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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision:- 09.09.2021

+ W.P.(C) 6653/2021



..... Petitioners

Through: Ms. Vibha Datta Makhija, Sr. Adv.
with Mr. Praveen Gaur, Adv.

Versus

GOVT. OF NCT OF DELHI

..... Respondent

Through Ms. Shobhana Takiar, ASC, GNCTD.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present petition under Article 226 of the Constitution of India has been filed by an Indian couple residing in the United States of America (USA), seeks a direction to the concerned Sub-Divisional Magistrate (SDM), New Delhi to register their marriage in accordance with the provisions of the Delhi (Compulsory Registration of Marriage) Order, 2014 (*hereinafter* referred to as the 'Registration Order') without insisting on their physical appearance before him.

2. That the marriage between the petitioners was solemnized at Delhi on 06.12.2001 as per Hindu rites and ceremonies. They are now blessed with a son and a daughter born on 23.10.2002 and on 22.11.2011, respectively.

3. It may be noticed at the outset that the aforesaid Registration Order of 2014 was promulgated post the directions issued by the Supreme Court in *Seema (Smt) Vs. Ashwani Kumar (2006) 2 SCC 578*. Pursuant thereto, the

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registration of marriages solemnized in Delhi was made compulsory under this Registration Order.

4. That the procedure for registration has been provided for in clause 4 of the Registration Order and the same reads as under:

“4. Procedure

(a) Within a period of 60 days, excluding the day on which the final ceremony of marriage is solemnized, the parties to the marriage shall apply jointly in the prescribed Form-A for registration of their marriage addressed to the marriage officer having jurisdiction to register the same.

(b) Such prescribed application shall be accompanied by documentary proof of age of both of the parties to the marriage, solemnization of marriage, identification of the parties, place of residence of the parties to the marriage, citizenship of the parties if any along with the requisite fee of rupees Two Hundred.

(c) On receiving such application alongwith requisite documents as prescribed above and satisfaction of the marriage officer as regard authenticity of such proof the same shall be entered in the register of marriage prescribed for this purpose as per Form-B.

(d) After having received such application complete in all aspect and having entered the same in the prescribed register, the marriage officer shall fix a date for the parties to appear in person alongwith two witnesses who shall certify to the solemnization of such marriage and bearing proof of permanent resident of Delhi.

(e) The marriage officer thereafter on personal appearance of the parties with witnesses on such appointed date or any other extended date and on satisfaction of solemnization of such marriage in Delhi shall issue the requisite certificate of registration of such marriage as per Form-C.”

5. The Registration Order also envisaged creation of an on-line portal so as to enable the parties to submit online applications for registration, the provision whereof has been prescribed in clause 9 which reads as under:-

“9. E-registration:

The Govt. of NCT of Delhi shall endeavor to create a dedicated portal for the purpose of online submission of application and prior appointment to facilitate compulsory registration of marriage. The application form alternatively shall be available on such portal which may be downloaded by the parties and be submitted alongwith requisite documents manually at the respective counters of the marriage registration offices. On such submission either manually or online, a computer generated priority number alongwith appointed dated for registration of marriage shall be made available to the applicants to be produced at the time of personal appearance before the marriage officer to register the marriage.”

6. It is petitioner’s case that since they, alongwith their minor son, had already relocated to Singapore before 2014, they could not apply for registration of their marriage when the order came into effect. They, having since relocated to USA, where they are residing on the strength of a L1 visa issued in favour of petitioner no.2 husband and a L2 visa (dependent visa) in favour of petitioner no.1 wife. The petitioners, now require a marriage registration certificate for grant of a green card in USA. The petitioners state that they have applied for a Green card in the USA, and though their applications for the same stand approved, the same are not being processed for want of a marriage registration certificate from the concerned SDM in Delhi, where their marriage was solemnized.

7. The petitioners submit that they were scheduled to travel to Delhi on 27.05.2021, but on account of the huge spike in COVID-19 cases in the

country, the Director General of Civil Aviation vide his order dated 30.04.2021 suspended all international flights to India. Soon thereafter, the US government also banned travel between India and the USA.

8. In light of these changed circumstances, the petitioners in early June, 2021, tried to make an online application on the web portal of the Delhi Government at the link: <https://edistrict.delhigovt.nic.in/in/en/home/index.html> but were unable to do so, as they do not possess an Adhaar card or a Voter ID card, which are mandatory to apply through the portal. Consequently, the petitioners, through their counsel, tried to submit a physical application to the SDM, through their counsel, which was also not accepted and they were informed that their physical presence was essential. The petitioners followed that up by submitting a representation to the respondent on 30.06.2021, which has remained unanswered, thus compelling them to approach this Court by way of the present petition.

