

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

TRANSFER CIVIL MISCELLANEOUS PETITION No.110 of 2015

ORDER:

This petition is filed under Section 24 of C.P.C., to withdraw F.C.O.P.No.465 of 2014 from the file of Judge, Family Court-cum-V Additional District Judge, Visakhapatnam and transfer the same to the file of Judge, Family Court, Vijayawada.

2. A perusal of the record reveals that on 02.03.2015, 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 “refused, hence, returned to the sender”. For better clarification, the address furnished by the respondent in F.C.O.P.No.465 of 2014 filed by him on the file of Judge, Family Court-cum-V Additional District Judge, Visakhapatnam 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
- Veerni Nageswara Rao S/o V.V.Ramana Murthy, Hindu, aged 35 years Occ: Bank employee, R/o Kapparada Village, Kancharapalem, Visakhapatnam	- Veerni Nageswara Rao S/o V.V.Ramana Murthy, Occ: Bank Clerk, R/o H.No.37-11-31/1, Kapparada Village, Kancharapalem, Visakhapatnam District.

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.465 of 2014 filed by him against the petitioner herein on the file of Judge, Family Court-cum-V Additional District Judge, 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^[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. Hirala*^[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 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 decision, when a notice has been sent to the correct address of the party and the same has been returned with an endorsement "refused, 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 cases 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 07.12.2008 at Gowri Parvathi Kalyana Mandapam, Visakhapatnam, as per Hindu Rites and Caste Customs. Immediately after the marriage, the petitioner joined the respondent to lead marital life. Out of lawful wedlock, they were blessed with a son on 14.02.2010. Basing on the complaint lodged by the petitioner, the Station House Officer, Thotlavalluru Police Station registered a case in Crime No.153 of 2014. The petitioner filed M.C.No.25 of 2015 on the file of Judge, Family Court, Vijayawada seeking maintenance from the respondent. The respondent filed F.C.O.P.No.465 of 2014 on the file of Judge, Family Court-cum-V Additional District Judge, Visakhapatnam, for dissolution of marriage between him and the petitioner.

8. The petitioner has been residing in her parents' house at Visakhapatnam due to misunderstandings between her and the respondent. The distance between Vijayawada and Visakhapatnam is around 300 kilometers. The petitioner may face some difficulty to travel from Vijayawada to Visakhapatnam in order to prosecute F.C.O.P.No.465 of 2014. Invariably, the respondent has to attend the Family Court at Vijayawada in view of pendency of M.C.No.25 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**^[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. Accordingly, the Transfer Civil Miscellaneous Petition is allowed. F.CO.P.No.465 of 2014 is withdrawn from the file of the Judge, Family Court-cum-V Additional District Judge, Visakhapatnam and transferred to the file of Judge, Family Court Vijayawada for 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

OCTOBER 30, 2015

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THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

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Date: 30.10.2015

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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