

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

HON'BLE THE CHIEF JUSTICE SRI VIPIN SANGHI

AND

HON'BLE SRI JUSTICE R.C. KHULBE

4TH NOVEMBER, 2022

A.O. No. 376 OF 2022

Between:

Dr. Surjeet

.....Appellant

and

Dr. Namita

.....Respondent

Counsel for the appellant : Mr. Siddharth Sah and Dr. Anurag Bhardwaj.

Counsel for the respondent : Ms. Nishat Intezar and Mr. Ahrar Baig.

Upon hearing the learned Counsel, the Court made the following

JUDGMENT : (per Sri Vipin Sanghi, C.J.)

Issue Notice.

2. Ms. Nishat Intezar, learned counsel for the respondent appears and accepts notice.

3. Since there is delay of only two days in filing the present Appeal, the same is not opposed by the learned counsel for the respondent. Accordingly, the delay is condoned and the Application (IA No. 2 of 2021) for condonation of delay is allowed.

4. The appellant is aggrieved by the order dated 20.07.2022 passed by the Family Court, Haldwani in

Misc. Civil Case No. 08 of 2022 '*Dr. Namita vs. Dr. Surjeet*' as well as the order dated 17.09.2022.

5. The parties had jointly moved a petition for divorce by mutual consent under Section 13B of the Hindu Marriage Act, 1955. The appellant is a resident of Lexington, State Kentucky, USA. Consequently, he preferred the said petition through his power of attorney granted in favour of his father Mr. Mani Ram Arya.

6. The Family Court rejected the petition only on the ground that the appellant should personally prefer the petition and should remain present in Court.

7. The parties had relied upon several decisions of other High Courts, wherein it has been held that a petition to seek divorce by mutual consent can be moved by the power of attorney of the parties. Reference was also made to the judgment rendered by the Supreme Court in ***Amar Deep vs. Harveen Kaur (Civil Appeal No. 11158 of 2017***, decided on 12.09.2017). Reliance was placed particularly on Para-22 of the said judgment, which reads as follows: -

"22. Needless to say that in conducting such proceedings the Court can also use the medium of video conferencing and also permit genuine representation of the parties through close relations such as parents or siblings

where the parties are unable to appear in person for any just and valid reason as may satisfy the Court, to advance the interest of justice."

8. The only reason given by the Family Court for not entertaining the petition through the appellant's father as his power of attorney was that there was no precedent by this Court on the said aspect.

9. We are dismayed by this approach of the Family Court. The Family Court is expected to deal with issues, which arise before it, without waiting for a pronouncement by this Court. There were enough precedents cited before the Family Court not only of several High Courts, but also of the Supreme Court, which recognize the right of a party to be represented in proceedings under the Hindu Marriage Act, through his / her power of attorney. We find the approach of the Family Court to be completely perverse and unexpected.

10. We, therefore, set aside the impugned orders, and direct the Family Court to entertain the petition on the basis of the power of attorney furnished on behalf of the appellant of his father. It is made clear that the presence of the appellant shall be secured through Video Conferencing, since he is residing in USA and is not in a

position to come to India. The parties shall appear before the Family Court on 01.12.2022.

11. The Appeal stands disposed of accordingly.

VIPIN SANGHI, C.J.

R.C. KHULBE, J.

Dt: 4th November, 2022
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