

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

TRANSFER C.M.P. No.551 of 2015

ORDER:

This transfer civil miscellaneous petition is filed under Section 24 of CPC seeking to withdraw O.P.No.1338 of 2011 from the file of Family Court, Ranga Reddy District at L.B. Nagar and transfer the same to the file of Family Court, Medak District at Sangareddy.

2. Heard the learned counsel for the petitioner and perused the material available on record.

3. A perusal of the record reveals that on 23.9.2015, this court directed the petitioner to take out personal notice to the respondent by registered post with acknowledgment due. In pursuance thereof, notice was sent to the respondent. For better clarification, the address furnished by the respondent in O.P. No.1338 of 2011 filed by him on the file of Family Court, Ranga Reddy District at L.B. Nagar 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>
<u>-</u> <u>K.Madhusudhan Rao,</u> <u>S/o.K.Narsimha Rao,</u> <u>Aged about 29 years, Occ. Govt.</u> <u>Employee, R/o.H.No.41-18/1, Papi</u> <u>Reddy Nagar, Jagadgiri Gutta,</u> <u>Ranga Reddy District.</u> <u>-</u>	<u>-</u> <u>K.Madhusudhan Rao,</u> <u>S/o.K.Narsimha Rao,</u> <u>H.No.41-18/1, Papi Reddy Nagar,</u> <u>Jagadgiri Gutta,</u> <u>Ranga Reddy District – 521 001.</u> <u>-</u>

A perusal of the above table clearly reveals that the notice was sent to the correct address of the respondent, as mentioned in O.P. No.1338 of 2011 filed by him against the petitioner herein. A perusal of page No.21 of the material papers clearly reveals that the respondent herein filed Crl.R.P. No.11 of 2014 on the file of the Court of District and Sessions Judge, Medak District at Sangareddy with the following address:

K.Madhusudhan Rao,
S/o.Late K.Narsimha Rao,

Aged 37 years, Occ: Govt. Employee.
H.No.41-18/1, Papi Reddy Nagar,
Jagathgiri Gutta, Hyderabad.

A perusal of the above clearly reveals that the petitioner sent the notice to the correct address of the respondent. The notice sent to the respondent returned with endorsement 'not claimed/insufficient address/addressee left'. Whether returning of the cover with such endorsement would amount to proof of service or not?

4. To resolve the issue, this court is placing reliance on the following 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 to 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 (CrI.) 276 (SC) = 2006(8) SCJ 63 = (2006) 6 SCC 456)."

5. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, this court is of the considered view that the notice sent to the respondent shall be deemed to be served.

6. In spite of service of the notice, the respondent did not choose to

appear and oppose the transfer petition. Hence, this court is inclined to dispose of the matter on merits.

7. The marriage of the petitioner was performed with the respondent on 05.4.2007 at Beeramguda village, Ramachandrapuram Mandal, Medak District, as per Hindu rites and caste customs. Immediately after the marriage, the petitioner joined the respondent to lead marital life. Out of the lawful wedlock, the petitioner and the respondent were blessed with a daughter on 21.1.2010. Basing on the complaint lodged by the petitioner, the Station House Officer, Patancheru Police Station registered a case in Crime No.208 of 2011 against the respondent for the offences under Section 498-A IPC and Sections 3 and 4 of the Dowry Prohibition Act. The respondent is facing trial in D.V.C. No.1 of 2012 on the file of Judicial First Class Magistrate Court, Sangareddy. The petitioner also filed M.C. No.16 of 2014 on the file of the Judicial First Class Magistrate Court, Sangareddy seeking maintenance from the respondent. The respondent filed O.P. No.1338 of 2011 on the file of the Family Court, Ranga Reddy District at L.B. Nagar for dissolution of the marriage between him and the petitioner.

8. The petitioner has been residing at her parents' house at Patancheru along with her daughter, due to misunderstandings between her and the respondent. The petitioner may face difficulty to travel from Patancheru to L.B.Nagar in order to prosecute O.P. No.1338 of 2011. Invariably, the respondent has to attend criminal courts at Sangareddy in view of pendency of D.V.C. No.1 of 2012 and M.C. No.16 of 2014. 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 to the wife and children.

9. As per the principle enunciated in **Sumita Singh v. Kumar Sanjay**^[3] and **Rachna Kanodia v. Anuk Kanodia**^[4], the paramount consideration, in transfer of matrimonial cases, is the convenience of the

wife. 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 relief sought by the petitioner can be granted.

10. Accordingly, the Transfer CMP is allowed. O.P. No.1338 of 2011 is withdrawn from the file of the Family Court, Ranga Reddy District at L.B. Nagar and transferred to the file of Family Court, Medak District at Sangareddy, for disposal in accordance with law. Miscellaneous petitions, if any, pending in this transfer petition shall stand closed.

T. SUNIL CHOWDARY, J

Date: 28.10.2015
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- [\[1\]](#) 2011(4) ALD 96
 - [\[2\]](#) 2015(4) ALT 447
 - [\[3\]](#) AIR 2002 SC 396
 - [\[4\]](#) 2001 (7) Supreme 96