SUPREME COURT OF INDIA

Santhini

Vs.

Vijaya Venketesh

Tr.P.(Civil)No.1278 of 2016

(Dipak Misra,CJI., A.M.Khanwilkar and Dr.D.Y.Chandrachud,JJ.,)

09.10.2017

JUDGMENT

Dipak Misra,CJI., (For himself and Khanwilkar,J.,)

1. A two-Judge Bench in *Krishna Veni Nagam v. Harish Nagam*[1], while dealing with transfer petition seeking transfer of a case instituted under Section 13 of the Hindu Marriage Act, 1955 (for brevity, 'the 1955 Act,) pending on the file of IInd Presiding Judge, Family Court, Jabalpur, Madhya Pradesh to the Family Court, Hyderabad, Andhra Pradesh, took note of the grounds of transfer and keeping in view the approach of the Court to normally allow the transfer of the proceedings having regard to the convenience of the wife, felt disturbed expressing its concern to the difficulties faced by the litigants travelling to this Court and, accordingly, posed the question whether there was any possibility to avoid the same. It also took note of the fact that in the process of hearing of the transfer petition, the matrimonial matters which are required to be dealt with expeditiously are delayed. That impelled the Court to pass an order on 09.01.2017 which enumerated the facts including the plight asserted by the wife, the concept of territorial jurisdiction under Section 19 of the 1955 Act, and reflected on the issues whether transfer of a case could be avoided and alternative mode could be thought of. Dwelling upon the said aspects, the Court articulated:-

> "In these circumstances, we are prima facie of the view that we need to consider whether we could pass a general order to the effect that in case where husband files matrimonial proceedings at place where wife does not reside, the court concerned should entertain such petition only on the condition that the husband makes appropriate deposit to bear the expenses of the wife as may be determined by the Court. The Court may also pass orders from time to time for further deposit to ensure that the wife is not handicapped to defend the proceedings. In other cases, the husband may take proceedings before the Court in whose jurisdiction the wife resides which may lessen inconvenience to the parties and avoid delay. Any other option to remedy the situation can also be considered."

As the narration would exposit, the pivotal concern of the Court was whether an order could be passed so as to provide a better alternative to each individual who is compelled to move this Court.

2. The observation made in *Anindita Das v. Srijit Das*[2] to the effect that on an average at least 10 to 15 transfer petitions are on board of each Court on each admission day was noticed. The learned Judges apprised themselves about the observations made in *Mona Aresh Goel v. Aresh Satya Goel*[3], *Lalita A. Ranga v. Ajay Champalal Ranga*[4], *Deepa v. Anil Panicker*[5], *Archana Rastogi v. Rakesh Rastogi*[6], *Leena Mukherjee v. Rabi Shankar Mukherjee*[7], *Neelam Bhatia v. Satbir Singh Bhatia*[8], *Soma Choudhury v. Gourab Choudhaury*[9], *Rajesh Rani v. Tej Pal*[10], *Vandana Sharma v. Rakesh Kumar Sharma*[11] *and Anju Ohri v. Varinder Ohri*[12] which rest on the principle of "expedient for ends of justice" to transfer the proceedings. It also adverted to *Premlata Singh v. Rita Singh*[13] wherein this Court had not transferred the proceedings but directed the husband to pay for travelling, lodging and boarding expenses of the wife and/or person accompanying her for each hearing. The said principle was also followed in *Gana Saraswathi v. H. Raghu Prasad*[14].

3. The two-Judge Bench, after hearing the learned counsel for the parties, the learned Additional Solicitor General and the learned Senior Counsel who was requested to assist the Court, made certain references to the doctrine of 'forum non conveniens" and held that it can be applied to matrimonial proceedings for advancing the interest of justice. The learned Additional Solicitor General assisting the Court suggested about conducting the proceedings by videoconferencing. In that context, it has been held:-

> "14. One cannot ignore the problem faced by a husband if proceedings are transferred on account of genuine difficulties faced by the wife. The husband may find it difficult to contest proceedings at a place which is convenient to the wife. Thus, transfer is not always a solution acceptable to both the parties. It may be appropriate that available technology of videoconferencing is used where both the parties have equal difficulty and there is no place which is convenient to both the parties. We understand that in every district in the country videoconferencing is now available. In any case, wherever such facility is available, it ought to be fully utilised and all the High Courts ought to issue appropriate administrative instructions to regulate the use of videoconferencing for certain category of cases. Matrimonial cases where one of the parties resides outside court's jurisdiction is one of such categories. Wherever one or both the parties make a request for use of videoconferencing, proceedings may be conducted on videoconferencing, obviating the needs of the party to appear in person. In several cases, this Court has directed recording of evidence by ***video conferencing***[15]**.**
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> 16. The advancement of technology ought to be utilised also for service on parties or receiving communication from the parties. Every District Court must have at least one e-mail ID. Administrative instructions for directions can be issued to permit the

litigants to access the court, especially when litigant is located outside the local jurisdiction of the Court. A designated officer/manager of a District Court may suitably respond to such e-mail in the manner permitted as per the administrative instructions. Similarly, a manager/information officer in every District Court may be accessible on a notified telephone during notified hours as per the instructions. These steps may, to some extent, take care of the problems of the litigants. These suggestions may need attention of the High Courts."

[Emphasis added]

4. After so stating, the two-Judge Bench felt the need to issue directions which may provide alternative to seeking transfer of proceedings on account of inability of a party to contest proceedings at a place away from their ordinary residence which will eventually result in denial of justice. The safeguards laid down in the said judgment are:-

"(i) Availability of videoconferencing facility.

(ii)Availability of legal aid service.

(iii) Deposit of cost for travel, lodging and boarding in terms of Order 25 CPC.

(iv) E-mail address/phone number, if any, at which litigant from outstation may communicate."

Be it stated, the Court took note of the spirit behind the orders of this Court allowing the transfer petitions filed by wives and opined that the Court almost mechanically allows the petitions so that they are not denied justice on account of their inability to participate in proceedings instituted at a different place. It laid stress on financial or physical hardship. It referred to the authorities in the constitutional scheme that provide for guaranteeing equal ***access to justice***[16], power of the State to make special provisions for ***women and children***[17], duty to uphold the dignity of ***women***[18] and various steps that have been taken in the said ***direction***[19]**.**

5. In the said case, the Court transferred the case as prayed for and further observed that it will be open to the transferee court to conduct the proceedings or record the evidence of the witnesses who are unable to appear in court by way of videoconferencing. The aforesaid decision was brought to the notice of the two-Judge Bench in the instant case by the learned counsel appearing for the respondent who advanced his submission that there is no need to transfer the case and the parties can be directed to avail the facility of videoconferencing. The two-Judge Bench, after referring to the Statement of Objects and Reasons of the Family Courts Act, 1984 (for brevity, 'the 1984 Act'), various provisions of the said Act, Sections 22, 23 and 26 of the 1955 Act, Rules 2, 3 and 4 of Order XXXIIA which were inserted by the 1976 amendment to the Code of Civil Procedure (for short, "the CPC"),

the concept of reconciliation, the role of the counsellors in the Family Court and the principle of confidence and confidentiality, held:-

> "19. To what extent the confidence and confidentiality will be safeguarded and protected in video conferencing, particularly when efforts are taken by the counsellors, welfare experts, and for that matter, the court itself for reconciliation, restitution of conjugal rights or dissolution of marriage, ascertainment of the wishes of the child in custody matters, etc., is a serious issue to be considered. It is certainly difficult in video conferencing, if not impossible, to maintain confidentiality. It has also to be noted that the footage in video conferencing becomes part of the record whereas the reconciliatory efforts taken by the duty-holders referred to above are not meant to be part of the record. All that apart, in reconciliatory efforts, physical presence of the parties would make a significant difference. Having regard to the very object behind the establishment of Family Courts Act, 1984, to Order XXXIIA of the Code of Civil Procedure and to the special provisions introduced in the Hindu Marriage Act under Sections 22, 23 and 26, we are of the view that the directions issued by this Court in Krishna Veni Nagam (supra) need reconsideration on the aspect of video conferencing in 12 matrimonial disputes."

