

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

TRANSFER C.M.P.No.82 of 2015

ORDER:

This petition is filed under Section 24 of C.P.C., to withdraw F.C.O.P.No.63 of 2015 from the file of the Additional Family Court at Visakhapatnam and transfer the same to the file of the Senior Civil Judge Court at Amalapuram.

2. A perusal of the record reveals that on 18.02.2015, this Court permitted the petitioner to take out personal notice to the respondent by registered post with acknowledgment due. In pursuance thereof, notice has been sent to the respondent and the same was returned with postal endorsement “*No such addressee at Marikavalasa. Returned to sender*”. For better clarification, the address furnished by the respondent in F.C.O.P.No.63 of 2015 filed by him on the file of the Additional Family Court at Visakhapatnam and the address to which the petitioner sent notice are furnished in the following table:

Address mentioned by the respondent in his F.C.O.P.	Address to which the petitioner sent notice by post
Sri Muramalla Venkataramana, S/o. Late Subba Rao, Hindu, Aged 36 years, R/at SF-4, Block No.9, Rajeev Gruha Kalpa, Near Marikavalasa, Kommada, Visakhapatnam.	M.Venkataramana, S/o. late Subba Rao, R/o. SF-4, Block No.9, Rajeev Gruha Kalpa, Near Marikavalasa, Kommada, Visakhapatnam.

From the above table, it is clear that the notice was sent to the correct address of the respondent, as mentioned in F.C.O.P.No.63 of 2015 filed by him against the petitioner herein on the file of the Additional Family Court at Visakhapatnam.

3. At this juncture, learned counsel for the petitioner has drawn my attention to the decision in **AJEET SEEDS LTD. v. K.GOPALA KRISHNAIAH** 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*, *State of M.P. v. Hiralal* and *V.*

Raja Kumari v. P. Subbarama Naidu.) 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 with an endorsement that “*No such addressee at Marikavalasa. Returned to sender*”, 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 is deemed to have been 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

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

7. The marriage of the petitioner was performed with the respondent on 27.08.2005 at Amalapuram, as per Hindu Rites and Caste Custom. Immediately after the marriage, the petitioner joined the respondent to lead marital life. Out of lawful wedlock, they were blessed with two sons. The respondent filed F.C.O.P.No.63 of 2015 on the file of the Additional Family Court at Visakhapatnam seeking dissolution of marriage between him and the petitioner.

8. The petitioner has been residing in her parents' house at Amalapuram along with her children due to matrimonial disputes. The distance between Visakhapatnam and Amalapuram is nearly 200 kilometers. The petitioner may face some difficulty to travel from Amalapuram to Visakhapatnam along with her children in order to prosecute F.C.O.P.No.63 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, to the wife and the children.

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

10. 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 deserves to be allowed.

11. Accordingly, the Transfer Civil Miscellaneous Petition is allowed. F.C.O.P.No.63 of 2015 is withdrawn from the file of the Additional Family Court at Visakhapatnam and transferred to the file of the Senior Civil Judge Court at Amalapuram for trial and disposal in accordance with law. There shall be no order as to costs.

12. Consequently, Miscellaneous petitions, if any, pending in this transfer petition shall stand closed.

T.SUNIL CHOWDARY, J

Date: 01.10.2015.

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