

HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

TRANSFER C.M.P.No.683 of 2014

ORDER:

This petition is filed under Section 24 C.P.C., to withdraw F.C.O.P.No.991 of 2014 from the file of the Judge, Family Court, Ranga Reddy District, at L.B.Nagar, and transfer the same to the court of the Judge, Family Court, Vijayawada, Krishna District, for disposal in accordance with law.

2. Learned counsel for the petitioner submitted that the respondent intentionally avoided to take notice. He further submitted that return of postal cover with an endorsement of 'unclaimed' amounts to service of notice on the respondent. On 06.04.2015 this Court directed the petitioner to take out personal notice to the respondent by Registered Post with Acknowledgment Due. In pursuance of the directions of this Court, the petitioner sent the notice to the respondent to the address as mentioned in F.C.O.P.No.991 of 2014. The postal cover returned with an endorsement 'unclaimed'. A perusal of the record clearly reveals that the petitioner sent the notice to the address of the respondent as mentioned in F.C.O.P.No.991 of 2014. The question that arises for consideration is whether return of postal cover with an endorsement as unclaimed amounts to service of notice or not.

3. Learned counsel for the petitioner has drawn my attention to the decision of ***K. SAJJAN RAJ v. GOPI SETTY CHANDRA MOULI***^[1] wherein it was held at paragraph 11 as follows:

“Admittedly, the notice Ex.A1, dated 28.05.2004, was sent by speed post. Ex.A2 is the speed post receipt, Ex.A3 is the returned registered envelop and Ex.A4 is the certified copy of posting coupon. 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."

4. As per the principle enunciated in the cases cited supra, if the postal cover sent to the correct address of the respondent returns with an endorsement of unclaimed, it amounts to service of notice.

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 served on the respondent. Hence, I am inclined to dispose of the matter on merits in the absence of the respondent.

6. The marriage of the petitioner was performed with the respondent on 15.02.2009 at Kanakadurga Temple, Vijayawada, as per Hindu rites and caste customs. Immediately after the marriage, the petitioner joined the respondent to lead marital life. Out of lawful wedlock, the petitioner and respondent were blessed with a daughter. The petitioner filed D.V.C.No.142 of 2014 against the respondent on the file of I Additional Chief Metropolitan Magistrate, Vijayawada, and the same is pending. The petitioner also filed M.C.No.219 of 2014 seeking maintenance from the respondent and the same is pending on the file of the Family Court-cum-IV Additional District Court, Vijayawada. Basing on the complaint of the petitioner, the Station House Officer, Machavaram Police Station, registered a case in Crime No.420 of 2014 against the respondent for the offence punishable under Section 498-A IPC. The respondent filed F.C.O.P.No.991 of 2014 on the file of the Family Court, Ranga Reddy District, at L.B.Nagar, for dissolution of marriage between him and the petitioner.

7. The petitioner has been residing at her parents house at Vijayawada along with her minor daughter due to misunderstandings between her and the respondent. Even as per the recitals of

F.C.O.P.No.991 of 2014, the petitioner was residing at Vijayawada as on the date of filing of the petition. The distance between Vijayawada and Hyderabad is around 280 kilometers. It may not be possible for the petitioner to travel 280 kilometers without the assistance of one of the male members of the family. Filing of maintenance petition indicates the financial status of the petitioner. Invariably, the respondent has to attend Metropolitan Magistrate Court and the Family Court at Vijayawada in view of pendency of D.V.C.No.142 of 2014 and M.C.No.219 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, the wife.

8. As per the principle enunciated in **V.Sailaja v V.Koteswara Rao**^[2], **Rachna Kanodia v. Anuk Kanodia**^[3], and **Sumita Singh v. Kumar Sanjay**^[4], 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 inclined to allow the petition.

10. Accordingly, the Transfer Civil Miscellaneous Petition is allowed. F.C.O.P.No.991 of 2014 is withdrawn from the file of the Family Court, Ranga Reddy District, at L.B.Nagar, and transferred to the file of the Family Court, Vijayawada, Krishna District, for disposal in accordance with law. As a sequel, miscellaneous petitions, pending if any shall stand closed.

T.SUNIL CHOWDARY, J

Date:10.07.2015.

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

[\[2\]](#) AIR 2003 AP 178 = 2003 (1) ALD 673 = 2003 (1) APLJ 441

[\[3\]](#) 2001(7) Supreme 96

[\[4\]](#) AIR 2002 SC 396