

ORDER SHEET
IN THE LAHORE HIGH COURT,
MULTAN BENCH MUL.TAN
JUDICIAL DEPARTMENT

Writ Petition No.17899 of 2016.

Salman Ahmad Khan.

Vs. Judge Family Court, Multan, etc.

| <i>Sr. No. of order/ proceedings</i> | <i>Date of order/ Proceeding</i> | <i>Order with signature of Judge, and that of Parties' counsel, where necessary</i> |
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| | 22.12.2016. | Miss Fouzia Kausar Bhatti, Advocate for petitioner. Syed Muzamil Hassan Bukhari, Advocate for respondent No.2. |

Through this writ petition, Salman Ahmad Khan, the petitioner has challenged order dated 10.12.2016 passed by learned Judge Family Court, Multan, whereby the learned Judge ordered that statement of plaintiff/respondent No. 2 Mst. Quratulann be recorded through video link/skype.

2. The brief facts of the case are that the marriage of the petitioner with Quratulann daughter of Jamshed Ali Khan was solemnized on 31.03.2006. From the wedlock, a son namely Muhammad Yawar was born. On 01.03.2016, Mst. Quratulann, respondent No. 2, through special attorney, Syed Muzammil Hassan Bokhari, filed a suit for dissolution of marriage against the petitioner on the ground of '*khula*'.

3. The suit was resisted by the present petitioner on the ground that earlier suit for dissolution of marriage filed by respondent No.2 was withdrawn by her at the

request of respectable persons of the family. Second suit for dissolution of marriage was filed with forged signatures of the respondent No. 2, which was dismissed. The respondent No. 2 along with son Muhammad Yawar has shifted to USA by violating undertaking given to court and the power of attorney executed by the respondent No. 2 in favour of Syed Muzammil Hassan Bokhari, her attorney had expired.

4. On 22.10.2016, the attorney for respondent No. 2 filed an application that statement of respondent No. 2 be recorded through video link. On 23.11.2016, the attorney placed on the record fresh power of attorney executed by respondent No. 2 in his favour. However, on 10.12.2016, the said attorney got recorded his statement that as a fresh power of attorney has been executed in his favour, therefore, he would not press the application for recording statement of respondent No.2 through video link. On 13.12.2016, the petitioner filed an application that the Special Power of Attorney is bogus and the same be got attested from the American Embassy. The Judge Family Court after recording the statement of the attorney, passed order dated 10.12.2016 for recording of statement of the respondent No. 2, through video link/skype. The petitioner has challenged the order dated 10.12.2016 through this writ petition.

5. Learned counsel for the petitioner argued that as the counsel for the petitioner had withdrawn his application, the Family Court was not competent to pass the order for recording of statement through video link. Signatures of the principal/respondent No. 2, on the second power of attorney are different from the first power of attorney, hence, the second attorney is bogus, respondent No. 2 has removed the minor from the jurisdiction of the court, despite undertaking not to do so, therefore, instead of recording statement of the respondent No. 2 through video link, the petitioner should be summoned in person.

6. Conversely, learned counsel for respondent No. 2 argued that court is authorized under Section 11 (1A) of the Family Courts Act, 1964 to record statement of parties through video link, Skype, etc., the court can regulate its own procedure and was not bound by rigors of Civil Procedure Code and the fact that respondent No. 2 had taken the minor away from Pakistan cannot hinder the court to exercise jurisdiction vested in it. Furthermore, the undertaking and order on it has been passed in another case and not in this particular case.

7. Heard. Record perused.

8. In order to resolve the controversy relating to recording of statement through video link/skype

reference to section 11 (1A) of the Family Courts Act, 1964 is essential. The same is reproduced below:

“11 (1A). The Family Court shall record or cause to be recorded, the substance of the statement of a witness or may record or cause to be recorded, the statement of a witness through audio or video recording.”