9. In support of the petition, learned senior counsel for the petitioner, at the outset, submits that the respondent is misinterpreting clause 4 (d) & (e) of the Registration Order by insisting that the personal appearance of the parties, as envisaged therein, mandates them to appear physically before the Registering Authority. By relying on the decision of the Supreme Court in *State of Maharashtra v. Praful B. Desai (Dr)*, (2003) 4 SCC 601, she contends that in doing so, the respondent has failed to appreciate that with the significant advancements made in the field of technology when even evidence of witnesses in a criminal trial can be recorded through Video Conferencing, there is no reason as to why the parties cannot be allowed to appear before the Registering Authority through Video Conferencing. The insistence by the respondent on physical presence of the parties overlooks the

fact that the personal presence of the parties, as envisaged in Clause 4, can be and ought to be secured through Video Conferencing specially in these trying times when the world is reeling under the effect of Covid-19 and most countries in the world have restricted international travel, making it very difficult for persons residing outside Delhi to travel to Delhi, in order to fulfill the requirement of physically appearing before the Registering Authority.

10. Ms. Makhija further submits that, even otherwise the question whether appearance of the parties through Video Conferencing for purposes of registration of marriage, would be treated as their 'personal appearance', is no longer *res integra*. This Court in the case of ***Charanjit Kaur Nagi Vs. Govt. of NCT of Delhi, 2007 SCC OnLine Del 1393***, as also the Jharkhand High Court in ***Upasana Bali & Anr. Vs. State of Jharkhand and Ors. 2012 SCC OnLineJhar 1505***, Kerala High Court in ***Pardeep Kodiveedu Cletus & Anr. Vs. Local Registrar of Marriages & Ors., 2017 SCC OnLine Ker 23204*** and the Punjab and Haryana High Court in ***Ami Ranjan v. State of Haryana 2020 SCC OnLine P&H 3815*** have held that applications for registration of marriage ought to be accepted and processed without insisting on the physical presence of the parties.

11. She further submits that even the Special Leave Petition assailing the decision of the Punjab & Haryana High Court in ***Ami Ranjan (Supra)*** has been rejected. She, therefore, prays that the present petition be allowed and appropriate directions be issued to the respondent to accept the personal appearance of the parties through Video Conferencing from the US.

12. Per contra, Ms. Shobhana Takiar, learned counsel for the respondent opposes the petition by contending that that the physical presence of the parties is required for variegated reasons; such as the requirement for

capturing and uploading live photographs of the parties and their witnesses on the portal, for the marriage certificate to be physically signed by both parties before the Registrar of Marriage and also the need to assess whether both the bride and groom are of sound mind and are entering into the marriage without any fear. She thus, contends that the personal presence of the parties as required under Clause 4 of the Registration Order has to be read to mean their physical presence before the competent authority, and therefore prays that the writ petition be dismissed.

13. Having considered the submissions of learned counsel for the parties, I find that the question whether personal appearance for purposes of registration of marriage would include appearance through Video Conferencing has already been considered and answered in the affirmative, as rightly urged by learned senior counsel for the petitioner not only by this Court but by a number of other High Courts as well.

14. In **Charanjit Kaur Nagi (Supra)** this Court, way back in the year 2007, when the use of Video Conferencing was still at a very nascent stage, permitted registration of marriage without insistence on the physical appearance of one of the parties to the marriage, while permitting appearance through Video Conferencing. It may be useful to refer to paragraph 14 to 16 of the said decision which read as under :

“14. So viewed the real effect of the declaration and the particulars sought are as to the name and parentage of parties, date of birth and details such as residence proof and relations before marriage. As noticed earlier under the Hindu Marriage Act, the marriage is not solemnized by the Registrar, but certified to have been solemnized, by the Registrar on the basis of application to him. Under the Hindu Marriage Act he merely issues a certificate that according to the information supplied to him the parties were married on a particular date. Form B which is in

terms of Rule 4 is to the same effect; it is part of the Register under Rule 4. (Emphasis supplied)

