

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

TRANSFER C.M.P.No.424 of 2015

ORDER:

This petition is filed under Section 24 C.P.C., to withdraw O.P.No.519 of 2015 from the file of the Family Court, Ranga Reddy District at L.B. Nagar, Hyderabad and transfer the same to the file of the Family Court, Kurnool, for trial and disposal in accordance with law.

2. A perusal of the record reveals that on 30.7.2015, 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 O.P. No.519 of 2015 filed by him on the file of Family Court, Ranga Reddy District at L.B. Nagar, Hyderabad 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>Lavudia Srikanth, S/o.Deva Naik, Aged:-28 years, Occ:-Un-Employee, R/o.H.No.8-50/B/6, Srinivasa Colony, Boduppal, Near Venkateswara Temple, Ghatkesar Mandal, R.R. Dist.</u>	<u>Lavudia Srikanth, S/o.Deva Naik, H.No.8-50/B/6, Srinivasa Colony, Near Venkateswara Temple, Ghatkesar Mandal, Ranga Reddy Dist. Telangana State.</u>
-	-

From the above table, it is clear that the notice was sent to the correct address of the respondent, as mentioned in O.P. No.519 of 2015 filed by him against the petitioner herein on the file of Family Court, Ranga Reddy District.

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 11.2.2012 at “Devi Paradise”, Nandyal Road, Near Check Post, Kurnool, as per Hindu rites and caste customs.

Immediately after the marriage, the petitioner joined the respondent to lead marital life. The respondent is facing trial in DVC No.5 of 2015 on the file of Special Judicial Magistrate of Proh. and Excise, Kurnool. The petitioner also filed M.C. No.22 of 2015 on the file of Family Court, Kurnool seeking maintenance from the respondent. The respondent filed O.P. No.519 of 2015 on the file of the Family Court, Ranga Reddy District at L.B. Nagar, Hyderabad for dissolution of the marriage between him and the petitioner.

7. The petitioner has been residing at her parents' house in Kurnool due to disputes between her and the respondent. The distance between Kurnool and Hyderabad is about 250 KMs. The petitioner may face some difficulty to travel from Kurnool to Hyderabad to defend O.P.No.519 of 2015. Invariably, the respondent has to attend the Family Court and Special Mobile Court at Kurnool, in view of pendency of M.C. No.22 of 2015 and DVC No.5 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, 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. O.P.No.519 of 2015 is withdrawn from the file of the Family Court, Ranga Reddy District and transferred to the file of Family Court, Kurnool, for trial and disposal in accordance with law. Miscellaneous petitions, if any, pending in this transfer petition shall stand closed.

Date: 02.09.2015.
YS

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