

Role of Judges and Counselors in amicable settlement of family court cases



- Family Courts Act, 1984
- 9. Duty of Family Court to make efforts for settlement
- (1) In every suit or proceeding, endeavor shall be made by the Family Court in the first instance, where it is possible to do so consistent with the nature and circumstances of the case, **to assist and persuade the parties in arriving at a settlement** in respect of the subject-matter of the suit or proceeding and for this purpose a Family Court may, **subject to any rules made by the High Court, follow such procedure as it may deem fit.**

- (2) If, in any suit or proceeding, at any stage, it appears to the Family Court that there is a reasonable possibility of a settlement between the parties, the Family Court may adjourn the proceedings for such period as it thinks fit to enable attempts to be made to effect such a settlement.

- **U.P.Family Court Rules,1995-**
- Rule-27. Functions of Counsellor [Sections 6 (1) and 23 (2) (e)]. - (1) A Counsellor entrusted with a petition shall **assist and advise the parties regarding the settlement of the subject-matter** of dispute between the parties or any part thereof. The Counsellor shall also help the parties in arriving at reconciliation.

- Rule-27-(4) A Counsellor in the discharge of his functions shall be entitled to pay visits to the house of any of the parties, and interview relatives, friends and acquaintances of parties or any of them :
- Provided that where the lady is the sole occupant of the premises she occupies, the visit by a male Counsellor shall always be along with a lady duly approved by the Family Court.

- Rule 27(5) The Counsellor in the discharge of his functions may seek such information as he may deem necessary from the employer of a party.
- 27(6) The Counsellor may refer a party to an expert in any other area such as medicine or psychiatry.

- Rule-30. Confidentiality of information -
- (1) Information gathered by the Counsellor, any statement made before the Counsellor or any notes or report prepared by the Counsellor shall be treated as confidential and the Counsellor shall not be called upon to disclose the information, statements, notes or reports to any court except with the consent of both the parties.

- Rule-31. Counsellor not to give evidence
- Rule-32. Submission of memorandum
- Rule-33. Settlement before Counsellor - If the parties arrive at a settlement before the Counsellor relating to the dispute or any part thereof, such settlement shall be reduced to writing and shall be signed by the parties and countersigned by the Counsellor, and the Family Court shall pronounce a decree or order in terms thereof unless it considers the terms of the settlement unconscionable or unlawful or contrary to public policy.

- Rule-34. Supervision of or custody of children
- Rule-35. Supervision after reconciliation

- **Santhini v. Vijaya Venketesh (2018) 1 SCC 62**
- 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.



- [Jagraj Singh vs Birpal Kaur \(2007\) 2 SCC 564](#)
- Para 26-
- From the above case-law, in our judgment, **it is clear that a Court is expected, nay, bound, to make all attempts and endeavours of reconciliation.** To us, sub-section (2) of Section 23 is a salutary provision exhibiting the intention of Parliament requiring the Court 'in the first instance' to make every endeavour to bring about a reconciliation between the parties.

- **Sushma Kumari v. Om Prakash, AIR 1993 Patna 156,**
- it was held that the duty is cast on the Court to take steps for reconciliation between the parties, though non-observance of endeavour for reconciliation would not make the order of the Court without jurisdiction.

- **Smt. Manju Singh v. Ajay Bir Singh, AIR 1986 Delhi 420**
- the Court should try first for reconciliation. If an endeavour of reconciliation is not made, the order would be illegal.

- Judge of the family court or counselors when attempting settlement:
- 1. should assist the parties in an independent and impartial manner to reach an amicable settlement of their dispute;

- Judge of the family court or counselors when attempting settlement:
- 2. be guided by the principles of objectivity, fairness and justice, giving due consideration to, among other things, the rights and obligations of the parties, and the circumstances surrounding the dispute, while assisting the parties;

- Judge of the family court or counselors when attempting settlement:
- 3. were of the opinion that a settlement seems likely, at any stage of the proceedings **may suggest plausible areas/issues of agreement, and encourage discussions on settlement.** Such suggestions need not be in writing and need not be accompanied by a statement of the reasons;

- Judge of the family court or counselors when attempting settlement:
- 4. as regards matters discussed during attempts of settlement, they cannot be relied upon or used as evidence in any adversarial proceedings before the family court. This would in particular extend to views and suggestions expressed by a party as regards a possible settlement, admissions made by any party, proposals made by the counselor or judge of the family court as the case maybe, and sentiments expressed by any party as regards these proposals;

- Judge of the family court or counselors when attempting settlement:
- 5. at no point of time should any pressure, threat, force or coercion be visited on the litigant to settle their dispute against their wishes

- Judge of the family court or counselors when attempting settlement:

6. must clearly desist from finding fault with a particular litigant if the matter is not conciliated, so as not to prejudice themselves when they adjudicate the matter. In such an instance what happened during conciliation or parties' behavior during conciliation would become completely irrelevant.

Thanks