15. It would be evident from the above discussion that the status of the parties is attested to on basis of information furnished to the Registrar. He is not the official invested by the State with authority to solemnize the marriage. Prima facie a reading of Form A and B no doubt lends support to the view of the respondents indeed that the normal method is one where spouses are expected to apply and affirm about their marriage. But what ought to be a situation—where parties are living at a considerable distance from each other and yet desire the furnishing of certificate has not been provided for under the Rules. (Emphasis supplied)

16. Rule 3 was framed at a time when technology was nascent; developments that have changed the world and the way we view the world today were unimaginable, and perhaps beyond comprehension of the rule makers. It is possible for a person living thousands of kilometers away from Delhi or anywhere in India to simultaneously communicate with another party. Also, technology has enabled parties today to attest documents digitally, and ensure digitally secure transmission, through Internet. The objective and philosophy underlying Information Technology Act is based on these developments. In these circumstances the inaction or indifference of the State to recognize these developments and provide for a suitable mechanism to facilitate (what is required to do) i.e. registration of marriage of spouses separated by distance, has to be addressed. The law has to adapt to changing times. Here, the requirements spelt out half a century ago are acting as impediments, even though technology has enabled myriad solutions to the authorities. It is open to evolve a suitable mechanism with a mix of technology by incorporating video-conferencing, authentication of identities by Embassies, and attestation of signatures in a similar manner.”

15. It may also be apposite to refer to the decision in *Upasana Bali & Anr. (Supra)*, where the Jharkhand High Court while allowing the petition of a similarly placed couple, who were residing in the United Kingdom (UK), directed the Registering Authority under the Jharkhand Hindu Marriage Rules to accept their application for registration of marriage through their Power of Attorney holder, and to permit them to personally appear before the authority through Video Conferencing. Paragraphs 13 and 14 of the said decision wherein the Court noticed that Video Conferencing is readily available with the public at large, read as under:

“13. Therefore, we are of the considered view that the requirement of presentation of application for registration of the marriage under the Jharkhand Hindu Marriage Registration Rules, 2002 can be met fully, when such application is presented by duly authorized power of attorney of the parties, authorized jointly or separately, coupled with satisfaction of the registering authority through video-conferencing from the persons who are seeking registration of their marriage and for that reason the registering authority may permit appearance through video-conferencing whenever any need arise for opting for such procedure.

*14. Learned counsel for the petitioners also submitted that the document for registration can be submitted through power of attorney, which is specifically provided in the Registration Act itself. However, that provision can be used only for the purpose of presentation of the application by power of attorney of the party to the marriage and to avoid any future dispute, a cheap mode of Video Conferencing can be used for the purpose of verifying the facts from the party to marriage, for which registering authority may take help of Video Conferencing facility provided by several providers, like Skype or even provided by Email providers, like yahoo.com and gmail.com etc. **The Video Conferencing is not new and out of reach mode but it is readily available with public at large and is also not expensive one rather a cheap mode to live Internet. Normally the Government officers of the rank of the***

Registering authority or Registrar of the Marriages, may have been provided with Computer and Laptop facility with Internet connection, which can be used by such officer and if they are not having that facility then the parties may be asked to provide this facility for satisfaction of the registering authority about the genuineness of the parties to the marriage.” (Emphasis supplied)

16. Similar directions were issued by the Kerala High Court in ***Pardeep Kodiveedu Cletus & Anr. (Supra)*** wherein the Court, in Paragraph 9 of its judgment observed that the provision for registration of marriage could certainly be interpreted as enabling the Local Registrar to obtain personal appearance through Video Conferencing as well, the said paragraph reads as under:

“9. As noted above, the question is whether the said provision can be interpreted as conferring power to the Local Registrar to ensure personal appearance through Video Conferencing as well. It is presumed that the law makers intend the court to apply to an ongoing statute/rule a construction that continuously updates its wording to allow for changes since the introduction of the statute/rule. In other words, the language of the statute/rule, though necessarily embedded in its own time, is nevertheless to be construed in accordance with the need to treat it current law. This means that the courts will be justified in interpreting provisions contained in the ongoing legislations in such a way making allowances for the relevant changes that have occurred since the introduction of the legislation in law, social conditions, technology etc. [See State v. S.J. Choudhary, [(1996) 2 SCC 428]. The principle is that the law cannot remain standstill; it must change with the changing social concepts and values. If the law fails to respond to the needs of the changing society, then either it will stifle the growth of the society and choke its progress or if the society is vigorous enough, it will cast away the law which stands in the way of its growth. There cannot be any doubt