Being of this view, it has referred the matter to be considered by a larger Bench. That is how the matter has been placed before us.

6. We have heard Mr. V.K. Sidharthan, learned counsel for the petitioner and Mr. Rishi Malhotra, learned counsel for the respondent. We have also heard Mr. Ajit Kumar Sinha, learned senior counsel who has been requested to assist the Court.

7. Before we refer to the scheme under the 1984 Act and the 1955 Act, we think it apt to refer to the decisions that have been noted in Krishna Veni Nagam (supra). In Mona Aresh Goel (supra), the three-Judge Bench was dealing with the transfer of the matrimonial proceedings for divorce that was instituted by the husband in Bombay. The prayer of the wife was to transfer the case from Bombay to Delhi. The averment was made that the wife had no independent income and her parents were not in a position to bear the expenses of her travel from Delhi to Bombay to contest the divorce proceedings. That apart, various inconveniences were set forth and the husband chose not to appear in the Transfer Petition. The Court, considering the difficulties of the wife, transferred the case from Bombay to Delhi. In Lalita A. Ranga (supra), the Court, taking note of the fact that the husband had not appeared and further appreciating the facts and circumstances of the case, thought it appropriate to transfer the petition so that the wife could contest the proceedings. Be it noted, the wife had a small child and she was at Jaipur and it was thought that it would be difficult for her to go to Bombay to contest the proceedings from time to time. In Deepa's case, the stand of the wife was that she was unemployed and had no source of income and, on that basis, the prayer of transfer was allowed. In Archana Rastogi (supra), the Court entertained the plea of transfer and held that the prayer for transfer of matrimonial proceedings taken by the husband in the Court of District Judge, Chandigarh to the Court of District Judge, Delhi deserved

acceptance and, accordingly, transferred the case. Similarly, in Leena Mukherjee (supra), the prayer for transfer was allowed. In Neelam Bhatia (supra), the Court declined to transfer the case and directed the husband to bear the to-and-fro travelling expenses of the wife and one person accompanying her by train whenever she actually appeared before the Court. In Soma Choudhury (supra), taking into consideration the difficulties of the wife, the proceedings for divorce were transferred from the Court of District Judge, South Tripura, Udaipur (Tripura) to the Family Court at Alipore (West Bengal). In Anju Ohri (supra), the Court, on the foundation of the convenience of the parties and the interest of justice, allowed the transfer petition preferred by the wife. In Vandana Sharma (supra), the Court, taking note of the fact that the wife had two minor daughters and appreciating the difficulty on the said bedrock, thought it appropriate to transfer the case and, accordingly, so directed.

8. Presently, we think it condign to advert in detail as to what has been stated in Anindita Das (supra). The stand of the wife in the transfer petition was that she had a small child of six years and had no source of income and it was difficult to attend the court at Delhi where the matrimonial proceedings were pending. The two-Judge Bench referred to some of the decisions which we have already referred to and also adverted to *Ram Gulam Pandit v. Umesh J. Prasad*[20] and *Rajwinder Kaur v. Balwinder Singh*[21] and opined that all the authorities are based on the facts of the respective cases and they do not lay down any particular law which operates as a precedent. Thereafter, it noted that taking advantage of the leniency shown to the ladies by this Court, number of transfer petitions are filed by women and, therefore, it is required to consider each petition on merit. Then, the Court dwelled upon the fact situation and directed that the husband shall pay all travel and stay expenses to the wife and her companion for each and every occasion whenever she was required to attend the Court at Delhi. From the aforesaid decision, it is quite vivid that the Court felt that the transfer petitions are to be considered on their own merits and not to be disposed of in a routine manner.

9. Having noted the authorities relating to transfer of matrimonial disputes, we may refer to Section 25 of the CPC which reads as follows:-

> "Section 25. Power of Supreme Court to transfer suits, etc.- (1) On the application of a party, and after notice to the parties, and after hearing such of them as desire to be heard, the Supreme Court may, at any stage, if satisfied that an order under this section is expedient for the ends of justice, direct that any suit, appeal or other proceedings be transferred from a High Court or other Civil Court in one State to a High Court or other Civil Court in any other State.
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> (2) Every application under this section shall be made by motion which shall be supported by an affidavit.
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> (3) The court to which such suit, appeal or other proceeding is transferred shall, subject to any special directions in the order of transfer, either re-try it or proceed from the stage at which it was transferred to it.

(4) In dismissing any application under this section, the Supreme Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum, not exceeding two thousand rupees, as it considers appropriate in the circumstances of the case.

(5) The law applicable to any suit, appeal or other proceeding transferred under this section shall be the law which the court in which the suit, appeal or other proceeding was originally instituted ought to have applied to such Suit, appeal or proceeding."

10. Order XLI Rule 2 of the Supreme Court Rules, 2013 which deals with the application for transfer under Article 139A(2) of the Constitution and Section 25 of the CPC is as follows:-

"1. Every petition under article 139A(2) of the Constitution or Section 25 of the Code of Civil Procedure, 1908, shall be in writing. It shall state succinctly and clearly all relevant facts and particulars of the case, the name of the High Court or other Civil Court in which the case is pending and the grounds on which the transfer is sought. The petition shall be supported by an affidavit.

2. The petition shall be posted before the Court for preliminary hearing and orders as to issue of notice. Upon such hearing the Court, if satisfied that no prima facie case for transfer has been made out, shall dismiss the petition and if upon such hearing the Court is satisfied that a prima facie case for granting the petition is made out, it shall direct that notice be issued to the parties in the case concerned to show cause why the case be not transferred.

A copy of the Order shall be transmitted to the High Court concerned.

3. The notice shall be served not less than four weeks before the date fixed for the final hearing of the petition. Affidavits in opposition shall be filed in the Registry not later than one week before the date appointed for hearing and the affidavit in reply shall be filed not later than two days preceding the day of the hearing of the petition. Copies of affidavits in opposition and in reply shall be served on the opposite party or parties and the affidavits shall not be accepted in the Registry unless they contain an endorsement of service signed by such party or parties.

4. The petition shall thereafter be listed for final hearing before the Court.

5. Save as otherwise provided by the rules contained in this Order the provisions of other orders (including Order LI) shall, so far as may be, apply to petition under this Order."

The purpose of referring to the same is that this Court has been conferred with the power by the Constitution under Article 139A(2) to transfer the cases and has also been conferred statutory jurisdiction to transfer the cases. The Rules have been framed accordingly. The Court has the power to allow the petition seeking transfer or to decline the prayer and indubitably, it is on consideration of the merits of the case and satisfaction of the Court on that score.

