

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

TRANSFER C.M.P.No.279 of 2015

ORDER:

This petition is filed under Section 24 C.P.C., to withdraw H.M.O.P.No.15 of 2015 from the file of the Family Court, Mahabubnagar and transfer the same to the file of the Family Court, Secunderabad.

2. A perusal of the record reveals that on 10.6.2015, 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 H.M.O.P. No.15 of 2015 filed by him on the file of Family Court, Mahabubnagar 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>
- Bhavani Shanker Chowdhary, S/o.Kishan Rao Chowdhary, age:29 years, Occ: unemployed, r/o.H.No.1-10-96/7, S.S.Gutta, Mahabubnagar. -	- Bhavani Shanker Chowdhary, R/o.H.No.1-10-96/7, S.S.Gutta, Mahabubnagar. -

From the above table, it is clear that the notice was sent to the correct address of the respondent, as mentioned in H.M.O.P. No.15 of 2015 filed by him against the petitioner herein on the file of Family Court, Mahabubnagar.

3. The learned counsel for the petitioner 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 (Cri.) 276 (SC) = 2006(8) SCJ 63 = (2006) 6 SCC 456).”

4. 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. 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 08.04.2012 at Veerabhadra Swamy Temple, Kyatanapally village, Damargidda mandal, Mahabubnagar 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, they were blessed with a son. Basing on the complaint lodged by the petitioner, Women Police Station, Begumpet, Hyderabad registered a case in Crime No.46 of 2014 against the respondent and others for the offences punishable under Sections 498-A, 420 and 509 read with 34 IPC and Sections 4 and 6 of Dowry Prohibition Act, which was subsequently numbered as C.C. No.21 of 2015 and pending on the file of XV Additional Chief Metropolitan Magistrate, Nampally, Hyderabad. The petitioner also filed D.V.C.No.209 of 2014 on the file of the IV Metropolitan Magistrate, Erramanzil, Hyderabad against the respondent and others. The respondent filed H.M.O.P. No.15 of 2015 on the file of the Family Court, Mahabubnagar for restitution of conjugal rights against the petitioner herein.

7. The petitioner has been residing at her parents' house in Hyderabad due to disputes between her and the respondent. The distance between Hyderabad and Mahabubnagar is nearly 110 kilometers. The petitioner may face some difficulty to travel from Hyderabad to Mahabubnagar to defend H.M.O.P.No.15 of 2015. Invariably, the respondent has to attend the Criminal Courts at Hyderabad, in view of pendency of C.C. No.21 of 2015 and DVC No.209 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 **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 of the considered view that it is a fit case to allow the petition.

10. Accordingly, the Transfer Civil Miscellaneous Petition is allowed. H.M.O.P.No.15 of 2015 is withdrawn from the file of the Family Court, Mahabubnagar and transferred to the file of Family Court, Secunderabad, for trial and disposal in accordance with law. Miscellaneous petitions, if any, pending in this transfer petition shall stand closed.

T.SUNIL CHOWDARY, J

Date: 31.08.2015.

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

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

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

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