that personal appearance of the parties to the marriage is insisted in terms of the Rules for registration of the marriage to ensure that the marriage is registered with their knowledge. If the purpose of the Rule which insists personal appearance of the parties to the marriage could be ensured by Video Conferencing, there shall not be any impediment for the court in interpreting the provisions in such a way as permitting insistence of personal appearance through Video Conferencing. It is common knowledge that the virtual presence of a person living in a different country can be ensured by Video Conferencing. In State of Maharashtra v. Praful B. Desai (Dr.), [(2003) 4 SCC 601], the Apex Court has approved in the context of criminal trial that the requirement of 'personal appearance' can be ensured through Video Conferencing as well. There cannot be any doubt that the Local Registrar can certainly ensure that the application for registration of the marriage is preferred with the knowledge of the parties, through Video Conferencing. If that be so, I am of the view that the provision contained in Rule 11 of the Rules can certainly be interpreted as enabling the Local Registrar to obtain personal appearance through Video Conferencing as well. A contrary interpretation, as observed by Justice Bhagawati in National Textile Workers' Union v. P.R. Ramakrishnan [(1983) 1 SCC 228], would have the effect of allowing the dead hand of the past stifling the growth of the living present." (Emphasis supplied)

17. In its recent decision in **Ami Ranjan (Supra)**, a Division Bench of the Punjab & Haryana High Court having considered the aforementioned decisions of different High Courts, has also passed similar directions for accepting the personal presence of a party for the registration of marriage through Video Conferencing. In fact, the Supreme Court, while rejecting a challenge to this decision, has opined that there was no reason to interfere with these practical directions of the High Court.

18. At this juncture, reference may also be made to the decision in **State of Maharashtra v. Praful B. Desai (Dr)**, (2003) 4 SCC 601 wherein the Apex

Court in Paragraph 19 of its decision, expounded upon the importance of Video Conferencing by observing as under:

*“19. At this stage we must deal with a submission made by Mr. Sundaram. It was submitted that video-conferencing could not be allowed as the rights of an accused, under Article 21 of the Constitution of India, cannot be subjected to a procedure involving “virtual reality”. Such an argument displays ignorance of the concept of virtual reality and also of video-conferencing. Virtual reality is a state where one is made to feel, hear or imagine what does not really exist. In virtual reality, one can be made to feel cold when one is sitting in a hot room, one can be made to hear the sound of the ocean when one is sitting in the mountains, one can be made to imagine that he is taking part in a Grand Prix race whilst one is relaxing on one's sofa etc. Video-conferencing has nothing to do with virtual reality. Advances in science and technology have now, so to say, shrunk the world. They now enable one to see and hear events, taking place far away, as they are actually taking place. To take an example, today one does not need to go to South Africa to watch World Cup matches. One can watch the game, live as it is going on, on one's TV. If a person is sitting in the stadium and watching the match, the match is being played in his sight/presence and he/she is in the presence of the players. When a person is sitting in his drawing room and watching the match on TV, it cannot be said that he is in the presence of the players but at the same time, in a broad sense, it can be said that the match is being played in his presence. Both, the person sitting in the stadium and the person in the drawing room, are watching what is actually happening as it is happening. This is not virtual reality, it is actual reality. One is actually seeing and hearing what is happening. **Video-conferencing is an advancement in science and technology which permits one to see, hear and talk with someone far away, with the same facility and ease as if he is present before you i.e. in your presence. In fact he/she is present before you on a screen. Except for touching, one can see, hear and observe as if the party is in the same room. In video-conferencing both parties are in the presence of each other. The submissions***

of the respondents' counsel are akin to an argument that a person seeing through binoculars or telescope is not actually seeing what is happening. It is akin to submitting that a person seen through binoculars or telescope is not in the “presence” of the person observing. Thus it is clear that so long as the accused and/or his pleader are present when evidence is recorded by video-conferencing that evidence is being recorded in the “presence” of the accused and would thus fully meet the requirements of Section 273 of the Criminal Procedure Code. Recording of such evidence would be as per “procedure established by law”. (Emphasis supplied)

19. In light of the aforesaid, I am of the view that, in times such as these, when technology has proven to be the bridge that ensured uninterrupted communication, widespread dissemination of information in public interest and the smooth functioning of society, the Court cannot allow a rigid interpretation of the statute to prevent citizens from exercising their rights.