11. Having stated thus, it is necessary to appreciate the legistative purpose behind the 1984 Act. The Family Courts have been established for speedy settlement of family disputes. The Statement of Objects and Reasons reads thus:-

> "Statement of Objects and Reasons Several associations of women, other organizations and individuals have urged, from time to time, that Family Courts be set up for the settlement of family disputes, where emphasis should be laid on conciliation and achieving socially desirable results and adherence to rigid rules of procedure and evidence should be eliminated. The Law Commission in its 59th report (1974) had also stressed that in dealing with disputes concerning the family the court ought to adopt an approach radically different from that adopted in ordinary civil proceedings and that it should make reasonable efforts at settlement before the commencement of the trial. The Code of Civil Procedure was amended in 1976 to provide for a special family. However, not much use has been made by the courts in adopting this conciliatory procedure and the courts continue to deal with family disputes in the same manner as other civil matters and the same adversary approach prevails. The need was, therefore, felt, in the public interest, to establish Family Courts for speedy settlement of family disputes.
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> 2. The Bill inter alia, seeks to−
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> (a)provide for establishment of Family Courts by the State Governments;
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> (b)make it obligatory on the State Governments to set up a Family Court in every city or town with a population exceeding one million;
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> (c)enable the State Governments to set up, such courts, in areas other than those specified in (b) above.
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> (d)exclusively provide within the jurisdiction of the Family Courts the matters relating to−
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> (i)matrimonial relief, including nullity of marriage, judicial separation, divorce, restitution of conjugal rights, or declaration as to the validity of marriage or as to the matrimonial status of any person;
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> (ii)the property of the spouses or of either of them;

(iii)declaration as to the legitimacy of any person;

(iv)guardianship of a person or the custody of any minor;

(v)maintenance, including proceedings under Chapter IX of the Code of Criminal Procedure;

(e) Make it obligatory on the part of the Family Court to endeavour, in the first instance to effect a reconciliation or a settlement between the parties to a family dispute. During this stage, the proceedings will be informal and rigid rules of procedure shall not apply;

(f) provide for the association of social welfare agencies, counselors, etc., during conciliation stage and also to secure the service of medical and welfare experts;

(g) provide that the parties to a dispute before a Family Court shall not be entitled, as of right, to be represented by legal practitioner. However, the court may, in the interest of justice, seek assistance of a legal expert as amicus curiae,

(h) simplify the rules of evidence and procedure so as to enable a Family Court to deal effectively with a dispute;

(i) provide for only one right of appeal which shall lie to the High Court.

3.The Bill seeks to achieve the above objects."

12. The preamble of the 1984 Act provides for the establishment of Family Courts with a view to promote conciliation in, and secure speedy settlement of disputes relating to marriage and family affairs and for matters connected therewith.

13. Presently, we may recapitulate how this Court has dealt with the Duty and responsibility of the Family Court or a Family Court Judge. In *Bhuwan Mohan Singh v. Meena and others*[22], the three-Judge Bench referred to the decision in *K.A. Abdul Jaleel v. T.A. Shahida*[23] and laid stress on securing speedy settlement of disputes relating to marriage and family affairs. Emphasizing on the role of the Family Court Judge, the Court in Bhuwan Mohan Singh (supra) expressed its anguish as the proceedings before the family court had continued for a considerable length of time in respect of application filed under Section 125 of the Code of Criminal Procedure (CrPC). The Court observed:-

"It has come to the notice of the Court that on certain occasions the Family Courts have been granting adjournments in a routine manner as a consequence of which both the parties suffer or, on certain occasions, the wife becomes the worst victim. When such a situation occurs, the purpose of the law gets totally atrophied. The Family

Judge is expected to be sensitive to the issues, for he is dealing with extremely delicate and sensitive issues pertaining to the marriage and issues ancillary thereto. When we say this, we do not mean that the Family Courts should show undue haste or impatience, but there is a distinction between impatience and to be wisely anxious and conscious about dealing with a situation. A Family Court Judge should remember that the procrastination is the greatest assassin of the lis before it. It not only gives rise to more family problems but also gradually builds unthinkable and Everestine bitterness. It leads to the cold refrigeration of the hidden feelings, if still left. The delineation of the lis by the Family Judge must reveal the awareness and balance. Dilatory tactics by any of the parties has to be sternly dealt with, for the Family Court Judge has to be alive to the fact that the lis before him pertains to emotional fragmentation and delay can feed it to grow."

And again:

"We hope and trust that the Family Court Judges shall remain alert to this and decide the matters as expeditiously as possible keeping in view the Objects and Reasons of the Act and the scheme of various provisions pertaining to grant of maintenance, divorce, custody of child, property disputes, etc."

14. The said passage makes it quite clear that a Family Court Judge has to be very sensitive to the cause before it and he/she should be conscious about timely delineation and not procrastinate the matter as delay has the potentiality to breed bitterness that eventually corrodes the emotions. The Court has been extremely cautious while stating about patience as a needed quality for arriving at a settlement and the need for speedy settlement and, if not possible, proceeding with meaningful adjudication. There must be efforts for reconciliation, but the time spent in the said process has to have its own limitation.

15. In *Shamima Farooqui v. Shahid Khan*[24], after referring to the earlier decisions, especially the above quoted passages, the Court expressed:-

"When the aforesaid anguish was expressed, the predicament was not expected to be removed with any kind of magic. However, the fact remains, these litigations can really corrode the human relationship not only today but will also have the impact for years to come and has the potentiality to take a toll on the society. It occurs either due to the uncontrolled design of the parties or the lethargy and apathy shown by the Judges who man the Family Courts. As far as the first aspect is concerned, it is the duty of the courts to curtail them. There need not be hurry but procrastination should not be manifest, reflecting the attitude of the court. As regards the second facet, it is the duty of the court to have the complete control over the proceeding and not permit the lis to swim the unpredictable grand river of time without knowing when shall it land on the shores or take shelter in a corner tree that stands "still" on some unknown bank of the river. It cannot allow it to sing the song of the brook. "Men may come and men may go, but I go on forever." This would be the greatest tragedy

that can happen to the adjudicating system which is required to deal with most sensitive matters between the man and wife or other family members relating to matrimonial and domestic affairs. There has to be a proactive approach in this regard and the said approach should be instilled in the Family Court Judges by the Judicial Academies functioning under the High Courts. For the present, we say no more."

[Underlining is ours]

16. The object of stating this is that the legislative intent, the schematic purpose and the role attributed to the Family Court have to be perceived with a sense of sanctity. The Family Court Judge should neither be a slave to the concept of speedy settlement nor should he be a serf to the proclivity of hurried disposal abandoning the inherent purity of justice dispensation system. The balanced perception is the warrant and that is how the scheme of the 1984 Act has to be understood and appreciated.

17. Let us now proceed to analyse the fundamental intent of the scheme of the 1984 Act. Section 4 of the 1984 Act deals with the appointment of the judges. Section 5 provides for association of social welfare agencies, etc. It engrafts that the State Government may, in consultation with the High Court, provide, by rules, for the association in such manner and for such purposes and subject to such conditions as may be specified in the rules, with a Family Court of institutions or organizations engaged in social welfare or the representatives thereof; persons professionally engaged in promoting the welfare of the family; persons working in the field of social welfare; and any other person whose association with a Family Court would enable it to exercise its jurisdiction more effectively in accordance with the purposes of the 1984 Act. The aforesaid provision, as is evident, conceives involvement of institutions or organizations engaged in social welfare or their representatives and professionals engaged in promoting the welfare of the family for the purpose of effective functioning of the Family Court to sub-serve the purposes of the Act. Thus, the 1984 Act, to achieve its purpose, conceives of involvement of certain categories so that, if required, the Family Court can take their assistance to exercise its jurisdiction in an effective manner.

