

HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

TRANSFER C.M.P.No.437 of 2015

ORDER:

This petition is filed under Section 24 C.P.C., to withdraw O.P.No.40 of 2015 from the file of the Family Court, Warangal, and transfer the same to the Senior Civil Judge Court, Peddapalli, Karimnagar District.

2. The notice sent to the respondent was returned with an endorsement 'unclaimed'. The learned counsel for the petitioner submitted that return of postal cover sent to correct address of the respondent with endorsement 'unclaimed' would amount to service of notice. In support of the contention, he has drawn my attention to the decisions:

In ***K.SAJJAN RAJ v. GOPI SETTY CHANDRA MOULI***^[1] at Para-11, it is held as follows:

"It is an admitted case that the notices were sent to the correct address of the defendant. Therefore, the finding of the lower Court, that when a notice has been sent to the correct address of a party and when the same has been returned 'as not claimed', the same amounts to service of notice, need not be disturbed."

In ***P.PUSHPAMALA REDDY v. JANGA RAGHAVA REDDY***^[2] at Para -2, it is held as follows:

"This Court issued notice to the respondent/plaintiff on 21.02.2014. The notice was however returned with the endorsement 'not claimed'. Significantly, the address to which the notice was sent was the same address furnished by the respondent/plaintiff in his plaint. Failure of the respondent/plaintiff to claim the notice sent through registered post to his last known address would therefore qualify as 'deemed service' (D.Vinod Shivappa v. Nanda Belliappa (1) 2006 (3) ALT (Crl.) 276 (SC) = 2006(8) SCJ 63 = (2006) 6 SCC 456)."

3. As per the principle enunciated in the above decisions, when a notice has been sent to the correct address of the party and the same has been returned as “not claimed”, it amounts to service of notice. Let me consider the facts of the case on hand, in the light of the above principle.

4. A perusal of the record reveals that on 04.8.2015, this court permitted the learned counsel for the petitioner to take out personal notice to the respondent by registered post with acknowledgment due. In pursuance thereof, learned counsel for the petitioner has sent notice to the respondent and the same was returned with postal endorsement “unclaimed”. For better clarification, the address furnished by the respondent in O.P. No.40 of 2015 filed by him on the file of Family Court, Warangal and the address to which the petitioner sent notice are furnished in the following table:

<u>Address mentioned by the respondent in his O.P.</u>	<u>Address to which the petitioner sent notice by post</u>
Darna Satish Kumar, S/o.Vishwanadham, aged 35 years, Occ: Pvt. Electrician, R/o.H.No.16-3-120, Shantinagar, Warangal District.	Darna Satish Kumar, (Pvt Electrician), S/o.Vishwanatham, H.No.16-3-120, Shantinagar, Warangal - 506001.
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From the above table, it is clear that the notice was sent to the correct address of the second respondent, as mentioned in O.P. No.40 of 2015 filed by him against the petitioner herein on the file of Family Court, Warangal. The facts of the case on hand are almost identical to the facts of the cases cited supra.

5. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, I am of the considered view that the notice was properly served on the respondent. Since the respondent did not make appearance, after duly served with notice in this petition, the matter can be decided on merits in the absence of the respondent. Heard the learned counsel for

the petitioner and perused the material available on record.

6. The marriage of the petitioner was performed with the respondent on 15.05.2013 at Sultanabad village and Mandal, Karimnagar District, as per Hindu rites and caste customs. Immediately after the marriage, the petitioner joined the respondent to lead marital life. The respondent is facing trial in D.V.C.No.5 of 2015 on the file of the Judicial Magistrate of First Class, Sultanabad. Basing on the complaint lodged by the petitioner, the Station House Officer, Sultanabad Police Station registered a case in Crime No.52 of 2015 against the respondent and others for the offences punishable under Sections 498-A and 506 read with 34 IPC and Section 4 of Dowry Prohibition Act. The respondent filed O.P.No.40 of 2015 on the file of the Family Court, Warangal, for dissolution of marriage between him and the petitioner.

7. The petitioner has been residing at her parents' house in Sultanabad due to disputes between her and the respondent. The distance between Sultanabad and Warangal is nearly 100 kilometers. The petitioner may face some difficulty to travel from Sultanabad to Warangal in order to prosecute O.P.No.40 of 2015. Invariably, the respondent has to attend the Court of Judicial Magistrate of First Class, Sultanabad, in view of pendency of Crime No.52 of 2015 and D.V.C.No.5 of 2015. While deciding the petitions of this nature, the Court has to take into consideration the inconvenience likely to be caused to the parties to the proceedings, more particularly, the wife.

8. As per the principle enunciated in **V.Sailaja v V.Koteswara Rao**^[3], **Rachna Kanodia v. Anuk Kanodia**^[4], and **Sumita Singh v. Kumar Sanjay**^[5], the paramount consideration, in transfer of matrimonial cases, is the convenience of the wife.

9. Having regard to the facts and circumstances of the case and

also the principle enunciated in the cases cited supra, I am of the considered view that it is a fit case to allow the petition.

10. Accordingly, the Transfer Civil Miscellaneous Petition is allowed. O.P.No.40 of 2015 is withdrawn from the file of the Family Court, Warangal and transferred to Senior Civil Judge Court, Peddapalli, Karimnagar District. As a sequel, miscellaneous petitions, pending if any shall stand closed.

T.SUNIL CHOWDARY, J

31.08.2015.

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[\[1\]](#) 2011(4) ALD 96

[\[2\]](#) 2015(4) ALT 447

[\[3\]](#) AIR 2003 AP 178 = 2003 (1) ALD 673 = 2003 (1) APLJ 441

[\[4\]](#) 2001(7) Supreme 96

[\[5\]](#) AIR 2002 SC 396