

HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

TRANSFER C.M.P.No.36 of 2015

ORDER:

This petition is filed under Section 24 C.P.C., to withdraw M.O.P.No.28 of 2014 from the file of the Senior Civil Judge, Ramachandrapuram, East Godavari District, and transfer the same to the Senior Civil Judge Court, at Tenali, Guntur District.

2. As directed by this Court, the learned counsel for the petitioner has taken the notice to the respondent and the same was returned with an endorsement 'respondent not available in the house for one week'. For better clarification, the address furnished by the respondent in M.O.P.28 of 2014 filed by him on the file of Senior Civil Judge, Ramachandrapuram, and the address to which the petitioner sent notice are furnished in the following table:

<u>Address mentioned by the respondent in his M.O.P.</u>	<u>Address to which the petitioner sent notice by post</u>
- <u>Amaraapu Pydiyya @ Chinna S/o.Veerayya, age:45 years, Hindu, Polamuru Village, Anaparthi Mandal, East Godavari District.</u>	- <u>Amaraapu Pydiyya @ Chinna, S/o.Veerayya, R/o.Chervugattu, near Z.P.High School, Polamuru Village, Anaparthi Mandal, East Godavari District.</u>
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The crucial question that falls for consideration is 'whether return of the postal cover with above referred endorsement would amounts to service of notice or not. From the above table, it is clear that the notice was sent to the correct address of the respondent, as mentioned in M.O.P. No.28 of 2014 filed by him against the petitioner herein.

3. At this juncture, learned counsel for the petitioner has drawn my attention to the decision in **AJEET SEEDS LTD. v. K.GOPALA**

KRISHNAIAH^[1] at Paras-9 and 10, it is held as follows:

9. This Court has already held that when a notice is sent by registered post and is returned with a postal endorsement 'refused' or 'not available in the house' or 'house locked' or 'shop closed' or 'addressee not in station', due service has to be presumed. (Vide *Jagdish Singh v. Natthu Singh*^[2], *State of M.P. v. Hirala*^[3] and *V. Raja Kumari v. P. Subbarama Naidu*^[4].) It is, therefore, manifest that in view of the presumption available under Section 27 of the Act, it is not necessary to aver in the complaint under Section 138 of the Act that service of notice was evaded by the accused or that the accused had a role to play in the return of the notice unserved."

10. It is thus clear that Section 114 of the Evidence Act enables the Court to presume that in the common course of natural events, the communication would have been delivered at the address of the addressee. Section 27 of the GC Act gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post. It is not necessary to aver in the complaint that in spite of the return of the notice unserved, it is deemed to have been served or that the addressee is deemed to have knowledge of the notice. Unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business."

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 'respondent not available in the house for one week', 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 24.05.1995 in Polamuru village of Anaparthi Mandal, East Godavari District, 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 two daughters. The petitioner filed M.C.No.39 of 2014 on the file of the I Additional Judicial Magistrate of First Class, Tenali, claiming maintenance from the respondent. The respondent filed M.O.P.No.28 of 2014 on the file of Senior Civil Judge Court, Ramachandrapuram, East Godavari District, for dissolution of marriage between him and the petitioner.

7. The petitioner has been residing at her parents house in Tenali along with her two daughters due to misunderstandings between her and the respondent. The distance between Ramachandrapuram and Tenali is around 200 kilometers. The petitioner may face some difficulty to travel from Tenali to Ramachandrapuram along with her two daughters to prosecute M.O.P.No.28 of 2014. Invariably, the respondent has to attend the Court of Judicial Magistrate of First Class, at Tenali in view of pendency of M.C.No.39 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 and children.

8. As per the principle enunciated in **Sumita Singh v. Kumar Sanjay**^[5], **Rachna Kanodia v. Anuk Kanodia**^[6] and **V.Sailaja v V.Koteswara Rao**^[7] 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. M.O.P.No.28 of 2014 is withdrawn from the file of the Senior Civil Judge, Ramachandrapuram, East Godavari District, and transferred to the file of Senior Civil Judge Court, Tenali, Guntur District, for disposal in accordance with law. As a sequel, miscellaneous petitions, if any, pending in this transfer petition shall stand closed.

T.SUNIL CHOWDARY, J

04.09.2015.

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[\[1\]](#) 2014(2) ALD (CrI.) 702 (SC)

[\[2\]](#) (1992) 1 SCC 647

[\[3\]](#) (1996) 7 SCC 523

[\[4\]](#) (2004) 8 SCC 774

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

[\[6\]](#) 2001(7) Supreme 96

[\[7\]](#) AIR 2003 AP 178 : 2003 (1) ALD 673 : 2003 (1) APLJ 441