

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

TRANSFER C.M.P. No.461 of 2015

ORDER:

This petition is filed under Section 24 of C.P.C to withdraw O.P.No.85 of 2015 from the file of the Family Court, Khammam District and transfer the same to the Family Court, Nellore District for disposal in accordance with law.

2. As directed by this Court on 14.08.2015, the petitioner has taken out notice to the respondent by registered post with acknowledgement due. The notice sent to the respondent was returned with an endorsement 'addressee left. For better clarification, the address furnished by the respondent in O.P.No.85 of 2015 filed by him on the file of the Family Court, Khammam, and the address to which the petitioner sent notice are furnished in the following table:

Address mentioned by the respondent in his O.P.	Address to which the petitioner sent notice by post
Boggavarapu Umamahesh, S/o late Jagannadham, age: 28 years, Occ: Nil, R/o H.No.11-4-67/2, Nehru Nagar, Khammam town and District.	Boggavarapu Umamahesh, S/o late Jagannadham, H.No.11-4-67/2, Nehru Nagar, Khammam town and District – 507 002.

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 O.P. No.85 of 2015 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** 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 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 ‘addressee left, it amounts to service of notice. The facts of the case on hand are almost identical to the facts of the case 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 09.12.2012 at M.S.R.Kalyana Mandapam, near Bye-pass road, Nellore city, as per Hindu rites and caste customs. Immediately after the marriage, the petitioner joined the respondent to lead marital life. Basing on the complaint lodged by the petitioner, the Station House Officer, Nellore registered a case in Crime No.9 of 2015 against the respondent and others for the offences punishable under Sections 420, 464, 468, 471 and 379 IPC. The Station House Officer, WPS, Nellore registered a case in Crime No.16 of 2015 against the respondent for the offence punishable under Section 498-A IPC. The respondent is also facing trial in DVC No.16 of 2015 on the file of the IV Additional Judicial Magistrate of First Class, Nellore. The respondent filed O.P.No.85 of 2015 on the file of the Family Court, Khammam for restitution of conjugal rights.

8. The petitioner has been residing at her parents’ house in Nellore town due to

matrimonial disputes. The distance between Khammam and Nellore is around 400 KMs. The petitioner may face much difficulty to travel from Nellore to Khammam in order to defend O.P.No.85 of 2015. Invariably the respondent has to attend the IV Additional Judicial Magistrate of First Class, Nellore in view of pendency of DVC No.16 of 2011 and Crime Nos. 9 and 16 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. If the petition is dismissed, it may cause untold hardship to the petitioner. Even if the petition is allowed, the same may not cause any prejudice to the respondent.

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

10. Accordingly, the Transfer Civil Miscellaneous Petition is allowed. O.P.No.85 of 2015 is withdrawn from the file of the Family Court, Khammam District and transferred to the Family Court, Nellore District for trial and disposal in accordance with law. No costs.

As a sequel, miscellaneous petitions, if any pending in this petition, shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 12.09.2015.

GvI