUDICIAL MAGISTRATE, FIRST CLASS
40TH COURT, GIRGAON, MUMBAI.

C. C. No. 640/SS/2013

:- ORDER BELOW EXH. 202 :-

1. This is an application by respondent No.1 to allow him to give evidence through video conference. Read say by the applicant. Heard both the sides. Perused the documents.
2. Respondent No.1 submitted that he is US citizen residing in US since 40 years. Present proceeding is filed by the applicant as a counter to proceeding initiated by him in US. The applicant has examined eight witnesses. He has apprehension that if he returns to India, applicant will resort to all tactics to block his return to US. C.C. No.4115/PW/2016 is filed by the applicant to pressurize him. It will take lot of time and expenses to come to India to lead his evidence. He will file evidence affidavit and will appear through VC for cross-examination. Cross-examination of parents of applicant is also conducted through VC. Hence he prayed to allow his application.
3. The applicant opposed the application very strongly. She submitted that present application is preferred to delay the proceeding. Earlier he has filed one application that he would appear before the Court in May 2025. He did not appear before the Court but filed present application. CC. No.4115/PW/2016 is pending against him. He is not appearing in that matter. This Court is following due procedure to secure his presence. If he would permitted to appear through VC, then it would defeat attempts of this Court to secure his presence. He is travelling worldwide. Hence there is no question of unnecessary expenses. Earlier one of his witness was examined before Hon'ble Family Court. Hon'ble Court has observed that witness is sitting in the house of respondent. Witness was looking somewhere as

someone was present in the room. There is every possibility that someone may tutor the witness during cross-examination. Parent of the applicant was present in the Court at New Delhi to appear through VC. Hence applicant prayed to reject the application on above grounds.

4. Advocate for respondent No.1 relied upon case law of State of Maharashtra Vs. Prafull Desai 2003(4) SCC 601. Advocate for applicant submitted that in that matter, witness was expert witness having no personal interest in the case. There was no question to guide expert witness. Hence that ratio is not applicable in present case. I am agree with submission of advocate for the applicant. That case law is not applicable in present case.

5. Respondent No.1 sought permission for two reasons. One is that applicant would not allow him to go back to US. Admittedly, criminal case is pending against respondent No.1 before this Court. His presence is not secured till today. But it would nothing to do with his presence in present matter to give evidence. Apprehension expressed by respondent No.1 is not proper. He cannot avoid to appear before the Court on ground of that apprehension.

6. Second reason given by respondent No.1 for not appearing personally before this Court is it will take time and expenses. But as per submission of the applicant, respondent No.1 is travelling worldwide. Respondent No.1 is main party in present proceeding. It is pending since 2013. He is not appearing before the Court since long. Proceeding is conducted by his advocate in his absence. Considering his US citizenship, that liberty is already granted. But his evidence is important in present case. One of his witness was examined through VC before Hon'ble Family Court. Hon'ble Court has observed that someone is present in the room and witness is looking to that person. In present matter also such situation may arise. Hence it would not be proper to take evidence through VC.

7. Reasons given by respondent No.1 to record his evidence through VC are not proper. This Court is aware that he is US citizen. At the same time, he is main respondent in present case. His personal appearance for recording evidence would help the Court to decide matter on merits. This Court cannot take chance for tutoring the witness specially considering observation of Hon'ble Family Court. Every endeavors shall be made to conclude his cross-examination expeditiously. Hence the order : -

ORDER

1. Application is hereby rejected.
2. Respondent No.1 is directed to file evidence affidavit duly affirmed before Indian Embassy and to appear personally before this Court for cross-examination.

Mumbai.
Date :- 26.09.2025

(S. R. Nimse)
Judicial Magistrate, First Class
40th Court, Girgaon, Mumbai.