18. Section 6 provides for counselors, officers and other employees of Family Courts. Section 7 deals with the jurisdiction of the Family Court. The jurisdiction conferred on the Family Court, as we perceive, is quite extensive. It confers power in a Family Court to exercise jurisdiction exercisable by any district court or any subordinate civil court under any law relating to a suit or a proceeding between the parties to a marriage or a decree of a nullity of marriage declaring the marriage to be null and void or annulling the marriage, as the case may be, or restitution of conjugal rights or judicial separation or dissolution of marriage. It has the authority to declare as to the validity of a marriage so as to annul the matrimonial status of any person and also the power to entertain a proceeding with respect to the property of the parties to a marriage or either of them. The Family Court has the jurisdiction to pass an order or injunction in circumstances arising out of a marital relationship, declare legitimacy of any person and deal with proceedings for grant of maintenance, guardianship of the person or the custody of or access to any minor. That apart, it has also been conferred the authority

to deal with the applications for grant of maintenance for wife and children and parents as provided under the CrPC.

19. Section 9 prescribes the duty of the Family Court to make efforts for settlement by rendering assistance and persuading the parties for arriving at a settlement in respect of the subject matter of the suit or proceeding. For the said purpose, it may follow the procedure laid down by the High Court. If in any suit or proceeding, at any stage, it appears to the Family Court that there is a reasonable opportunity of settlement between the parties, it may adjourn the proceedings for such period as it thinks fit to enable attempts to be made to effect such a settlement.

20. Section 11 provides for proceedings to be held in camera. The provision, being significant, is reproduced below:-

> "Section 11. Proceedings to be held in camera.−In every suit or proceedings to which this Act applies, the proceedings may be held in camera if the Family Court so desires and shall be so held if either party so desires."

On a plain reading of the aforesaid provision, it is limpid that if the Family Court desires, the proceedings should be held in camera and it shall be so held if either of the parties so desires. A reading of the said provision, as it seems to us, indicates that, once one party makes a prayer for holding the proceedings in camera, it is obligatory on the part of the Family Court to do so.

21. Section 12 stipulates for assistance of medical and welfare experts for assisting the Family Court in discharging the functions imposed by the Act.

22. At this juncture, it is profitable to refer to certain provisions of the 1955 Act. Section 22 of the said Act provides for proceedings to be in camera and stipulates that the proceeding may not be printed or published. Section 23(2) of the 1955 Act enjoins that before proceeding to grant any relief under this Act, it shall be the duty of the court in the first instance, in every case where it is possible to do so consistently with the nature and circumstances of the case, to make every endeavour to bring about a reconciliation between the parties. The said provision is not applicable to any proceeding wherein relief is sought on any of the grounds specified in clause (ii), clause (iii), clause (iv), clause (v), clause (vi) or clause (vii) of sub-section (1) of Section 13. Sub-section (3) of Section 23 permits the Court to take aid of a person named by the parties or of any person nominated by the Court to bring out a resolution. It enables the Court, if it so thinks, to adjourn the proceedings for a reasonable period not exceeding fifteen days and refer the matter to any person named by the parties in this behalf or to any person nominated by the court if the parties fail to name any person, with directions to report to the court as to whether reconciliation can be and has been effected and the court shall, in disposing of the proceeding, have due regard to the report.

23. It is worthy to note here that the reconciliatory measures are to be taken at the first instance and emphasis is on efforts for reconciliation failing which the court should proceed for adjudication and the command on the Family Court is to hold it in camera if either party so desires.

24. Section 26 of the 1955 Act deals with custody of children. It empowers the court, from time to time, to pass such interim orders and make such provisions in the decree as it may deem just and proper with respect to the custody, maintenance and education of minor children consistently with their wishes, wherever possible, and the Government may, after the decree, upon application by petition for the purpose, make from time to time, all such orders and provisions with respect to the custody, maintenance and education of such children as might have been made by such decree or interim orders in case the proceedings for obtaining such decree were still pending, and the court may also, from time to time, revoke, suspend or vary any such orders and provisions previously made. The proviso appended thereto postulates that the application with respect to the maintenance and education of the minor children, pending the proceeding for obtaining such decree, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the respondent.

25. It is to be borne in mind that in a matter relating to the custody of the child, the welfare of the child is paramount and seminal. It is inconceivable to ignore its importance and treat it as secondary. The interest of the child in all circumstances remains vital and the Court has a very affirmative role in that regard. Having regard to the nature of the interest of the child, the role of the Court is extremely sensitive and it is expected of the Court to be pro-active and sensibly objective.

26. In *Mausami Moitra Ganguli v. Jayant Ganguli*[25], it has been held that the principles of law in relation to the custody of a minor child are well settled. While determining the question as to which parent the care and control of a child should be committed, the first and the paramount consideration is the welfare and interest of the child and not the rights of the parents under a statute. The provisions contained in the Guardians and Wards Act, 1890 and the Hindu Minority and Guardianship Act, 1956 hold out the welfare of the child as a predominant consideration because no statute on the subject can ignore, eschew or obliterate the vital factor of the welfare of the minor.

27. In the said case, a passage from Halsbury's Laws of England (4th Edn., Vol. 13) was reproduced which reads thus:-

> "809. Principles as to custody and upbringing of minors.− Where in any proceedings before any court, the custody or upbringing of a minor is in question, the court, in deciding that question, must regard the welfare of the minor as the first and paramount consideration, and must not take into consideration whether from any other point of view the claim of the father in respect of such custody or upbringing is superior to that of the mother, or the claim of the mother is superior to that of the

father. In relation to the custody or upbringing of a minor, a mother has the same rights and authority as the law allows to a father, and the rights and authority of mother and father are equal and are exercisable by either without the other."

28. In *Rosy Jacob v. Jacob A.Chakra makkal*[26], the Court ruled that the children are not mere chattels, nor are they mere playthings for their parents. Absolute right of parents over the destinies and the lives of their children has, in the modern changed social conditions, yielded to the considerations of their welfare as human beings so that they may grow up in a normal balanced manner to be useful members of the society and the guardian court in case of a dispute between the mother and the father is expected to strike a just and proper balance between the requirements of welfare of the minor children and the rights of their respective parents over them.

29. In *Vikram Vir Vohra v. Shalini Bhalla*[27], the Court took note of the fact that the learned Judge of the High Court had personally interviewed the child who was seven years old to ascertain his wishes. The two Judges of this Court also interacted with the child in the chambers in the absence of his parents to find out about his wish and took note of the fact that the child was aged about 10 years and was at an informative and impressionable stage and eventually opined that the order passed by the High Court affirming the order of the trial Court pertaining to visitation rights of the father had been so structured that it was compatible with the educational career of the child and the rights of the father and the mother had been well balanced. It is common knowledge that in most of the cases relating to guardianship and custody, the Courts interact with the child to know her/his desire keeping in view the concept that the welfare of the child is paramount.

30. It is essential to reflect on the reasoning ascribed in Krishna Veni Nagam (supra). As we understand, the two-Judge Bench has taken into consideration the number of cases filed before this Court and the different approaches adopted by this Court, the facet of territorial jurisdiction, doctrine of forum non-conveniens which can be applicable to matrimonial proceedings for advancing the interest of justice, the problems faced by the husband, the recourse taken by this Court to videoconferencing in certain cases and on certain occasions, the advancement of technology, the role of the High Courts to issue appropriate administrative instructions to regulate the use of videoconferencing for certain categories of cases and ruled that the matrimonial cases where one of the parties resides outside the court's jurisdiction do fall in one of such categories.