20. In a little over half a decade, since the Registration Order was notified, the universe has undergone a sea change but the Registering Authority, while exercising its power and jurisdiction under the Registration Order is refusing to recognize the reality that with the technology as is available today, web portals and Video Conferencing have become almost the norm.

21. In fact, if not for the acceptance of Video Conferencing as the norm, this Court and the judicial system in this country would have come to a grinding halt, and would not have been able to function at a time, when there was the greatest need for the citizens of this country to have access to justice. These aspects appear to have been simply overlooked by the Registering Authority, who's continuing to insist on that the parties must remain present physically before him.

22. At this stage, it may also be useful to refer to the observations of the Supreme Court in paragraph 24 of the judgment in *Anuradha Bhasin v.*

Union of India 2020 3 SCC 637 in which the Court emphasized the need to adapt technological advancements while dispensing justice. The same reads as under:

“24. Law and technology seldom mix like oil and water. There is a consistent criticism that the development of technology is not met by equivalent movement in the law. In this context, we need to note that the law should imbibe the technological development and accordingly mould its rules so as to cater to the needs of society. Non recognition of technology within the sphere of law is only a disservice to the inevitable. In this light, the importance of internet cannot be underestimated, as from morning to night we are encapsulated within the cyberspace and our most basic activities are enabled by the use of internet.” (Emphasis supplied)

23. The respondents’ plea that the physical presence of the parties is necessary to ascertain whether they are of sound mind and are entering into marriage without any fear or coercion, overlooks the fact that the task assigned to the Registering Authority under the Registration Order is to register a marriage which has already been solemnized. The respondent appears to be acting under the misconception that a marriage is being solemnized before the Registering Authority.

24. I cannot also overlook the fact that The Delhi (Compulsory Registration of Marriage) Order, 2014 is welfare legislation, promulgated at the instance the Supreme Court to encourage registration of marriages. There is no gainsaying that a welfare or beneficial legislation must be interpreted in such a manner so as to ensure that the object for which the statute was effectuated is fulfilled, and that there are no unnecessary obstacles to the beneficiaries obtaining the benefits of the same. Keeping in view the fact that the issuance of the registration order is to promote registration of marriages, I am of the considered view that Clause 4 must be interpreted in such a manner

that encourages parties to easily get their marriages registered. The insistence of physical appearance even when their personal appearance can be easily secured through video conferencing, will definitely make it more cumbersome for parties to come forward for registration of marriages. This will negate the very purpose of enactment of the Registration Order and cannot be permitted.

25. Thus, looked at from any angle, I have no hesitation in coming to the conclusion that the term ‘personal appearance’ in Clause 4 of the Registration Order has to be read to include presence secured through Video Conferencing. Any other interpretation, would not only frustrate the very purpose of this beneficial legislation, but, it would also undermine the use of this important and easily accessible tool of Video Conferencing. The same would also be against the ratio of the decision of the Supreme Court in ***Praful B. Desai (Supra)*** in which the Court while observing that Video Conferencing permits one to see, hear and talk with someone far away with the same ease as if he/she is physically present, had allowed the recording of evidence in a criminal trial through Video Conferencing.

26. For the aforesaid reasons, the writ petition is entitled to succeed and is accordingly allowed. It is directed that the parties seeking registration of their marriage under the Registration Order, will be entitled to submit a physical copy of their application through their attorney and also enter personal appearance, as and when required, through Video Conferencing, which application would be duly processed by the registering authority, subject to submission of duly notarized copies of all relevant documents before the authority physically and fulfilling all other procedural requirements.

27. However, keeping in view the peculiar facts of this case, the following specific directions are issued qua the petitioners –

- a) The petitioners are permitted to submit their application for registration of marriage, through their counsel/Power of Attorney Holder in physical form before the SDM Kishan Ganj, Delhi, alongwith copies of all supporting documents duly notarized, either by the notary public in US, where they are presently residing, or by the notary public in Delhi.
- b) The respondent will allow the “personal appearance” of the Petitioners for the purpose of Clause 4 (d) and (e) & Form A of The Delhi (Compulsory Registration of Marriage), 2014 through Video Conferencing.
- c) The two witnesses, as required under the Registration Order will appear physically before the Registering Authority alongwith their original ID proofs, on the date as notified by the authority.
- d) The respondent will, thereafter, expeditiously register the petitioners’ marriage, and issue the Marriage Registration Certificate within a period of two weeks’ from the date of receipt of the application made by the petitioners.

REKHA PALLI, J

SEPTEMBER 9, 2021

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