9. The petitioner had raised specific objection regarding the authority of the attorney to file the suit for dissolution of marriage on the basis of ‘Khula’ as the power of attorney had expired on 31.07.2016. When the attorney placed on the record the second power of attorney executed by the respondent No. 2, the petitioner objected to that power of attorney being genuine on the ground that the signatures of respondent No. 2 on both the power of attorneys did not match. The Family Court in order to satisfy itself about the question of appointment of Special Power of Attorney, on 10.12.2016, passed the following order:

“I deem it appropriate to record statement of plaintiff through video link as same would be helpful in resolving the question of appointment of special power of attorney by plaintiff and for further proceedings in accordance with law for reaching a just decision of case. Learned Counsel for the plaintiff is hereby asked to furnish skype address of plaintiff in the court on 14.12.2016. Letter of request is hereby humbly submitted to the court of Learned Senior Civil Judge, Multan for doing the needful. To come up for submission of skype address of plaintiff in the court on 14.12.2016.”

10. As regards the objection that the Special Power of Attorney must be got verified from American

Embassy before the attorney can appear in the court on behalf of respondent No.2, neither the Registration Act, 1908 nor the Family Courts Act, 1964 or the C.P.C or any other law require the same to be so verified. Be that as it may, as the Family Court has already taken up the question of genuineness of Special Power of Attorney, I would leave the decision of the same to the Family Court.

11. The contention of the petitioner that signature of respondent No.2 on both the special power of attorneys differs can be considered when respondent No2. herself denies her signatures on the same. The counsel for respondent No.2 has pointed out that both the power of attorneys have been attested by the Consulate General of Pakistan in Houston USA, only respondent No.2 can contest the genuineness of these power of attorneys for which purpose the court had adopted procedure of getting the statement of respondent No.2 recorded through video link/skype. This objection also can be resolved by the Family Court after the statement of respondent No.2 is recorded.

12. As regards the ground that respondent No.2 is not entitled to get her statement recorded because she has removed the minor from the jurisdiction of the court and should appear in person if she wants to get

her statement recorded, suffice to say that the Family Court may regulate its own procedure and violation of the undertaking cannot deprive court of its own jurisdiction. Besides the undertaking not to remove the minor from the jurisdiction of court was not given in the case of dissolution of marriage rather it was given in the case for custody of minor which is pending adjudication before the Family Court and the court can determine vires of the same in the case for custody of minor.

13. The Family Court in order to satisfy itself that the attorney was authorized to file the suit and proceed with the same wanted to inquire about genuineness of Power of Attorney. The court for that purpose has decided to clarify the situation by recording the statement of witness through video link/skype. It is settled proposition of law that a family court can adopt its own procedure and is not bound by the rigors of C.P.C. A family court could proceed on the premise that every procedure is permissible unless prohibited. Reliance is placed on case law titled as *Muhammad Sajjad vs. Additional District Judge* (PLD 2015 Lah 405), *Shakeela Bibi vs. M.Israr* (2012 MLD 756), *Syed Shahid Baig vs. Lubna Riaz* (2004 CLC 1545), *Syed Ghazanfar Abbas Rizvi vs. Syed Haider Abbas* (2000

YLR 1482), *Khalil ur Rehman Bhatti vs. Razia Naz* (1984 CLC 890).

14. Furthermore, the evidence received through modern devices is admissible under Article 164 of the Qanoon-e-Shahadat Order, 1984. Although Qanoon-e-Shahadat Order is not strictly applicable to family courts but the family court is not barred from receiving such evidence under any provision of law. Moreover, the technicalities should not stand in the way of justice.

15. For invoking constitutional jurisdiction of this court vested in it under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner was bound to show that the court below has exercised the jurisdiction not vested in it by law or there is jurisdictional defect in the order impugned or that the order is illegal or perverse. Learned counsel for the petitioner could not show any such defect in the order impugned through this writ petition nor I have seen any jurisdictional defect therein whereby order of the Family Court could have been declared as without lawful authority and of no legal effect.

16. For what has been discussed above, this writ petition being devoid of any force stands **dismissed**.

(Muzamil Akhtar Shabir)
Judge