31. Before we proceed to analyse further, we would like to cogitate on the principles applied in the decisions rendered in the context of videoconferencing. In *State of Maharashtra v. Dr. Praful B. Desa*i[28], the proceedings related to recording of evidence where the witness was in a foreign country. In *Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav & Anr.*[29], the controversy pertained to a criminal trial under Section 302 IPC wherein the Court, in exercise of power under Article 142 of the Constitution, directed shifting of the accused from a jail in Patna to Tihar Jail at Delhi. In that context, the Court permitted conducting of the trial with the aid of videoconferencing. In *Budhadev Karmaskar (4) v. State of West Bengal*[30]

, the issue of videoconferencing had arisen as the lis related to rehabilitation of sex workers keeping in view the interpretation of this Court of 'life' to mean life of dignity.

32. In *Malthesh Gudda Pooja v. State of Karnataka & Ors*[31]. , the question that fell for consideration was whether a Division Bench of the High Court, while considering a memo for listing an appeal restored for fresh hearing, on grant of application for review by a co-ordinate Bench, could refuse to act upon the order of review on the ground that the said order made by a Bench different from the Bench which passed the original order granting review is a nullity. We need not dilate upon what ultimately the Court said. What is necessary to observe is what arrangement should be made in case of a High Court where there are Principal Seat and Circuit Benches and Judges move from one Bench to another for some time and decide the matters and review is filed. In that context, the Court opined:-

> when two Judges heard the matter at a Circuit Bench, the chances of both Judges sitting again at that place at the same time, may not arise. But the question is in considering the applications for review, whether the wholesome principle behind Order 47 Rule 5 of the Code and Chapter 3 Rule 5 of the High Court Rules providing that the same Judges should hear it, should be dispensed with merely because of the fact that the Judges in question, though continue to be attached to the Court are sitting at the main Bench, or temporarily at another Bench. In the interests of justice, in the interests of consistency in judicial pronouncements and maintaining the good judicial traditions, an effort should always be made for the review application to be heard by the same Judges, if they are in the same Court. Any attempt to too readily provide for review applications to be heard by any available Judge or Judges should be discouraged."
>
> And further:-
>
> "With the technological innovations available now, we do not see why the review petitions should not be heard by using the medium of video conferencing."

33. The aforesaid pronouncements, as we find, are absolutely different from a controversy which is involved in matrimonial proceedings which relate to various aspects, namely, declaration of marriage as a nullity, dissolution of marriage, restitution of marriage, custody of children, guardianship, maintenance, adjudication of claim of stridhan, etc. The decisions that have been rendered cannot be regarded as precedents for the proposition that videoconferencing can be one of the modes to regulate matrimonial proceedings.

34. The two-Judge Bench has also noted the constitutional scheme that provides for guaranteeing equal access to justice and the power of the State to make special provisions for women and children as enshrined under Article 15(3) of the Constitution and the duty to uphold the dignity of women and the various steps taken in the said direction. The Court has also referred to Articles 243-D and 243-T of the Constitution under which provisions have been made for reservation for women in Panchayats and Municipalities by the 1973 and 1974

amendments. It has also taken note of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) that underlines the awareness of the international commitments on the subject. There is also reference to various authorities of the Court that have referred to the international conventions and affirmative facet enshrined under Article 15(3) of the Constitution. We must immediately clarify that these provisions of the Articles of the Constitution and the decisions find place in the footnote of the judgment to highlight the factum that various steps have been taken to uphold the dignity of women.

35. The two-Judge Bench has referred to certain judgments to highlight the affirmative rights conferred on women under the Constitution. We shall refer to them and explain how they are rendered in a different context and how conducting of matrimonial disputes through videoconferencing would scuttle the rights of women and not expand the rights. In *Mackinnon Mackenzie & Co. Ltd v. Audrey D' costa and another*[32], the Court dealt with the principle of applicability of equal pay for equal work to lady stenographers in the same manner as male stenographers. A contention was advanced by the employer that this discrimination between the two categories had been brought out not merely on the ground of sex but the Court found it difficult to agree with the contention and referred to various aspects and, eventually, did not interfere with the judgment of the High Court that had granted equal remuneration to both male and female stenographers. In *Vishaka and others v. State of Rajasthan and others*[33], the three-Judge Bench, taking note of Articles 14, 15, 19(1)(g), 21 and 51-A and further highlighting the concept of gender equality and the recommendations of CEDAW and the absence of domestic law, laid down guidelines and norms for observation at work places and other institutions for the purpose of effective enforcement of the basic human right of gender equality and sexual harassment and abuse, more particularly, sexual harassment at work places.

36. In *Arun Kumar Agrawal and another v. National Insurance Company Limited and others*[34], the lis arose pertaining to the criteria for determination of compensation payable to the dependants of a woman who died in a road accident and who did not have regular source of income. Singhvi, J. opined that it is highly unfair, unjust and inappropriate to compute the compensation payable to the dependants of a deceased wife/mother who does not have a regular income by comparing her services with that of a housekeeper or a servant or an employee who works for a fixed period. The gratuitous services rendered by the wife/mother to the husband and children cannot be equated with the services of an employee and no evidence or data can possibly be produced for estimating the value of such services. Ganguly, J., in his concurring opinion, said that women make a significant contribution at various levels. He referred to numerous authorities and ruled:-

> "63. Household work performed by women throughout India is more than US $612.8 billion per year (Evangelical Social Action Forum and Health Bridge, p. 17). We often forget that the time spent by women in doing household work as homemakers is the time which they can devote to paid work or to their education. This lack of sensitiveness and recognition of their work mainly contributes to women's high rate of poverty and their consequential oppression in society, as well

as various physical, social and psychological problems. The courts and tribunals should do well to factor these considerations in assessing compensation for housewives who are victims of road accidents and quantifying the amount in the name of fixing "just compensation".

64. In this context the Australian Family Property Law has adopted a very gender sensitive approach. It provides that while distributing properties in matrimonial matters, for instance, one has to factor in "the contribution made by a party to the marriage to the welfare of the family constituted by the parties to the marriage and any children of the marriage, including any contribution made in the capacity of a homemaker or parent."

37. In *Voluntary Health Association of Punjab v. Union of India and others*[35], the two-Judge Bench which was dealing with the sharp decline in female sex ratio and mushrooming of various sonography centers, issued certain directions keeping in view the provisions of the Medical Termination of Pregnancy Act, 1971 and the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996. The concurring opinion adverted to the direction contained in point 9.8 of the main judgment which related to the steps taken by the State Government and the Union Territory to educate the people of the necessity of implementing the provisions of the said Act by conducting workshops as well as awareness camps at the State and district levels. In the concurring opinion, reference was made to the authority in *State of H.P. v. Nikku Ram*[36] and *M.C. Mehta v. State of T.N*[37] and it was stated:-

"A woman has to be regarded as an equal partner in the life of a man. It has to be borne in mind that she has also the equal role in the society i.e. thinking, participating and leadership. The legislature has brought the present piece of legislation with an intention to provide for prohibition of sex selection before or after conception and for regulation of pre-natal diagnostic techniques for the purposes of detecting genetic abnormalities or metabolic disorders or chromosomal abnormalities or certain congenital malformations or sex-linked disorders and for the prevention of their misuse for sex determination leading to female foeticide. The purpose of the enactment can only be actualised and its object fruitfully realised when the authorities under the Act carry out their functions with devotion, dedication and commitment and further there is awakened awareness with regard to the role of women in a society."

