

CNR No: WBSP01-001831-2017

Present: Subhra Som Ghosal

J.O Code: WB00984

MAT Suit No: 290 of 2017

Order No. 57, dated: 02-04-2024.

The petitioner/husband is present by filing his hazira through their Ld. Advocates.

Hearing of the petition dated 08-01-2024.

Today the Ld. Advocate for the petitioner/husband has filed a petition signed by Smita Sengupta who is the constituted attorney of the petitioner/husband praying for recording of the evidence of the petitioner/P.W-01 through V.C.

No steps have been taken on behalf of the respondent/wife.

On call the Ld. Advocate for the petitioner/husband is found to be present.

None appears and none moves for the respondent/wife on repeated calls.

The Ld. Advocate for the petitioner in all his fairness submitted that with the instruction of his client he intends to "Not press" the petition dated 08-01-2024 as after filing of the petition on this day the previous petition under Order 26 rule 5 of the Code of Civil Procedure, 1908 has become infructuous.

I also find no predicament in allowing such prayer. As such the Ld. Advocate for the petitioner/husband is granted leave to "not press" the petition with an endorsement to that effect.

Hence the petition dated 08-01-2024 under Order 26 rule 5 of the Code of Civil Procedure, 1908 is rejected on being 'Not pressed'.

As regards the petition that has been filed today, I find no impediment in taking up the petition even in absence of the respondent as the innocuous prayer will not affect any interest of the respondent, rather it will ensure speedy disposal of the suit.

Ld. Advocate for the petitioner/husband submitted that his client is staying out of India and for that reason it is not possible for him to appear physically for the purpose of giving evidence he insisted on passing necessary orders so that the appearance of the petitioner/husband is approved through remote mode i.e. through Videoconferencing.

Perused the case record.

In this case the petitioner, by invoking section 27(1)(b)(d) of the Special Marriage Act, 1954 has prayed for divorce. After exhausting the modalities of procedure prescribed by law the case was fixed for evidence and the evidence of P.W-01 is now being recorded.

There is no denial to the fact that the petitioner/husband is now staying out of India and insisting for his physical appearance before this Court will only add to the delay of this case. That being undisputed fact; this Court finds it condign to resort to the technological advancements to bridge the gap and facilitate the avowed object of expeditious disposal of the case. In this context it is worth mentioning that the importance of Videoconferencing has now been accepted and emphasized. The Hon'ble Supreme Court in its recent decision in **Sarvesh Mathur v. The Registrar General, High Court of Punjab and Haryana [Writ Petition(s) (Criminal) No(s).351/ 2023 dated 06.10.2023]** had highlighted the importance of Videoconferencing in Judicial proceedings, which is as follows:

".... 16. Above all, it must be noted that technology plays an essential role in securing access to courtrooms and as a result, access to justice for citizens across the country. Lawyers and litigants using electronic gadgets to access files and legal materials cannot be asked to turn the clock back and only refer to paper books. In the march of technology, the Courts cannot remain tech averse. Placing fetters on hybrid hearings, like mandating an age criteria, requiring prior application, and frequent denial of access to virtual participants has the direct effect of discouraging lawyers and litigants to use technology. Not only does this affect the efficiency and access to courts, but it also sends out the misguided message that access to courts can be restricted at whim to those who seek justice.

17. The use of technology by the Bar and the Bench is no longer an option but a necessity. Members of the Bench, the Bar and the litigants must aid each other to create a technologically adept and friendly environment. The above directions must be implemented by all concerned stakeholders in letter and in spirit."

Following the path pioneered by the Hon'ble Supreme Court, the Hon'ble High Court has also framed rules for Videoconferencing. As per Rule 3 which comes under Chapter II the general Principles governing Video Conferencing have been enumerated. It has been clearly formulated by the Hon'ble High Court that Video conferencing facilities may be used at all stages of judicial proceedings and proceedings conducted by the Court. As per the mandate of sub-rule (ii) of Rule 3; all proceedings conducted in 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.

Hence I find no predicament in adapting to the process of video conferencing in order to carry forward the evidence of P.W-01.

Hence in the facts and circumstances of this case I think it condign to go ahead with the process of recording of evidence through the medium of electronic video linkage. The petitioner/husband shall provide identity proof as recognized by the Government of India/State Government/Union Territory. Petitioner/husband shall also provide the platform through which he intends to connect through V.C

Fix 02-09-2024 for evidence through video conferencing.

Typed to the dictation directly;

corrected on the system.

Sd/-Subhra Som Ghosal
Additional District and Sessions Judge,
01st Court, Alipore, South 24 parganas.

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