THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

TRANSFER C.M.P.NO.603 OF 2015

O R D E R:

This Transfer C.M.P. is filed by the petitioner-wife against the respondent-husband for transfer of H.M.O.P.No.76 of 2015 instituted by the respondent-husband for grant of divorce, pending on the file of Principal Senior Civil Judge, Madanapalle, Chittoor District, to the file of Principal Senior Civil Judge or to the Family Court at Nellore, SPSR Nellore District.

It is the case of the petitioner that her marriage with the respondent was performed on 08.02.2015 as per Hindu Rites and Customs. After marriage, both of them lived happily together for some time. Thereafter, the respondent went to Madanapalle without information and did not turn up and filed H.M.O.P.No.76 of 2015 under Section 12 (1) of the Hindu Marriage Act (for short 'the Act') on the file of Principal Senior Civil Judge, Madanapalle, Chittoor District against the petitioner, for declaring the marriage as null and void. The petitioner also filed F.C.O.P.No.214 of 2015 under Section 9 of the Act, on the file of Family Court, Nellore seeking restitution of conjugal rights and the same is pending.

The learned counsel for the petitioner submits that the petitioner is residing with her parents at Nellore and as there is no male assistance for her, she is unable to travel all the way from Nellore to Madanapalle, which is 300 kms., away and she cannot effectively defend H.M.O.P.No.214 of 2015. It is also submitted that the respondent used to travel from Madanapalle to Nellore on business purpose.

Though notice is sent to the respondent, it was returned with an endorsement made by the postal department stating that the addressee is out of station for seven days and the postal endorsement received by the learned counsel for the petitioner is filed in U.S.R.No7207 of 2015. In view of the same, the notice is deemed to be served to the respondent under Section 27 of General Clauses Act.

As per the judgment of the Apex Court in **AJEET SEEDS LIMITED VS. K.GOPALA KRISHNAIAH**[1] it was held as follows:

> "Section 27 gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post. In view of the said presumption, when stating that a notice has been sent by registered post to the address of the drawer, it is unnecessary to further aver in the complaint that in spite of the return of the notice

> unserved, it is deemed to have been served or that the address 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 of which the letter would have been delivered in the ordinary course of business. 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** (1992) (1) SCC 647), **State of M.P. v. Hiralal** (1996) 7 SCC 523) and **V.Raja Kumari v. P.Subbarama Naidu** (2004)-8 SCC 774:2005 SCC (Cri) 393). 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."

The facts narrated, which are mentioned in respect of the transfer petition would go to show that the petitioner is unable to travel all the way from Nellore to Madanapalle, which is at a distance of 300 kms., and she has to look after her parents and in view of the fact that the averments made in support of the Transfer Petition are not controverted, as the respondent has not made appearance in spite of notice sent to the address given in the O.P., and in view of the decision of the Apex Court

in **SUMITA SINGH VS. KUMAR SANJAY AND ANOTHER**[2] wherein it was held that while transferring matrimonial proceedings initiated by the husband, the convenience of wife must be looked at, the Transfer C.M.P. is liable to be allowed.

Accordingly, the Transfer C.M.P. is allowed, transferring H.M.O.P.No.76 of 2015 from the file of Principal Senior Civil Judge, Madanapalle, Chittoor District to the file of Principal Senior Civil Judge, Nellore. Miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

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A.RAJASHEKER REDDY, J

Dt.31.12.2016
TJS

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[1]) (2014) 12 SCC 685

[2]) AIR 2002 SC 396