38. In *Charu Khurana and others v. Union of India and others*[38], the controversy arose about the prevalence of discrimination of gender equality in the film industry where women were not allowed to become make-up artists and only allowed to work as hair-dressers. Referring to various earlier judgments and Article 51-A(e), the Court observed:-

"On a condign understanding of clause (e), it is clear as a cloudless sky that all practices derogatory to the dignity of women are to be renounced. Be it stated, dignity

is the quintessential quality of a personality and a human frame always desires to live in the mansion of dignity, for it is a highly cherished value."

And again:

"...The sustenance of gender justice is the cultivated achievement of intrinsic human rights. Equality cannot be achieved unless there are equal opportunities and if a woman is debarred at the threshold to enter into the sphere of profession for which she is eligible and qualified, it is well-nigh impossible to conceive of equality. It also clips her capacity to earn her livelihood which affects her individual dignity."

39. Eventually, directions were issued that women were eligible to become make-up artists. The aforesaid decisions unequivocally lay stress and emphasis on gender equality and dignity of women.

40. In *Voluntary Health Association of Punjab v. Union of India and Ors*[39], while dealing with female foeticide, it has been observed:-

"It needs no special emphasis that a female child is entitled to enjoy equal right that a male child is allowed to have. The constitutional identity of a female child cannot be mortgaged to any kind of social or other concept that has developed or is thought of. It does not allow any room for any kind of compromise. It only permits affirmative steps that are constitutionally postulated. Be it clearly stated that when rights are conferred by the Constitution, it has to be understood that such rights are recognised regard being had to their naturalness and universalism. No one, let it be repeated, no one, endows any right to a female child or, for that matter, to a woman. The question of any kind of condescension or patronisation does not arise."

41. Emphasizing on the equality and dignity of women, it has been stated:-

"... let it be stated with certitude and without allowing any room for any kind of equivocation or ambiguity, the perception of any individual or group or organisation or system treating a woman with inequity, indignity, inequality or any kind of discrimination is constitutionally impermissible. The historical perception has to be given a prompt burial. Female foeticide is conceived by the society that definitely includes the parents because of unethical perception of life and nonchalant attitude towards law. The society that treats man and woman with equal dignity shows the reflections of a progressive and civilised society. To think that a woman should think what a man or a society wants her to think tantamounts to slaughtering her choice, and definitely a humiliating act. When freedom of free choice is allowed within constitutional and statutory parameters, others cannot determine the norms as that would amount to acting in derogation of law."

42. In *Vikas Yadav v. State of Uttar Pradesh and others*[40],

condemning honour killing, the Court after referring to *Lata Singh v. State of U.P. and Maya Kaur Baldevsingh Sardar v. State of Maharashtra*[42], has opined:-

> "One may feel "My honour is my life" but that does not mean sustaining one's honour at the cost of another. Freedom, independence, constitutional identity, individual choice and thought of a woman, be a wife or sister or daughter or mother, cannot be allowed to be curtailed definitely not by application of physical force or threat or mental cruelty in the name of his self-assumed honour. That apart, neither the family members nor the members of the collective has any right to assault the boy chosen by the girl. Her individual choice is her self-respect and creating dent in it is destroying her honour. And to impose so-called brotherly or fatherly honour or class honour by eliminating her choice is a crime of extreme brutality, more so, when it is done under a guise. It is a vice, condemnable and deplorable perception of "honour", comparable to medieval obsessive assertions."

43. The aforesaid enunciation of law makes it graphically clear that the "constitutional identity", "freedom of choice", "dignity of a woman" and "affirmative rights conferred on her by the Constitution" cannot be allowed to be abrogated even for a moment. In this context, we have to scan and appreciate the provision contained in Section 11 of the 1984 Act. The provision, as has been stated earlier, mandates the proceedings to be held in camera if one of the parties so desires. Equality of choice has been conferred by the statute. That apart, Section 22 of the 1955 Act lays down the proceedings to be held in camera and any matter in relation to any such proceeding may not be printed or published except a judgment of the High Court or of the Supreme Court with the previous permission of the Court.

44. We, as advised at present, constrict our analysis to the provisions of the 1984 Act. First, as we notice, the expression of desire by the wife or the husband is whittled down and smothered if the Court directs that the proceedings shall be conducted through the use of videoconferencing. As is demonstrable from the analysis of paragraph 14 of the decision, the Court observed that wherever one or both the parties make a request for the use of videoconferencing, the proceedings may be conducted by way of videoconferencing obviating the need of the parties to appear in person. The cases where videoconferencing has been directed by this Court are distinguishable. They are either in criminal cases or where the Court found it necessary that the witness should be examined through videoconferencing. In a case where the wife does not give consent for videoconferencing, it would be contrary to Section 11 of the 1984 Act. To say that if one party makes the request, the proceedings may be conducted by videoconferencing mode or system would be contrary to the language employed under Section 11 of the 1984 Act. The said provision, as is evincible to us, is in consonance with the constitutional provision which confer affirmative rights on women that cannot be negatived by the Court. The Family Court also has the jurisdiction to direct that the proceedings shall be held in camera if it so desires and, needless to say, the desire has to be expressed keeping in view the provisions of the 1984 Act.

45. The language employed in Section 11 of the 1984 Act is absolutely clear. It provides that if one of the parties desires that the proceedings should be held in camera, the Family Court has no option but to so direct. This Court, in exercise of its jurisdiction, cannot take away such a sanctified right that law recognizes either for the wife or the husband. That apart, the Family Court has the duty to make efforts for settlement. Section 23(2) of the 1955 Act mandates for reconciliation. The language used under Section 23(2) makes it an obligatory duty on the part of the court at the first instance in every case where it is possible, to make every endeavour to bring about reconciliation between the parties where it is possible to do so consistent with the nature and circumstances of the case. There are certain exceptions as has been enumerated in the proviso which pertain to incurably of unsound mind or suffering from a virulent and incurable form of leprosy or suffering from venereal disease in a communicable form or has renounced the world by entering any religious order or has not been heard of as being alive for a period of seven years, etc. These are the exceptions carved out by the legislature. The Court has to play a diligent and effective role in this regard.

46. The reconciliation requires presence of both the parties at the same place and the same time so as to be effectively conducted. The spatial distance will distant the possibility of reconciliation because the Family Court Judge would not be in a position to interact with the parties in the manner as the law commands. By virtue of the nature of the controversy, it has its inherent sensitivity. The Judge is expected to deal with care, caution and with immense sense of worldly experience absolutely being conscious of social sensibility. Needless to emphasise, this commands a sense of trust and maintaining an atmosphere of confidence and also requirement of assurance that the confidentiality is in no way averted or done away with. There can be no denial of this fact. It is sanguinely private. Recently, in *Justice K.S. Puttaswamy (Retd) v. Union of India & others*[43], this Court, speaking through one of us (Chandrachud, J.), has ruled thus:-

> "The intersection between one's mental integrity and privacy entitles the individual freedom of thought, the freedom to believe in what is right, and the freedom of self-determination. When these guarantees intersect with gender, they create a private space which protects all those elements which are crucial to gender identity. The family, marriage, procreation and sexual orientation are all integral to the dignity of the individual."
>
> And again:
>
> "Privacy represents the core of the human personality and recognizes the ability of each individual to make choices and to take decisions governing matters intimate and personal."

