

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

TRANSFER C.M.P.No.402 of 2015

ORDER:

This petition is filed under Section 24 of C.P.C., to withdraw H.M.O.P.No.36 of 2015 from the file of the Court of the Senior Civil Judge at Machilipatnam, Krishna District and transfer the same to the file of the Judge, Family Court at L.B.Nagar, Ranga Reddy District.

2. A perusal of the record reveals that on 23.07.2015, 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 that “the addressee is not staying in the said address and as such the cover is returned to the sender”. For better clarification, the address furnished by the respondent in H.MO.P.No.36 of 2015 filed by him on the file of the Court of the Senior Civil Judge at Machilipatnam and the address to which the petitioner sent notice are furnished in the following table:

<u>Address mentioned by the respondent in his H.M.O.P.</u>	<u>Address to which the petitioner sent notice by post</u>
- <u>Singamsetti Dinesh Babu, S/o.Vara Prasada Rao, Hindu, Aged about 31 years, employee, R/o. D.No.20/117/6-1, near Gandhi park, Gandhi Nagar, Machilipatnam, JCJC, Mchilipatnam.</u>	- <u>S.Dinesh Babu, S/o. Vara Prasada R a o , D.No.20/117/6-1, Near Gandhi Park, Gandhi Nagar, Machilipatnam, Andhra Pradesh.</u> -

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.36 of 2015 filed by him against the petitioner herein on the file of the Court of the Senior Civil Judge at Machilipatnam.

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. Hiralal*^[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 affected 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 "the addressee is not staying in the said address and as such the cover is returned to the 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 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

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 09.03.2012 at Eluru, as per Hindu rites and caste customs. Immediately after the marriage, the petitioner joined the respondent to lead marital life. The respondent filed H.M.O.P.No.36 of 2015 on the file of the Court of the Senior Civil Judge at Machilipatnam for dissolution of marriage between him and the petitioner.

8. The petitioner has been residing at her parents' house in Hyderabad. As per the averments made in H.M.O.P.No.36 of 2015, the petitioner is the permanent resident of Eluru. At the time of argument, the learned counsel for the petitioner submitted that the petitioner has been residing at her parents' house in Hyderabad. The distance between Machilipatnam and Hyderabad is around 400 kilometers. The petitioner may face some difficulty to travel from Hyderabad to Machilipatnam. 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.

9. As per the principle enunciated in **Rachna Kanodia v. Anuk Kanodia**^[5], and **Sumita Singh v. Kumar Sanjay**^[6], 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. After perusing the record, there is some confusion with regard to the original address of both parties. The respondent may also face some difficulty to attend the Family Court at L.B.Nagar, Ranga Reddy District on each and every date of adjournment. Even if the presence of the respondent is dispensed with, no prejudice will be caused to the petitioner.

12. Accordingly, the Transfer Civil Miscellaneous Petition is allowed. H.M.O.P.No.36 of 2015 is withdrawn from the file of the Court of the Senior Civil Judge at Machilipatnam, Krishna District and transferred to the file of the Judge, Family Court at L.B.Nagar, Ranga Reddy District for trial and disposal in accordance with law. The presence of the respondent (husband) in respect of H.M.O.P.No.36 of 2015 is hereby dispensed with on each and every date of adjournment before the Judge, Family Court at L.B.Nagar, Ranga Reddy District. However, he shall appear before the said Court as and when his presence is so required. There shall be no order as to costs.

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

T.SUNIL CHOWDARY, J

Date: 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

[\[5\]](#) 2001(7) Supreme 96

[\[6\]](#) AIR 2002 SC 396