47. Frankfurter Felix in *Schulte Co. v. Gangi* [44], has stated that the policy of a statute should be drawn out of its terms as nourished by their proper environment and not like nitrogen out of the air. Benjamin N. Cardozo, in *Hopkins Savings Assn. v. Cleary* [45], has opined that when

a statute is reasonably susceptible of two interpretations, the Court has to prefer the meaning that preserves to the meaning that destroys.

48. The command under Section 11 of the 1984 Act confers a right on both the parties. It is statutory in nature. The Family Court Judge who is expected to be absolutely sensitive has to take stock of the situation and can suo motu hold the proceedings in camera. The Family Court Judge is only meant to deal with the controversies and disputes as provided under the 1984 Act. He is not to be given any other assignment by the High Court. The in camera proceedings stand in contradistinction to a proceeding which is tried in court. When a case is tried or heard in court, there is absolute transparency. Having regard to the nature of the controversy and the sensitivity of the matter, it is desirable to hear in court various types of issues that crop up in these types of litigations. The Act commands that there has to be an effort for settlement. The legislative intendment is for speedy settlement. The counsellors can be assigned the responsibility by the court to counsel the parties. That is the schematic purpose of the law. The confidentiality of the proceedings is imperative for these proceedings.

49. The procedure of videoconferencing which is to be adopted when one party gives consent is contrary to Section 11 of the 1984 Act. There is no provision that the matter can be dealt with by the Family Court Judge by taking recourse to videoconferencing. When a matter is not transferred and settlement proceedings take place which is in the nature of reconciliation, it will be well nigh impossible to bridge the gap. What one party can communicate with other, if they are left alone for sometime, is not possible in videoconferencing and if possible, it is very doubtful whether the emotional bond can be established in a virtual meeting during videoconferencing. Videoconferencing may create a dent in the process of settlement.

50. The two-Judge Bench had referred to the decisions where the affirmative rights meant for women have been highlighted in various judgments. We have adverted to some of them to show the dignity of woman and her rights and the sanctity of her choice. When most of the time, a case is filed for transfer relating to matrimonial disputes governed by the 1984 Act, the statutory right of a woman cannot be nullified by taking route to technological advancement and destroying her right under a law, more so, when it relates to family matters. In our considered opinion, dignity of women is sustained and put on a higher pedestal if her choice is respected. That will be in consonance with Article 15(3) of the Constitution.

51. In this context, we may refer to the fundamental principle of necessity of doing justice and trial in camera. The nine-Judge Bench in *Naresh Shridhar Mirajkar and Ors v. State of Maharashtra and Anr.*[46], after enunciating the universally accepted proposition in favour of open trials, expressed:-

> "While emphasising the importance of public trial, we cannot overlook the fact that the primary function of the Judiciary is to do justice between the parties who bring their causes before it. If a Judge trying a cause is satisfied that the very purpose of

finding truth in the case would be retarded, or even defeated if witnesses are required to give evidence subject to public gaze, is it or is it not open to him in exercise of his inherent power to hold the trial in camera either partly or fully? If the primary function of the court is to do justice in causes brought before it, then on principle, it is difficult to accede to the proposition that there can be no exception to the rule that all causes must be tried in open court. If the principle that all trials before courts must be held in public was treated as inflexible and universal and it is held that it admits of no exceptions whatever, cases may arise where by following the principle, justice itself may be defeated. That is why we feel no hesitation in holding that the High Court has inherent jurisdiction to hold a trial in camera if the ends of justice clearly and necessarily require the adoption of such a course. It is hardly necessary to emphasise that this inherent power must be exercised with great caution and it is only if the court is satisfied beyond a doubt that the ends of justice themselves would be defeated if a case is tried in open court that it can pass an order to hold the trial in camera; but to deny the existence of such inherent power to the court would be to ignore the primary object of adjudication itself. The principle underlying the insistence on hearing causes in open court is to protect and assist fair, impartial and objective administration of justice; but if the requirement of justice itself sometimes dictates the necessity of trying the case in camera, it cannot be said that the said requirement should be sacrificed because of the principle that every trial must be held in open court."

52. The principle of exception that the larger Bench enunciated is founded on the centripodal necessity of doing justice to the cause and not to defeat it. In matrimonial disputes that are covered under Section 7 of the 1984 Act where the Family Court exercises its jurisdiction, there is a statutory protection to both the parties and conferment of power on the court with a duty to persuade the parties to reconcile. If the proceedings are directed to be conducted through videoconferencing, the command of the Section as well as the spirit of the 1984 Act will be in peril and further the cause of justice would be defeated.

53. A cogent reflection is also needed as regards the perception when both the parties concur to have the proceedings to be held through videoconferencing. In this context, the thought and the perception are to be viewed through the lens of the textual context, legislative intent and schematic canvas. The principle may had to be tested on the bedrock that courts must have progressive outlook and broader interpretation with the existing employed language in the statute so as to expand the horizon and the connotative expanse and not adopt a pedantic approach.

54. We have already discussed at length with regard to the complexity and the sensitive nature of the controversies. The statement of law made in Krishna Veni Nagam (supra) that if either of the parties gives consent, the case can be transferred, is absolutely unacceptable. However, an exception can be carved out to the same. We may repeat at the cost of repetition that though the principle does not flow from statutory silence, yet as we find from the scheme of the Act, the Family Court has been given ample power to modulate its procedure.

The Evidence Act is not strictly applicable. Affidavits of formal witnesses are acceptable. It will be permissible for the other party to cross-examine the deponent. We are absolutely conscious that the enactment gives emphasis on speedy settlement. As has been held in Bhuwan Mohan Singh (supra), the concept of speedy settlement does not allow room for lingering the proceedings. A genuine endeavour has to be made by the Family Court Judge, but in the name of efforts to bring in a settlement or to arrive at a solution of the lis, the Family Court should not be chained by the tentacles by either parties. Perhaps, one of the parties may be interested in procrastinating the litigation. Therefore, we are disposed to think that once a settlement fails and if both the parties give consent that a witness can be examined in video conferencing, that can be allowed. That apart, when they give consent that it is necessary in a specific factual matrix having regard to the convenience of the parties, the Family Court may allow the prayer for videoconferencing. That much of discretion, we are inclined to think can be conferred on the Family Court. Such a limited discretion will not run counter to the legislative intention that permeates the 1984 Act. However, we would like to add a safeguard. A joint application should be filed before the Family Court Judge, who shall take a decision. However, we make it clear that in a transfer petition, no direction can be issued for video conferencing. We reiterate that the discretion has to rest with the Family Court to be exercised after the court arrives at a definite conclusion that the settlement is not possible and both parties file a joint application or each party filing his/her consent memorandum seeking hearing by videoconferencing.

55. Be it noted, sometimes, transfer petitions are filed seeking transfer of cases instituted under the Protection of Women from Domestic Violence Act, 2005 and cases registered under the IPC. As the cases under the said Act and the IPC have not been adverted to in Krishna Veni Nagam (supra) or in the order of reference in these cases, we do intend to advert to the same.

56. In view of the aforesaid analysis, we sum up our conclusion as follows :-

> "(i) In view of the scheme of the 1984 Act and in particular Section 11, the hearing of matrimonial disputes may have to be conducted in camera.
>
> (ii) After the settlement fails and when a joint application is filed or both the parties file their respective consent memorandum for hearing of the case through videoconferencing before the concerned Family Court, it may exercise the discretion to allow the said prayer.
>
> (iii) After the settlement fails, if the Family Court feels it appropriate having regard to the facts and circumstances of the case that videoconferencing will sub-serve the cause of justice, it may so direct.
>
> (iv) In a transfer petition, video conferencing cannot be directed.
>
> (v) Our directions shall apply prospectively.

(vi) The decision in Krishna Veni Nagam (supra) is overruled to the aforesaid extent

57. We place on record our appreciation for the assistance rendered by Mr. Ajit Kumar Sinha, learned senior counsel.

58. The matters be placed before the appropriate Bench for consideration of the transfer petitions on their own merits.

JUDGMENT

Dr D.Y.Chandrachud,J.,

59. The judgment proposed by the learned Chief Justice has been circulated and deliberated upon. The reasons why I am unable to adopt the view propounded in the judgment of the learned Chief Justice will be delivered separately. I record below my conclusions:

> "1. The Family Courts Act, 1984 has been enacted at a point in time when modern technology (at least as we know it today) which enables persons separated by spatial distances to communicate with each other face to face was not the order of the day or, in any case, was not as fully developed. That is no reason for any court - especially for this court which sets precedent for the nation - to exclude the application of technology to facilitate the judicial process.
>
> 2. Appropriate deployment of technology facilitates access to justice. Litigation under the Family Courts Act 1984 is not an exception to this principle. This court must be averse to judicially laying down a restraint on such use of technology which facilitates access to justice to persons in conflict, including those involved in conflicts within the family. Modern technology is above all a facilitator, enabler and leveler.
>
> 3. Video conferencing is a technology which allows users in different locations to hold face to face meetings. Video conferencing is being used extensively the world over (India being no exception) in on line teaching, administration, meetings, negotiation, mediation and telemedicine among a myriad other uses. Video conferencing reduces cost, time, carbon footprint and the like.
>
> 4. An in-camera trial is contemplated under Section 11 in two situations: the first where the Family Court so desires; and the second if either of the parties so desires. There is a fallacy in the hypothesis that an in-camera trial is inconsistent with the usage of video conferencing techniques. A trial in-camera postulates the exclusion of the public from the courtroom and allows for restraints on public reporting. Video conferencing does not have to be recorded nor is it accessible to the press or the public. The proper adoption of video conferencing does not negate the postulates of

an in-camera trial even if such a trial is required by the court or by one of the parties under Section 11.

5. The Family Courts Act 1984 envisages an active role for the Family Court to foster settlements. Under the provisions of Section 11, the Family Court has to endeavour to "assist and persuade" parties to arrive at a settlement. Section 9 clearly recognises a discretion in the Family Court to determine how to structure the process. It does so by adopting the words "where it is possible to do so consistent with the nature and circumstances of the case". Moreover, the High Courts can frame rules under Section 9(1) and the Family Court may, subject to those rules, "follow such procedure as it deems fit". In the process of settlement, Section 10(3) enables the Family Court to lay down its own procedure. The Family Court is entitled to take the benefit of counsellors, medical experts and persons professionally engaged in promoting the welfare of the family.

6. The above provisions - far from excluding the use of video conferencing - are sufficiently enabling to allow the Family Court to utilise technological advances to facilitate the purpose of achieving justice in resolving family conflicts. There may arise a variety of situations where in today's age and time parties are unable to come face to face for counselling or can do so only at such expense, delay or hardship which will defeat justice. One or both spouses may face genuine difficulties arising from the compulsions of employment, family circumstances (including the needs of young children), disability and social or economic handicaps in accessing a court situated in a location distant from where either or both parties reside or work. It would be inappropriate to deprive the Family Court which is vested with such wide powers and procedural flexibility to adopt video conferencing as a facilitative tool, where it is convenient and readily available. Whether video conferencing should be allowed must be determined on a case to case analysis to best effectuate the concern of providing just solutions. Far from such a procedure being excluded by the law, it will sub serve the purpose of the law.

7. Conceivably there may be situations where parties (or one of the spouses) do not want to be in the same room as the other. This is especially true when there are serious allegations of marital abuse. Video conferencing allows things to be resolved from the safety of a place which is not accessible to the other spouse against whom there is a serious allegation of misbehaviour of a psychiatric nature or in a case of substance abuse.

8. Video conferencing is gender neutral. In fact it ensures that one of the spouses cannot procrastinate and delay the conclusion of the trial. Delay, it must be remembered, generally defeats the cause of a party which is not the dominant partner in a relationship. Asymmetries of power have a profound consequence in marital ties. Imposing an unwavering requirement of personal and physical presence (and exclusion of facilitative technological tools such as video conferencing) will result in a denial of justice.

9. The High Courts have allowed for video conferencing in resolving family conflicts. A body of precedent has grown around the subject in the Indian context. The judges of the High Court should have a keen sense of awareness of prevailing social reality in their states and of the federal structure. Video conferencing has been adopted internationally in resolving conflicts within the family. There is a robust body of authoritative opinion on the subject which supports video conferencing, of course with adequate safeguards. Whether video conferencing should be allowed in a particular family dispute before the Family Court, the stage at which it should be allowed and the safeguards which should be followed should best be left to the High Courts while framing rules on the subject. Subject to such rules, the use of video conferencing must be left to the careful exercise of discretion of the Family Court in each case.

10. The proposition that video conferencing can be permitted only after the conclusion of settlement proceedings (resultantly excluding it in the settlement process), and thereafter only when both parties agree to it does not accord either with the purpose or the provisions of the Family Courts Act 1984. Exclusion of video conferencing in the settlement process is not mandated either expressly or by necessary implication by the legislation. On the contrary the legislation has enabling provisions which are sufficiently broad to allow video conferencing. Confining it to the stage after the settlement process and in a situation where both parties have agreed will seriously impede access to justice. It will render the Family Court helpless to deal with human situations which merit flexible solutions. Worse still, it will enable one spouse to cause interminable delays thereby defeating the purpose for which a specialised court has been set up.

60. The reference should in my opinion be answered in the above terms.

Judgment Referred.

[1]*(2017) 4 SCC 0150*
[2] *(2006) 9 SCC 0197*
[3] *(2000) 9 SCC 0255*
[4] *(2000) 9 SCC 0355*
[5] *(2000) 9 SCC 0441*
[6] *(2000) 10 SCC 0350*
[7] *(2002) 10 SCC 0480*
[8] *(2004) 13 SCC 0436*
[9]*(2004) 13 SCC 0462*
[10] *(2007) 15 SCC 0597*
[11] *(2008) 11 SCC 0768*
[12] *(2007) 15 SCC 0556*
[13] *(2005) 12 SCC 0277*
[14] *(2000) 10 SCC 0277*
[15] *State of Maharashtra v. Praful B. Desai, (2003) 4 SCC 601 : 2003 SCC (Cri) 815; Kalyan Chandra Sarkar v. Rajesh Ranjan, (2005) 3 SCC 284 : 2005 SCC (Cri) 705; Budhadev Karmaskar (4) v. State of W.B., (2011) 10 SCC 283 : (2012) 1 SCC (Cri) 285; Malthesh Gudda Pooja v. State of Karnataka, (2011) 15 SCC 330 : (2014) 2 SCC (Civ) 473*
[22]*(2003) 4 SCC 0166*
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[25]*(2008) 7 SCC 0673*
[26]*(2008) 7 SCC 0673*
[28]*(1973) 1 SCC 0840*